

Substance use is not per se neglect

Substance abuse by a parent may contribute to a finding of neglect but, without proof of an adverse impact on the child or a substantial risk of harm, is not sufficient itself to support a finding of neglect. *See In re K.H.*, 281 N.C. App. 259 (2022); *In re F.S.*, 268 N.C. App. 34 (2019); *In re J.C.M.J.C.*, 268 N.C. App. 47 (2019); *In re K.J.B.*, 248 N.C. App. 352 (2016); *In re E.P.*, 183 N.C. App. 301, *aff'd per curiam*, 362 N.C. 82 (2007); *Powers v. Powers*, 130 N.C. App. 37 (1998); *In re McDonald*, 72 N.C. App. 234 (1984); *In re Phifer*, 67 N.C. App. 16 (1984).

- *In re E.P.*, 183 N.C. App. 301, 307 (2007), *aff'd*, 362 N.C. 82 (2007)
“In the case before us, the trial judge found no instances of neglect or harm to the children. Furthermore, the treatment records requested by DSS contained no evidence that actual harm to the children had occurred, or that the parents' substance abuse issues created a substantial risk of harm to the children. More importantly, DSS failed to present other evidence that the children had been harmed because of respondents' substance abuse or that the children were exposed to a substantial risk of harm. We in no way contend that DSS was required to have shown that the children were actually harmed in order for the trial court to have found that they were neglected or dependent. However, DSS failed to present clear and convincing evidence that the parents' problems created a substantial risk of harm to the children, and we hold the subject records would not have aided DSS in satisfying its burden of proof. DSS failed to prove by clear and convincing evidence that respondents' home was not suitable for the children. Thus, the trial court did not err by dismissing the juvenile petitions.”
- *In re K.J.B.*, 248 N.C. App. 352, 355–56 (2016)
“Assuming *arguendo* that the evidence supported the finding that Respondent continued to have a substance abuse problem, there was a lack of clear and convincing evidence that Respondent's substance abuse had an adverse impact on Kenneth's well-being.
...
In *In re E.P.*, 183 N.C.App. 301, 645 S.E.2d 772, *aff'd per curiam*, 362 N.C. 82, 653 S.E.2d 143 (2007), this Court held a parent's substance abuse problem alone could not support an adjudication of neglect. *Id.* at 304–05, 645 S.E.2d at 774. In so holding, the Court distinguished *In re Leftwich*, 135 N.C.App. 67, 73, 518 S.E.2d 799, 803 (1999), in which the evidence showed the mother's alcoholism resulted in her children lacking age-appropriate social skills and toilet training. *In re E.P.*, 183 N.C.App. at 306, 645 S.E.2d at 775.

In *Leftwich*, “the adjudication of neglect was based upon *the harm to the children* as a result of respondent's substance abuse; it was not based solely upon respondent's substance abuse.” *Id.* at 306, 645 S.E.2d at 775 (emphasis in original). By contrast, the trial court in *In re E.P.* could not adjudicate neglect where “there was no substantial evidence of any connection between the substance abuse and domestic violence and the welfare of [the] two children.” *Id.* at 306, 645 S.E.2d at 775 (internal quotation marks omitted) (alteration in original).

Here, as in *In re E.P.*, there is no substantial evidence to show Kenneth suffered any physical, mental, or emotional impairment, or that he was at a substantial risk of suffering such impairment, as the result of Respondent's substance abuse. *See In re C.M.*, 183 N.C.App. at 210, 644 S.E.2d at 592. While Respondent admitted to drinking alcohol on the evening of 9 December 2014, she left Kenneth in the care of another adult that evening. Respondent sought to retrieve Kenneth the following morning, and there is no evidence Respondent was intoxicated at that time. Without evidence showing Respondent cared for Kenneth while intoxicated, or showing the babysitter did not or could not properly care for Kenneth, the events of 9–10 December 2014 do not demonstrate harm or a substantial risk of harm to Kenneth.”

- *In re K.H.*, 281 N.C. App. 259, 269–70 (2022)
“Respondents correctly note that a parent's substance abuse problem alone cannot support an adjudication of neglect. *See id.* at 355, 797 S.E.2d at 518 (citing *In re E.P.*, 183 N.C. App. 301, 645 S.E.2d 772, *aff'd per curiam*, 362 N.C. 82, 653 S.E.2d 143 (2007)). But here, the unchallenged findings reveal further circumstances posing a substantial risk of harm to Ken: Two heroin overdoses necessitating emergency medical response occurred in the home in July and September of 2020. Drug paraphernalia was also present in and about the home on different occasions. Beketov confiscated drug paraphernalia from the home in February 2020 and a SCDSS social worker “located a used needle in the front yard, close to the front door of the home” in September 2020. During SCDSS's investigation in September 2020, Ken was “10 months of age, crawling, and pulling up.” Respondents did not indicate that anyone other than themselves cared for Ken for any length of time. Taken as a whole, these findings show a prolonged period of drug use in the home, by both Respondents and others, during which Ken was placed at risk of exposure to drugs and drug paraphernalia. These findings in turn support the conclusion that Ken was neglected because he lived in an injurious environment—one that posed him a substantial risk of harm. *In re K.J.B.*, 248 N.C. App. at 354, 797 S.E.2d at 518.”

Violations of the Americans with Disability Act Related to Child Welfare (*Excerpt from 2025 ed of A/N/D TPR Manual, Ch. 13.5 (edition forthcoming)*)

Violations of Title II of the ADA in the child welfare context have been found in other states based on a variety of different types of discriminatory practices. Some of the violations are as follows:

Substance Use and Medication Treatment

- A voluntary resolution agreement between the U.S. DHHS Office of Civil Rights (OCR) and the Pennsylvania Department of Human Services (DHS). OCR Transaction [No. 20-359940](#) (July 5, 2023). This agreement resolves a complaint filed by an individual who was discouraged from applying to be a foster parent because of her use of medically prescribed methadone for her opioid use disorder. Under the agreement, DHS will not

discriminate against any participant in the child welfare system, including parents, foster parents, legal guardians, and adoptive parents, because of that participant's disability. Disability includes individuals with substance use disorders but does not include those currently using illegal substances. Safety requirements will be assessed for actual risks pertaining to the individual with a disability and not speculation, generalizations, or stereotypes. Reasonable modifications to policies, practices, and procedure that are tailored to the needs of the individual with a disability will be made, and auxiliary aids and services will be provided without any cost to the individual. New policies and procedures will be developed and training to all staff including contractors will be provided that address substance use disorders, medication assisted treatment, medication for opioid use disorder (which is not the use of illegal drugs), reasonable accommodations, and grievances.

- A finding by the U.S. Department of Justice of Title II violations by the Unified Judicial System of Pennsylvania. [DJ # 204-64-170](#) (February 2, 2022). The courts discriminated against individuals who had opioid use disorder (OUD) and were under court supervision (probation and drug court) by prohibiting or limiting their use of medication to treat OUD. The findings letter discusses medication for opioid use disorder (MOUD); its safety and effectiveness; and need for individualized assessments and treatment plans, with a recognition that for some, treatment will continue indefinitely. Voluntary compliance negotiations are suggested that would include provisions addressing in part training and educating all court staff about OUD and the nondiscrimination requirements of Title II, paying compensatory damages to the complainants, and adopting or revising policies that explicitly exclude discrimination against qualified individuals receiving services from the courts because of OUD.
- A Voluntary Resolution Agreement between the U.S. DHHS Office of Civil Rights (OCR) and the West Virginia Department of Health and Human Resources (Department) ([OCR Transaction No. 18-306552](#)) (April 2020). This agreement addresses individuals who are in recovery from opioid use disorder (OUD) through medication assisted treatment (MAT). OCR received a complaint from relatives who obtained a favorable home study for a kinship placement of a child but were determined by the Department social worker to be inappropriate due to one of the relative's history of taking Suboxone as part of his MAT. OCR identified systemic deficiencies in the Department's implementation of its nondiscrimination policies, practices, and procedures as applied to individuals who are in recovery for OUD. The agreement requires the Department to update its policies and procedures, create a training specifically addressing OUD recovery, and assure compliance with the ADA and Section 504 of the Rehabilitation Act. OCR will monitor and provide technical assistance to the Department to ensure compliance with the agreement.