

The State of Post-Petition Evidence in A/N/D Adjudicatory Hearings

An adjudicatory hearing in an abuse, neglect, or dependency action is “a judicial process designed to adjudicate the existence or nonexistence of any of the conditions alleged in the petition.” [G.S. 7B-802](#). The conditions refer to whether the juvenile is abused, neglected, or dependent. Because of the statutory language of G.S. 7B-802, the general rule created by the appellate courts is that post-petition evidence is not considered at an adjudicatory hearing. However, the court of appeals has stated this rule is “not absolute.” *In re V.B.*, 239 N.C. App. 340, 344 (2015). In the last several years, the court of appeals has carved out 3 exceptions to the rule that allow for post-petition evidence: (1) a neglect adjudication when there is a long period of separation between the child and parent before the petition is filed, (2) dependency adjudications, and (3) evidence of fixed and ongoing circumstances, such as paternity and mental illness. In November 2022, the North Carolina Supreme Court in *In re L.N.H.*, 382 N.C. 536 (2022) addressed one of those exceptions, the dependency adjudication exception, and determined the court of appeals exception was error. So, what is the rule regarding post-petition evidence? It’s a little murky now.

The General Rule

When considering whether the juvenile is abused, neglected, or dependent, the “evidence in the adjudicatory hearing is limited to a determination of the items alleged in the petition.” *In re L.N.H.*, 382 N.C. at 543 (quoting *In re A.B.*, 179 N.C. App. 605, 609 (2006)). In other words, evidence of events that occurred after the petition was filed should generally not be considered by the trial court.

What Is Post-Petition Evidence?

There is no definition of what constitutes post-petition evidence, but examples are provided in the cases below, including drug screens, a parent’s conduct during visits, the establishment of paternity, the approval of a relative home study, and compliance with case plan requirements that occurred after the petition was filed. Although a child medical examination (CME) occurs after a petition is filed, a CME is not post-petition evidence that is excluded. The Juvenile Code explicitly addresses consent for a CME after the petition is filed in [G.S. 7B-505.1\(b\) and \(c\)\(4\)](#). The CME and other evaluations (dis)prove the allegations in the petition related to abuse, neglect, or dependency and is not a new event that creates a circumstance addressed by the components of the definition of abuse, neglect, or dependency.

In re L.N.H.: NC Supreme Court Reverses Court of Appeals

In re L.N.H. involves an appeal of an adjudication of abuse, neglect, and dependency as well as the initial dispositional order. This post focuses only on the portion regarding the adjudication of

dependency and post-petition evidence.

The trial: The department of social services (DSS) filed a petition alleging L.N.H. was abused, neglected, and dependent based on L.N.H.'s hospitalization for significant burns on the soles of her feet and following reports that mother had burned L.N.H. with a lighter, sprayed green liquid in her face, punched her in the chest, and left her alone on the front porch. Mother reported she did not remember hurting L.N.H., that she suffered from depression and was not taking her medication, that she drank that night and had gone to sleep, and that she thought L.N.H. was still home. Before DSS filed its petition, several of mother's family members expressed their willingness to care for L.N.H., but home studies had not been completed as L.N.H.'s immediate safety concerns were prioritized. L.N.H.'s father was identified; however, his paternity was not adjudicated and, although he lived in Colorado, his location was unknown. DSS filed its petition and obtained nonsecure custody of L.N.H. At the adjudicatory hearing, the trial court adjudicated L.N.H. dependent finding in part that at the time the petition was filed, no parent was available and there was no alternative child care arrangement since a home study could not be completed due to the urgency of the situation, which included the need for consent to medical treatment. At initial disposition, the court ordered L.N.H. in the legal custody of DSS and ordered placement with the material great aunt who had been approved by DSS. Mother appealed.

The Court of Appeals: In an unpublished opinion, [272 N.C. App. 695 \(2020\)](#), the court of appeals reversed the adjudication of dependency based on mother's argument that mother had alternative child care providers. Dependency requires that the juvenile is in need of assistance or placement because a parent, guardian, or custodian (1) is unable to provide for the juvenile's care or supervision and (2) lacks an appropriate alternative child care arrangement. [G.S. 7B-101\(9\)](#). Both components of the definition of dependency must be addressed. Under case law, dependency does not exist when one parent can provide or arrange for appropriate child care. *In re V.B.*, 239 N.C. App. 340 (2015).

Addressing post-petition evidence specifically, the court of appeals looked to two previously published opinions, [In re F.S.](#), 268 N.C. App. 34 (2019) and [In re B.P.](#), 257 N.C. App. 424 (2018) and stated "[t]he trial court must look at the situation before the court at the time of the hearing when considering whether a juvenile is dependent." *In re L.N.H.*, 272 N.C. App. at ____ (unpublished) (quoting *In re F.S.*, 268 N.C. App. at 34). The court of appeals also determined there were no findings about L.N.H.'s father's ability to provide or arrange for her care. The court of appeals reversed the dependency adjudication because mother's family members were available to care for L.N.H. and the court at disposition ordered placement with one family member, indicating that mother did not lack an appropriate alternative child care arrangement.

The NC Supreme Court: The supreme court granted a petition for discretionary review and reversed the court of appeals and affirmed the dependency adjudication. In its analysis, the supreme court looked at the language of G.S. 7B-802: "The adjudicatory hearing shall be a judicial process designed to adjudicate the existence or nonexistence of any of the conditions alleged in

the petition.” The supreme court stated:

the conditions underlying [a] determination of whether a juvenile is an abused, neglected, or dependent juvenile are fixed at the time of the filing of the petition. This inquiry focuses on the status of the child at the time the petition is filed, not the post-petition actions of a party.

In re L.N.H., 382 N.C. at 543.

The court of appeals did not follow the plain language of G.S. 7B-802. When the petition was filed, paternity had not been established for L.N.H.’s father, and his whereabouts were unknown, and because no home studies had been completed for the family members, no appropriate alternative placements were available. The trial court properly made its findings based on the situation when the petition was filed.

The Exceptions

Strictly reading the supreme court opinion, there are no exceptions: post-petition evidence is not allowed at adjudication. However, it may not be that simple because all the specific exceptions created *by the court of appeals* were not addressed by the supreme court, and a subsequent court of appeals opinion applied the fixed and ongoing circumstances exception to affirm an adjudication of neglect. Let’s look at each exception and where it stands.

1. Dependency and circumstances at the time of the hearing

The effect of the holding in *In re L.N.H.* is that it supersedes the holdings of the court of appeals regarding post-petition evidence in a dependency adjudication. It is clear under *In re L.N.H.* that a dependency adjudication does not permit the consideration of post-petition evidence. Although not expressly, the supreme court’s holding in *L.N.H.* effectively overrules the court of appeals opinions in *In re F.S.* and *In re B.P.*, where the court of appeals is said to have failed to follow the plain language of G.S. 7B-802. Instead, the supreme court stated the trial court was correct when it considered the circumstances at the time the petition was filed.

2. Neglect and circumstances at the time of the hearing

Consider a juvenile who is voluntarily placed by a parent with a caretaker who is providing appropriate care because of issues with the provision of proper care by the parent(s). DSS becomes involved and has concerns that the parent can remove the child from the appropriate caretaker at any time. The court of appeals has repeatedly recognized that an exception exists for post-petition evidence in neglect adjudications when there has been a long period of separation between the juvenile and their parent prior to the filing of a neglect petition. See [In re K.J.D.](#), 203 N.C. App. 653 (2010) (child placed with grandmother by mother; 18 months later DSS filed petition); [In re H.L.](#), 256 N.C. App. 450 (2017) (child placed with adult sibling as a safety resource;

6 months later DSS filed petition); [In re C.C.](#), 260 N.C. App. 182 (2018) (child placed by mother with grandmother and mother's former foster mother; several months later DSS filed petition).

In its first opinion creating this exception, *In re K.J.D.*, 203 N.C. App. 653, the court of appeals looked to case law applying the neglect ground for an adjudication of a termination of parental rights (TPR) because the definition of neglect was the same for both under G.S. 7B-101(15) and TPR cases typically involve a substantial period of separation between the child and respondent parent. Based on the TPR case law, the court of appeals held that the trial court "should consider 'evidence of changed circumstances in light of the evidence of prior neglect and the probability of repetition of neglect. The determinative factors must be the best interests of the child and the fitness of the parent to care for the child *at the time of the [adjudication] proceeding.*' " *In re K.J.D.*, 203 N.C. App. at 660 (emphasis in original) (citation omitted) (quoted in *In re H.L.*, 256 N.C. App. 450 (2017) and *In re C.C.*, 260 N.C. App. 182, 191 (2018)). The court considers the risk of harm to the child based on prior neglect and the fitness of the parent to care for the child at the time of the adjudicatory hearing, examining whether the parent has remedied the conditions that led to the voluntary placement of the juvenile. *In re C.C.*, 260 N.C. App. 182.

This exception for post-petition evidence appears to be superseded by *In re L.N.H.* The supreme court was clear in its statements, "the conditions underlying [a] determination of whether a juvenile is an *abused, neglected, or dependent* juvenile are fixed at the time of the filing of the petition. This inquiry focuses on the status of the child at the time the petition is filed, not the post-petition actions of a party." *In re L.N.H.*, 382 N.C. at 543 (emphasis supplied). Additionally, one of the opinions relied on by the court of appeals in its reversed opinion in *In re L.N.H.* was *In re B.P.*, which examined post-petition evidence for an adjudication of neglect under this exception.

One could argue that cases involving fact patterns like these are distinguishable from *In re L.N.H.*, which had essentially no period of separation between the mother and her infant before the juvenile petition was filed, and the infant's removal from mother was involuntary. The supreme court did not examine this exception specifically or overrule these opinions. In arguing for the post-petition exception, one would have to address the supreme court's explicit reference to adjudications of abuse, neglect, and dependency and the irrelevant nature of a party's post-petition actions.

3. Fixed and ongoing circumstances at the time of the hearing

The court of appeals also created an exception for post-petition evidence for an adjudication of neglect and dependency when that evidence addresses "fixed and ongoing circumstance[s]" rather than a "discrete event or one-time occurrence." *In re V.B.*, 230 N.C. App. 340, 344 (2015). Examples of a fixed and ongoing circumstances are the establishment of paternity and mental illness. *In re V.B.*, 230 N.C. App. 340. See [In re Q.M.](#), 275 N.C. App. 34 (2020) (petition filed 4 days after child was born giving father only 4 days to establish paternity before the petition was filed).

One month after the supreme court decided *In re L.N.H.*, the court of appeals published [In re G.W.](#),

286 N.C. App. 587 (2022), an opinion that applies this exception for post-petition evidence in a neglect adjudication. Relying on prior court of appeals opinions that determined mental illness was a fixed and ongoing circumstance, the failure of the parents to address the case plan goals related to their mental illnesses was relevant post-petition evidence in determining the existence or nonexistence of conditions alleged in the petition. The court of appeals appears to have broadened this exception to include parenting skills and the physical condition of the parents' home. Post-petition evidence of the parents' struggles during visitation was determined to be a fixed and ongoing circumstance because it related to the parents' (in)ability to properly care for the juvenile and is relevant to the existence or nonexistence of the conditions alleged in the neglect petition. Similarly, post-petition evidence of holes still being in the floor of the parents' home was a fixed and ongoing circumstance and was relevant to whether the child resided in an injurious environment, which was an issue raised in the petition. Evidence of discrete or one-time occurrences were also identified by the court of appeals when it determined evidence of completed parenting classes and drug screens conducted after the petition was filed were not admissible at adjudication.

In re G.W. makes no reference to *In re L.N.H.* and how the supreme court's holding impacts this exception. Instead, the court of appeals relied on its own precedent. Because the supreme court was clear in its statements "the conditions underlying [a] determination of whether a juvenile is an abused, neglected, or dependent juvenile are *fixed at the time of the filing of the petition*. This inquiry focuses on the status of the child at the time the petition is filed, not the post-petition actions of a party" (*In re L.N.H.*, 382 N.C. at 543 (emphasis supplied)), it appears this exception is not permitted. Given that the supreme court did not expressly overrule let alone review the court of appeals precedent creating this exception, and given the facts are distinguishable from those in *In re L.N.H.*, it is possible that this exception survives.

Conclusion

Strictly following the supreme court and *In re L.N.H.*, post-petition evidence should not be considered at adjudication. If it is, an appeal may be made seeking to address how *In re L.N.H.* affects the post-petition evidence exceptions in a neglect adjudication when there is a long period of separation between the juvenile and the parent prior to the filing of the petition or there is evidence of a fixed and ongoing circumstance, such as paternity. Remember, even if not permitted at an adjudicatory hearing, evidence of changed conditions or a party's actions taken after the petition is filed can be considered at disposition if the court adjudicated the child as abused, neglected, or dependent.