

## Issues in Juvenile Court Review and Permanency Planning Hearings

### Subject Matter Jurisdiction

- Chapter 7B establishes “one continuous juvenile case with several interrelated stages, not a series of discrete proceedings,” and thus an unverified petition can be challenged in the appeal of a review hearing and deprives the trial court of subject matter jurisdiction in the case. The verification requirement is jurisdictional and not procedural. In re T.R.P., 360 NC 588, 636 SE 2d 787 (2006)(3 judges dissenting)(case remanded to COA for remand to trial court, subject to the filing of a new petition).

### Entry of Orders

- 7B-906(d) and 7B-907(c) require entry of the order within 30 days of the hearing, but failure to adhere to that timeline is not reversible without a showing of prejudice. In re L.L., 172 NC App 689, 616 SE 2d 392 (2005)(8 month delay after review hearing was prejudicial); In re J.J., 637 SE 2d 258 (Court of Appeals, 12/5/06)(2 ½ month delay after permanency planning hearing was not prejudicial, Judge Tyson dissenting)(plan changed from reunification to guardianship with relative and mother retained reduced visitation).

### Timing of Permanency Planning Hearing

- Failure to conduct a permanency planning hearing within the mandated 12 months was not reversible error where the respondent mother did not show prejudice from the two-month delay. In re L.B., 639 SE 2d 23 (Court of Appeals, 1/2/07).

### Sufficiency of Findings of Fact

- Both 7B-906 and 7B-907 require that the court consider certain criteria and make written findings regarding those that are relevant.
- Appellate cases:
  - Failure to make those findings is reversible error and the court cannot simply adopt DSS or GAL reports as its only facts or substitute them for the court’s independent review, although those reports are admissible. In re Harton, 156 NC App 655, 577 SE 2d 334 (2003); In re D.L., 166 NC App 574, 603 SE 2d 376 (2004)(arguments of counsel are not evidence) See also Moore v. Moore, 160 NC App 569, 587 SE 2d 74 (2003)(recitations of testimony of each witness do not constitute findings of fact).
  - Findings must address the specified criteria under 7B-907, such as whether it is possible for the child to return home within 6 months and why it is not in the child’s best interest to return home, not just recite the progress or lack of progress of the parent. In re Ledbetter, 158 NC App 281, 580 SE 2d 392 (2003).

- When cessation of reasonable efforts is ordered, findings of fact must meet the requirements of both 7B-907 and 7B-507(b)(efforts toward reunification would be futile or inconsistent with the juvenile's health, safety, and need for a permanent home). In re Weiler, 158 NC App 473, 581 SE 2d 134 (2003).
- It is not reversible error if the trial court makes sufficient findings of ultimate facts concerning these factors, but does not specifically identify these findings as 7B-907(b) factors. In re J.C. S. 164 NC App 96, 595 SE 2d 155 (2004); In re L.B., 639 SE 2d 23 (Court of Appeals, 1/2/07)(DSS and GAL reports may be incorporated if the judge's own findings of fact appear based on those reports). And the court can find facts relevant to 7B-507(b) without formally listing those criteria. In re M.R.D.C., 166 NC App 693, 603 SE 2d 890 (2004), disc. review denied, 359 NC 321, 611 SE 2d 413 (2005).
- 7B-907(d) requires the filing of a TPR petition when a child has been in DSS custody/placement responsibility and out of the home for 12 out of the most recent 22 months unless the court finds:
  - Permanent plan is guardianship or custody with relative or some other suitable person
  - Specific reasons why the filing of the petition for TPR is not in the child's best interest
  - DSS has not provided necessary services to the family when reasonable efforts are still required to facilitate reunification
  - Reversible error where the court neither directed DSS to file a TPR petition nor made findings excusing the filing under this subsection, although it did order cessation of reasonable efforts and the plan of adoption be pursued. In re Dula, 143 NC App 16, 544 SE 2d 591, aff'd 354 NC 356, 554 SE2d 336 (2001).
  - Making findings under 7B-907(d) does not relieve the court from making findings under 7B-907(b) which establish the permanent plan. In re M.R.D.C., 166 NC App, 693, 603 SE 2d 890 (2004)(reversible error when court did not make adequate findings about placement with a relative under 7B-907(b)(2) before ordering TPR petition to be filed).

### **Priority of Relative Placements**

- 7B-505, -506 and -903 contain language giving priority to relatives in the placement of children. Specifically, if the court finds that a relative is willing and able to provide proper care and supervision in a safe home, the court shall order placement of the child with that relative unless the court finds that placement with that relative would be contrary to the best interests of the child.

- This priority language is not found in 7B-906 and -907, but both reference the court's authority to make any disposition authorized by 7B-903. In re L.L., 172 NC App 689, 616 SE 2d 392 (2005), held that this priority language is deemed incorporated into those review statutes, and thus the trial court erred in awarding custody to foster parents, who wished to pursue TPR, without making sufficient findings that placement of the child with out of state relatives was not in his best interest.

### **Award of Guardianship or Custody**

- An appropriate person can be granted custody or guardianship of a child at any stage of a juvenile proceeding. Juvenile court reviews, however, continue until the requirements of 7B-906(b) are met, which allows the court to waive further reviews. To do so, the court must find that (1) the child has resided with the relative or has been in the custody of another suitable person for a period of at least one year, (2) the placement is stable and continuation of it is in the child's best interest, (3) neither the rights of any party nor the best interest of the child require six month hearings, (4) all parties understand that motions for review can still be brought at any time and (5) the order has designated the relative or other suitable person as the permanent guardian or custodian.
- An award of guardianship or custody that is not the child's permanent plan must include a minimum outline of the time, place and conditions for visitation with the parent under 7B-905. That visitation cannot be left to the discretion of the custodian or guardian. In re E.C., 174 NC App 517, 621 SE 2d 647 (2005)(child placed in custody of cousin at initial disposition without any language about permanency). But see In re L.B., 639 SE 2d 23 (Court of Appeals, 1/2/07) where the Court without citation to E.C. held that visitation with relatives appointed as guardians at the permanency planning hearing could not be left to the relatives' discretion. This holding is consistent with two unpublished cases, In re K.H.H. (1/2/06)(custodian) and In re H.P. (12/19/06)(guardian clearly designated as permanent plan). To avoid visitation need findings that visits are not in the child's best interest.
- Even if further reviews are waived, a parent can file a motion for review asking the court for return of the child, assuming custody is not now in district court pursuant to 7B-311. An award of custody can be changed based on the parent's change in circumstance affecting the welfare of the child. An award of guardianship that is not the permanent plan for the child can be changed if the parent demonstrates that the child will receive proper care and supervision and that reunification is in his best interest. In re J.D.C., 174 NC App 157, 620 SE 2d 49 (2005). As the permanent plan, guardianship cannot be changed unless the guardian is shown to be unfit, unwilling, unable to care for the child or the relationship between the guardian and the child is no longer in the child's best interest. 7B-600(b).

- At whatever point custody or guardianship is awarded, the court must verify that the custodian or guardian understands its legal significance and will have adequate resources to care appropriately for the child. 7B-906(g); 7B-907(f).
- There is no termination of parental rights and likewise no cessation of the parents' responsibility to pay child support. Both can apply for TANF payments for the children as "child only" cases. This means there are no time restrictions or work requirements on these TANF payments. However, some relatives who become custodians or guardians choose not to apply for TANF benefits because the parent will be pursued for child support.
  - Payments under TANF:
    - one child - \$181 monthly
    - two children - \$236 monthly
    - three children - \$272 monthly
    - four children - \$297 monthly
- If a child has ever been in the custody of a county DSS, he may receive adoption assistance, even after DSS no longer has custody, if the person to whom DSS gave custody or guardianship later adopts him, and the child is a special needs child. Adoption assistance eligibility must be determined prior to the entry of the final decree of adoption and will necessitate a preplacement assessment and fingerprint check of the relative. The relative will be responsible for clearing the birth parents, but, if approved for adoption assistance, can use the "nonrecurring benefit" of up to \$2000 per child to pay for legal services.

## Appeals

- For actions commenced prior to 10/1/05, any order of disposition after an adjudication could be appealed, as well as any order modifying custodial rights. 7B-1001. An order changing the permanency plan from reunification to termination of parental rights was thus held appealable. In re Weiler, 158 NC App 473, 581 SE 2d 134 (2003). This holding was later limited to its facts in a subsequent case where the review order appealed repeated the previous directives of the court that reunification be ceased, but the parent did not appeal from those earlier orders. In re B.N.H., 170 NC App 157, 611 SE 2d 888, rev denied, 359 NC 632, 615 SE 2d 865 (2005).
- For actions commenced on or after 10/1/05, 7B-1001(a) now provides that an order entered under 7B-507(b) ceasing reunification may only be reviewed in the appeal of a termination of parental rights case if (1) the TPR motion or petition was heard and granted, (2) the order terminating rights was appealed in a proper and timely manner, and (3) the order to cease reunification is assigned as an error in the record on appeal of the TPR case. Or the parent may appeal the 7B-507(b) order if no TPR petition or motion is filed within 180 days of that order. A custodian or guardian may immediately appeal the 7B-507(b) order.