

Writing Good Court Orders in Juvenile Cases Abuse, Neglect, Dependency

Key Questions

1. Does the court have subject matter jurisdiction?
2. Does the court have personal jurisdiction over the necessary parties?
3. What is the statutory and procedural context of the order?
4. Does the order comply with any specific statutory requirements for this type order?
5. Is there competent evidence in the record to support the court's findings of fact?
6. Do the findings of fact support the conclusions of law?
7. Does the court have legal authority to order what it orders?
8. Has the court exercised its discretion in a reasoned (not arbitrary) way?
9. Will the parties understand the order?
10. Was the order entered in a proper and timely way?

Entry of a Court Order

1. Who prepares the order and what input do other parties have?
2. Has the order been signed and filed with the clerk? G.S. 1A-1, Rule 58.
3. Has the order been entered within 30 days after "completion of the hearing," if required?
 - a. Order for Continued Non-Secure Custody. G.S. 7B-506(d).
 - b. Adjudication Order. G.S. 7B-807(b).
 - c. Disposition Order. G.S. 7B-905(a).
 - d. Review Hearing Order. G.S. 7B-906(d).
 - e. Permanency Planning Hearing Order. G.S. 7B-907(c).
 - f. Termination of Parental Rights Order. G.S. 7B-1110(a).
4. Has a person designated by the court – or, if no one is designated, the person who prepared the order – served it on all parties within 3 days after it was entered? G.S. 1A-1, Rule 58.
5. Are there any local rules relating to preparation or service of orders?

General Tips for Writing Orders

1. Use language the parties will understand.
2. Begin the order with clear information about the type of order it is, the kind of hearing from which it results, and anything else that will establish its context in the larger case. Do not, however, recite the whole history of the case. *“On July 1, 2008, the court conducted an adjudication hearing on the petition filed in this matter on May 24, 2008. . . .”*
3. When appropriate, reference the statute pursuant to which the order is being entered, and ensure that all statutory requirements about the contents of this type of order have been satisfied.
4. Clearly distinguish among introductory material, findings of fact, conclusions of law, and the order/decreed.
5. If the adjudication and disposition hearings are held together, either enter two separate orders or clearly distinguish within the order.
6. If a particular standard of proof is required, be sure to state it. *“The court finds the following facts by clear and convincing evidence.”*
7. Incorporate by reference sparingly, if at all. If the court directed that a report or any other document be incorporated into the order,
 - a. be sure that a copy of the document is attached to the order, and
 - b. state in the order, *“the report submitted by [the guardian ad litem] [dss] [other], dated June 18, 2008, is attached hereto and incorporated herein by reference.”*
8. Make findings of fact specific and provide dates or a general time frame for events. Avoid findings such as:
 - a. *“Father has a drinking problem”* (instead, describe what that problem is, how it is manifested, and whether/how it affects the children)
 - b. *“Parents have refused to cooperate with DSS”* (instead, describe precisely the conduct or failure to act that is relevant)
 - c. *“Mother has made substantial progress in addressing problems that led to the child’s placement”* (instead, describe the problems and how mother has addressed them)
9. Do not write findings that simply describe a witness’s testimony. The following are not useful findings:
 - a. *“Dr. Lee testified that the child’s injuries could not have been caused accidentally.”*
 - b. *“Ms. Ray testified that DSS arranged weekly visits the parents failed to attend.”*
 - c. *“DSS introduced a medical report indicating that the child had three broken ribs.”*
10. Include the purpose and date of the next court hearing if applicable.
11. _____
12. _____
13. _____
14. _____

Specific Orders

I. Non-Interference Orders (G.S. 7B-303)

- Standard of Proof (burden being on DSS)
 - If order is entered after a hearing: clear, cogent, and convincing evidence
 - If the order is *ex parte*: probable cause
- Include a *finding of fact* about the report DSS is investigating, sufficient to support a *conclusion of law* that DSS received a report of “abuse,” “neglect,” or “dependency” that triggered a requirement that DSS conduct an assessment under G.S. 7B-302.
- Include findings about what, if anything, the respondent did or refused to do that obstructed or interfered with the assessment.
- Include a conclusion that the respondent [did] [did not] not have a lawful excuse for obstructing or interfering with the assessment.
- In an *ex parte* order, any relief granted must be narrowly tailored to include only provisions necessary to enable DSS to conduct an investigation sufficient to determine whether the juvenile is “in need of immediate protection or assistance.”

II. Expunction of Name from Responsible Individuals List (G.S. 7B-323)

- Standard of Proof (burden being on DSS): preponderance of the evidence
- Must contain findings of fact to support a conclusion of law that “DSS [has] [has not] established by a preponderance of the evidence the correctness of the director’s determination of abuse or serious neglect or the identification of the responsible individual.”

III. Continued Nonsecure Custody Order (G.S. 7B-503 through -508)

- Standard of Proof (burden being on DSS): clear and convincing evidence
- Findings of fact in an order continuing nonsecure custody must include
 - the evidence relied on
 - the purposes continued custody is designed to achieve
 - at least one ground for nonsecure custody under G.S. 7B-503
- When appropriate, a nonsecure custody order may include authorization to consent to health care and other kinds of treatment
- The order should reflect that the court inquired as to
 - identity/location of any missing parent
 - efforts to identify and/or locate and serve any missing parent
 - whether paternity is at issue and, if it is, efforts to establish paternity

- whether relative is willing and able to provide proper care and supervision of the child in a safe home and, if so, whether placement with the relative would be contrary to the child's best interest
- whether other children remain in the home and, if so, assessment findings about them and any actions taken or services provided to protect them
- if applicable, ICWA and MEPA

IV. Any order (nonsecure custody, disposition, review) in which custody is given to or continued with DSS (G.S. 7B-507)

- Every order must contain
 - a finding that continuation in or return to own home would be contrary to child's best interest
 - reasonable efforts findings – both whether such efforts have been made (unless the court has ordered that they are not required) and whether they should continue
 - a statement that the child's placement and care are the responsibility of DSS
- An order that terminates the obligation of DSS to make reasonable efforts to reunify must include one of the findings set out in G.S. 7B-507(b):
 1. such efforts would be futile or inconsistent with child's health, safety, and need for safe, permanent home within a reasonable period of time; or
 2. a court has determined that the parent has subjected the child to aggravated circumstances (defined in G.S. 7B-101); or
 3. a court has terminated the parent's rights to another child without the parent's consent; or
 4. a court has determined that the parent committed murder or voluntary manslaughter of another child of the parent; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; or has committed a felony assault resulting in serious bodily injury to the child or another child of the parent.

V. Adjudication Order (G.S. 7B-805, -807)

- Standard of Proof (burden being on DSS): clear and convincing evidence
- Findings should relate to specific part(s) of the definition of "abused juvenile," "neglected juvenile," or "dependent juvenile," as appropriate.
- "*The juvenile is a neglected juvenile,*" is a conclusion of law, not a finding of fact.
- The order must either
 1. find that the allegations have been proved by clear and convincing evidence, or
 2. dismiss the petition with prejudice.

- The order should never say that the child is adjudicated “as to” one parent or individual. The adjudication is about the child, and the child either is or is not an abused, neglected, or dependent juvenile.

VI. Disposition Order (G.S. 7B-905) (Also see G.S. 7B-507 and -900 to -904)

- Relate the disposition to the preceding adjudication by reciting or describing what led up to the disposition hearing. It is not necessary to repeat the contents of the adjudicatory order.
- Include appropriate findings regarding
 1. the children’s present and future needs,
 2. the parents’ strengths and weaknesses in relation to being able to meet those needs,
 3. the parents’ needs,
 4. available and/or needed resources.

These findings then provide guidance as to what actually needs to be ordered. In reviewing an order it is helpful to ask in relation to each thing ordered whether it is clear from the findings why it is being ordered.

- If the child is placed or continued in placement outside the home, include specific provisions for visitation. The order must do more than provide for visitation “*in the discretion of DSS.*” (Ideally DSS, along with the parents and others involved, would develop a proposed visitation plan/schedule and submit it to the court for review and approval.)

§ 7B-905. Dispositional order.

In subsection (c): “Any dispositional order under which a juvenile is removed from the custody of a parent, guardian, custodian, or caretaker, or under which the juvenile’s placement is continued outside the home shall provide for appropriate visitation as may be in the best interests of the juvenile and consistent with the juvenile’s health and safety. If the juvenile is placed in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved by the court.”

- If child is placed in DSS custody, see required findings in IV. above
- There is no clear definition of “custody.” It can be helpful to spell out anything that might be questioned about the ramifications of giving DSS or anyone else custody of a child.
- If the order addresses child support, include findings consistent with the guidelines.
- If the child is being returned home, the order must include findings that the juvenile will receive proper care and supervision in a safe home.
- In the actual “order,” especially in any directive to the parent(s), relate the disposition to conditions that resulted in the adjudication or removal of the children and be specific. Wording that is too vague or general, and therefore subject to misunderstanding or differing interpretations, includes:

- parents shall “*take advantage*” of all programs, services, etc., offered by DSS.
- parent shall “*cooperate with DSS.*”
- parent should “*get appropriate treatment for substance abuse.*” (Where, how, when, with what assistance from DSS?)
- parent shall “*get suitable housing.*”
- parent shall “*go to mental health.*”
- Be clear and specific about what is expected of the parties before the next hearing.
- Do not include the kitchen sink.

VII. Review and Permanency Planning Orders (G.S. 7B-906, -907)

- Refer to factors listed in the statutes.
- An order should not state that “*No further reviews are required*” unless it includes (or a previous order has included) the findings necessary for a waiver of review hearings or the child has been returned home.
- If the court is waiving further reviews, include findings required by G.S. 7B-906(b). These findings must be made by clear, cogent, and convincing evidence.
 - 1) juvenile has resided with a relative or been in the custody of another suitable person for at least a year;
 - 2) the placement is stable and continuation of the placement is in the juvenile's best interests;
 - 3) neither the juvenile's best interests nor the rights of any party require that review hearings be held every six months;
 - 4) all parties are aware that the matter may be brought before the court for review at any time by filing a motion for review or on the court's own motion; and
 - 5) the court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.
- It probably is never necessary to say that “*DSS is relieved of further responsibility.*” The order should be clear with respect to whether DSS does or does not have custody of the child and, if appropriate, refer to anything specific that DSS must do or may stop doing.
- If applicable and possible, refer to the purpose and date of the next hearing.
- Indicate whether the court is retaining or terminating jurisdiction.
- If the court awards custody or guardianship to someone other than a parent, the order should reflect that court has verified that the person “understands the legal significance of the placement or appointment and will have adequate resources to care appropriately for the child.”
- No order should ever state that
 1. the case is “closed” or
 2. the case is “inactive.”

VIII. Continuing or Terminating the Court's Jurisdiction

- It should be clear, from either the nature of the order or an explicit statement in the order, whether the court is continuing to exercise jurisdiction or is terminating jurisdiction in the case.
 - The order should not state that an individual judge retains jurisdiction in a case unless the parties consent.
 - No order should state that “the case is closed,” since that is not a phrase used in the Juvenile Code and it is not clear whether the court intends to terminate jurisdiction or to retain jurisdiction without scheduling review hearings.
 - If the court's intention is to end the case, the order should state that the court terminates jurisdiction. (*See* G.S. 7B-201 for the effects of terminating jurisdiction.)
 - If the court intends to retain jurisdiction without scheduling further hearings, and if the court has removed the child from the custody of a parent, guardian, custodian, or caretaker, the order must include findings required by G.S. 7B-906(b) for waiving review hearings.
- When the court wants to terminate jurisdiction in the juvenile case and either enter or modify a custody order under G.S. Chapter 50, two separate orders are required.
 - The order awarding custody in an existing or new Chapter 50 case must include findings of fact that would support the entry or modification of a custody order under Chapter 50. The order should include specific findings and should not incorporate by reference or simply refer to documents in the juvenile file.
 - The order terminating jurisdiction in the juvenile case must include findings that
 - Continued state intervention through a juvenile proceeding is not needed, and
 - At least six months have passed since the court found that the permanent plan for the child was placement with the person to whom the court is awarding custody. This finding is not required, however, if the court is awarding custody to (i) a parent or (ii) a person with whom the child was living when the juvenile petition was filed.

IX. Selected Points about Termination Orders

- Neglect
 - Requires findings of current neglect or of past neglect and a likelihood of repetition of neglect if child were returned home
- Willfully leaving the child in foster care for more than a year without making reasonable progress under the circumstances to correct conditions that led to the child's removal
 - Requires findings sufficient to support a conclusion of willfulness, which requires findings about what the parent did in relation to what the parent was capable of doing
 - Findings must relate a parent's failure to make reasonable progress in relation to the conditions that led to the child's removal from the home
- Non-support
 - Must include findings about employment, earnings, assets, etc., to support a conclusion that the parent was able to provide support
- Father of illegitimate child

- Must include findings that respondent, before filing of petition or motion,
 - has not established paternity judicially or by affidavit filed with DHHS, and
 - has not legitimated the child pursuant to G.S. 49-10 or filed a petition for that purpose, and
 - has not legitimated the child by marrying the mother, and
 - has not provided substantial financial support or consistent care for the child and mother.
- Record must include certified reply of DHHS as to whether respondent has filed a paternity affidavit
- Note the difference between the elements and wording of this ground and the requirements under G.S. 48-3-601(2)b.4. for determining whether a putative father's consent to adoption is required
- Incapacity ground
 - Must include a finding that the parent who lacks capacity to care for the child also lacks an appropriate alternative plan of care
- Willful abandonment
 - Must include findings sufficient to support a conclusion of willfulness
- Commission or conviction of certain crimes
 - Must include findings of a conviction of a covered offense or of the parent's commission of each element of a covered offense
 - If relying on felony assault, must include findings as to all necessary elements of the offense unless the conviction is specifically under G.S. 14-318.4(a3). Conviction under G.S. 14-318.4(a) does not satisfy the serious "bodily injury" part of the ground.