

Child Welfare Case Update

September 25 NC Supreme Court
October 17 – December 15, 2020
Social Services Attorneys' Virtual Conference (December 2020)

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Abuse, Neglect, Dependency

Compliance with Appellate Mandate; Two Actions with Same Juvenile; Termination of Guardianship

In re K.S., ___ N.C. App. ___ (Dec. 1, 2020)* (*This opinion was rewritten after Dec. 1*)

Held: Reverse and Remand

- **Facts and Procedural History:** This is an appeal by the juvenile’s guardians of a permanency planning order that terminates their guardianship and focuses on the district court’s lack of compliance with a prior appeal and the mandate resulting from it. That prior opinion is *In re M.N.*, 260 N.C. App. 203 (2018).
 - K.S. was born in 2007 and was adjudicated neglected and abused later that year. In 2009, permanency was achieved when maternal grandparents were appointed as guardians. Further review hearings in the action were waived.
 - In 2016, DSS filed a second petition alleging K.S. was neglected and dependent based on the guardians having drug-related charges. In 2017, K.S. was adjudicated neglected and in a dispositional order, the guardianship of K.S. was terminated. The guardians, who are named as parties, appealed.
 - On appeal, the adjudication and disposition were reversed due to insufficient findings of fact and a lack of evidence to support the findings of fact that K.S. was neglected. The case was remanded “for further proceedings ‘not inconsistent with th[e] opinion.’ ” Sl. Op. at 5.
 - On the day the appellate opinion was filed, DSS filed a motion for review/permanency planning hearing to terminate the grandparents’ guardianship due to the guardians’ substance use and criminal charges. The guardians filed a motion raising res judicata and estoppel as affirmative defenses.
 - The district court conducted a hearing to address the appellate mandate and “provided DSS with the option of addressing the matter on remand for further findings of fact as to the adjudication of Kaitlyn as a neglected juvenile or, alternatively, proceeding with its motion for review.” Sl.Op. at 5-6. A permanency planning hearing was held on DSS’s motion for review as the trial court concluded DSS “elected to proceed with the motion for review/permanency planning hearing” and purported to dismiss the second petition which had been the subject of the previous appeal. After hearing, the court terminated the guardianship. The guardians appealed raising as one issue that the district court lacked subject matter jurisdiction at a permanency planning hearing to terminate their guardianship based on the remand from the previous appeal and as another issue that

the district court's proceedings on remand were inconsistent with the appellate mandate.

- Subject matter jurisdiction to terminate the guardianship: Under G.S. 7B-200 and -201, the district court retained jurisdiction over K.S. under the first petition as it did not enter an order terminating its jurisdiction and K.S. has not turned 18 or been otherwise emancipated. Jurisdiction over that first action did not terminate when the second petition (2016) was purportedly dismissed after the appellate remand. The district court retains subject matter jurisdiction in the first action.
- Compliance with the Remand: “ ‘The general rule is that an inferior court must follow the mandate of an appellate court in a case without variation or departure.’ ” Sl.Op. at 10. The 2018 reverse and remand “for further proceedings ‘not inconsistent with th[e] opinion’ ” mandate required “DSS to provide sufficient evidence to adjudicate Kaitlyn neglected (as alleged in the Second Petition) by showing harm or risk of harm.” Sl.Op at 13. By conducting a permanency planning hearing in the first action without first conducting a new adjudicatory in the 2016 action was reversible error. The matter is remanded for the district court to comply with the previous mandate to make findings as to whether there was harm or risk of harm to K.S. and make the appropriate conclusions of law. “Thereafter, the parties may proceed as permitted under law while taking into consideration this Court’s previous holdings.” Sl.Op. at 15.

Adjudication: Evidence - Residual Hearsay Exceptions re: Children’s Statements

In re B.W., ___ N.C. App. ___ (Nov. 17, 2020)

Held: Vacate in part; reverse in part; remand

- Facts: As part of an assessment of a report of abuse and neglect, two of the three children (ages 11.5 and 7.5 years old) were interviewed by a clinical social worker at a Child Advocacy Center (CAC). The interview was videotaped. The older child disclosed he was repeatedly raped and sexually assaulted by a male friend of his mother’s who occasionally spent the night; the younger child disclosed she had been touched inappropriately by the same man. DSS filed a petition; the children were removed from their home, and they began receiving counseling. Prior to the adjudicatory hearing, DSS filed a notice and motion to introduce the children’s hearsay statements under Rules 803(24) and 804(b)(5). At a pre-adjudication hearing, the court orally ruled the children would be unavailable to testify; no written order was prepared. Later, mother’s attorney subpoenaed the children for their testimony at the adjudicatory hearing, which the district court orally quashed upon the request of DSS and the children’s GAL. At the adjudicatory hearing, over objection, to the CAC interviewer’s hearsay testimony and the admission of the interview videos. The alleged perpetrator testified and denied the allegations. The two children were adjudicated abused and all three children were adjudicated neglected. Mother appeals.
- Residual Hearsay Exceptions are reviewed for an abuse of discretion. There must also be a showing that the appellant was prejudiced and a different result would likely have occurred.
- Rules 803(24) and 804(b)(5) require the court make specific findings. The NC Supreme Court requires the district court to conduct a 6-part inquiry. The only distinction between the two residual hearsay rules is the finding of unavailability for the declared, which is required by Rule

804(b)(5). A court's failure to make the required findings or erroneous findings results in the appellate court reviewing the record to determine if it supports the trial court's conclusion about the admissibility of the statements under the residual hearsay exception.

- The trial court's oral ruling about the children's unavailability in the pre-adjudicatory hearing is not an entered judgment such that there are no findings of fact (there is no order). Although there was testimony from the children's therapist at the pre-adjudicatory hearing, that testimony is not addressed in the adjudication order. DSS contends the record includes a letter from the counselor, but that letter is not a substitute for sworn testimony. The findings of the children's unavailability in the adjudication order are not supported by competent evidence.
- The introduction of the residual hearsay prejudiced mother – "Where the court's findings and conclusions are not supported by other evidence, the admission of incompetent evidence is prejudicial." Sl.Op. at 17. Without inadmissible hearsay, there is no clear and convincing evidence supporting the conclusion that the children were abused and neglected.

Adjudication: Hearsay Evidence; Abuse/Neglect (Corporal Punishment); Visitation; Standing to Appeal

In re A.J.L.H., ___ N.C. App. ___ (Dec. 15, 2020)

Held: Vacate and Remand

- Facts: This action involves three children, where the appellant is the stepfather to the two older children and the biological father of the youngest child. The children share the same mother. After a DSS assessment of abuse based on the use of corporal punishment with a belt that caused bruising on the oldest child, who was 10 years old, DSS and the parents entered into a safety plan. Months later at a CFT meeting, DSS decided to file a petition alleging the oldest child was abused and neglected and the younger siblings were neglected. The safety plan had not been violated but the parents did not believe their disciplinary methods were cruel or unusual. After hearing, the children were adjudicated and the parents were denied visitation. The parents appeal challenging the adjudications and denial of visitation.
- There is a distinction between a parent and stepparent. A stepparent is a caretaker and does not have standing to appeal the orders regarding his stepchildren. See G.S. 7B-101(8); 7B-1002(4). As the parent of the youngest child, he does have standing to appeal the order related to her.
- The Juvenile Code requires the protection of a parent's due process rights and the rules of evidence apply to adjudicatory hearings. G.S. 7B-802, -804.
 - The oldest child's out-of-court statements, which were objected to, were inadmissible hearsay. The child's letter to the court as also inadmissible hearsay. No hearsay exception was offered or applies. Additionally, the child was not found to be unavailable as a witness.
 - Prior reports involving the mother's DSS history are a permitted business record exception to hearsay under Rule 803(6). There was a proper foundation laid for the business records.

- Abuse under G.S. 7B-101(1)(a)-(b) refers to “serious physical injury.” “The nature of the injury is dependent on the facts of each case.” Sl.Op. at 14. In this case, the evidence of temporary marks and bruises resulting from a spanking on the oldest child is not serious physical injury and does not support an abuse adjudication by clear and convincing evidence. There was no admissible evidence to support an abuse adjudication under G.S. 7B-101(c), which involves the use of cruel or grossly inappropriate discipline. The adjudication intertwines findings that were supported by competent admissible evidence and findings that relied on inadmissible evidence. Remanded for a new hearing.
- Neglect requires harm or risk of harm to the juvenile. The prior abuse of another juvenile living in the home, standing alone, is insufficient to support an adjudication of neglect. The neglect conclusion regarding the younger siblings is based solely on the abuse and neglect adjudication of the oldest sibling. Adjudication is reversed and petition is dismissed and children are to be immediately returned to their mother and (step)father.
- There was an abuse of discretion in denying any visitation between the mother and her children and the father and his child as the court relied on incompetent and inadmissible evidence. Regarding the petition that has not been dismissed by this opinion, the visitation prohibition is vacated and remanded for the court “to order generous and increasing visitation between [juvenile] and her mother. Sl.Op. at 20.

Adjudication: Abuse/Neglect, Child Pornography; Disposition: Relative Placement, Visitation

In re N.K., ___ N.C. App. ___ (Oct. 20, 2020)

Held: Affirm (adjudication); vacate in part/remand (visitation in dispositional order)

- Facts: This case involves two siblings, one of whom was adjudicated abused and neglected and the other was adjudicated neglected based on mother’s preparation and dissemination of pornographic pictures of one of her sons. In its disposition order, the court ordered visitation with the mother when her and the children’s therapists recommended visitation occur and that the father’s visitation be supervised.
- Standard of review of an adjudication is whether there is clear, convincing, and competent evidence to support the findings of fact and whether the findings of fact support the conclusion of law. A dispositional order is reviewed for an abuse of discretion.
- Evidence and findings support the conclusions.
 - The unchallenged finding of fact, supported by clear, convincing, and competent evidence (witness testimony and mother’s admission) that mother took pornographic pictures of one of her sons, although falsely claiming her brother did, and disseminated those pictures to law enforcement support an abuse and neglect adjudication.
 - G.S. 7B-101(1)(d) defines an abused juvenile as including certain criminal actions, including preparing obscene photographs of the juvenile, permitting the juvenile to assist in a violation of obscenity laws, disseminating obscene materials of the juvenile and/or material that is harmful to the juvenile, and first and second degree sexual exploitation of the juvenile. “The question in this case is not whether respondent-

mother is guilty of the alleged crimes; we are only considering whether the district court findings are supported by clear and convincing evidence.” Sl.Op. at 4. Additionally, the unchallenged findings about father being aware of mother’s criminal charges and actions leading to the charges support the adjudications; the question is not whether father knew or believed mother was guilty of the alleged crimes.

- Under G.S. 7B-101(15), a neglected juvenile is one who lives in an environment that is injurious to the juvenile’s welfare and includes a child who lives with a person who has abused or neglected other juveniles. The adjudication of abuse and evidence that supports that adjudication are enough to substantiate both that juvenile’s and his brother’s adjudication as neglected as there were living in an environment that is injurious to their welfare.
- Relative Placement: G.S. 7B-903(a1) consists of two steps: (1) whether there is a relative who is willing and able to provide proper care and supervision in a safe home and (2) placement of the juvenile in that home absent findings that the placement is contrary to the child’s best interests. If the court finds there was not an available relative who could provide proper care and supervision in a safe home, the court is not required to consider whether placement with a relative is in the child’s best interests. Here, the court determined there was not an available relative who met the first step as neither of the two relatives suggested by father were appropriate, based on the DSS report that was admitted as evidence, the findings in the nonsecure custody order, and the father not presenting any evidence to the contrary.
- Visitation: G.S. 7B-905.1 requires the court to address visitation when the child has been removed from the home.
 - Regarding mother, an order denying visitation must make appropriate findings, and if visitation is ordered, the court must specify the minimum frequency and duration and whether the visits shall be supervised. The court may not delegate its authority to set a visitation as that is a judicial function. Here the court delegated its authority to allow visitation and to set the terms of that visitation to therapists (mother’s and each child’s).
 - Regarding father’s visitation, remanded to ensure the order includes provisions regarding his right to file a motion for review under G.S. 7B-905.1(d).

Adjudication: Dependency (putative father); Notice of Appeal (signatures)

In re Q.M., ___ N.C. App. ___ (Dec. 15, 2020)

Held: Vacated and Remanded

- Facts: At the time the juvenile was born, the mother was a ward of a county DSS due to her incompetency. DSS filed a petition alleging dependency and named the putative father. Mother was appointed a Rule 17 GAL. After a paternity test, a hearing to establish the putative father’s paternity was held, but an order was not entered until months later. Prior to the adjudicatory hearing, DSS had nonsecure custody and the juvenile was placed in foster care. The child was adjudicated dependent, and a dispositional order continued custody with DSS and placement with the child’s father. No visitation was ordered with mother. Mother appeals.
- Notice of Appeal: Mother was appointed a Rule 17 GAL due her incompetency. The notice was signed by mother’s counsel but was not signed by mother or her court-appointed Rule 17 GAL.

DSS filed a motion to dismiss for failing to comply with G.S. 7B-1001, requiring the notice be signed by the attorney and mother. The court granted DSS's motion. Mother had also filed an amended notice of appeal with the attorney's and GAL's signatures and filed a petition for writ of certiorari since the amended notice was untimely. The writ was granted as the defect in the first notice was corrected.

- When determining whether a juvenile is dependent, G.S. 7B-101(9) requires the court to address both parents (1) ability to provide proper care and supervision and (2) the availability of alternative child care arrangements. Citing *In re V.B.*, although post-petition evidence is generally not admissible in an adjudicatory hearing, post-petition evidence of paternity is a fixed and ongoing circumstance the court may consider. "Respondent-Mother's inability to care for [the juvenile] on her own does not create a sufficient basis to adjudicate [the juvenile] dependent where Respondent-Father was known to DSS and, in fact, spoke with [the juvenile's] social worker in direct contemplation of caring for [the juvenile]. Sl.Op. at 14. The findings do not address the second prong – the availability of alternative child care arrangements – remanded to make proper findings supported by clear and convincing evidence and to re-evaluate whether the juvenile is dependent.

Permanency Planning: Motion to Continue; Guardianship; Waive Reviews vs Terminate Jurisdiction

In re L.G., ____ (Nov. 17, 2020)

Held: Remanded

- Facts: The juvenile was adjudicated abused and neglected based on circumstances involving her parents' substance use and housing instability. Mother did not appear at the last permanency planning hearing due to her enrolling in an inpatient substance abuse treatment facility immediately before the hearing. Mother was represented by her attorney, who made an oral motion to continue, which the court denied. After hearing, the court entered a permanency planning order (PPO) that established a primary permanent plan of guardianship and secondary plan of reunification. A second order, a guardianship order, was entered. Mother appeals.
- A motion to continue is reviewed for an abuse of discretion (no constitutional right was raised) and whether prejudice resulted from the court's error. The party seeking a continuance has the burden of showing there are sufficient grounds, and the court considers whether the continuance will further substantial justice. Mother did not meet her burden. There was no abuse of discretion. A parent's absence from the hearing is not per se prejudicial. Mother's attorney advocated for mother. Additionally, no indication of whether mother intended to testify or an offer of the forecast of her potential testimony was provided.
- G.S. 7B-906.1(e) requires the court to make certain findings about whether it is possible for the juvenile to be placed with the parent within the next 6 months and if not, why that placement is not in the child's best interests before the court may order a guardianship. The possibility of the juvenile's placement with either parent within the next 6 months is not addressed in the PPO although there are several findings that could support a conclusion that it was not possible for

the child to be placed with either parent. Remanded for the trial court to consider the issue and the make appropriate finding under G.S. 7B-906.1(e)(1).

- Waive Reviews/Terminate Jurisdiction: G.S. 7B-906.1(n) authorizes the court to waive periodic permanency planning hearings if it makes each of the 5 enumerated findings by clear and convincing evidence. One of those findings is that the child will have been in the current placement for one year four days after the hearing. The court lacked authority to waive the hearings since the juvenile had not resided in the placement for one year at the time of the hearing. The PPO also states that the action may be removed from the juvenile docket and DSS and the appointed attorneys will be released as of the one year date (4 days after the hearing), that any party may request a review, and that “jurisdiction of this [c]ourt over such person shall dissolve.” Sl.Op. at 19. Additionally, reunification was ordered as a secondary plan, entitling mother to reasonable efforts provided by DSS and the right for the court to review those efforts. Remanded to satisfy G.S. 7B-906.1(n) findings and to retain jurisdiction and for DSS to continue reunification efforts.

Eliminate Reunification/Cease Reunification Efforts: Required Findings

In re D.C., ___ N.C. App. ___ (Dec. 15, 2020)

Held: Vacated and remanded

- Facts: The juvenile was adjudicated neglected, and at initial disposition the court found DSS had made reasonable efforts for reunification and directed those efforts continue. An initial permanency planning hearing was scheduled to establish the initial permanent plan. A review hearing was held where the court entered two orders under G.S. 7B-911: a custody of the juvenile to her placement provided and an order terminating its jurisdiction in the juvenile matter. Mother appeals both orders, arguing the findings required under G.S. 7B-906.2 to cease reunification efforts and eliminate reunification as a permanent plan were not made.
- Standard of review for a dispositional order is whether the findings are based on credible evidence, whether the findings support the conclusions, and whether the court abused its discretion. The failure to make statutorily required finding is reversible error.
- Before ceasing reunification efforts and eliminating reunification as a permanent plan, the court must make findings in G.S. 7B-906.2(b) and (d). The order did not include reunification as a permanent plan and ceased reunification efforts when it released DSS of responsibilities. Under G.S. 7B-906.2(b), the court was required to find that reunification efforts would be clearly unsuccessful or inconsistent with juvenile’s health or safety. The findings in both orders (the custody and 7B orders) when read together were insufficient because the G.S. 7B-906.2(b) finding and one of the four required findings under G.S. 7B-906.2(d) were not made.

Termination of Parental Rights

Relinquishment; Other Parent's Constitutional Rights; Subject Matter Jurisdiction; Grounds

In re E.B., ___ N.C. ___ (Sept. 25, 2020)

Held: Reversed

- **Facts:** Father appealed this TPR to the NC Supreme Court based on a dissent in the Court of Appeals opinion that affirmed the trial court's order terminating his rights. Mother executed a relinquishment to DSS the day after the child was born. DSS placed the child in foster care and contacted the putative father, who was excited about being the child's father and agreed to paternity testing. Father agreed to an out-of-home family services agreement, and subsequently the paternity test confirmed he was the father. Between 2016-2018, the district court held 6 permanency planning hearings, although DSS never filed a petition alleging the child was abused, neglected, or dependent. Father never obtained custody/placement of the child through the permanency planning orders as the court determined he had not satisfied the various requirements it placed on him. Father did have visitation and suggested his sister, who lived in California, be a placement option after an ICPC was conducted, until he was awarded custody. After father moved to California without informing DSS before or immediately after his move, DSS filed a TPR petition; the court had ordered a primary permanent plan of adoption. The TPR was granted on the grounds of neglect, failure to make reasonable progress, and willful abandonment.
- **Holding:** "[P]etitioners [DSS] failed to prove by clear, cogent, and convincing evidence that respondent willfully abandoned his child. We also hold that petitioners have failed to prove that any other ground existed to terminate respondent's parental rights." Sl.Op. at 2.
- **Subject Matter Jurisdiction:** "DSS never filed a petition seeking to have the trial court adjudicate Ella an abused, neglected, or dependent juvenile pursuant to N.C.G.S. §§ 7B-402(a) and -403(a). Thus, the trial court lacked subject-matter jurisdiction to conduct permanency planning and review hearings, and its orders lacked the force of law." Sl.Op. at 5. Without the petition, the trial court lacked the legal authority to demand respondent demonstrate his parenting abilities before taking custody of his daughter. However, the trial court did have jurisdiction to hear the TPR as an abuse, neglect, or dependency petition is not a precondition to a TPR proceeding and DSS had standing through mother's relinquishment to it under G.S. 7B-1103(a)(4).
- **Constitutional Rights:** "We begin by noting that DSS's and the trial court's actions repeatedly infringed upon respondent's constitutional parental rights. '[The] government may take a child away from his or her natural parent only upon a showing that the parent is unfit to have custody or where the parent's conduct is inconsistent with his or her constitutionally protected status.' " Sl.Op. at 8. Respondent grasped the opportunity to be this child's parent and had a constitutionally protected right to the care, custody, and control of his child. Until the TPR was filed, DSS never sought an order that determined respondent father was unfit or acted inconsistently with his constitutionally protected status as a parent. Without subject matter jurisdiction in the permanency planning and review hearings, the "trial court did not have

authority to act on its own views of what served [the child's] best interests without first finding grounds to displace respondent's constitutional parental rights to make such decisions." Sl.Op. at 10.

- **TPR Grounds:** "A trial court cannot determine a party's rights based on facts established in or arising from a legally void judicial proceeding." Sl.Op. at 11. There were not sufficient facts that were independent from the void permanency planning orders to prove any of the alleged grounds. Had the court made sufficient findings based on facts that were independent of the invalid hearings and orders, "the mere fact that those invalid proceedings occurred would not preclude the trial court from also concluding that termination was warranted." Sl.Op. at 12.
 - Regarding the abandonment ground under G.S. 7B-1111(a)(7), the findings directly related to the void hearings, focusing mostly on father's failure to satisfy the conditions that were imposed on him. Respondent's express intent to be reunified with his daughter, have his sister be an interim placement, and have his child move to California with him does not show that he willfully determined to abandon his daughter. Additionally, respondent's actions before and during the determinative six-month period are inconsistent with a finding that he willfully intended to forego all his parental duties.
 - Regarding the neglect ground under G.S. 7B-1111(a)(1), petitioner failed to prove there was prior neglect and a likelihood of repetition of that neglect. Respondent had custody of and was appropriately caring for his 3 other children such that the court lacked a basis to infer that respondent, who had not actually neglected this child, would have neglected her if she had been in his care.
 - Regarding the failure to correct the conditions that led to the child's removal ground, G.S. 7B-1111(a)(2) applies when the removal is pursuant to a court order. A voluntary out-of-home family services agreement between respondent and DSS does not apply. There was never a legally valid order that removed the child from respondent.

Abandonment: Single Act

In re J.D.C.H., ___ N.C. ___ (Sept. 25, 2020)

Held: Affirmed

- **Facts:** This case involves a private TPR (mother as petitioner, father as respondent). The parties have 2 children together. Father's last contact with the children was September 2016. Mother remarried. Father was incarcerated from Oct. – Dec. 2018 and upon his release, he contacted mother to ask about seeing the children. Mother denied his request and filed a TPR petition, including willful abandonment as one ground. The court granted the TPR and father appeals, challenging the findings and conclusion of the ground of abandonment.
- G.S. 7B-1111(a)(7) authorizes the termination of parental rights when the parent has willfully abandoned the child for at least 6 months immediately preceding the filing of the TPR petition. Abandonment involves a parent's conduct that manifests a willful determination to forego all parental duties and claims and includes withholding his presence, love, care, opportunity to display filial affection, and support/maintenance.

- Although the determinative time period is those 6 months before the petition is filed, a trial court may consider the parent's conduct outside of that 6-month period to evaluate the parent's credibility and intentions. That includes the parent's conduct after the filing of the TPR petition.
- One single act during the determinative time period, the father's phone call in December 2018, does not preclude a finding that a parent willfully abandoned his children by withholding his love and affection. The findings that father did not send any letters to or call the children and did not provide any emotional, material, or financial support over a 2-year period when he had the ability to do so support the court's conclusion. Although he made the one phone call during the 6-month period, "it is not necessary that a parent absent himself continuously from the child for the specified six months, nor even that he cease to feel any concern for its interest." Sl.Op. at 15 (quotation omitted).

Abandonment: Evidence and Findings

In re L.M.M., ___ N.C. ___ (Sept. 25, 2020)

Held: Affirmed; Dissent

- Facts: This is an appeal of a private TPR. In 2017, mother contacted petitioner to request petitioner take temporary custody of mother's child due to her lack of housing and employment. Petitioner agreed if mother permanently signed over her parental rights, which mother ultimately agreed to. Mother signed a notarized document that purported to transfer permanent parental rights to petitioner. Mother contacted petitioner through Facebook to request a picture of her son and money. After mother's second request for money, petitioner blocked mother on Facebook. In 2018, mother was incarcerated. In 2019, petitioner filed an adoption petition and this TPR. Mother's rights were terminated, and mother appeals the grounds.
- G.S. 7B-1111(a)(7) authorizes the termination of parental rights when the parent has willfully abandoned the child for at least 6 months immediately preceding the filing of the TPR petition. Abandonment involves a parent's conduct that manifests a willful determination to forego all parental duties and claims and includes withholding his presence, love, care, opportunity to display filial affection, and support/maintenance. Although the determinative time period is those 6 months before the petition is filed, a trial court may consider the parent's conduct outside of that 6-month period to evaluate the parent's credibility and intentions.
- The findings about mother not having taking *any* action to contact and/or provide financial support for her child, even when incarcerated during some or all of the determinative six month time period are supported by clear and convincing evidence – petitioner's testimony. That testimony included that petitioner had the same phone number and mother was only blocked on Facebook, not by phone, and petitioner and mother had shared relatives. Although petitioner communicated with mother's mother, she had not been advised of any attempt by mother to contact her about the child. Mother's "complete failure to show any interest in Larry after November 2017 – particularly during the six months between 18 July 2018 and 18 January 2019

– supports the trial court’s conclusion that she acted willfully in abandoning the child.” Sl.Op. at 12.

- Evidence of mother’s intentions before the 6 month time period, which includes mother’s initial requires to place her child with petitioner temporarily, represents mother’s intention before the determinative six month period. “The weight to be assigned to respondent’s conduct during this earlier period was a matter left to the trial court’s discretion as fact-finder.” Sl.Op. at 13.
- Because one ground is affirmed, the appellate court does not need to review the two other grounds as adjudication of any single ground to TPR is sufficient to support the trial court’s order.
- Dissent, Earls: Petitioner’s testimony of the lack of actual contact by mother while mother was incarcerated is not clear and convincing evidence that mother did not attempt to make contact. “The absence of evidence is not the same thing as clear, cogent, and convincing evidence.” Dissent at 6. There is a difference between mother’s alleged lack of efforts and petitioner’s experience and perceptions of her interactions with the mother. Addressing the ground of neglect, mother recognized she was unable to provide for her child and sought an appropriate alternative caregiver such that these protective actions do not support an inference that she neglected her son.

Best Interests Findings

In re S.J.B., ___ N.C. ___ (Sept. 25, 2020)

Held: Affirmed

- Facts: In 2018, the juvenile was adjudicated neglected based on circumstances involving mother’s drug use and mental health issues. In 2019, after mother overdosed, was admitted to inpatient treatment and discharged for failing to complete the program, the primary permanent plan was changed to adoption. DSS filed a TPR petition. The TPR was granted, and respondent mother appeals challenging the best interests determination.
- Standard of review at disposition is whether the abused its discretion.
- The court made findings of the G.S. 7B-1110(a) factors, which are unchallenged and, therefore, binding on appeal. Mother’s argument that the court should have considered her future plan to enter a residential treatment program where should would have the potential to have the child reside with her after several months has very limited relevance to the child’s best interests, particularly since the grounds to TPR were based in part on mother’s history of relapse and failure to complete drug treatment. The findings that the foster parents, who wanted to adopt the child, maintained relationships between the child and her half-brother and grandmother showed the court considered the competing goals of preserving family relationship and achieving permanency for the child. It is not the role of the appellate court to reweigh the evidence of the trial court.