

## Applicable Statutes Addressing Visitation in Abuse, Neglect, Dependency Action

### § 7B-905.1. Visitation.

(a) An order that removes custody of a juvenile from a parent, guardian, or custodian or that continues the juvenile's placement outside the home shall provide for visitation that is in the best interests of the juvenile consistent with the juvenile's health and safety, including no visitation. The court may specify in the order conditions under which visitation may be suspended.

(b) If the juvenile is placed or continued 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 or ordered by the court. The plan shall indicate the minimum frequency and length of visits and whether the visits shall be supervised. Unless the court orders otherwise, the director shall have discretion to determine who will supervise visits when supervision is required, to determine the location of visits, and to change the day and time of visits in response to scheduling conflicts, illness of the child or party, or extraordinary circumstances. The director shall promptly communicate a limited and temporary change in the visitation schedule to the affected party. Any ongoing change in the visitation schedule shall be communicated to the party in writing and state the reason for the change. If the director makes a good faith determination that the visitation plan is not consistent with the juvenile's health and safety, the director may temporarily suspend all or part of the visitation plan. The director shall not be subject to any motion to show cause for this suspension but shall expeditiously file a motion for review and request that a hearing be scheduled within 30 days. However, no motion or notice of hearing is required if a review or permanency planning hearing is already scheduled to be heard within 30 days of the suspension.

(c) If the juvenile is placed or continued in the custody or guardianship of a relative or other suitable person, any order providing for visitation shall specify the minimum frequency and length of the visits and whether the visits shall be supervised. The court may authorize additional visitation as agreed upon by the respondent and custodian or guardian.

(d) If the court retains jurisdiction, all parties shall be informed of the right to file a motion for review of any visitation plan entered pursuant to this section. Upon motion of any party and after proper notice and a hearing, the court may establish, modify, or enforce a visitation plan that is in the juvenile's best interest. Prior to or at the hearing, the court may order the department and guardian ad litem to investigate and make written recommendations as to appropriate visitation and give testimony concerning its recommendations. For resolution of issues related to visitation, the court may order the parents, guardian, or custodian to participate in custody mediation where there is a program established pursuant to G.S. 7A-494. In referring a case to custody mediation, the court shall specify the issue or issues for mediation, including, but not limited to, whether or not visitation shall be supervised and whether overnight visitation may occur. Custody mediation shall not permit the participants to consent to a change in custody. A copy of any agreement reached in custody mediation shall be provided to all parties and counsel and shall be approved by the court. The provisions of G.S. 50-13.1(d) through (f) apply to this section.

## § 7B-506. Hearing to determine need for continued nonsecure custody

. . . (g1) The provisions of G.S. 7B-905.1 shall apply to determine visitation.

## Selected Published Appellate Opinions Addressing Visitation

### Minimum Outline

*In re J.H.*, 224 N.C. App. 255 (2015)

#### **Held: Remanded**

- An order that awards the mother monthly visitation in North Carolina to be supervised by the maternal grandparents at a location of their choice does not comply with G.S. 7B-905.1. Although the order establishes the frequency and level of supervision for the visits, it fails to establish the length of the visit, which is also required by the statute.

*In re N.B.*, 240 N.C. App. 353 (2015)

#### **Held: Affirmed**

- G.S. 7B-905.1, effective Oct. 1, 2013, requires the court order to contain “the minimum frequency and length of visits and whether the visits shall be supervised” and abrogates the holding in *In re E.C.*, 174 N.C. App. 517 (2005) that the court also include in its order the time and place for the visits.
- An order that sets forth visitation of at least one visit per month for a minimum of one hour to be supervised by the family therapist with the respondent mother to coordinate the schedule with the family therapist meets the minimum requirements of G.S. 7B-905.1.

## Electronic Visitation and DSS Discretion to Expand Visits

*In re K.W.*, \_\_\_ N.C. App. \_\_\_ (July 21, 2020)

#### **Held: Affirmed and Remanded**

- Facts: DSS became involved after mother reported to the child’s therapist that the children were abused and neglected by their father when there were in his care (joint custody had been ordered under a G.S. Chapter 50 order). Mother made numerous reports of the children’s mistreatment by father to various professionals, including medical providers who were assessing the children for abuse, and law enforcement. All of mother’s allegations were false. DSS filed a petition and obtained a nonsecure custody order where the children were placed with their father. Based on several inappropriate incidents involving mother and visitation, the court limited her visitation to electronic only. The court adjudicated the older juvenile abused and neglected and the younger juvenile neglected. At disposition, the court ordered mother’s visitation remain the same but authorized DSS to allow for in-person visitation when she made progress on her case plan. Mother appeals.
- G.S. 7B-905.1 allows the court to order no visitation to a parent if no visitation is in the child’s best interests. The standard of review is an abuse of discretion. The court found that the safety of the children required electronic visitation and only and relied on the findings in the adjudication order about mother causing distress for the children. FN 2 refers to *In re T.R.T.*, 225 N.C. App. 567 (2013) that held electronic visitation is not visitation.
- A visitation order that establishes a plan and allows DSS to expand visitation is not an abuse of discretion. Although the court may not delegate its authority to a custodian, here the discretion was not granted to a custodian but to DSS, which has been given significant discretion by the

legislature under G.S. 7B-905.1(b) to manage visits. The order allows DSS to expand visits, not reduce it below the minimum visitation the court established in its order, and is not an impermissible delegation of its authority.

- G.S. 7B-905.1(d) requires the court notify the parties of their right to motion for review of the visitation plan. No such notification was provided at hearing (after reviewing the transcript) or in the order. Remanded for compliance with G.S. 7B-905.1(d).

### Limited Ability to Modify Visitation by Guardian

[In re J.M.](#), \_\_\_ N.C. App. \_\_\_ (Sept. 1, 2020)

**Held: Remanded in part; vacated and remanded in part**

- Facts: At a permanency planning hearing, the court ordered guardianship to the maternal grandmother with visitation to mother. The order authorized the guardian to change the conditions or duration of visits if the parent's conduct would cause emotional distress or harm to the children. Mother appeals challenging that the court improperly delegated its authority regarding visitation to the guardian.
- Visitation orders are reviewed for an abuse of discretion. G.S. 7B-905.1(c) applies to visitation orders when a child is placed with a guardianship or custodian. Unlike subsection (b), which applies when DSS has custody of a child, G.S. 7B-905.1(c) does not authorize a guardian or custodian to temporarily suspend all or part of a visitation when necessary to protect the juvenile's health and safety. The guardian's ability to unilaterally modify mother's visitation is an improper delegation of judicial authority.

### Visitation: Cost of Supervised visitation; preserve issue for appeal

[In re J.T.S.](#), \_\_\_ N.C. App. \_\_\_ (Oct. 15, 2019)

**Held: Affirmed in part; Vacate and remand in part**

- Facts: The trial court ordered weekly supervised visitation but made no findings about the costs of supervised visitation. Respondent mother appeals.
- The court erred in ordering supervised visitation without addressing costs; who would pay; and if the respondent mother, her mother's ability to pay those costs. See *In re J.C.*, 368 N.C. 89 (2015); *In re Y.I.*, 822 S.E.2d 501 (2018).
- Appellate preservation:
  - To preserve the issue of costs associated with supervised visitation for appellate review, the respondent is not required to object at the hearing. The costs were neither discussed or consented to at the hearing.
  - Respondent agreed to conditions that were recommended by DSS that addressed the terms of visitation (e.g., obtain assessments and treatment, submit to drug screens, not miss visits). These terms were provided in writing, read by a social worker in court, and addressed by the court with respondent's attorney. Respondent did not properly preserve the issue for appellate review.