

Visitation

(see A/N/D – TPR Manual, Ch. 7.5; On the Civil Side blog post, *It's My Birthday and I'll Cry if I Want To: Is that the Norm for Children in Foster Care*, 8/12/2016)

Visitation must be addressed in a court order that (1) removes custody of a child from a parent, guardian, or custodian or (2) continues the child's placement outside of the home. G.S. 7B-905.1(a), (c); see G.S. 7B-906.1(d)(2). This includes orders for continued nonsecure custody. G.S. 7B-506(g1).

The order must specify the minimum (1) frequency, (2) length of visits, and (3) whether the visits must be supervised. G.S. 7B-905.1(a), (c). Failure to address each of these requirements will result in a remand. See, e.g., *In re J.H.*, 244 N.C. App. 255 (2015). The order does not have to include the specific times of the visitation (e.g., 3 p.m. – 5 p.m.) or the location. *In re N.B.*, 240 N.C. App. 353 (2015). Electronic communication (e.g., Skype) cannot take the place of in-person visitation, but it may supplement visitation when the provisions of G.S. 50-13.2 are satisfied. *In re T.R.T.*, 225 N.C. App. 567 (2013).

When DSS has custody or placement responsibility, the court may order the director to “arrange, facilitate, and supervise a visitation plan *expressly approved or ordered* by the court.” *Unless ordered otherwise*, the DSS director has discretion to determine the supervisor, location, and necessary scheduling changes. G.S. 7B-905.1(b).

The order must “provide for appropriate visitation as may be in the best interests of the juvenile consistent with the juvenile's health and safety.” G.S. 7B-905.1(a). An order may deny visitation after finding (1) the parent has forfeited his/her right to visitation, or (2) it is in the child's best interests to deny visitation. *In re T.R.T.*, 225 N.C. App. 567 (2013). Appellate review of a visitation order is based on an abuse of discretion. *In re T.W.*, 796 S.E.2d 792 (2016).

Questions:

- a. What factors do you consider when addressing visitation?
- b. How do you determine how much, how often, level of supervision, or whether no visits should occur?
- c. Do you consider and order visitation with siblings if they are not placed together? Why or why not?
- d. What are ways to allow for increased contact between child and parent/relative/sibling?

Relative Placement Preference

(see A/N/D TPR Manual, Ch. 7.4.C & H.)

At any dispositional stage (initial, review, or permanency planning), when the court is ordering the child placed outside of his or her home, G.S. 7B-903(a1) requires the court to “first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home.” The court must order the child’s placement with that relative “if the court finds that the relative is willing and able to provide proper care and supervision in a safe home... *unless* the court finds that the placement is contrary to the best interests of the juvenile.” When the child is not placed with that relative, failure to make the finding that the relative placement is contrary to the child’s best interests will result in a remand. *In re E.R.*, 793 S.E.2d 103 (2016). G.S. 7B-101(19) defines “safe home” as “a home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.”

The court must also consider whether it is in the child's best interest to remain in his or her community of residence. Any placement with an out-of-state relative must comply with the ICPC. G.S. 7B-903(a1).

The appellate court reviews the trial court’s best interests determination for an abuse of discretion. *See, e.g., In re D.S.A.*, 181 N.C. App. 715 (2007).

Questions

- a. What factors do you consider when determining whether placement with a relative is contrary to the child’s best interests when the child has been in the same nonrelative home for a significant period of time?

- b. What findings would you make to conclude that the relative’s placement would be contrary to the child’s best interests?

Concurrent Permanency Planning

(see *A/N/D TPR Manual*, Ch. 7.8.B–D, 7.9, 7.10, 9.3.A.2.)

The federal Adoptions and Safe Families Act (ASFA) permits reasonable efforts for reunification and for placement for adoption or guardianship to be made concurrently. 42 U.S.C. 671(15)(B), (F). In 2015, the NC Juvenile Code was amended to require concurrent permanency planning until a permanent plan has been achieved. G.S. 7B-906.2. Reunification must be given priority and be identified as primary or secondary permanent plan until certain findings are made that authorize the court to eliminate reunification as a permanent plan. G.S. 7B-906.2; see G.S. 7B-901(c). “The text of N.C.G.S. § 7B-906.2 clearly contemplates the use of multiple, concurrent plans including reunification and adoption.” *In re A.A.S.*, 812 S.E.2d 875, 881 (2018). In the permanency planning order, the court must order DSS to make efforts toward finalizing the primary and secondary plans and may specify what efforts are reasonable to achieve timely permanence. G.S. 7B-906.2(b). When the court finds a termination of parent rights (TPR) is required to achieve the primary permanent plan, DSS must file a TPR petition within the time period set forth in G.S. 7B-906.1(m).

Questions:

- a. What factors do you consider when ordering a concurrent plan of adoption and reunification?

- b. What factors do you consider when determining which one is the primary plan?

- c. What types of reasonable efforts do you order DSS to make to achieve each plan?

TPR and Best Interests

(see A/N/D TPR Manual, Ch. 9.12)

A termination of parental rights (TPR) completely and permanently severs the rights and obligations of the parent to the child and the child to parent, except the child's right to inherit from the parent continues until there is a final order of adoption. G.S. 7B-1112. The purpose of the TPR statutes is to both recognize the necessity for a child to have a permanent plan at the earliest possible age and the need to protect children from the unnecessary severance of the parent-child relationship. G.S. 7B-1100(2); see G.S. 7B-100(4). The child's best interests are paramount to the parent's interests when those interests conflict. G.S. 7B-1101(3); 7B-100(5). A TPR cannot be based solely on a child's best interests. *In re S.Z.H.*, 785 S.E.2d 341 (2016). The court must first determine a ground to TPR exists. G.S. 7B-1110(a); *In re D.L.W.*, 368 N.C. 835 (2016); see G.S. 7B-1110; see also *Owenby v. Young*, 357 N.C. 142 (2003).

After an adjudication of a ground, the court determines whether the TPR is in the child's best interests. If the TPR is not in the child's best interests, the court must dismiss the TPR after making sufficient findings of fact and conclusions of law. G.S. 7B-1110(b). When making a best interests of the child determination, the court must consider the criteria specified in G.S. 7B-1110(a) and make written findings of the relevant criteria. Two of the statutory factors address adoption and include

- “the likelihood of adoption of the juvenile” and
- “the quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.”

The lack of an adoptive placement for the child does not bar a TPR. *In re D.H.*, 232 N.C. App. 217 (2014); *In re A.H.*, 794 S.E.2d 866 (2016). An appellate court review of a best interests determination is for an abuse of discretion. *In re D.H.*, 232 N.C. App. 217 (2014).

Questions:

- a. If there is no prospective adoptive placement for the child, is it in the child's best interests to TPR?
- b. What factors do you consider?
- c. Is the child's age or the existence of special needs a factor?
- d. When there is no adoptive placement, should the primary permanent plan be adoption or is a different primary plan in the child's best interests?

Paternity

(see *A/N/D TPR Manual, Ch. 5.4.B.7; Fathers and Paternity: Applying the Law in North Carolina Child Welfare Cases*)

The court is required to inquire as to whether paternity is an issue at various stages in an abuse, neglect, or dependency action, including the hearings on the need for continued nonsecure custody, the pre-adjudication hearing, and the initial dispositional hearing. G.S. 7B-506(h)(1); 7B-800.1(a)(3); 7B-901(b). The court is also required to make findings of efforts that have been made to establish paternity and may specify efforts that must be taken to establish paternity. G.S. 7B-506(h)(1); 7B-901(b).

In North Carolina, a man who is married to the mother at any time from the child's conception to birth is presumed to be the father, but this marital presumption may be rebutted by clear and convincing evidence. *Eubanks v. Eubanks*, 273 N.C. 189 (1968); G.S. 49.12.1. If the mother is not married during this time, she and the man believed to be the child's father may execute an Affidavit of Parentage (AOP). G.S. 130A-101(f). If the AOP is executed within 10 days of the child's birth, the father will be named on the child's birth certificate. *Id.* The AOP does not legally establish paternity (outside of a child support proceeding; see G.S. 130A-132). A certified copy of the AOP may be introduced as evidence in a proceeding where paternity is an issue. G.S. 130A-101(f).

Questions:

- a. If there is an executed AOP is paternity an issue? Why/Why Not?

- b. How is paternity established when there is an AOP?

- c. If there is a legal father, must he be named and served in any proceeding addressing paternity for another man? Why/Why Not?

- d. When do you establish paternity? Why/How does it impact the A/N/D case?

The Child's Involvement in Court

(see A/N/D TPR Manual, Ch. 2.3.C. & D.)

The child who is the subject of an abuse, neglect, or dependency action is a party to proceeding. G.S. 7B-601(a); 7B-401.1(b). The court must appoint a guardian ad litem (GAL) to a child who is alleged to be abused or neglected. G.S. 7B-601. When the child is alleged to be dependent only, the court exercises its discretion to determine whether a G.S. 7B-601 GAL should be appointed. The G.S. 7B-601 GAL both protects and promotes the child's best interests and assures protection of the child's rights throughout the proceeding.

The child has a right to participate in the proceeding. At hearings on the need for continued nonsecure custody, the parties have a right to present evidence, examine witnesses, and be heard on their own behalf. G.S. 7B-506(b). At the initial dispositional hearing, "the juvenile...shall have the right to present evidence" and may advise the court of what he or she believes is in his or her best interests. G.S. 7B-901(a). At each review and permanency planning hearing, "the court shall consider information from... the juvenile,... the guardian ad litem" and others. G.S. 7B-906.1(c). When the child is 12 and older, he or she must receive notice of review and permanency planning hearings in addition to the notice sent to his or her GAL (when one is appointed). G.S. 7B-906.1(b). A child who is 12 or older must consent to his or adoption, unless waived by the court hearing the adoption proceeding. G.S. 48-3-601(1); 48-3-602(b)(2). Before Another Planned Permanent Living Arrangement (APPLA) can be ordered as the primary permanent plan, the court must first question the juvenile (who must be 16- or 17-years old). G.S. 7B-912(c), (d).

Questions:

- a. When only dependency is alleged, what factors do you consider when deciding whether to appoint a G.S. 7B-601 GAL?

- b. If you do not appoint a G.S. 7B-601 GAL, do you appoint a Rule 17 GAL? Why or why not?

- c. If you do not appoint a GAL (either G.S. 7B-601 or Rule 17), how does the child participate in the proceeding?

- d. Are there any procedures used in your court for children who are participating in the proceeding? What are they? Do you consider them child-friendly, and if so, how? How could a child's experience be improved?