

## Best Interest Scenarios

### 1. Nick

DSS files a petition and obtains a nonsecure custody order after police pick up Nick, a four-year-old child who was seen wandering by the side of a street late at night. The mother is located and served. At the first nonsecure custody hearing, both parents are present. DSS presents evidence, including testimony that the mother was intoxicated both when the police located her and when the social worker visited the home the next afternoon. The mother testifies that she is a heavy sleeper and had no idea that Nick was able to open the outside door by himself. The father testifies that he learned of the situation and the hearing only when he went to pick Nick up for a scheduled weekend visit. He presents a civil custody order showing that he and the mother have joint custody of Nick, with the mother having primary physical custody. The father insists that Nick be returned to him immediately. The mother strenuously objects, asserting that the father is three months behind in child support, lives with a woman who has two young children of her own, and often returns the child after visits with nothing but dirty clothes. DSS argues that nonsecure custody should remain with DSS until it has an opportunity to evaluate the father's home. Neither parent has relatives in the area.

#### Consider:

- What is the relevance of the constitutional presumption at this stage?
- Is "best interest" the applicable standard?

#### Which of the following would you do?

- a. Return Nick to the father and dismiss the petition
- b. Dissolve the nonsecure custody order, send Nick home with the father, and schedule an adjudication hearing
- c. Leave Nick in nonsecure custody with DSS and schedule another nonsecure custody hearing
- d. Place Nick in nonsecure custody with the father and schedule another nonsecure custody hearing
- e. Something else

## 2. Tina and Tyrone

DSS filed a petition alleging that Tina and Tyrone were abused and neglected while in the home of their mother and stepfather. The court adjudicated both children abused and neglected after finding from the evidence that (i) the stepfather had repeatedly engaged in physical fights with the children, most recently pulling out a chunk of Tina's hair and hitting Tyrone in the side of the head when he tried to break up the fight; (ii) both the mother and stepfather used illegal drugs in the children's presence; and (iii) the mother was aware of her husband's treatment of the children, did nothing to intervene on their behalf, and did not intend to separate from him. The court placed the children in DSS custody pending disposition.

At disposition:

- The court heard additional evidence supporting a finding that the children would not be safe in the mother's home.
- The children's biological father presented evidence that he was willing and able to care for both children; that his contact with them had been limited because of the hostility of the mother and her husband and the fact that he lived in Virginia (he had seen them twice in the past year when he was in town visiting his mother); that he paid child support when he was able, although there was no child support order; that he was married and he and his wife had a new baby; that his home, of which he provided numerous photographs, was more than adequate for the children; that he had been working for almost 9 months in a reopened factory from which he had been laid off two years ago; and that his wife, before the birth of the baby, had worked as a teacher's aide at a local elementary school. None of this evidence was contradicted.
- DSS and the GAL recommended that the children remain in DSS custody and be placed with their paternal grandmother or a maternal aunt. DSS had evaluated and approved the homes of both relatives, who lived nearby and interacted with the children regularly. DSS and the GAL recommended that the father be given visitation rights. DSS argued that if the children were sent to Virginia, reunification efforts with the mother would be virtually impossible. The GAL argued that the children did not know their father and his wife well enough to move in with them, that it wasn't clear they could provide for these two children and a baby, that a home study should be ordered, and that visits of the father with Tina and Tyrone should be monitored and evaluated.

Consider:

- What is the relevance of the constitutional presumption at this stage?
- Is "best interest" the applicable standard?

Which of the following would you do?

- a. Place the children in the custody of DSS.
- b. Place the children in the custody of DSS and direct that placement be with the local grandmother or aunt.
- c. Place the children in DSS custody and order DSS to obtain a home study of the father's home through the Interstate Compact on the Placement of Children.
- d. Place the children in the custody of their father.
- e. Something else

### 3. Gina

Gina and her two younger siblings were adjudicated neglected based on their mother's drug use and criminal activities. Gina's father expressed his interest in having custody, or at least extended visitation, with Gina. A court order had given him visitation, but the mother had consistently ignored the order. He did not ask for custody because he was living with a cousin in a crowded apartment.

At disposition, the court placed the children in DSS custody for placement with the maternal grandmother and ordered unsupervised visits between Gina and her father. At a subsequent review hearing, the court continued the children's placement with the maternal grandmother. The court later continued that placement again and increased Gina's visitation with her father, who had obtained his own apartment. At the next review hearing the court relieved DSS of reunification efforts with the mother.

At a permanency planning hearing, DSS indicated that its plan for Gina was reunification with her father and presented its positive home study on his home. The GAL indicated that Gina, although she liked spending time with her father, very much wanted to stay with her grandmother and siblings, and argued that at age 16, her desire should be given great weight. The court ordered that Gina's father have visitation every other weekend and for two separate weeks during her summer vacation.

At the next permanency planning hearing:

- The GAL argued that it was in Gina's best interest to remain with her grandmother and asked the court to award custody to the grandmother and visitation to the father.
- DSS argued that because the father had not been shown to be unfit, joint custody should be awarded to him and the grandmother, with the grandmother having primary physical custody.
- The father argued that he should be given full custody and that any visitation with the grandmother should be up to him.
- The mother argued that her mother (the grandmother) was like a second mother to Gina, that she and her other children would never see Gina if her father had custody, and that the grandmother should be made Gina's guardian.

Consider:

- What is the relevance of the constitutional presumption at this stage?
- Is "best interest" the applicable standard?

Whose recommendation would you adopt?

- a. The GAL – custody to grandmother and visitation to father
- b. DSS – joint custody to father and grandmother; primary physical custody with grandmother
- c. Father – full custody to father
- d. Mother – name grandmother as guardian
- e. None of the above

#### 4. Nick

Assume that in Scenario # 1, at the nonsecure custody hearing Nick was placed in DSS custody. DSS placed Nick with his maternal grandmother. Several months later, Nick was adjudicated neglected based on his mother's failure to properly supervise and care for him when she was intoxicated. At disposition, the trial court decided to continue placement with the grandmother while both parents participated in substance abuse treatment. About 18 months later, the trial court decided it was time to terminate juvenile court jurisdiction and enter a civil custody order pursuant to G.S. 7B-911, because there was no need for continued involvement by DSS. However, the trial court is concerned that both parents have a significant history of substance abuse, even though they have successfully completed the treatment programs and tested negative for the past three months, with one exception in the case of the mother.

#### Consider:

- What is the relevance of the constitutional presumption at this point?
  - Is the best interest standard applicable?
- A. Could the court award joint legal custody to mom, dad, and grandmother with primary physical custody to grandmother?
1. Yes
  2. Probably
  3. Probably not
  4. No
- B. If the trial court were comfortable giving primary custody to the father, could the court order visitation with the grandmother due to the close bond that had formed between her and Nick?
1. Yes
  2. Probably
  3. Probably not
  4. No

## 5. Larry, Marvin, and Jamal

Doris's husband wants to adopt her three children, each of whom has a different father. Doris files a petition against each father seeking to terminate his rights. In each case, the court adjudicates one ground, based on the findings summarized below:

- **Larry.** For just over a year before the filing of the petition Larry paid none of the child support required by the separation agreement he and Doris executed when they separated twelve years ago. The failure to pay was willful because, although unemployed during that time, Larry could have sold his interest in family land he had inherited years ago. [G.S. 7B-1111(a)(4)]
- **Marvin.** Doris and Marvin have never been married. Their child, just 3 months old when the petition was filed, was conceived when Doris and her present husband were separated briefly. Marvin has talked to an attorney about legitimating the child and filing an action for visitation or custody, but has not filed anything. Paternity has not been established judicially or by affidavit filed with DHHS. Since before the child was born Doris has told Marvin that she does not want anything from him. She has refused to let him see the child except in the hospital and will not even talk to him on the phone. [G.S. 7B-1111(a)(5)]
- **Jamal.** When Jamal was 18, his rights to his former girlfriend's child were terminated on the grounds of abandonment and failure to pay support. He is now 27, is severely disabled as the result of an industrial accident, and lives in an assisted living facility. [G.S. 7B-1111(a)(9)]

Before the disposition hearings, each father argues that adjudication of the respective ground, by itself, is not sufficient to establish that he has forfeited his constitutionally protected parental status and authorize application of the "best interest" standard?

### Consider:

- What is the relevance of the constitutional presumption at this stage?
- Is "best interest" the applicable standard?

### In your opinion, this is a valid argument in the case of

- a. **Larry** (failure to pay child support)
- b. **Marvin** (failure to establish paternity, etc.)
- c. **Jamal** (termination of rights to another child and inability to establish a safe home)
- d. **all three** fathers
- e. **none** of the fathers
- f. **two** but not all three of the fathers