

## **In re A.P.: A County DSS Director's Standing to File an A/N/D Petition Is Not as Limited as Previously Held by the Court of Appeals**

Last year, the Court of Appeals held that *only* a director (or authorized representative) of a county department of social services (DSS) *where the child resided or was found* at the time a petition alleging abuse, neglect, or dependency (A/N/D) was filed in court had standing to do so. [In re A.P.](#), 800 S.E.2d 77 (2017). Because standing is jurisdictional, when a county DSS without standing commences an A/N/D action, the district court lacks subject matter jurisdiction to act. *Id.*; see my earlier blog post discussing this holding [here](#). This holding had an immediate impact on A/N/D cases throughout the state. Because subject matter jurisdiction can be raised at any time, both new and old cases were dismissed either through a voluntary dismissal by DSS or a motion to dismiss filed by another party in the action. After dismissal, new petitions for these same children were filed, sometimes after a child was transported to a county for the purpose of giving the county DSS director standing to commence the action. The North Carolina Department of Health and Human Services (DHHS) notified county DSS's that the holding in *In re A.P.* superseded DHHS policy on conflict of interest cases, recognizing that contrary to the policy, a county DSS with a conflict may be the only county DSS with standing to file an A/N/D action after a partner DSS determines there is a need to file a petition because of abuse, neglect, or dependency. See [CWS-28-2017](#).

Last month, the North Carolina Supreme Court reversed the Court of Appeals holding, stating the statutory interpretation was too restrictive and contrary to children's best interests. [In re A.P.](#), 812 S.E.2d 840 (2018).

### **Refresher on the Facts**

Three counties were involved in this case: Cabarrus, Rowan, and Mecklenburg. At the time of A.P.'s birth, she lived with her mother in Cabarrus County. When A.P. was 2-months-old, a report was received by the Cabarrus County DSS. A.P.'s mother agreed to a safety plan that allowed A.P. to live with a safety resource in Rowan County while she (mother) received mental health treatment in a residential setting in Mecklenburg County. Upon discharge, A.P. and her mother lived together in Mecklenburg County, and Cabarrus County DSS transferred the case to Mecklenburg County DSS. A new report was received by Mecklenburg County DSS, and A.P. returned to the home of the safety resource in Rowan County. While A.P. was in Rowan County, her mother temporarily resided in South Carolina and Mecklenburg County and eventually, she reported that she was living in Cabarrus County. Mecklenburg County DSS was contacted by the safety provider in Rowan County because she was no longer able to care for A.P. Mecklenburg County DSS requested that Cabarrus County DSS accept a case transfer, but the request was declined. Mecklenburg County DSS filed the petition alleging neglect and dependency. After the adjudication and disposition orders were entered, A.P.'s mother appealed. She argued Mecklenburg County DSS lacked standing to commence the action because at the time the petition

was filed, A.P. did not reside in and was not found in Mecklenburg County. The Court of Appeals agreed and vacated the trial court's order. The NC Supreme Court reversed the Court of Appeals decision.

## **A Holistic Statutory Interpretation Is Required**

In its opinion, the NC Supreme Court discussed how to interpret statutory text after stating that the "rigid interpretation of isolated provisions in the Juvenile Code is unsupported by the whole of the statutory text and creates jurisdictional requirements beyond those which the legislature intended to impose." *Id.* at 843. A court should "...follow the whole-text cannon, which calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts." *Id.* at 843 (quoting *N.C. Dep't of Transp. V. Mission Battleground Park, DST*, 810 S.E.2d 217, 222 (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 167 (2012))).

The Court of Appeals' application of the definition of director found at G.S. [7B-101\(10\)](#), which refers to "the county in which the juvenile resides or is found," to the statute that states "only a county director.... may file a petition...." (G.S. [7B-401.1\(a\)](#); emphasis in opinion) restricts who may file a petition to specific county DSS directors. In looking at the Juvenile Code as a whole, the NC Supreme Court concluded that "...the legislature did not intend to constrain departments of social services this way." *In re A.P.*, 812 S.E.2d at 841.

In its opinion, the NC Supreme Court looked to the introductory language of the definitions statute, G.S. 7B-101, which states the words have the following meaning "*unless the context clearly requires otherwise*" and concluded the context requires otherwise. (emphasis supplied in opinion). In making its conclusion, the NC Supreme Court looked to

- various provisions in the Juvenile Code that distinguished between "a county director," which refers to directors generally, and "*the* county director," which refers to a specific county director and cited the language of G.S. 7B-401.1(a), which states "a county director of social services" may file a petition, and
- provisions in the Juvenile Code that suggest a county DSS director may file a petition even though the child is not a resident of that county (see G.S. [7B-302\(a2\)](#), [-400\(b\)](#), [-402\(d\)](#)).

In looking at a holistic reading of the applicable statutes, I wonder if the NC Supreme Court could have also examined the issue in the context of the structure of North Carolina's child welfare system by also looking at G.S. Chapter 108A. North Carolina's child welfare system is state-supervised and county administered. See G.S. [108A-14\(a\)](#), [-74](#). The system consists of 100 counties and DHHS, with DHHS designated as the single state agency responsible for administering or supervising the administration of social services programs, including child welfare services. G.S. [108A-71](#), [-74](#). The same applicable laws (e.g., the Juvenile Code and the NC Administrative Code) apply to each county and DHHS. North Carolina appellate courts have

recognized in several child welfare contexts that the county DSS operates as an agent of the state. See, e.g., *Gammons v. N.C. Dep't of Human Res.*, 344 N.C. 51 (1996) (child protective services); *Vaughn v. N.C. Dep't of Human Res.*, 296 N.C. 683 (1979) (foster care); *In re N.X.A.*, 803 S.E.2d 244 (2017) (verification requirements for an A/N/D petition); *In re Z.D.H.*, 184 N.C. App. 183 (2007) (appeal in a juvenile case); *Parham v. Iredell County Dep't of Soc. Servs.*, 127 N.C. App. 144 (1997) (adoption). In interpreting the provisions of the Juvenile Code, would the analysis have been different, supported, or weakened by also addressing the structure of the system as set forth in G.S. 108A when multiple counties are involved with one family?

### The Child's Best Interests Is the Polar Star

The NC Supreme Court's interpretation was also guided by its "... oft-recited recognition that 'the fundamental principle underlying North Carolina's approach to controversies involving child neglect and custody [is] that the best interest of the child is the polar star.'" *In re A.P.*, 812 S.E.2d at 845 (quoting *In re M.A.W.*, 370 N.C. 149, 152 (2017)). In response to the argument that a county DSS director would have standing by simply requesting the child be transported to that county so that the child is "found" there, the NC Supreme Court concluded this interpretation is contrary to a child's best interest. The court pointed out that

- subject matter jurisdiction could be defeated by a parent or caretaker moving the child between counties, and
- because subject matter jurisdiction could be raised at any time, countless juvenile orders across the state could be attacked and needlessly delay permanency for children who are alleged to be abused, neglected, or dependent.

### Don't Forget the [G.S. 7B-302](#) Criteria

Although *In re A.P.* makes it clear that a county DSS director's standing is not limited to the child's residence or location at the time the A/N/D petition is filed, there are certain conditions a county department must satisfy before the district court has subject matter jurisdiction to proceed in an A/N/D action. Specifically, the procedures of G.S. 7B-302(c) or (d) must be followed, which require

- an assessment (sometimes referred to as an investigation) and
- a finding (or substantiation) that abuse, neglect, or dependency has occurred.

*In re S.D.A.*, 170 N.C. App. 354, 361 (2005) (vacating adjudication and disposition orders and remanding for dismissal due to lack of subject matter jurisdiction after determining that in a conflict of interest case where one county DSS referred the assessment to a second county DSS, and there was no finding of abuse or neglect by either county DSS, the first county DSS "lacked the power to invoke the jurisdiction of the court").