

## **Show Me the Money: Verification of Adequate Resources Required when Ordering Custody or Guardianship to a Non-Parent in an A/N/D Action**

If you're a sports fan like me, you probably like sports movies. And if you like sports movies, you know the famous line from Jerry Maguire, "show me the money!" That line has some application to abuse, neglect, or dependency cases – specifically when a court is going to order custody or guardianship of a child who has been adjudicated abused, neglected, or dependent to a person who is not the child's parent. The Juvenile Code requires that the court first verify that the proposed custodian or guardian "will have adequate resources to care appropriately for the juvenile." G.S. [7B-903\(a\)\(4\)](#), [-906.1\(j\)](#), [-600\(c\)](#).\*

### **The Dispositional Alternatives of Custody or Guardianship**

A child's disposition is based on the child's best interests and involves services to meet the child's needs and to strengthen the family so that the child may return home when it is safe to do so. See G.S. [7B-100](#), [-900](#). Until and unless it is safe for the child to return home, the court considers various "dispositional alternatives", which address custody and placement options outside of the parents' home(s), as the case proceeds through the dispositional stage. See G.S. 7B-903. Two of the enumerated dispositional alternatives are (1) custody to a relative or other suitable person who is not the child's parent and (2) guardianship of the person. G.S. 7B-903(a)(4) & (5); see G.S. 7B-600.

In an abuse, neglect, or dependency case, there are different dispositional phases: initial disposition, review, and permanency planning. See G.S. [7B-901](#), -906.1. The various dispositional alternatives are available at any dispositional hearing. G.S. 7B-903(a), -906.1(i). This means custody or guardianship may be ordered as a temporary measure in the initial or review phase or as the child's permanent plan.

### **Verification of Adequate Resources**

Before the court orders custody to an individual who is not the child's parent or appoints a guardian of the person to the child, the Juvenile Code requires the court to verify that the person receiving custody of or being appointed as guardian for the child will have adequate resources to appropriately care for the child. G.S. 7B-903(a)(4), -906.1(j), -600(c).

### **Findings and Evidence**

Specific findings for the verification are not required, and the court does not have to make detailed and extensive findings of the proposed guardian's or custodian's resources. [In re P.A.](#), 241 N.C. App. 53 (2015); see [In re T.W.](#), 796 S.E.2d 792 (2016). However, there must be sufficient

competent evidence in the record to support the court's determination that a proposed custodian or guardian will have adequate resources to appropriately care for the child. *In re T.W.*; *In re P.A.*

Dispositional hearings may be informal, and the rules of evidence are relaxed. The court may hear and consider any evidence, including hearsay and written reports, that the court finds to be reliable, relevant, and necessary to determine the child's needs and the most appropriate disposition. The court considers information from the parents, the child and child's GAL, the guardian or custodian, the person providing care for the child, and any other person that will aid in the court's review. See G.S. 7B-901(a), -906.1(c). Evidence the court may consider when determining if the proposed guardian or custodian has adequate resources includes reports and home studies conducted by DSS and/or the child's GAL. See [In re J.E.](#), 182 N.C. App. 612 (2007).

### **Sufficiency of the Evidence**

The trial court must make an independent determination based on the evidence presented that the resources available to the potential guardian or custodian are adequate. *In re P.A.*

Last month, the court of appeals recognized that the case law examining a trial court's determination of adequate resources was made "from numerous angles, none of them precisely on point". [In re N.H.](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ (Sept. 19, 2017). Even in that opinion, consensus was lacking as there was a concurrence and a dissent.

Given the lack of clarity or a bright-line rule on what is required to prove adequate resources, the parties and the trial court must figure out what is sufficient. It is difficult to know. Recent cases provide some guidance for the courts and parties to follow.

1. **Evidence of income and expenses preferred (not required).** Evidence that shows whether the monthly income meets the monthly household expenses allows the court to make a determination of whether the proposed guardian or custodian will have adequate resources. See [In re K.B.](#), 791 S.E.2d 669 (2016) (originally unpublished) (vacating order as there was no evidence regarding amount of income or expenses); *In re N.H.* (affirming order based on evidence that the proposed guardian's income (without addressing the specific amount) covers her bills if she plans to save, which she intended to do; note the dissent, which stated the evidence of inadequate funds and a vague assurance she could make ends meet was insufficient). See also *In re T.W.* (reversing order; evidence showed aunt was unemployed and needed more financial support but was looking for work and provided a vague assurance of finding employment).
2. **Testimony from proposed guardian or custodian helpful.** Sworn testimony by the proposed guardian or custodian constitutes competent evidence in the record that may support the court's determination. Compare *In re N.H.* (sworn testimony taken) to *In re P.A.* (unsworn testimony by proposed guardian) and [In re J.H.](#), 780 SE 2d 228 (2015) (no testimony by proposed guardian). Note that testimony from the proposed guardian or

- custodian is not required as other evidence may be admitted, such as a DSS social worker testimony or report.
3. **Subjective opinion insufficient.** A proposed guardian's or custodian's subjective conclusory opinion that he or she has adequate resources without any evidence of resources is insufficient. *In re P.A.*
  4. **Past care alone insufficient.** Evidence that solely consists of the child having been successfully maintained in the proposed guardian's or custodian's home in the past is insufficient. The statutory language contemplates the proposed guardian's or custodian's ability to care for the child in the future, as it requires verification that the person "will have adequate resources." *In re N.H.*, (Dillon, J. concurring). See *In re T.W.* (reversing order awarding custody to aunt who had maintained child successfully in her home but was currently struggling financially); *In re J.H.* (reversing guardianship order; evidence through DSS and GAL reports that child had been in a successful kinship placement for 10 months, his needs had been met and there were no current financial or material needs was insufficient to support independent determination by court).
  5. **Financial difficulties not a bar.** During a kinship placement, the proposed guardian experienced a short-term layoff; however, the court found he had adequate resources based on the evidence before it and further noted his seeking Temporary Assistance for Needy Families (TANF) benefits during that time demonstrated his preparation for the financial burden of caring for the child. *In re C.P.*, 801 S.E.2d 647 (2017). In another case, the determination of adequate resources was affirmed even with evidence of the proposed guardian's past financial difficulties that caused her to use her savings and gift cards from DSS. *In re N.H.*

These decisions are hard as oftentimes resources are limited for the proposed guardian or custodian, who is oftentimes a child's relative. If a determination is appealed, the reviewing court will not weigh and compare the evidence (even if it is a close call) but will instead look to see if there was competent evidence as permitted under the Juvenile Code to support the trial court's findings. See *In re N.H.* Make sure the evidence is admitted so that the court can make a determination.

*\*The Juvenile Code also requires the court verify the proposed guardian or custodian understands the legal significance of the appointment or placement. This second requirement is beyond the scope of this post.*