The Cease Reunification Efforts Shuffle in A/N/D Actions: It's All about the Timing

NOTE: Since this post was published, S.L. 2018-86 was enacted effective for all initial disposition orders that are effective on or after June 25, 2018. G.S. 7B-901(c) has been amended to add the word "determines" and supersedes the holding of In re G.T., ___ N.C. App. ___, 791 S.E.2d 274 (2016), aff'd per curiam, 370 N.C. 387 (2017). 2018 legislative summaries impacting child welfare are discussed here*.*

Abuse, neglect, or dependency court proceedings have several different stages, one of which is the dispositional stage. The dispositional stage, which occurs only after a child has been adjudicated abused, neglected, or dependent, has several different types of hearings: initial, review, and permanency planning. During the various dispositional hearings, a court may address reunification efforts, which involve the diligent use of preventive or reunification services by a DSS when a child's remaining in or returning to the home of a parent is consistent with achieving a safe permanent home for the child within a reasonable period of time. *See* G.S. 7B-101(18). How a trial court may address reunification efforts, including whether to relieve DSS from making those efforts, differs depending on the type of dispositional hearing. That is what the reunification efforts shuffle is all about.

Recent Statutory Amendments Result in the Shuffle

Before October 1, 2015, the trial court could enter an order ceasing reunification efforts in any order that placed a child in DSS custody if it made a finding set forth in the former G.S. 7B-507. Significant statutory amendments made to the Juvenile Code from 2015 through 2017 have limited the trial court's authority to enter an order that eliminates reunification efforts and/or reunification as a permanent plan with a parent. Now, the Juvenile Code is prescriptive in when and how the court may act with regard to reunification efforts. Some of the requirements are easily understood by simply reading the amended statutes, specifically G.S. 7B-901 and 7B-906.1. Other requirements have resulted from appellate decisions that have interpreted the language of these same statutes.

The statutes and case law have created what I call the reunification efforts shuffle (named after comments from some district court judges about my dancing, clogging, and shuffling my way across the platform I was teaching on to illustrate and explain the appellate decisions interpreting the new statutes as they related to dispositional hearings, findings, and the court's authority to cease efforts). Let's do the shuffle.

The Timing of Dispositional Hearings Generally

The initial dispositional hearing is the first dispositional hearing in the action and must take place

immediately after and conclude within 30 days of the completion of the adjudicatory hearing. G.S. 7B-901(a). Within 90 days of the initial dispositional hearing, the court must hold a review hearing. G.S. 7B-906.1(a). A second review hearing is held within 6 months of the first review hearing. *Id.* Within 12 months of the initial order removing custody of the child, the court must hold the first permanency planning hearing, and any review hearing occurring within that time must be designated as a permanency planning hearing. *Id.* Subsequent permanency planning hearings must be held at least every 6 months or earlier as set by the court, until and unless waived. G.S. 7B-906.1(a), (k), (n).

Ceasing Efforts at the Initial Dispositional Hearing Requires a Prior Order

The initial dispositional hearing is the first opportunity for DSS or the child's GAL to request that the court order that DSS be relieved of providing reunification efforts to a parent. The court's authority is limited by the criteria set forth in G.S. 7B-901(c). Unless the court concludes that there is compelling evidence warranting continued reunification efforts, the court is required to direct that reasonable efforts for reunification are not required if it makes a written finding of fact that a court of competent jurisdiction

- has determined the parent has committed, encouraged the commission of, or allowed the continuation of any of the following aggravated circumstances on the child: sexual abuse, chronic physical or emotional abuse, torture, abandonment, chronic or toxic exposure to alcohol or controlled substances that causes impairment of or addiction in the child, or any

other act or conduct that increased the enormity or added to the injurious consequences of the abuse or neglect;
- has terminated involuntarily the parent's rights to another child of the parent; or
- has determined that the parent has committed murder or voluntary manslaughter of another child of the parent; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; has committed felony assault resulting in serious bodily injury to the child or another child of the parent; has committed sexual abuse against the child or another child of the parent; or has been required to register as a sex offender on any government-administered registry.

G.S. 7B-901(c) (emphasis supplied).

These findings are only required when the child is placed in DSS custody and are not required if guardianship or custody is awarded to a person or agency other than DSS. G.S. 7B-901(c); *In re H.L.*, 807 S.E.2d 685 (2017) (holding when guardianship awarded at initial disposition, G.S. 7B-901(c) does not apply).

G.S. 7B-901(c) was interpreted in In re G.T., 791 S.E.2d 274 (2016), *aff'd per curiam,* 808 S.E.2d 142 (2017), which reversed the portion of the initial disposition order that ceased reunification efforts with the mother after finding at the initial dispositional hearing that the child was subjected to chronic and toxic exposure to controlled substances that resulted in his impairment or addiction at birth due to mother's drug use during pregnancy. The appellate courts looked to the plain words of the statute, specifically the verb tenses used, to determine legislative intent. It held the use of the present tense, "makes", and present perfect tense, "has determined", requires that the trial court at the initial dispositional hearing "must refer to a prior court order" rather than make the determination in the initial dispositional order. *Id.* at 279. A prior court order results from either a previously held adjudication hearing or "some other hearing in the same juvenile case" or at a collateral proceeding before a court of competent jurisdiction. *Id*. The appellate courts have not addressed what other hearing in the same juvenile case (e.g., a hearing on the need for continued nonsecure custody, *see* G.S. 7B-506) is sufficient or what constitutes a court of competent jurisdiction as related to specific statutory findings. Appellate opinions do not address whether the "prior order" must be entered as opposed to orally rendered. *See* In re O.D.S., 786 S.E.2d 410 (2016) (discussing rendering and entering judgments).

When reunification efforts are ceased at initial disposition, permanency planning is accelerated. A permanency planning hearing must be scheduled within 30 days. G.S. 7B-901(d). There is no review hearing.

If reunification efforts are not ceased at initial disposition, the next dispositional hearing is likely to be the review hearing.* *See* G.S. 7B-906.1(a). At a review hearing, the court must consider certain statutory criteria and make written findings of those that are relevant -- one of which is whether reunification efforts would clearly be unsuccessful or inconsistent with the child's health or safety and need for a safe, permanent home within a reasonable period of time. G.S. 7B-906.1(d)(3). If the court finds that efforts would be unsuccessful or inconsistent, it is not authorized to enter an order ceasing reunification efforts, unless the review hearing was also scheduled as a permanency planning hearing. *See* In re T.W., 796 S.E.2d 792 (2016). When the hearing is a review hearing only, after making the G.S. 7B-906.1(d)(3) finding, the court must schedule a permanency planning hearing within 30 days to address the child's permanent plans. G.S. 7B-906.1(d)(3).

The Permanency Planning Hearing (PPH)

The first PPH must be held within 12 months of the initial order removing custody of the child or when applicable, within 30 days of the initial dispositional order that ceases reunification efforts or a review order that makes a G.S. 7B-906.1(d)(3) finding regarding reunification efforts. G.S. 7B-906.1(a); 7B-901(d); 7B-906.1(d)(3). A PPH must be held at least every 6 months, unless waived, while the court retains jurisdiction over the action. G.S. 7B-906.1(a), (k), (n).

Until a permanent plan for the child has been achieved, the court must adopt concurrent permanent plans, identify a primary and a secondary permanent plan, and order DSS to make efforts to finalize the plans. G.S. 7B-906.2(a1), (b). Under G.S. 7B-906.2(b), reunification must be a primary or secondary plan unless the court

- made a finding under G.S. 7B-901(c) to eliminate reunification efforts (The court does not have the authority to make a finding under G.S. 7B-901(c) at a permanency planning hearing to eliminate reunification as a permanent plan. *In re T.W.,* 796 S.E.2d 792) or

- makes written findings that reunification efforts clearly would be unsuccessful or inconsistent with the child's health or safety. (This finding may be made at the first or subsequent PPH. *See* G.S. 7B-906.2(c); *In re H.L.*, 807 S.E.2d 685 (2017).)

The court of appeals in In re C.L.S.B., 803 S.E.2d 429 (2017) (originally unpublished but subsequently published) has addressed reunification efforts when a permanent plan other than reunification has been achieved but a secondary plan of reunification remains. In that circumstance, the trial court has not eliminated reunification as a concurrent permanent plan, and the findings of G.S. 7B-906.2(b) are not required. But, if the court keeps the secondary plan of reunification rather than order the single achieved permanent plan as permitted by G.S. 7B-906.2(a1), the parent has the right to have reunification efforts from DSS and DSS may not be relieved from any further responsibilities in the case.

***Combining the Hearings**

The Juvenile Code sets forth the maximum time limits for when each type of hearing must be held as the language of the statutes refer to scheduling a hearing "within" a set number of days or months and explicitly permit the court to schedule permanency planning hearings earlier. *See, e.g*., G.S. 7B-906.1(a). The statutes governing dispositional hearings do not preclude the court from combining the different types of hearings so long as proper notice has been provided or has not been waived. *See In re H.L*. (combined initial, 90-day review, and permanency planning hearing was properly noticed and no objection was made); *see also In re K.C.*, 791 S.E.2d 284 (2016) (originally unpublished but subsequently published) (vacating and remanding permanency planning order as parent timely objected to deficient notice converting review to permanency planning review hearing). However, when an initial dispositional hearing and PPH are combined and result in one order, the findings of G.S. 7B-901(c) are required before the court may enter a single order that eliminates reunification efforts. In re J.M., 804 S.E.2d 803 (2017), *review allowed* (reversing

portion of dispositional order that eliminated reunification efforts under findings that apply to PPH pursuant to G.S. 7B-906.2(b)). The findings of G.S. 7B-901(c) cannot "be eluded in favor of the more lenient requirements of G.S. 7B-906.2(b) simply by combining [initial] dispositional and permanency planning matters in a single order." *Id.* at 841. The court of appeals has not addressed whether the trial court may make the findings under G.S. 7B-906.2(b) in a combined initial dispositional and permanency planning hearing if it enters two separate orders: an initial dispositional order and a permanency planning order.

Because these statutory amendments are new, the case law is still evolving. Perhaps the questions raised in this post, as well as other questions you have, will be answered in time.

!! *See my May 3, 2018 blog post, here, discussing new appellate opinions that address eliminating reunification as a permanent plan and findings for ceasing reunification efforts.*