

What Is the Role of a Foster Parent in the A/N/D Court Action?

A foster parent provides substitute care for a child who has been separated from his or her family because of abuse, neglect or dependency. [G.S. 131D-10.2\(9a\);10A NCAC 70B.0101](#). When a parent, relative, guardian, or custodian is unable to care for a child, a foster parent is a critical part of a county department's plan for arranging for the child's immediate and temporary safety. Foster parents are likely to have relevant information that will assist a court in determining what is in the child's best interests. Foster parents may also be interested in adopting a child who has been placed in their care. Does a foster parent have a right to participate in the court proceeding?

Foster Parents Are Not Parties

Effective October 1, 2015, the General Assembly amended G.S. 7B-401.1 to add subsection (e1), which explicitly states foster parents are not parties in an abuse, neglect, and dependency action. [S.L. 2015-136](#), §2.

Prior to this statutory change, a foster parent could be made a party by court order because a foster parent is included in the definition of “**caretaker**” in [G.S. 7B-101\(3\)](#). Caretakers may only be parties in an abuse, neglect, and dependency action if one of three criteria are met:

1. the petition contains allegations relating to the caretaker;
2. the caretaker has assumed the obligation and status of a parent; or
3. the court orders the caretaker be a party.

[G.S. 7B-401.1\(e\)](#). Requirement #1 does not typically apply to a foster parent since a child is placed in a foster home *after* a petition alleging the child's abuse, neglect, or dependency has been filed in court. Requirement #2 requires that the foster parent assume the obligation and status of a parent, which is the equivalent of acting in loco parentis. [In re A.P.](#), 165 N.C. App. 841 (2004). A foster parent provides temporary substitute care and is not intending to assume the status of parent “by taking on obligations incidental to the parental relationship, particularly that of support and maintenance” for the child. [In re T.B.](#), 200 N.C. App. 739 (2009) (*citations omitted*). Requirement #3 allows the court to use its discretion when deciding if a caretaker should be a party. Until the new amendment, this left room for the court to allow a foster parent to join as a party. The new G.S. 7B-401.1(e1) makes it clear that the court no longer has discretion to order a foster parent to be a caretaker party in the abuse, neglect, and dependency proceeding.

May a Foster Parent Intervene?

Case law has consistently held that the Juvenile Code sets forth the exclusive procedures governing juvenile proceedings, and a particular rule of civil procedure only applies if it fills a

procedural gap and advances the purposes of the Juvenile Code. [In re E.H.](#), 742 S.E. 2d 844 (2013). Prior to October 1, 2013, the statutes governing abuse, neglect, and dependency actions did not address intervention. The Court of Appeals held that the North Carolina Rule of Civil Procedure 24 (Intervention) applies to abuse, neglect, and dependency proceedings. [In re T.H.](#), 753 S.E.2d 207 (2014). The holding in *In re T.H.* no longer applies because intervention in an abuse, neglect, and dependency action is specifically addressed by [G.S. 7B-401.1\(h\)](#).

G.S. 7B-401.1(h) limits intervention to a parent, guardian, custodian, caretaker, or another county's social services agency that has an interest in the abuse, neglect, and dependency proceeding. Although a foster parent is a caretaker, the new [G.S. 7B-401.1\(e1\)](#) limits a foster parent's ability to intervene to when a foster parent has standing to initiate a termination of parental rights action against the child's parent. Standing to commence a termination of parental rights action is governed by [G.S. 7B-1103](#). A foster parent is unlikely to have standing under G.S. 7B-1103 except for when a child has continuously resided in the foster parent's home for two years immediately preceding the filing of the termination of parental rights petition.

May a Foster Parent Participate in the Court Proceeding?

Yes. Although a foster parent is not a party, the Juvenile Code allows for a foster parent to participate in the court proceeding.

At the initial dispositional hearing after a child has been adjudicated abused, neglected, or dependent, the court may consider testimony and evidence from a non-party if the court determines that person has information that is relevant, reliable, and necessary to determine the child's best interests. [G.S. 7B-901](#). A foster parent may meet this requirement. Following the initial dispositional hearing, the clerk must send notice of review and permanency planning hearings to the person providing care for the child; this is the foster parent. [G.S. 7B-906.1\(b\)\(iv\)](#). At the review and permanency planning hearings, the court should also consider information from any person providing care to the child even when that person is not a party. [G.S. 7B-906.1\(c\)](#). If a termination of parental rights action is initiated, the foster parent may be heard as a nonparty in the dispositional hearing if the court finds the foster parent's information is relevant, reliable, and necessary to determine the child's best interests. [G.S. 7B-1110\(a\)](#).

Finally, if a child's permanent plan is adoption, a foster parent must receive notice from the social services agency of who the agency selected as prospective adoptive parents within ten days of selection. [G.S. 7B-1112.1](#). If the foster parent wants to adopt the child and was not selected as the prospective adoptive parent, the foster parent has a right to move for judicial review of the adoption selection. The motion must be filed within ten days of when the foster parent receives the notification. During this ten-day period, the child may not be placed with the selected adoptive parents, and a petition for adoption may not be filed. The child should not be moved until after the judicial review hearing. The foster parent has a right to be heard at the hearing. *Id.* If a motion for review is not filed within ten days, the child may be moved to the selected adoptive parent's home

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after that time.