

Who Is a “Caretaker” in Child Abuse and Neglect Cases?

This post was amended to reflect changes made to the definition of caretaker that occurred after the post was published by section 1 of [S.L. 2015-123](#)* (effective January 1, 2016) and Section 12C.1.(d). of S.L. 2016-94, effective July 1, 2016**

In North Carolina, abuse, neglect, and dependency cases determine the child’s status as abused, neglected, or dependent by examining the child’s circumstances rather than determining the fault or culpability of a parent. *In re Montgomery*, 311 N.C. 101 (1984). In determining a child’s status, social services agencies and trial courts must look at the statutory definitions of abuse, neglect, and dependency. [G.S. 7B-101\(1\), \(15\), \(9\)](#). These definitions require the social services agencies and courts to determine who created the child’s circumstances. In abuse and neglect cases, was it the child’s parent, guardian, custodian, or caretaker? In dependency cases, was it the child’s parent, guardian, or custodian? If the child’s circumstances were not caused by a parent, guardian, custodian, or caretaker, the child is not abused, neglect, or dependent. A court order establishes the relationship of guardian [[G.S. 7B-600](#); [G.S. 35A-1202](#) & [Article 6](#)] or custodian [[G.S. 7B-101\(8\)](#)] to a child, but who is a caretaker?

Statutory Definition

[G.S. 7B-101\(3\)](#) defines caretaker and limits the application of the definition to abuse and neglect cases. A caretaker is “any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting.” The term specifically includes:

- a stepparent,
- a foster parent,
- an adult member of a child’s household,
- an adult relative entrusted with the child’s care,
- a potential adoptive parent during a visit or trial placement when the child is in a county department’s custody**
- a house or cottage parent whose primary responsibility is supervising the health and welfare of a child residing in a child care or educational facility, or
- any employee or volunteer of a division, institution, or school that is operated by the North Carolina Department of Health and Human Services.

Most of these listed individuals are easily identified, but “an adult relative entrusted with the juvenile’s care” has been more difficult to define.

Who is an Adult Relative Entrusted with the Juvenile’s Care?

Last month, the North Carolina Supreme Court answered this question in [In re R.R.N.](#), ___ N.C.

_____ (August 21, 2015). A twelve-year old child, R.R.N., spent one night at her stepfather's cousin's home, where the stepfather's cousin, who was 36 years old, supervised a children's sleepover. During the sleepover, the stepfather's cousin sexually abused R.R.N. The next day, R.R.N. disclosed the abuse to her mother. Her mother and stepfather took appropriate action, including making a report of the abuse to the county department of social services. The department filed a petition in district court alleging R.R.N. was an abused and neglected juvenile and identified the stepfather's cousin as R.R.N.'s caretaker on the night of the sleepover. The court adjudicated R.R.N. as abused and neglected and ordered custody to her mother. R.R.N.'s mother appealed the adjudication arguing the stepfather's cousin was not a caretaker and, therefore, the Juvenile Code did not apply. The North Carolina Supreme Court agreed with R.R.N.'s mother, reversed the adjudication, and provided guidance for how to determine if an adult relative is entrusted with the child's care such that the adult relative is a caretaker.

The Court examined both the purposes of the Juvenile Code and the statutory definition of caretaker when deciding the issue. One of the purposes of the Juvenile Code is to balance the safety and best interests of children with parents' constitutional rights to care, custody, and control of their children. The authority of a county social services agency to intervene in a family's private life is limited by the Juvenile Code. When looking at the definition of caretaker as a whole, a person must have significant responsibility for a child's care on a daily basis.

In determining if an adult relative is a caretaker, social services agencies and trial courts must apply a **totality of the circumstances test** to determine if the adult relative has **significant parent-type responsibility** for the child. If the adult relative has such responsibility, he or she is a caretaker; if not, he or she is not a caretaker, and the intervention by a social services agency with the family is unwarranted. The Court identified factors that should be considered: the duration, frequency, and location of the care the adult relative provides to the child as well as the level of decision-making authority given to the adult relative. A one-night children's sleepover at an adult relative's home does not result in a parent relinquishing her responsibilities to the adult relative and does not create a significant parent-like responsibility between the adult relative and child.

The Court distinguished between having responsibility for a child's short-term safety and having extended care of a child when determining if an adult relative is a caretaker. The Court cited [In re A.P.](#), 165 N.C. App. 841 (2004), which held a paternal step-grandfather who the respective children lived with temporarily (one child for eight months and the younger sibling for three months) was a caretaker and not a custodian. Although the Court cited *In re A.P.*, the holding in that case cannot be applied to the totality of the circumstances test when determining if an adult relative the child does not live with is entrusted with the child's health and welfare. The children in *In re A.P.* temporarily lived with their step-grandfather, which made him a caretaker as "an adult relative of the juvenile's household."

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*Effective January 1, 2016, section 1 of [S.L. 2015-123](#) amended G.S. 7B-101(3) to remove from the definition of caretaker any person who is responsible for a child's care in a nonresidential child care facility defined by Article 7 of G.S. Chapter 110. A new process involving investigations of a child's alleged maltreatment in a child care facility are conducted by the Department of Health and Human Services Division of Child Development and Early Education. To read about this process, see this [post](#).