

Mission Possible

Post-Adjudication Advocacy in A/N/D Court

By Charlene Edwards
Charlene Edwards Law Office
P.O. Box 2446
Lillington, North Carolina 27546

Many attorneys feel that once the Court has adjudicated a juvenile abused, neglected, or dependant, that the case is over, the parent has lost, and fighting for reunification is a mission impossible. That, however, does not have to be the case. Through the use of creative post-adjudication advocacy, you can help your client achieve the best possible result for their individual case, including that perceived rare victory called reunification.

When does post-adjudication advocacy begin? It begins at the initial disposition hearing and continues until the last hearing in the case. Remember that during the disposition hearing, "the juvenile and the juvenile's parent, guardian, or custodian shall have the right to present evidence, and they may advise the court concerning the disposition they believe to be in the best interests of the juvenile. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition." N.C.G.S. §7B-901.

Pursuant to N.C.G.S. § 7B-903, the dispositional alternatives for abused, neglected, or dependent juvenile are as follows:

- a. The court may dismiss the case or continue the case in order to allow the parent, guardian, custodian, caretaker or others to take appropriate action.
- b. In the case of any juvenile who needs more adequate care or supervision or who needs placement, the court may:
 - i. Require that the juvenile be supervised in the juvenile's own home by the department of social services in the juvenile's county, or by other personnel as may be available to the court, subject to conditions applicable to the parent, guardian, custodian, or caretaker as the court may specify; or
 - ii. Place the juvenile in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or
 - iii. Place the juvenile in the custody of the department of social services in the county of the juvenile's residence, or in the case of a juvenile who has legal residence outside the State, in the physical

custody of the department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state.

This statute further states that “In placing a juvenile in out-of-home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile. In placing a juvenile in out-of-home care under this section, the court shall also consider whether it is in the juvenile's best interest to remain in the juvenile's community of residence. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.” **ID.** See also In re L.L., 172 N.C. App. 689, 616 S.E.2d 392 (2005).

So what do you do as the parent's counsel at this stage? Disposition is frequently the most critical stage of the A/N/D process. One thing that you can do is to provide the court with your own Court Report advocating for one of those dispositional alternatives that will keep the children in the home and/or family. Court reports are often the Department of Social Services's primary piece of evidence at the disposition and Court's generally give quite a bit of weight to the reports. A Parent's report can be a response to the agency's proposal and presents the parent's position to the Court in the way the Court is familiar and comfortable with. Remember that judges are humans and they react favorably to the comfortable. Also, setting out your client's position and proposal in black and white can make it easier for the judge to see what you are proposing. It is quite common for the agency's or GAL's reports to read that the parents missed a number of visits but rarely tell how many visits the parents attended. Look at this example as to why a parent's report can be beneficial:

- a. A typical agency report might read: The parents missed 5 scheduled visits.
- b. A parents report might read: The parents attended 12 scheduled visits with the juveniles. They missed 5 because the parent had to work but they called the social worker in an attempt to reschedule and were told by the social worker that the visit could not be rescheduled because the agency did not have the resources to change the visitation schedule because of their current caseload.

While both report the same fact – that the parents missed 5 visits – it is easy to see that a few simple sentences can change the perception of the events.

Also remember that these court reports are often made a part of the file and incorporated into the order. That is another good reason to do a report for your client as well. Some districts may have local rules that state that all court reports must be shared

with the other party and often times, parents attorneys do not see what they need to counter in the Social Worker or GAL's reports until they miss the deadline to submit a report. This presents the attorney with the opportunity for creative lawyering. File a reply or response to the social worker's or GAL's report with proper objections and corrections to the errors in the report. Concentrate on creating a record that places the parent in the most favorable light possible.

Parent's Reports and/or Responses to the Social Worker or GAL's report should be used at subsequent review hearings in the case. Review hearings are held for the purpose of seeing how the case is progressing and what the parent's have done to follow their case plan and what the agency is doing to provide promised services. Pay careful attention to what the agency purports as services towards reunification. Often times the services provided by Department of Social Services have nothing to do with reunifying the child with the parent and fixing the problems that led to the children being taken into care. Make sure the court is aware of what services towards reunification were actually offered by the Department of Social Services to your client. Remember that the same relaxed evidentiary standard that exists for disposition hearings, continues in the review hearings pursuant to N.C.G.S. §7B-906 subsection c.

A Permanency Planning Hearings must be held within twelve months of the date of the initial removal order, or thirty days from the date that the court ceases reunification efforts. These hearings are held to determine a child's permanent placement. The Court will determine:

1. If the child can be returned home or not.
2. If the child cannot be returned home, the court shall decide if the child should be
 - a. Placed for adoption
 - b. Placed in the legal guardianship of a third person
 - c. Placed in the legal custody of a third party – be familiar with N.C.G.S. §7B-911.
 - d. Placed in another planned living arrangement such as a therapeutic group home.

In either of the first three options, placement can be with a relative. Also, keep in mind that the North Carolina General Statutes and the Adoption and Safe Families Act (ASFA) do allow for the child to remain in foster care with a continued plan of reunification past the magic twelve month period if the parent and child continue to have a strong bond and the parent is making continued progress such that the minor child will likely be returned home in a short period of time. Relative placement at any stage of the post-adjudication phase of the case tolls the statutory time lines under ASFA.

Utilize the option of calendaring a review hearing at anytime that you feel it would be beneficial to your client. "In any case where the court finds the juvenile to be abused,

neglected, or dependent, the jurisdiction of the court to modify any order or disposition made in the case shall continue during the minority of the juvenile, until terminated by order of the court, or until the juvenile is otherwise emancipated.” N.C.G.S. §7B-1000(b). If your client has completed the Family Services Agreement there is no need to wait until the scheduled review – which could be months off – to bring the matter before the court. Also, use the review power of the court to resolve issues in dispute between your client and the social worker or GAL regarding the services offered and your client’s participation in the same. Do not get caught in the trap of always being reactive to the Department of Social Services, be proactive in your representation.

Regardless of the stage of the proceeding that you are at, remember certain practical pointers that can help you help your client.

1. Try to establish a good working relationship with the other actors in the proceedings – Social Workers, Guardian Ad Litem, Attorney Advocates and Department of Social Services attorneys whenever possible.
2. Explain to your client the importance of cooperating with the agency and accepting services immediately when possible. (Caveat – be careful in any communications that you allow when there is a possibility of criminal charges against your client where you must be diligent in safeguarding the client’s constitutional right against self-incrimination while balancing the need for the client to engage in services seeking reunification.)
3. Document the substantial progress made by your client
4. Document the services provided to your client for reunification and document those services they have yet to provide.
5. Craft your own plan to achieve the child’s safe return to your client’s home.
6. Assist in the formulation of the Family Service Agreement by exploring what services are available.
7. Attend all Permanency Planning Team Meetings if possible or, if your client has a GAL, have the GAL attend these PPAT meetings.
8. Attend, or have your client’s GAL attend, a couple of the visitation sessions between your client and their children.
9. Frequently monitor your client’s progress and the agency’s services to keep up with how the case is progressing and to ward off problems before they balloon into unmanageable and unrecoverable situations.
10. Stress to your client the importance of keeping in contact with you and with the social workers on their case.

11. Help your client and the agency locate family members or family friends to serve as placement options for the minor child.
12. Determine if service providers view your client favorably. If so, present that information to the court as either live testimony or as an attachment to the Parent's Report.

The goal of post-adjudication advocacy is to, when possible, prevent termination of parental rights and have the case end with either reunification or some form of a relative placement. With creative lawyering and active hands on management of the case outside of the courtroom, this becomes a mission possible for the parent's attorney.

LIST OF ATTACHMENTS

- A. MEMO TO CLIENTS IN A/N/D CASES
- B. STATUS REPORT CALLING LOG
- C. SAMPLE PARENTS REPORT – FORM 1
- D. SAMPLE PARENT'S REPORT – FORM 2
- E. SAMPLE PARENT'S REPORT – FORM 3
- F. RESPONSE TO SW/GAL'S COURT REPORT