

**Juvenile Case Decided by the
North Carolina Court of Appeals**

May 21, 2013

Dependency – Permanency Planning

Dependency: Ceasing Reunification Efforts and Awarding Guardianship

- Permanency planning orders must comply with G.S. 7B-507 and 7B-907(b).
- A party may be estopped from taking wholly inconsistent positions at different points in the same case.
- Findings must be supported by evidence in the record, and the findings must support the conclusions.

In re I.K., ___ N.C. App. ___, ___ S.E.2d ___ (May 21, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi0xMDUzLTEucGRm>

Facts: The child was adjudicated dependent based on both parents' lack of appropriate living arrangements and the mother's having attempted suicide. At the first permanency planning hearing the court ceased reunification efforts with the mother and ordered a concurrent permanent plan of reunification with the father or guardianship to the foster parents. At a second permanency planning hearing, the court found that the father had complied with parts of the case plan but had not provided a plan of care for the child should the father be hospitalized. DSS recommended continuing reunification efforts and the guardian ad litem opposed that position. The court ceased reunification efforts with the father, awarded guardianship to the foster parents, and gave the father four hours a month of unsupervised visitation that could be increased in the guardians' discretion. The father appealed.

Held: Reversed and remanded.

1. The court of appeals rejected DSS's argument that it needed to examine the cessation of reunification efforts only if it determined that guardianship was not in the child's best interest.
 - a. First the court noted that DSS had changed its position – from supporting a primary plan of reunification to opposing continued reunification efforts – without making any attempt to explain or address the reason for doing so.
 - b. A permanency planning order must address the factors and questions set out in G.S. 7B-907(b) and G.S. 7B-507 and therefore must address reunification efforts.
2. The evidence did not support the trial court's critical findings relating to reunification efforts, and the findings did not support the conclusion about ceasing reunification efforts:
 - a. No evidence supported the finding that there was an "appreciable risk" that respondent would sexually or physically abuse child.
 - b. Evidence in fact indicated that those risks did not exist.
 - c. Some findings merely recited evidence.
 - d. Findings did not explain why the child could not be returned home immediately or within six months or why returning home was not in her best interest.
 - e. The court improperly considered positive aspects of the foster care placement before determining whether respondent would be able to parent the child.
3. DSS's claims about risks to the child and the trial court's order were inconsistent with supporting and providing for respondent to have unsupervised visitation with the child.
4. On remand, whether to take additional evidence is in the trial court's discretion.

Appellate court opinions: <http://www.aoc.state.nc.us/www/public/html/opinions.htm>.

Earlier case summaries: <http://www.sog.unc.edu/node/513>.

Other juvenile law resources: <http://www.sog.unc.edu/node/1689>.



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