OPD OFFICE OF THE PARENT DEFENDER

TUESDAY'S TIP #23 – CUSTODY AT NON-SECURE

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Situation: Your client's children have been removed from the home but by the time you are appointed, or at a non-secure custody hearing, the immediate danger has passed. Your client wants their children back home.

The Problem: DSS will often double-down on their position that there is a safety concern which is why they requested non-secure custody. Some social workers believe that custody cannot be returned until a disposition hearing is held. The GAL Program has not usually had an opportunity to investigate the allegations. The prevailing attitude is that it is better to be safe than sorry. And some judges are concerned that they may be overruling the judge who entered the original non-secure custody order if they allow the children to go home.

Law: Non-secure custody hearings fall under the purview of Article 5 of the Juvenile Code. Sections of this Article make it clear that the test is "there is a reasonable factual basis to believe the matters alleged in the petition are true," and also "that there are no other reasonable means available to protect the juvenile." N.C.G.S. § 7B-503(a). NSC orders keeping a child in NSC must have specific findings as to reasonable efforts to prevent the need for placement. N.C.G.S. § 7B-507(a)(2). DSS has the burden to prove by clear and convincing evidence the need for NSC. The court is not bound by the usual rules of evidence. N.C.G.S. § 7B-506(b). Rylan's Law does not apply to non-secure custody orders or to any requests made by anyone other than DSS. N.C.G.S. § 7B-903.1(c).

Action Steps:

1. Review the petition to see what is the emergency safety concern that triggered the removal. Focus on the "but for this child's removal," the child would be exposed to a substantial risk, the parent has created conditions likely to cause injury, or the parent has failed to supervise or protect.
2. Discuss with your client what steps have been taken and could be taken to address the safety concerns. Explore if services can be provided in-home with the children present.
3. If the triggering factor was a Safety Plan violation, discuss with your client whether they would abide by a temporary order of the court. Violating a voluntary plan is not equivalent to violating a court order. If the triggering factor was an arrest, has the parent been released.
4. Use DSS documentation obtained from your client or discovery to support lack of need of removal (such as the Family Strength Assessment and Safety Plan).
5. Identify, with the help of your client, what services they need to access to help them remedy the safety concern.
6. If the situation changes prior to adjudication, schedule another hearing to address placement. N.C.G.S. § 7B-506(g).
7. Look for additional tips in The First 7 Days and the AND/TPR Manual.

Conclusion: Our courts are still backlogged. It can take a long time before an adjudication and disposition hearing is held. As our Supreme Court has recognized, "children experience time differently from adults." *In re T.H.T.*, 362 N.C. 446 (2008). Help the court speed up reunification and free up foster homes for children who really need them by advocating for a quick return of your client's children to their family home where the family can address any issues together and where siblings can maintain their contact with each other and with their community.