OPD OFFICE OF THE PARENT DEFENDER

# MONTHLY MEMO #4– WAIVING CHILD SUPPORT DURING REUNIFICATION

**October 2024**

## Scenario:

You represent a parent. As soon as non-secure custody is obtained, DSS sends a referral to Child Support Enforcement (CSE). If not at the beginning, then soon after, CSE starts a child support case.

## The Problem:

DSS insists it is required to refer a case to CSE pursuant to 10A NCAC 70B .0104 so that it can recoup some of the public funds it expends on foster care. But any child support paid by your client does not go to the foster family or to your client's children.

Additionally, failure to pay child support, even if not court ordered, can then become a ground for terminating your client's parental rights. You need to prevent that.

## Main Argument:

Our clients typically have limited resources, meaning that assessing even the minimal child support obligation ($50/month) can significantly impact our clients' ability to successfully reunify with their child(ren).

Even if there is not a child support order entered, a future motion or petition to terminate parental rights can be based on willful failure to pay child support. N.C.G.S. § 7B-1111(a)(3). You want to prevent that ground from being used against your client by getting the trial court to order that your client has no child support obligation so long as one of the permanent plans is reunification.

## Applicable Law:

The Juvenile Code grants the trial court authority over parents as outlined in N.C.G.S. § 7B-904. The Supreme Court has stated that a case plan doesn't just need to address the original reasons for removal but can address corrective actions that may develop as the case progresses. *In re B.O.A.*, 372 N.C. 372, 386, 831 S.E.2d 305, 315 (2019).

1. **The Juvenile Code does not allow for child support to be set until disposition.**

N.C.G.S. § 7B-904(d) allows a judge to set child support in accordance with N.C.G.S. § 50-13.4(c).

> If the court places a juvenile in the custody of a county department of social services and if the court finds that the parent is unable to pay the cost of the support require by the juvenile, the cost shall be paid by the county department of social services in whose custody the juvenile is placed, …

If the trial court orders child support before disposition, argue that the Juvenile Code does not grant that authority to the trial court until the disposition stage.

2. **The federal government issued guidance discouraging referrals to child support.**

In July 2022, the Administration for Children and Families' (ACF) Children's Bureau (CB) and Office of Child Support Enforcement (OCSE) issued guidance on when it is appropriate to pursue child support by agencies receiving title IV-E funds for foster care placement. ACF suggested that child welfare agencies only pursue child support *in very rare circumstances.*

The policy acknowledged that many of the families involved in the child welfare system were often living in poverty. It concluded that "it was not in the best interest of any family to be pursued for child support when they have already been whipsawed by economic insecurity, family instability, and separation."

3. **DSS refers the case to CSE as early as non-secure custody.**

Because DSS might refer the case early on, ask at the first non-secure custody hearing for the judge to order that DSS not refer the case to CSE. Specifically ask for (and preferably file a written motion) asking the court to order that the parent does not have to pay child support while reunification is a permanent plan.

4. **Collections do not go directly to the foster or other placement.**

In a traditional child support matter, the child support amount is paid to Centralized Collections from where it is disbursed to the custodial parent. Likewise in our cases, the child support amount is disbursed from Centralized Collections and is transmitted to the custodial agency – DSS. The child support amount does not go to the foster home. Instead, the foster home is paid through a different mechanism. Argue that the parent's limited funds are best used (and the parent stays more encouraged to be engaged) by the parent giving in-kind items such as diapers or clothing, directly to the placement.

5. **Collections for 7B cases are minimal.**

The only study conducted by the State was published in 2012. At that time, CSE reported that it collected approximately $5.40 for every dollar expended.[1] But that was an aggregate amount for all CSE actions, not just those IV-E eligible.

In states where it has been studied, the collection of child support from clients who are involved in the child welfare system was minimal – hardly worth the amount of money that was

[1] https://www.ncdhhs.gov/general-assembly-report-march-2012-final/download

being expended on collection and show a delay in reunification. Perversely, attempts to collect from the parent lead to a delay in reunification, resulting in a greater expenditure of public funds for the child. In Wisconsin, a $100 increase in the child support order delayed reunification by 6.6 months. A study by Orange County California in 2018 showed that they collected $0.41 for each dollar expended. Washington State collected $0.39 per dollar expended in the same year.[2]

It would be a better use of resources to allow CSE to focus on cases in which the parents were not already involved with the child welfare system so parents can regain custody faster and families achieve permanency quicker.

6. **Reunification costs parents a great deal.**

Since the trial court has authority to order a parent to engage in services to rectify the conditions that led to removal, N.C.G.S. 7B-904, those expenses add up:

a. 7B-904(d1)(1): Parenting classes
Triple P: generally free but some agencies and institutions charge a co-pay or fee

b. 7B-904(d1)(3): Appropriate steps to remedy the condition [See 7B-904(c)]

c. 7B-904(c): Psychiatric, psychological, or other treatment or counseling directed toward remediating or remedying behaviors or conditions that led to or contributed to the juvenile's adjudication or to removal:

- Domestic Violence Classes:
  - Batterer Intervention Program (BIP)[3]
    $100-$200 enrollment fee + $50 weekly payment
    Classes last a minimum of 26 weeks ($1400-$1500 total)
    If participant misses more than 3 classes, must start from beginning.

- CCCA:
  - Generally free at local Health Department.

- Sexual Offender Specific Evaluation:
  - Not covered by insurance and average $2500 per evaluation.

- Psychological, Substance Abuse Assessment, and Parenting Capacity Evaluations.
  - Sometimes covered by insurance but not always.

[2] Joint Letter Regarding the Assignment of Rights to Child Support for Children in Foster Care.pdf (hhs.gov)
[3] https://files.nc.gov/ncdoa/BattererInterventionHandbook.pdf

- ❖ Drug testing
  - Parent co-pay
  - Cost of hair strand test

- ❖ Probation:
  - Supervision fee of $40 per N.C.G.S. § 15A-1343(a)(6) and (c1)
  - Pay court costs, fines, and restitution § 15A-1343(a)(9)

- ❖ Housing:
  - Security deposit
  - First and last month rent
  - DSS must provide reasonable efforts in locating housing. *See In re S.D.*, 276 N.C. App. 309, 319 (2021) (Speculation that, in general, people who earn "decent" wages should be able to find housing in the vicinity of Onslow County is not proof that Respondent-Mother could obtain adequate housing for herself and the children. There is no evidence that Respondent-Mother voluntarily declined adequate housing. The record and transcript contain no evidence that any housing support DSS offered Respondent-Mother led to an adequate residence that Respondent-Mother rejected. At best, DSS gave Respondent-Mother a list of addresses compiled by a third-party, which no employee of DSS reviewed, directing her to the three-year waiting list with the Housing Authority. For this reason, we conclude the evidence does not support the trial court's findings of fact to the extent they state that DSS provided Respondent-Mother with practical, timely, or meaningful assistance in obtaining housing, and Respondent-Mother failed to cooperate with that assistance or rejected adequate residences.)

- ❖ Transportation
  - Cost of reinstating driver's license
  - Cost to obtain a vehicle
  - Maintaining insurance on the vehicle
  - Paying for gas or rides

- ❖ Visitation
  - Need for transportation

In *In re S.D.*, 243 N.C. App. 65, 73, 776 S.E.2d 862, 867 (2015), the Court of Appeals reversed when it appeared that the mother's *meager income* may have been the basis for the termination, something that the trial court could not do.

The Court of Appeals has already opined that trial courts abuse their discretion when they do not consider the cost of certain requirements in a dispositional order. In *In re J.C.*, the Supreme Court reversed an order when the trial court ordered a parent to pay for a visitation center

without inquiring into the cost or the parent's ability to pay for such a cost. *In re J.C.*, 368 N.C. 89, 772 S.E.2d 465 (2015). This argument shows that when costs associated with case plan requirements are not considered early in the case, a parent's rights may be terminated based on poverty, not willfulness.

## Action Steps:

If you know that your county is going to request that your client pay child support (or will make a referral to CSE), take the lead and go into full offense mode by doing the following:

- Ask at the first non-secure custody hearing for an order that directs DSS not to refer the matter to CSE until at least the dispositional hearing or an order that reflects that the parent does not need to pay child support during the nonsecure phase.
- File a Motion to Not Order Child Support or Refer to Child Support Enforcement to be heard at the initial Disposition.
- Ask for a deviation if your judge tends to set the child support themselves. Emphasize the Self-Support Reserve which allows a parent to keep a basic minimum for their own survival (currently $1133 per month for one person). Double-check the current Child Support Guidelines.
- Make a list of expenses for each item listed on the case plan or the court order to show how much your client is expending each month.
- If child support is becoming an issue, ask the trial judge to enter an order that child support is not necessary unless reunification is eliminated as a permanent plan.

## Trial Court Script (closing argument):

➢ If pre-adjudication:
Your Honor, this court hasn't even had a chance to address whether or not the allegations contained in the petition are true or not. I ask that you order DSS not to submit a Child Support referral until we arrive at disposition, where it is authorized under N.C.G.S. § 7B-904.

Also consider that my client is jumping into action and involved in some of the criteria set out in their case plan, which will cost my client income that will make it harder for them to maintain housing and everything they hope to accomplish to get their child(ren) home and the case closed.

❖ If at disposition:
Your Honor, you've just entered a long list of activities that my client must complete to reunify with their child. Based on local practices and charges, this looks like it will cost my client approximately $X per week [brownie points if you were able to get the budget/costs into evidence]. Since the foster home is being paid regardless of whether

my client pays child support, please order that my client not be required to pay child support and that DSS not refer the case to the CSE while the permanent plan is reunification.

## What to Do if You're Unsuccessful:

If at the end of the hearing the trial judge orders your client to pay a specific amount of child support, orders the parent to go to CSE, or orders DSS to make a CSE referral, you can still preserve some issues on behalf of your client by requesting the trial court to order the following:

- Ask the trial court to stay the decision or referral until disposition;
- Ask the trial court to set a list of priorities for your client to meet given their limited economic circumstances.

## Conclusion:

Your client is pulled in all kinds of directions when they're involved with the child welfare system. But almost all cases involve clients who are indigent. Don't let a child support obligation be the barrier to your client being awarded custody of their child. Be proactive in asking for a break in child support until after disposition and as long as reunification remains a case plan.

## Attorney Tools:

- On the Civil Side: North Carolina's Child Support Guidelines (2023 edition)
- AND/TPR Manual, p. 7-73 to 7-74.
- Tuesday's Tip #6 – Child Support
- Motion to Not Order Child Support or Refer to Child Support Enforcement