

Case Brief: *In re B.O.A.*, 372 N.C. 372, 831 S.E.2d 35 (2019)\*

*IN RE B.O.A.: THE QUESTION OF REASONABLE PROGRESS TO CORRECT  
THE CIRCUMSTANCES THAT LED TO A CHILD'S REMOVAL*

This case turns on the question of whether the trial court erred by terminating a mother's parental rights to her daughter, Bev, because she "had failed to make reasonable progress in correcting the conditions that led to Bev's removal from her home."<sup>1</sup> Bev was born on April 4, 2015, and on August 9, 2015, law enforcement arrested both parents after responding to a request from the mother for help in dealing with a domestic violence situation with the father.<sup>2</sup> The next day, the Granville County Department of Social Services (DSS) filed a petition alleging that the child was a neglected juvenile and a judge entered an order granting nonsecure custody to DSS because Bev had been in the home during the altercation and had a bruised right arm.<sup>3</sup>

On January 25, 2017, DSS filed a petition to have the mother's parental rights terminated because she had "neglected Bev and had 'willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances ha[d] been made in correcting those conditions which led to removal of the juvenile.'"<sup>4</sup> On September 8, 2017, the trial court terminated the mother's parental rights in Bev under § 7B-1111(a)(2) of the North Carolina General Statutes because termination of her parental rights was in Bev's best interests.<sup>5</sup>

HOW TO TERMINATE PARENTAL RIGHTS IN NORTH CAROLINA

There are two stages to a termination of parental rights proceedings: an adjudication stage and a dispositional stage.<sup>6</sup> The adjudicatory stage involves the court reviewing evidence, finding facts, and adjudicating whether any of the circumstances under § 7B-1111 exist and allow for the termination of one's parental rights.<sup>7</sup> If the trial court finds that there are one or more grounds for

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1. *In re B.O.A.*, 372 N.C. 372, 373, 831 S.E.2d 305, 306 (2019) (referencing N.C. GEN. STAT. § 7B-1111(a)(2) (2019)).

2. *Id.* at 373, 831 S.E.2d at 306.

3. *Id.* at 373, 831 S.E.2d at 306-07.

4. *Id.* at 374, 831 S.E.2d at 307 (quoting DSS's petition for termination of parental rights).

5. *Id.* at 374-76, 831 S.E.2d at 307-08.

6. See *In re Montgomery*, 311 N.C. 101, 110, 316 S.E.2d 246, 252 (1984).

7. N.C. GEN. STAT. § 7B-1109 (2019).

terminating parental rights under § 7B-1111(a), it must move to the dispositional stage and determine if terminating someone's parental rights is in the child's best interests.<sup>8</sup>

Section 7B-1111 sets out the reasons for which a court can terminate parental rights, and § 7B-1111(a)(2) provides that parental rights may be terminated if "[t]he parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile."<sup>9</sup> This provision requires a two-part analysis by a trial court. First, the trial court must determine "by clear, cogent and convincing evidence that a child has been willfully left by the parent" for over twelve months and, second, that at the time of the hearing, "the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child" based on clear, cogent and convincing evidence.<sup>10</sup>

#### IN RE B.O.A. AND THE SUPREME COURT'S DECISION

The issue in this case is whether the trial court erred by terminating the mother's parental rights under § 7B-1111(a)(2) by finding that the mother "had failed to make reasonable progress in correcting the conditions that led to Bev's removal from her home."<sup>11</sup> After the Granville County DSS removed Bev from her home, a subsequent case plan with the mother required her "to obtain a mental health assessment; complete domestic violence counseling and avoid situations involving domestic violence; complete a parenting class and utilize the skills learned in the class during visits with the child; remain drug-free; submit to random drug screenings; participate in weekly substance abuse group therapy meetings; continue to attend medication management sessions; refrain from engaging in criminal activity; and maintain stable income for at least three months."<sup>12</sup> On January 12, 2016, Bev was adjudicated a neglected juvenile and on February 5, 2016, a dispositional order was entered requiring that the child remain in DSS custody and that the mother "comply with the provisions of the case plan to which she had agreed with DSS."<sup>13</sup>

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8. *Id.* § 7B-1110.

9. *Id.* § 7B-1111(a)(2).

10. *In re* O.C., 171 N.C. App. 457, 464–65, 615 S.E.2d 391, 396 (2005). Willfulness is a lower standard than what is required for "willful abandonment" under § 7B-1111(a)(7). *In re* Shepard, 162 N.C. App. 215, 224, 591 S.E.2d 1, 7 (2004). However, a showing that a parent has "made some efforts to regain custody of the children," does not prevent a finding of willfulness. *In re* Becker, 111 N.C. App. 85, 95, 431 S.E.2d 820, 826–27 (1993).

11. *In re* B.O.A., 372 N.C. 372, 373, 831 S.E.2d 305, 306 (2019).

12. *Id.* at 373–74, 831 S.E.2d at 307.

13. *Id.* at 374, 831 S.E.2d at 307.

After a year of periodic review proceedings in which DSS was required to attempt to reunify Bev with her mother, DSS filed a petition to have the mother's parental rights terminated because she had "neglected Bev and had 'willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to removal of the juvenile.'"<sup>14</sup> On September 8, 2017, the trial court made various findings of fact, finding that termination of her parental rights was in Bev's best interests and terminated the mother's parental rights in Bev under § 7B-1111(a)(2).<sup>15</sup>

Bev's mother appealed the termination order alleging error because Bev had been removed from her home due to domestic violence concerns and the bruise on the child's arm and the trial court's findings of fact did not support its conclusion that she had failed to address those domestic violence concerns or demonstrate reasonable progress in correcting the conditions that caused Bev's removal.<sup>16</sup>

The Court of Appeals reversed the termination order because it found that the evidence and findings of fact did not support the trial court's conclusion that the mother had failed to make reasonable progress to correct the specific conditions that had led to Bev's removal.<sup>17</sup> In particular, the Appellate Court focused on the language of § 7B-1111(a)(2) which permits termination if there is not reasonable progress in fixing "*those conditions which led to the removal of the juvenile.*"<sup>18</sup> The Court held that because Bev had not been removed from her mother's home due to substance abuse, mental health, or income-related concerns, those conditions in the case plan were "not relevant" in determining whether parental rights should be terminated under § 7B-1111(a)(2).<sup>19</sup> Therefore, it held that the mother's parental rights should not have been terminated.<sup>20</sup>

On a discretionary review based on a unanimous decision of the Court of Appeals, the North Carolina Supreme Court reversed the Court of Appeals' decision and remanded the termination order.<sup>21</sup> It held that "conditions of removal" in § 7B-1111(a)(2) should be more broadly understood to include "all of the factors that directly or indirectly contributed" to a child's removal, rather than just those set out in the petition for a nonsecure custody order or a

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14. *Id.* (quoting DSS's petition for termination of parental rights).

15. *Id.* at 374–76, 831 S.E.2d at 307–08.

16. *Id.* at 376, 831 S.E.2d at 308.

17. *In re B.O.A.*, 269 N.C. App. 365, 372–73, 818 S.E.2d 331, 336 (2018).

18. *Id.* at 373, 818 S.E.2d at 336.

19. *Id.*

20. *Id.*

21. *In re B.O.A.*, 372 N.C. at 388, 831 S.E.2d at 316.

determination that a child is abused, neglected, or dependent.<sup>22</sup> The Supreme Court also held that notice concerns raised by the Court of Appeals did not justify overturning the termination order because DSS did provide that § 7B-1111(a)(2) was the grounds for termination in the termination petition and that is enough to give the parent notice.<sup>23</sup>

#### THE SIGNIFICANCE OF CASE PLANS

The N.C. Supreme Court's decision highlighted that removing a child from a home is "rarely the result of a single, specific incident."<sup>24</sup> Such situations are complicated, ongoing investigations that require flexibility in assessing how best to prepare a parent to be reunified with their child. They also involve setting clear expectations for the parent to ensure that he or she is in a healthy, stable position to raise one's child in a safely.

With these complexities in mind, the Supreme Court acknowledged the importance of judicially adopted case plans created by DSS in concert with the parent. Where the Court of Appeals strove to limit § 7B-1111(a)(2) to only the circumstances regarding the child's removal from his or her parental home,<sup>25</sup> the Supreme Court broadened that provision and allowed the trial court to find grounds for termination "as long as the objectives sought to be achieved by the case plan provision in question address issues that contributed to causing the problematic circumstances that led to the juvenile's removal from the parental home."<sup>26</sup>

This decision lends significant support to the enforcement of case plans which are courts are permitted to implement at dispositional or subsequent hearings under § 7B-904(d1).<sup>27</sup> As the Court points out, § 7B-904(d1)(3) specifically permits courts to require parents to take steps to remedy conditions that "contributed to" the removal of a child.<sup>28</sup> The statute contemplates trial courts adjusting these plans as new information is obtained rather than relying on a plan created without time to fully understand the complexity of a family's situation.<sup>29</sup>

22. *Id.* at 381–82, 831 S.E.2d at 311–12.

23. *Id.* at 382–83, 831 S.E.2d at 312.

24. *Id.* at 384, 831 S.E.2d at 314.

25. *See In re B.O.A.*, 260 N.C. App. at 373, 818 S.E.2d at 336.

26. *In re B.O.A.*, 372 N.C. at 384, 831 S.E.2d at 314.

27. N.C. GEN. STAT. § 7B-904(d1) (2019). Subsection (1) allows courts to order parents to attend parental responsibility classes and under subsection (3) courts may order parents to "[t]ake appropriate steps to remedy conditions in the home that led to or contributed to the juvenile's adjudication or to the court's decision to remove custody of the juvenile from the parent, guardian, custodian, or caretaker." § 7B-904(d1)(1), (3).

28. *See In re B.O.A.*, 372 N.C. at 381, 831 S.E.2d at 312.

29. *Id.* at 381–82, 831 S.E.2d at 312.

If the Court of Appeals' decision had been upheld, courts and caseworkers would have lacked the judicial support to require parents or guardians seeking to be reunified with their children to complete classes or changes outside of the explicit circumstances for which the child was initially removed. For instance, if a child had been removed due to domestic violence between the parents, courts would not be able to mandate parenting classes due to later abuse or neglect found to be occurring to the child. Likewise, if it were later found that a parent was abusing or addicted to drugs or alcohol, the court would not be able to require the parent to get treatment for those issues because, when the child was removed, DSS was only aware of the domestic violence issues. In the end, either courts would have no room to mandate extraneous services to the individuals most in need of them or DSS would be forced to leave children in dangerous situations longer to identify all the circumstances for which services could be helpful before removing the child.

The downside of this decision is that parents are forced to let DSS into all aspects of their lives. In North Carolina, the Outcome Plan developed between DSS and the family involves information gained through a Family Risk Assessment, Family Assessment of Strengths and Needs, Temporary Parental Safety Agreement, and other assessments regarding the needs of the child and family.<sup>30</sup> DSS workers perform ongoing monitoring of the children and parents and have ongoing contact with all parties.<sup>31</sup> There is no doubt that privacy, particularly in the home, is sacrificed in these situations, but it is sacrificed for the best interests of the child.<sup>32</sup>

The Supreme Court's decision in this case considers the legislative intent of the statute at issue but it also attempts to understand this statute in light of those surrounding it. By strengthening the ability of courts to enforce case plans, it aids in protecting those unable to protect themselves. Although the Court of Appeals may have been concerned that parental rights could be terminated easily with a broad reading of § 7B-1111(a)(2), the Supreme Court puts a limit on the case plan by requiring that there be a "nexus between the components of the court-approved case plan" and the conditions which led to the child's removal from the home.<sup>33</sup> Ultimately, courts cannot mandate unnecessary services or recommendations, but they can help parents change the complex, intertwining circumstances that led to the removal of their child.

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30. See NC CHILD WELFARE MANUAL, IN-HOME SERVICES POLICY, PROTOCOL, AND GUIDANCE 25 (July 2019), <https://policies.ncdhhs.gov/divisional/social-services/child-welfare/policy-manuals/modified-manual-1/in-home-services.pdf> [<https://perma.cc/4R9J-A34N>].

31. *Id.* at 7.

32. See, e.g., N.C. GEN. STAT. § 7B-1110 (2019) (discussing how to determine the best interests of the juvenile).

33. *In re B.O.A.*, 372 N.C. at 385, 831 S.E.2d at 314.

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