

NO. COA06-1553

TWENTY-SIXTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

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IN THE MATTER OF:)	
)	<u>From Mecklenburg County</u>
J.E. and B.E.)	Nos. 00 J 759, 00 J 760
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BRIEF OF APPELLEE GUARDIAN AD LITEM

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) Nos. 00 J 759, 00 J 760
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Appellee Guardian Ad Litem for the minor children J.E. and B.E. respectfully requests that this Court affirm the District Court's Order granting legal and physical custody of the minor children to Maria and Jack Curtis, J.E.'s and B.E.'s maternal grandparents. The Permanency Planning Review Order was rendered on August 21, 2006 and entered on September 12, 2006 pursuant to a Permanency Planning Review Hearing held on August 21, 2006.

STATEMENT OF FACTS¹

YFS has been involved with this family since 1999 with the primary issues being substance abuse, mental health, and domestic violence. Since YFS' initial involvement, it has been well documented that both J.E. and B.E. have been relocated numerous times between their mother, father, paternal and maternal family members and in the foster care system.

J.E. and B.E. are the children of Cathy and Michael E. The children had briefly resided with their father in California

¹ The following facts are taken from the Court Summary presented to the District Court on July 13, 2006 (R.pp. 124-25), unless otherwise specified.

when they were younger, but due to their father's drug charges, they were placed with paternal relatives and eventually retrieved by their mother. YFS became involved with this family in June 1999 when Cathy's restraining order against her husband Michael E. expired and he moved back into the home. Michael had problems with alcohol and anger in the home. On one occasion after Michael poured his beer on J.E., he threw the glass at him and hit him in the chest. There were incidents in the home where J.E. had witnessed his father hold a gun up to his mother. The family situation took its toll on J.E. and he had reported that he knew where the gun was and that he might use the gun on himself. Michael E. moved back to California and YFS ceased involvement.

In August of 1999, a referral was received that Cathy and her then boyfriend, Ramiro V. had been using drugs in front of B.E and J.E. Cathy did not admit to YFS Investigators that she did use drugs and alcohol in the residence while B.E. and J.E. were at home. In April 2000, there was an assault and battery charge resulting from an incident between Cathy and Ramiro. In July 2000, Cathy was arrested for driving with a revoked driver's license. J.E. and B.E. were placed with their maternal Grandparents Maria and Jack Curtis in Galax, VA, who cared for them until August 7, 2000. J.E. and B.E. were brought to the agency by the grandparents who stated they had to care for Mrs. Curtis' ailing mother and could no longer be responsible for the

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boys. At that time, the children were placed into a foster home with the Moyer's. YFS made requests through the Interstate Compact for home studies to be completed with a paternal uncle and aunt, Tom and Karen E. of California, the paternal grandparents, Tom and Irene E. of California, and the maternal grandparents Maria and Jack Curtis of Virginia. Tom and Karen E. were denied as a placement option. Tom and Irene E. indicated that they were not in a position to care for the boys due to their medical problems. Maria and Jack Curtis were approved as a placement for the boys, but at the time were caring for an ailing mother.

During the time B.E. and J.E. were in foster care, the children had sporadic telephone contact with their father, Michael. Cathy and Ramiro both participated in parenting classes, working with an in-home parent educator, and completed drug treatment. In July 2001, Cathy and Ramiro were expecting their first child together, D.V. Cathy used cocaine during her pregnancy and tested positive in her sixth month of pregnancy. D.V. was born healthy with no complications. B.E. and J.E. both confessed during their therapy sessions that the foster father, Mr. Moyer, had hit them several times. A referral was completed on this family in August 2001 and the children were removed from the home. Because of Cathy's progress, as well as Ramiro's compliance, the children were placed into their care and YFS

remained the legal custodian. Cathy was awarded legal custody of B.E. and J.E. on May 1, 2002.

M.V. and D.V., the children of Cathy E. and Ramiro V., were placed into YFS custody on November 3, 2004. In November 2004, Cathy and Ramiro requested assistance from YFS. The family was evicted from their home in September 2004 and became homeless. The parents were not employed and had not made efforts to locate housing. Both parents declined placement at the Salvation Army Shelter for Cathy and the children and the Men's Shelter for Ramiro. Ramiro requested assistance with mental health treatment and Cathy admitted she had a substance abuse problem and requested assistance with treatment for this. Appropriate referrals were completed for both parents. YFS assumed custody of D.V. and M.V. on November 3, 2004. J.E. and B.E. had been placed in May 2004 with their maternal grandmother, Maria Curtis, in Virginia. They remained there until March 2005, when Cathy E.-V. brought them back to Charlotte, North Carolina.

On March 29, 2005, Cathy E.-V. tested positive for cocaine. (R.p. 6). In early May of 2005, while she was working her case plan to have custody of her children returned to her, Cathy E.-V. used her income tax refund to have a breast augmentation. (R.p. 10). At that time, she was dating her boss, whose wife and two daughters lived in Pennsylvania. (R.p. 13). Finally, in June of 2005, Cathy E.-V. completely relapsed and was abusing drugs again. (R.pp. 15-19).

A Juvenile Petition was filed by YFS on July 12, 2005 for a finding that the J.E. and B.E. were neglected and dependent, (R.p. 3-4), and a Non-Secure Custody Order was entered that same day, placing the juveniles in foster care. (R.p. 29-30). J.E. and B.E. were adjudicated to be neglected and dependent as to the parents and placed in legal custody with YFS on August 16, 2005. (R.p. 55-57). In the Permanency Planning Hearing Order filed on October 12, 2005, the District Court relieved YFS of reasonable efforts to reunify B.E. with his mother. (R.p. 58-63). Appellant did not appeal that order. The District Court conducted four additional Permanency Planning Hearings (R.pp. 84, 115, 141, 261), the last of which granted guardianship of J.E. and B.E. to Maria and Jack Curtis. Respondent appeals only the last order, dated September 12, 2006. (R.p. 264).

STANDARD OF REVIEW

Appellate review of a permanency planning order is limited to whether there is competent evidence in the record to support the findings and the findings support the conclusions of law. *In re Eckard*, 148 N.C. App. 541, 544, 559 S.E.2d 233, 235, *disc. review denied*, 356 N.C. 163, 568 S.E.2d 192-93 (2002). The District Court's findings of fact are binding on appeal if supported by competent evidence. *In re H.W.*, 163 N.C. App. 438, 443, 594 S.E.2d 211, 213, *disc. review denied*, 358 N.C. 543, 599 S.E.2d 46 (2004); *In re Isenhour*, 101 N.C. App. 550, 553, 400 CLT 1005700v1

S.E.2d 71, 73 (1991). For purposes of appellate review, findings to which Appellant did not except are deemed to be supported by competent evidence. *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991).

ARGUMENT

I. APPELLANT HAS ABANDONED OR IMPROPERLY ASSIGNED FIVE OF THE EIGHT ASSIGNMENTS OF ERROR

Appellant's Assignments of Error (R.p. 269-70) and Brief fail to follow the North Carolina Rules of Appellate Procedure for five of the eight assignments of error. Rule 10(c)(1) provides that "[e]ach assignment of error shall, so far as practicable, be confined to a single issue of law; and shall state plainly, concisely and without argumentation the legal basis upon which error is assigned." N.C. R. App. P. 10(c)(1). Assignment of Error II fails to satisfy the rule. The Assignment of Error states, "The trial court erred in granting guardianship of J.E. and B.E. to Mr. and Mrs. Curtis." (R.p. 269). The assignment does not state "the legal basis upon which [the] error is assigned." Therefore, Assignment of Error II is not sufficient to satisfy the North Carolina Rules of Appellate Procedure and should be stricken from the present appeal.

Four of Appellant's remaining Assignments of Error have been abandoned in accordance with Rule 28 of the North Carolina Rules of Appellate Procedure. Rule 28(a) states,

The function of all briefs required or permitted by these rules is to define clearly the questions presented to the reviewing court and to present the arguments and authorities upon which the parties rely in support of their respective positions thereon. Review is limited to questions so presented in the several briefs. Questions raised by assignments of error in appeals from trial tribunals but not then presented and discussed in a party's brief, are deemed abandoned.

N.C. R. App. P. 28(a).

Moreover, "[a]ssignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned." N.C. R. App. P. 28(b)(6).

Appellant's Assignments of Error III and IV, which deal with the issue of reasonable efforts by DSS, were never argued or even identified in Appellant's Brief, and so they should be deemed abandoned. Assignments of Error VI and VII claim that the District Court erred in its findings of fact and conclusions of law. (R.p. 269-70). While Section III of Appellant's Brief purports to address the findings of fact and conclusions of law, it fails to do so in any appreciable manner.

A breakdown of Assignment of Error VI illustrates this point. First, Appellant claims the District Court erred in

making its finding of fact number 3. Finding of fact number 3 highlights a number of the historical facts in evidence, as can be found in the Record. (R.p. 261). At no point in her Brief does Appellant address any one of the statements made in finding of fact number 3. As such, the assignment of error as to finding of fact number 3 should be deemed abandoned.

Finding of fact number 4 highlights the reasons why the District Court concluded that the juveniles could not return home immediately or within six months. (R.p. 261-62). The finding states that the factors that existed in July 2005 were "uncannily" similar to the factors that existed in 2000. (R.p. 261). Appellant's Brief does not dispute any of the factual findings of the similarities relied upon by the District Court, but instead merely argues that "the court would not allow itself to look at the current circumstances." (Appellant's Brief, p. 20). No other part of Appellant's Brief addresses or refutes the factual finding that the factors leading to the current situation were strikingly similar to those five years before.

Finding of fact 5 states that Mr. and Mrs. Curtis are "willing and able to provide a permanent home" and that the children have never been removed from their home. (R.p. 262). In her argument addressing N.C. Gen. Stat. § 7B-907(f), Appellant claims that the District Court failed to inquire of Mr. and Mrs. Curtis whether or not they understood the full implications of being guardians, because they were not available

at the August 21, 2006 Permanency Planning Hearing. (Appellant's Brief, p. 13). However, this argument fails to claim that the court erred in its factual finding that Mr. and Mrs. Curtis were "willing and able" to care for the juveniles. At no other location is this finding of fact addressed. Additionally, the Record is clear that Mr. and Mrs. Curtis had been asked about their potential role as guardians, as one or both were present at the hearings on July 18, 2006 (R.p. 141); April 17, 2006 (R.p. 115); October 12, 2005 (R.p. 58); March 8, 2001 (R.p. 301); June 7, 2001 (R.p. 305); July 24, 2001 (R.p. 309); and they allowed a home study to be conducted on two different occasions (R.pp. 218-234).

Finding of fact 6 is similar to finding of fact 4 in that it states the District Court's consideration of the full history of the family in finding that return of the juveniles to their mother within six months is not in their best interests. (R.p. 262). As stated above, Appellant does not specifically refute any of the facts as stated by the District Court, but merely alleges that the finding that the children cannot be returned to their mother within six months is not generally supported by the evidence. (Appellant's Brief, p. 20).

Finding of fact 8 states that "DSS has made reasonable efforts to implement the permanent plan for the juveniles." (R.p. 262). Appellant does not address the reasonable efforts

of DSS at any point in her brief, and so this Assignment of Error should be deemed abandoned.

Finding of fact 10 states that the "permanent plan for the juveniles is guardianship with Mr. and Mrs. Curtis." (R.p. 262). Appellant does not refute this finding of fact with regard to B.E. With regard to J.E., Appellant states that "the permanent plan for [J.E.] was kept as reunification until the most recent hearing." (Appellant's Brief, pp. 20-21). Appellant misstates the permanent plan for J.E. from the previous Hearing Orders. From the Orders entered between October 12, 2005 to July 18, 2006, the permanent plan for J.E. has always been a concurrent plan of guardianship with a relative and reunification with his mother. (R.pp. 58, 84, 115, 141). In fact, the District Court clearly stated that "reunification remain[ed] a part of the case plan for J.E. because it allow[ed] [the] mother to take advantage of benefits of F.I.R.S.T." (R.pp. 90, 116). Appellant has made no objection to the findings and conclusions set forth in the earlier Orders. Therefore, this Assignment of Error should be deemed abandoned, or in the alternative, overruled.

Finding of fact 13 incorporates the DSS summary, the reasonable efforts report, and the home study. (R.p. 262). Appellant's brief makes no objection to the incorporation of these documents as additional findings of fact. Therefore, this Assignment of Error should be deemed abandoned.

Looking to Assignment of Error VII, Appellant objects to the Conclusions of Law 2, 3, 4, 5, and 6. (R.p. 269). Conclusions 2 and 4 address reasonable efforts of DSS and that such efforts should be suspended. (R.p. 262). Appellant's brief does not address the reasonable efforts of DSS at any point, and so these Assignments of Error should be deemed abandoned.

Appellant's Brief also contends that the District Court's October 12, 2005 permanency planning order "is a standard form with checked boxes which reflects very little independent factual finding by the court." (Appellant's Brief, p. 19). Appellant's Notice of Appeal, however, indicates that she appeals only from the Order "rendered on August 21, 2006, and entered on September 12, 2006." (R.p. 264). Because the October 12, 2005 Order is not part of this Appeal, Appellant's argument should not be considered as part of this Court's review. See *In re J.C.S.*, 164 N.C. App. 96, 104, 595 S.E.2d 155, 160 (2004) (holding that appeal only applied to order clearly identified in notice of appeal); N.C. R. App. P. 3(d) ("The notice of appeal . . . shall designate the judgment or order from which appeal is taken").

Therefore, Respondent's Appeal should be dismissed. In abandoning and improperly assigning five of the eight Assignments of Error, Appellant has failed to make any semblance of a showing that the evidence in the Record does not support

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the findings and that the findings do not support the conclusions of law. In the alternative, Appellant's Assignments of Error II, III, IV, VI, and VII should be deemed abandoned or overruled.

II. THE TRIAL COURT DID NOT VIOLATE THE JUVENILE CODE AND THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN IN GRANTING GUARDIANSHIP OF J.E. AND B.E. TO MR. AND MRS. CURTIS IN VIRGINIA.

The Interstate Compact on the Placement of Children ("ICPC") provides that "no sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in *foster care* or as a *preliminary to a possible adoption* unless the sending agency shall comply with each and every requirement set forth in this Article" N.C. Gen. Stat. § 7B-3800, Art. III(a) (emphasis added). The North Carolina General Statutes define "Foster Care" as "the continuing provision of the essentials of daily living on a 24-hour basis for . . . children who . . . are living apart from their parents, *relatives*, or *guardians* in a family foster home or residential child-care facility. . . ." N.C. Gen. Stat. § 131D-10.2 (2001) (emphasis added). "When the statutory language is clear and unambiguous, there is no room for judicial construction and the courts must give the words of the statute their plain meaning." *In re Rholetter* 162 N.C. App. 653, 663-64, 592 S.E.2d 237, 243 (2004).

In *Rholetter*, the trial court determined that two minor children living with their father and step-mother were abused and neglected. *Id.* at 658, 592 S.E.2d at 240. The trial court then ordered the South Carolina Department of Social Services to complete a home study on the children's biological mother, who lived in South Carolina. *Id.* at 664, 592 S.E.2d at 244. The South Carolina agency declined to recommend placement of the juveniles in the mother's home. *Id.* At the dispositional hearing, however, the trial court declined to follow South Carolina's recommendation and placed the children with their biological mother in South Carolina. *Id.* The trial court did so because "the best interests of [the juveniles] would be served by the Court placing custody of [the juveniles] with [their biological mother]" *Rholetter*, 162 N.C. App. at 659, 592 S.E.2d at 241.

In affirming the trial court's order, the North Carolina Court of Appeals held that the trial court was not obligated to follow the mandates of the ICPC because placement with the biological mother did not fall under the classification of "foster care" or "preliminary to a possible adoption." *Id.* at 664, 592 S.E.2d at 244. Additionally, the Court of Appeals reiterated the North Carolina law that "the essential requirement[] at the dispositional hearing . . . is that sufficient evidence be presented to the *trial court* so that it can determine what is in the best interest of the child." *Id.*

(emphasis in original) (quoting *In re Shue*, 311 N.C. 586, 597, 319 S.E.2d 567, 574 (1984)). The trial court was not required to follow the recommendations of the South Carolina DSS home study so long as it had sufficient evidence before it to make a determination as to the best interests of the children. *Id.*

In the present case, the District Court had seven years worth of evidence from which to make a determination as to the best interests of J.E. and B.E. (T.p. 41). A home study on the Curtis home had been performed in 2001, finding the home suitable for placement of the juveniles. (R.p. 218). An update study on the Curtis home as to B.E. was performed in 2006. (R.p. 228). Like the first, this study reported a positive placement alternative. (R.p. 228). Based on its review of all the evidence, which included seven years of orders, reports, letters, and testimony from numerous sources, the District Court determined the best interests of J.E. and B.E. would be served by placing them with their maternal grandparents, Maria and Jack Curtis, in Virginia. (R.p. 261). The Order grants guardianship to Mr. and Mrs. Curtis, and it expressly provides that adoption is not an option. (R.p. 262). Because Mr. and Mrs. Curtis are not foster parents, but rather the closest relatives who were willing and able to provide a safe and stable home, (R.p. 262), and because placement is not preliminary to a possible adoption, the District Court's order is not subject to the requirements of

the ICPC, and Appellant's Assignments of Error I and II should be overruled.

Respondent additionally claimed that because both of the Virginia home studies indicated that North Carolina was to retain custody and jurisdiction, an order granting guardianship to Mr. and Mrs. Curtis in Virginia would violate the ICPC and North Carolina law. (T.p. 14-15, 38). From the plain language of the ICPC and the ruling in *Rholetter*, the District Court was not obligated to follow the ICPC mandates, nor was it required to adhere to the recommendations of the Virginia Department of Social Services.

Under Article V(a) of the ICPC,
The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state.

N.C. Gen. Stat. § 7B-3800, Art. V(a).

The District Court was cognizant of this provision when it issued its decision to place J.E. and B.E. with Mr. and Mrs. Curtis. (T.p. 38-39). Although the juveniles are placed in Virginia, North Carolina retains jurisdiction over any issues of

custody. Therefore, The District Court committed no reversible error in awarding guardianship of J.E. and B.E. to Mr. and Mrs. Curtis.

Respondent claims that "[t]he District Court confused maintaining custody and (sic) an active case with maintaining jurisdiction." (Appellant's Brief, p. 10). She additionally states that the Record contains no evidence "to support the conclusion that Virginia was advised that [B.E.'s] case was going to be closed or that they acquiesced with that decision." (Appellant's Brief, p. 11). However, both the transcript and the Record indicate otherwise. Counsel for Respondent brought to the District Court's attention the comment to the 2006 ICPC survey. (T.p. 38, R.p. 229). The District Court acknowledged the discrepancy and pointed counsel to the Home Study Report performed by the Grayson County Department of Social Services. (T.p. 39, R.p. 231). In the report, the Virginia DSS acknowledges that the goal was "Guardianship with an approved family member," and that "Maria and Jack Curtis are currently interested in obtaining custody/guardianship of [B.E]." (T.p. 39, R.p. 231). At the conclusion of the report, the Virginia DSS recommended the Curtis' home for placement. (R.p. 231). The comment that "North Carolina must retain custody and jurisdiction" (R.p. 229) must therefore indicate that North Carolina is to retain jurisdiction only, rather than both jurisdiction and legal custody. (see T.p. 39). Therefore,

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Appellant misinterprets the District Court's conclusions and reasoning with regard to the ICPC home studies.

Appellant also contends that the case of *In re L.L.*, 172 N.C. App. 689, 616 S.E.2d 392 (2005), stands for the proposition that any time a child is to be placed with an out-of-state relative, a favorable ICPC home study must be completed. (Appellant's Brief, p. 9). A close reading of *L.L.*, however, yields a different interpretation. Specifically, the Court of Appeals stated,

In addition, each of the statutes further provides that 'placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children,' as set out in Article 38 of the Juvenile Code N.C. Gen. Stat. §§ 7B-505, 7B-506(h)(2), and 7B-903(a)(2).

Id. at 702, 616 S.E.2d at 400.

The *L.L.* court was addressing the situation in which the District Court had failed to timely file its order and had not adhered to the requirements of N.C. Gen. Stat. § 7B-906. *Id.* at 691, 616 S.E.2d at 393. The court's analysis centered around the requirements for non-secure custody orders and dispositional alternatives for abused, neglected, or dependent juveniles. *Id.* at 701-707, 616 S.E.2d at 399-404. Accordingly, the court focused on N.C. Gen. Stat. §§ 7B-505, 7B-506(h)(2), and 7B-

903(a)(2), each of which contains the specific language that Appellant wishes to attach to each and every section of the Juvenile Code. The case *sub judice*, however, involves N.C. Gen. Stat. §§ 7B-907 and 7B-600, neither of which specifically require the trial court to adhere to the ICPC.² Therefore, *L.L.* provides no rule of law applicable to this proceeding.

The District Court correctly identified that following the provisions of the ICPC is not mandatory when granting guardianship to an out-of-state relative who is willing and capable of providing a safe and stable home for a juvenile. The court had seven years of evidence, including a 2001 home study and its 2006 update, on which to base its decision. In deciding that the best interests of J.E. and B.E. would be served by granting guardianship to Mr. and Mrs. Curtis, the District Court did not violate any North Carolina law or commit any reversible error. As such, Appellant's first two assignments of error should be overruled.

III. THE TRIAL COURT FULLY COMPLIED WITH THE REQUIREMENTS OF N.C.G.S. § 7B-907 AND § 7B-600 IN THE ORDER AWARDING GUARDIANSHIP TO MR. AND MRS. CURTIS.

Although Appellant has abandoned her Assignments of Error relating to the factual findings of the District Court, Appellee

² N.C. Gen. Stat. § 7B-907(c) provides that "[t]he judge may appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600 or make any disposition authorized by G.S. 7B-903" (emphasis added). However, the District Court utilized G.S. 7B-600 to award guardianship to Mr. and Mrs. Curtis, and so G.S. 7B-903 is not implicated in this Appeal.

will address the issue should this Court decide to review the argument *sua sponte* under N.C. R. App. P. 2.

Under section 7B-907(b) of the North Carolina General Statutes, the District Court must "make written findings on all of the relevant criteria" prescribed for a permanency planning review. *In re Harton*, 156 N.C. App. 655, 660, 577 S.E.2d 334, 337 (2003) (quoting N.C. Gen. Stat. § 7B-907(b)).

The goal of the permanency planning hearing is "to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time." N.C.G.S. § 7B-907(a) (2005). "[T]he best interests of the juvenile are of paramount consideration by the court and . . . when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a safe, *permanent* home within a reasonable amount of time." N.C.G.S. § 7B-100(5) (2003) (emphasis added). If a juvenile is not returned home at the conclusion of a permanency planning hearing, the trial court must consider certain specified criteria and "make written findings regarding those that are relevant." N.C.G.S. § 7B-907(b) (2005). These factors include:

1. Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;

2. Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;
3. Where the juvenile's return home is unlikely within six months, whether adoption should be pursued and if so, any barriers to the juvenile's adoption;
4. Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;
5. Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;
6. Any other criteria the court deems necessary.

N.C.G.S. § 7B-907(b)(1)-(6).

A permanency planning order need not "contain a formal listing of the G.S. § 7B-907(b)(1)-(6) factors, expressly denominated as such . . . as long as the trial court makes findings of fact on the relevant G.S. § 7B-907(b) factors." *In re J.S.*, 165 N.C. App. 509, 511, 598 S.E.2d 658, 660 (2004)

(quoting *In re J.C.S.*, 164 N.C. App. 96, 106, 595 S.E.2d 155, 161 (2004)).

In the current case, the District Court not only considered the various DSS reports, but she also considered Appellant's report regarding the mother's efforts and the arguments of the attorneys. (R.p. 261). Additionally, the findings of fact were based "clear, cogent and convincing evidence, the needs of the juveniles, and the available resources" (R.p. 261). The District Court had over six years worth of reports, orders, hearings, and other various pieces of evidence from which to base her findings.

Drawing from the extensive evidence, the District Court made findings of fact that satisfy each of the requirements of § 7B-907(b). (see R.pp. 261-63). The evidence supports the findings of fact and conclusions of law, and the District Court fulfilled its duty to find a *safe* and *permanent* home for J.E. and B.E. within a reasonable period of time. As such, the ruling of the District Court should be affirmed.

Appellant argues that the District Court violated §§ 7B-600 and 7B-907(f) by failing "to inquire whether Mr. and Mrs. Curtis understand the full implications of being guardians." (Appellant's Brief, p. 13). Appellant bases the argument on the sole fact that Mr. and Mrs. Curtis were not present at the August 21, 2006 hearing. (Appellant's Brief, p. 13).

In focusing on the single hearing, Appellant once again loses sight of the seven year history the court system has had with this family. The Record contains fourteen (14) separate Review Hearing Orders. (R.pp. 58, 84, 115, 141, 261, 287, 297, 301, 305, 309, 313, 316, 320, 357). Either Mr. or Mrs. Curtis, or both, were present at seven (7) of those hearings. (R.pp. 58, 115, 141, 287, 301, 305, 309). Two separate home studies of the Curtis household have been conducted with an eye toward placement and/or guardianship for J.E. and B.E. (R.pp. 218-34). Mrs. Curtis participated in a Team Decision-Making Meeting on July 24, 2006 with J.E., B.E., Cathy E.-V., Ramiro V., the mother's attorney, and the YFS social worker. (R.pp. 251-60). According to the minutes of that meeting, all parties understood that the permanency planning goal for both juveniles was guardianship and that "[f]ollowing the August 21, 2006 court date it [was] anticipated that [J.E.] and [B.E.] [would] be placed in the guardianship of their maternal grandparents" (R.p. 257).

More importantly, the Permanency Planning Review Hearing Order from July 18, 2006 clearly indicates that the District Court intended "to grant guardianship [of J.E. and B.E.] to [the] maternal grandparents if [the] home study [was] positive." (R.p. 143). The Order additionally states: "The Court specifically finds filing a petition for the termination of parental rights is not in the best interest of [J.E. and B.E.]

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because: m/g/parents (maternal grandparents) are interested in guardianship of juveniles." (R.p. 144). Mrs. Curtis was present at that hearing. (R.p. 141). Therefore, the Record contains sufficient evidence to support the finding that Mr. and Mrs. Curtis were willing and able to assume guardianship of J.E. and B.E. and that they understood the extent of their legal obligations. Appellant's contention that the Order violates N.C. Gen. Stat. §§ 7B-907(f) and 7B-600 should be overruled.

IV. THE TRIAL COURT FULLY COMPLIED WITH THE REQUIREMENTS OF N.C.G.S. § 7B-507 IN THE ORDER RELIEVING DSS OF REASONABLE EFFORTS TO REUNITE THE JUVENILES WITH THEIR MOTHER.

Although Appellant has abandoned her Assignments of Error relating to the cessation of reasonable efforts, Appellee will address the issue should this Court decide to review the argument *sua sponte* under N.C. R. App. P. 2.

"An underlying theme of the North Carolina Juvenile Code is for the trial court to serve the best interest of the child." *In re Brake*, 347 N.C. 339, 341, 493 S.E.2d 418, 420 (1997). "Certainly, then, the trial court must be able to allow DSS to terminate reunification efforts if the court finds that it is in the child's best interest to do so." *Id.* At a permanency planning review hearing, the District Court may order the cessation of efforts to reunify the juvenile with the respondent parent "if the court makes written findings of fact that: (1) Such efforts clearly would be futile or would be inconsistent

with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time." *In re Weiler*, 158 N.C. App. 473, 478, 581 S.E.2d 134, 137 (2003) (quoting N.C. Gen. Stat. § 7B-507(b)).

N.C.G.S. § 7B-507(c) provides that "[a]t any hearing at which the court finds and orders that reasonable efforts to reunify a family shall cease, the affected parent . . . or that parent['s] . . . counsel may give notice to preserve the parent['s] right to appeal the finding and order in accordance with G.S. 7B-1001(a)(5). Notice may be given in open court or in writing within 10 days of the hearing at which the court orders the efforts to reunify the family to cease."

In the Permanency Planning Hearing Order filed on October 12, 2005, the trial court relieved YFS of reasonable efforts to reunify B.E. with his mother. (R.p. 58-63). Appellant did not appeal that order at that time, and the Record is devoid of any indication that Appellant appealed that order at any time. Therefore, with respect to B.E., by not appealing on or before October 26, 2005, Appellant waived the right to appeal the order relieving YFS of reasonable efforts for reunification of B.E. with his mother.

With regard to J.E., the District Court specifically found that the grandparents, unlike the mother, were "willing and able to provide for a permanent home." (R.p. 262). Findings of fact 3-6 specifically support the conclusion that efforts for

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reunification "would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time." The Record contains an extensive amount of evidence to support such a finding. For example, in the Court Summary filed on December 30, 2005, the YFS social worker states, "Cathy [E.-V.] reports having substance abuse issues since she was a teenager and reports four years is the longest that she has been able to be substance free." (R.p. 71). The District Court has a duty to ensure that the children are not only placed in a safe environment, but also that they are placed in a *permanent* home. Thus, the Record clearly supports the finding that a return of the children to their mother likely would not result in a permanent placement.

Also of particular note is the letter dated April 10, 2006 from J.E.'s therapist at Elon Homes for Children. (R.p. 114). The letter in full states,

[J.E.] has made improvements in therapy, as a result of his own work and as a result of placement in a stabile (sic) environment, where he is not required to act as an adult caring for family members. As discussed in the past, it is still in his best interests to have a placement with healthy, mature parent figures who can provide a safe environment, where he can grow without having to take care of others. He continues to need support in developing

socially and emotionally and academically without the pressure of having to rescue his parents from their own choices that are costly not only to them but also to the children. [J.E.] is a very intelligent and gifted young man, who is capable of making a good contribution in this world if offered a reasonable environment in which to grow.

(R.p. 114).

Appellant contends that J.E. will best be able to grow with his mother. More specifically, she asks the Court to return the children "to the care of Ms. E.-V. *with continued monitoring by the Department of Social Services.*" (Appellant's Brief, p. 21) (emphasis added). She also claims that J.E., who is now fifteen (15) years old, "is old enough to alert other if he needs assistance in the future." (Appellant's Brief, p. 21). Additionally, Appellant asks: "How is the sending of [J.E.] to Virginia [and to boarding school] in his best interests?" (Appellant's Brief, p. 21). Comparing the two choices, one look at the material provided by Respondent about the specific boarding school to which J.E. has been admitted (R.p. 128) illustrates exactly why sending him to Virginia is in *his* best interest.

In operation since 1878,³ Oak Hill Academy is a nationally renowned, "coeducational, Baptist affiliated, [non-military,] boarding/day school for grades 8-12." (R.p. 206). It's "mission is to provide a safe, secure, nurturing environment and a structured educational program for girls and boys, many of whom need a change in school, peer, community or family relationships." (R.p. 206). The school reports that over ninety-five percent (95%) of graduates go on to college. (R.p. 206). A breakdown of the number of students per grade illustrates just how much individualized attention J.E. will receive at Oak Hill Academy. The school has 106 total students, with two (2) in eighth grade, seven (7) in ninth grade, 19 in tenth grade, 38 in eleventh grade, and 40 in twelfth grade. (R.p. 209). The average teacher to student ratio is one (1) to six (6). (R.p. 210). Additionally, Oak Hill claims that its philosophy is based on four core beliefs: "(1) Deep down inside, all children are good; (2) Regardless of academic ability, every child is capable of success; (3) All children would rather succeed than fail; and (4) Once a child gets a taste of success, he or she will want more."⁴

The District Court was faced with two options. On the one hand, it could continue the reunification efforts that had been

³ Appellant's Report to Court, Exhibit L (R.pp. 206-17), provides only a few pages from the Oak Hill Academy website. The complete website can be found at <http://www.oak-hill.net>.

⁴ [Http://www.oak-hill.net/index.htm](http://www.oak-hill.net/index.htm).

on-going for over a year, and arguably over two and a half years. Perhaps eventually, J.E. could go back to live with his mother, who may or may not relapse in the next three years and who could not provide him the environment and guidance to help him grow and mature. On the other hand, it could send him to live with his loving grandparents who will ensure he receives all the attention and education necessary for him to grow into a successful and mature young man.

Cathy E.-V. has consistently shown, as pointed out by the District Court, that unless someone is constantly holding her hand or looking over her shoulder, she cannot be trusted to remain sober and provide a safe, stable environment for her children. These children have had at least seven years of tumultuous family life. They have been scared, they have been hungry, and they have seen things no child should ever have to see or endure. The Juvenile Code seeks to provide a safe, stable, permanent home for children. The District Court adhered to the principles of the Code by suspending the reunification efforts and by granting guardianship of J.E. and B.E. to Mr. and Mrs. Curtis. The District Court correctly found that placement with Mr. and Mrs. Curtis was in J.E.'s and B.E.'s best interests.

Conclusion

Based upon the facts and arguments set forth above, the Appellee Guardian Ad Litem respectfully requests this Court to

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affirm the District Court's Order dated September 12, 2006 granting legal and physical custody of the minor children to Maria and Jack Curtis, J.E.'s and B.E.'s maternal grandparents.

Respectfully submitted this the 9th of January, 2007.

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CERTIFICATE OF SERVICE

This is to certify that on this date I served the foregoing Brief of Appellee Guardian Ad Litem via electronic mailing and United States mail, postage prepaid and addressed to the following:

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This 9th day of January, 2007.

Scott S. Addison

NO. COA06-1553

TWENTY-SIXTH JUDICIAL DISTRICT
NORTH CAROLINA COURT OF APPEALS

)	
IN THE MATTER OF:)	
)	<u>From Mecklenburg County</u>
J.E. and B.E.)	Nos. 00 J 759, 00 J 760
)	

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