The Implications of In Re L.M.T.: A Call to the North Carolina General Assembly to Reinstate Procedural Safeguards, a Parent's Right to Appeal, and the Importance of a Permanency Planning Order

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The Implications of *In re L.M.T.*: A Call to the North Carolina General Assembly to Reinstate Procedural Safeguards, a Parent’s Right to Appeal, and the Importance of a Permanency Planning Order

**ABSTRACT**

Jane Smith1 had finally gotten her life back on track. Jane, a mother of two, had a checkered past of drug addiction and failure to properly care for her children. After a teacher reported suspicion of child neglect to the local Department of Social Services (DSS), DSS began an investigation of Jane and her two children. At the first hearing, the judge adjudicated the children “neglected” and ordered the children be placed in nonsecure custody.2 While the children were in nonsecure custody, the court and DSS planned to reunite Jane with her two children and maintain the family unit.

Eight months later, Jane and her lawyer believed she had made the required reasonable efforts to regain full custody of her children and avoid a cease reunification efforts order.3 Jane attended drug counseling classes, parenting classes, and sought full-time employment, but the court decided that reunification between Jane and her children was not the best course of action and entered an order ceasing reunification efforts between Jane and her children. The court cited what it found to be a lack of reasonable efforts made by Jane. Jane, trying to regain full custody of her children, filed a motion to appeal the cease reunification order on the grounds that the court lacked sufficient findings of fact to show that reunification between Jane and her children would be futile.4 Jane believed the deficient cease reunification order meant she could continue on the permanency planning track and eventually regain custody of her children.

Following the order to cease reunification efforts and Jane’s appeal, DSS motioned for a termination of parental rights. Accordingly, the court

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1. Jane Smith is a pseudonym used for the purposes of the hypothetical.
2. See infra Part I-B-ii.
3. See infra Part I-B-iii and iv.
4. See id.
entered a termination of parental rights order. The termination of parental rights order completely severed the relationship between Jane and her children.\(^5\)

On appeal, the appellate court agreed that the cease reunification order was deficient and did not include the required findings of fact showing reunification efforts would be futile. The court stated that, on its own standing, the cease reunification order incorrectly characterized Jane’s reasonable efforts. The appellate court held that Jane’s participation in drug counseling classes and parenting classes was proof of her reasonable efforts to regain custody. Despite finding the order deficient, the appellate court upheld the trial court’s permanency planning order because the missing findings of fact were provided by the subsequent termination of parental rights order. Relying on In re L.M.T., A.M.T., the court read the subsequent termination of parental rights order in conjunction with the permanency planning order.\(^6\) The holding from L.M.T. allowed a subsequent termination of parental rights order to “cure” a prior, deficient order.\(^7\) Therefore, although Jane had a basis for appealing from the cease reunification order, her appeal was moot when the court later made the required findings in the subsequent, separate order. Thus, Jane lost her appeal and her relationship with her children was forever severed.

**INTRODUCTION**

The North Carolina Supreme Court recently addressed the relationship between permanency planning orders and termination of parental rights orders in *In re L.M.T.*\(^8\) The majority opinion held a subsequent order terminating the parental rights can cure a prior, deficient permanency planning order.\(^9\) However, the concurring opinion disagreed with the reading of the permanency planning order and termination of parental rights order together.\(^10\)

If deficiencies in a permanency planning order can be cured by a termination of parental rights order, the two orders are essentially merged

\(^5\) See infra Part I-B-v.

\(^6\) *In re L.M.T., A.M.T.*, 752 S.E.2d 453, 454 (N.C. 2013).

\(^7\) Id. at 454.

\(^8\) See id.

\(^9\) Id. at 456–57.

\(^10\) Id. at 461–62 (Beasley, J., concurring) (“I further disagree with the majority’s merging of permanency planning and termination orders for purposes of appellate review. Underlying my disagreement is the fact that permanency planning hearings are fundamentally different in nature than proceedings to terminate parental rights.”).
into one order when reviewed by appellate courts. The merging of the two orders is problematic because that method exposes the parent to procedural vulnerability, abridges a parent’s right to appeal, and undermines the importance and role of a permanency planning order.

This Comment explores the implications of the North Carolina Supreme Court’s decision in In re L.M.T. It discusses the conflicting interests of (1) the constitutional right to parent without federal or state interference and (2) the desire to remove children from detrimental environments, as authorized by the state acting under the parens patriae policy. Part I discusses the procedure of removing children from their parental homes, the subsequent court hearings and orders, and the repercussions of said orders. Part II outlines the rationale behind the holding of In re L.M.T. Part III outlines the implications from said holding. Part IV challenges the North Carolina General Assembly to better protect a parent’s right to appeal. Particularly, this Comment urges the General Assembly to revise General Statute section 7B-1001(a)(5)(a) and, in effect, to supersede the holding in L.M.T.

I. THE LAW AND THE CROSSROADS OF THE CONSTITUTIONAL RIGHT TO PARENT AND THE PROCESS OF REMOVING CHILDREN FROM INJURIOUS HOMES

A. The Constitutional Right to Parent and Governmental Interference with that Right

Common law tradition recognizes parents as the ultimate caretakers of their children, but this significant right is also embedded in the Ninth and Fourteenth Amendments to the United States Constitution in order to

11. Id. at 456–57.
12. Parens patriae, BLACK’S LAW DICTIONARY (10th ed. 2014) (“[Latin ‘parent of his or her country’]... 2. The state regarded as a sovereign; the state in its capacity as provider of protection to those unable to care for themselves... 3. A doctrine by which a government has standing to prosecute a lawsuit on behalf of a citizen, esp. on behalf of someone who is under a legal disability to prosecute the suit...”).
The right to parent is closely guarded by the Constitution because that right is considered a fundamental privacy right. In fact, the United States Supreme Court has specifically stated the right of a parent is a “right[] far more precious . . . than property rights.” This sentiment was explicitly adopted by the North Carolina Court of Appeals in In re Oghenekevebe. Thus, the family unit is generally protected from federal or state intervention.

The constitutional right to parent includes certain duties to provide for the wellbeing of a child, while giving parents power to make decisions about the ways in which their child will be raised. Parents are responsible for providing food, shelter, clothing, and medical care, among other needs for their children. The Due Process Clause of the Fourteenth Amendment reaffirms “that a parent enjoys a fundamental right ‘to make decisions concerning the care, custody, and control’ of his or her children . . .”

Though paramount, the right to parent is not without its limitations. Although there is a presumption that a parent will act in the best interest of the child, sadly, that is not always the case. Therefore, each state has a


15. See LaFleur, 414 U.S. at 639-40 (“This Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.”); see also Smith, 431 U.S. at 845 (“[T]he liberty interest in family privacy has its source, and its contours are ordinarily to be sought, not in state law, but in intrinsic human rights, as they have been understood in ‘this Nation’s history and tradition.’” (quoting Moore v. City of E. Cleveland, 431 U.S. at 503)); KATHARINE K. BAKER & KATHARINE B. SILBAUGH, FAMILY LAW: THE ESSENTIALS 100 (2009) (“[T]he Constitution protects parental liberty not so much because that liberty is good for parents but because key aspects of individualistic American culture will be undermined if the state asserts too much control over how children are to be raised.”).

16. Petersen, 445 S.E.2d at 903 (quoting May v. Anderson, 345 U.S. 528, 533 (1953)).

17. In re Oghenekevebe, 473 S.E.2d 393, 395 (N.C. Ct. App. 1996) (“This Court has previously recognized that a parent’s interest in his or her child is ‘more precious than any property right.’” (quoting In re Murphy, 414 S.E.2d 396, 398 (N.C. Ct. App. 1992)), aff’d, 422 S.E.2d 577 (N.C. 1992)).


statute that empowers the state to override parental authority.  

Specifically in North Carolina, members of the legislature "ha[ve] clearly expressed their desire to ensure that children receive that 'degree of care which promotes [their] healthy and orderly physical and emotional well-being." Accordingly, when questions of adequate care come before the courts, the inquiry is not whether a third party could make a better decision. In fact, in some instances, a parent’s decision for his or her child may be contradictory to a state’s laws enacted through its general police power. Instead, the question for the courts is whether the parent adequately cares for his or her child.  

Thus, when a parent or guardian fails to provide adequate care, the state may limit parental rights.

The movement to protect children who are neglected, abused, and/or dependent began in the late nineteenth century. Now, every state has at least one statute aimed at protecting children from abuse or neglect. Child abuse is generally defined as "the physical, sexual, or emotional mistreatment of a child." Generally, "neglect" implies a failure to provide for a child's basic needs for food, education, health care, or safe shelter. When neglect or abuse is suspected, state-governed protection

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23. BAKER & SILBAUGH, supra note 15, at 102.  
25. See Troxel, 530 U.S. at 78 (Souter, J., concurring); Wilson v. Wilson, 153 S.E.2d 349, 351 (N.C. 1967).  
26. Wilson, 153 S.E.2d at 351.  
27. See Meyers v. Nebraska, 262 U.S. 390, 396–97 (1923); see also Pierce v. Soc'y of Sisters, 268 U.S. 510, 534–35 (1925) (holding that the Compulsory Education Act "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children . . ."). The Supreme Court upheld the constitutional protections for a parent to choose how to raise his/her child in conflict with a state's education laws, exercised through general police power. Id.  
28. See Troxel, 530 U.S. at 67 (discussing the "best interest of the child" standard).  
30. N.C. GEN. STAT. § 7B-101(9) (2015) (defining a dependent juvenile as "[a] juvenile in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or (ii) the juvenile's parent, guardian, or custodian is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement").  
32. Id. at 102.  
33. HARRY D. KRAUSE & DAVID D. MEYER, FAMILY LAW IN A NUT SHELL 192 (5th ed. 2007).  
34. Id. at 191.
for the child is usually initiated through a report of neglect or abuse to the state or an authority of the state. All states have mandatory reporting laws for individuals in certain capacities or positions. Some states “require all persons to report suspected abuse or neglect, regardless of profession.” To encourage reporting, Congress passed the Child Abuse Prevention and Treatment Act in 1974. The Act “requires states to extend immunity to those who report child abuse ‘in good faith.’”

Thus while the constitutional right to parent is a significant one and is a protected privacy right, that right is subject to limitations and laws aimed at ensuring the safety and wellbeing of the child.

B. The Procedure and Adjudication of Abuse and Neglect Cases

Governmental interference with the right to parent is not taken lightly. Several procedural protections have been put in place to ensure that a parent’s right to make decisions regarding his or her child is not encroached upon in the absence of egregious circumstances. These steps occur after a report has been made, and include permanency planning hearings, “reasonable efforts” determinations, cease reunification orders, and, finally, the termination of parental rights.

i. Report and Assessment

In North Carolina, the authority to provide care for children who are neglected or abused is vested in DSS. In North Carolina, a neglected juvenile is defined as a juvenile who does not receive proper care, supervision, or discipline; is not provided with necessary medical care; or lives in an injurious environment. If there is a report of abuse or neglect,

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35. BAKER & SILBAUGH, supra note 15, at 106.
36. Id. at 106 (listing physicians and other health-care providers, teachers, child-care workers, other educators, and public safety employees as those who may be required to report abuse or neglect of a child to the state); KRAUSE & MEYER, supra note 33, at 192 (listing physicians, nurses, teachers, social workers, and other designated mandatory reporters as those who may be required to report).
37. CHILD WELFARE INFO. GATEWAY, supra note 20, at 3, 5–91.
41. See N.C. GEN. STAT. § 7B-101(15) (2015). Specifically, a neglected juvenile is defined in the following way:
DSS makes an assessment\textsuperscript{42} to determine if there is actually abuse or neglect and whether the protective services of the state should be provided.\textsuperscript{43}

\textit{ii. Permanency Planning Hearing}

Once a child is adjudicated as neglected or abused, the juvenile may be placed in nonsecure custody.\textsuperscript{44} Nonsecure custody is "the placement of a juvenile without restriction on the juvenile's freedom of movement in the custody of the [DSS] or [in the custody of] a person designated by the
After being placed in nonsecure custody, the court must conduct a hearing and enter a permanency planning order. The first hearing must occur within ninety days from the date of the initial hearing, and the court must conduct a review hearing within six months of the first hearing. The first hearing does not have to be designated as a permanency planning hearing, but a designated permanency planning hearing must occur within twelve months after the initial order. Any hearing after the first designated “permanency planning hearing” is referred to as a “subsequent permanency planning hearing”. A subsequent permanency planning hearing must occur every six months thereafter.

“The purpose of a permanency planning hearing is ‘to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time.’” At the permanency planning hearing, the court tries to determine what the best plan of care is for the juvenile. Specifically, the court considers: services which have been offered to reunite the juvenile with the parent; if the juvenile resided with the parent at the time of removal; if the parent has participated in visitation time; if reunification efforts would be futile or inconsistent with the juvenile’s safety and need for a safe, permanent home; the age of the juvenile; as well as other factors. If the juvenile is not currently placed with a parent, the court will also consider and make any relevant findings concerning: whether reunification with the parent in the next six months is possible and in the best interest of the juvenile; if there is other suitable guardianship or custody available; if adoption should be pursued; and any other criteria the court deems necessary.

47. Id.
48. Id.
49. Id.
50. See id.
52. A permanency planning hearing is sometimes referred to as a “permanency planning review”. See In re J.V., 679 S.E.2d 843, 845 (N.C. Ct. App. 2009).
54. See N.C. GEN. STAT. § 7B-906.1(d).
55. N.C. GEN. STAT. § 7B-906.1(e).
Typically in reunification plans, DSS schedules different classes focused on improving parenting skills, provides counseling for the parent, or requires certain improvements in the parent’s employment status or living situation. For example, in In re J.V., respondent father’s case plan included requirements to attend parenting classes, learn alternative means of discipline, and attend domestic violence counseling. In a similar situation, in In re L.B., respondent mother was “required to complete individual therapy, attend anger management, complete a psychological evaluation, maintain stable housing, and maintain employment.” Likewise, in In re Becker, respondent parents entered into contracts with DSS, in which, the parents “agreed to maintain schooling or employment, pay support for the children, obtain individual counseling, refrain from illegal activities, and obtain suitable housing for the children.”

iii. “Reasonable Efforts” Determination

During the permanency planning hearings, courts look for “reasonable efforts,” pursuant to section 7B-507, made by the parent for the return of the child. Within the inquiry into reasonable efforts, the court also analyzes the efforts made by the parent and whether the efforts have resulted in a positive result in the relationship between the parent and

56. DSS schedules classes for parents such as drug counseling classes, parenting classes, anger management classes, alcohol management classes, religious classes, etc. See Hatcher et al., supra note 40, at 7-25 to 7-26.
57. See In re J.V., 679 S.E.2d at 844.
58. Id.
60. Id. at 26.
62. Id. at 823.
63. In some cases, “reasonable efforts” is referred to as “reasonable progress”. See generally In re Pierce, 565 S.E.2d 81 (N.C. 2002).
64. N.C. Gen. Stat. § 7B-507 (2015); N.C. Gen. Stat. § 7B-906.1 (2015). Reasonable efforts is defined as follows:

The diligent use of preventive or reunification services by a department of social services when a juvenile’s remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

child.\textsuperscript{65} A "positive result"\textsuperscript{66} is evidenced by an overall positive response to and reasonable progress of the efforts of the parent.\textsuperscript{67} This requirement is necessary so a parent does not make sporadic efforts towards reunification without actually improving the relationship with the child.\textsuperscript{68}

The determination of reasonable efforts is a fact determinant case-by-case analysis. In one case, a respondent father did not make reasonable efforts when he "failed to pay child support during the six months prior to the filing of the termination petition and to participate in counseling and attend any permanency planning seminars."\textsuperscript{69} In another instance, respondent parents failed to make the necessary reasonable efforts when they did not improve their parenting skills, did not engage in treatment services, denied responsibility for the injuries of a child, failed to cooperate with family service plans, and failed to attend counseling or therapy.\textsuperscript{70} In contrast, a respondent mother did make reasonable efforts when she cooperated with DSS, attended counseling, attended nurturing classes, regularly paid child support, established an independent residence, and regularly visited with the child.\textsuperscript{71}

It is not often that the "reasonable efforts" determination is so clear cut. In a much closer case, the North Carolina Court of Appeals held the findings of fact were sufficient in the permanency planning order to cease reunification efforts.\textsuperscript{72} In \textit{In re N.D.S.}, respondent mother did show progress by completing anger management classes, obtaining a psychological exam, and working two part-time jobs.\textsuperscript{73} However, she was still unable to control her anger and put others in fear of violence, did not comply with the recommendations following the psychological evaluation, and did not obtain housing suitable for her child.\textsuperscript{74} The court recognized the respondent mother's progress, but upheld the trial court's finding that reunification efforts "would be futile or inconsistent with [child's] safety

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  \item \textsuperscript{65} \textit{In re Nolen}, 453 S.E.2d 220, 225 (N.C. Ct. App. 1995) (citing \textit{In re Tate}, 312 S.E.2d 535, 539 (N.C. Ct. App. 1984)).
  \item \textsuperscript{66} Courts use "reasonable efforts" and "positive response" while addressing the requirements of the parent. \textit{Id.} "Reasonable efforts" are required by section 7B-507, and the courts will also look for a positive response to the parent by the juvenile. \textit{Id.}
  \item \textsuperscript{67} \textit{In re Bishop}, 375 S.E.2d 676, 682 (N.C. Ct. App. 1989) (citing Tate, 312 S.E.2d at 539).
  \item \textsuperscript{68} \textit{Id.}
  \item \textsuperscript{69} \textit{In re Becker}, 431 S.E.2d 820, 825-26 (N.C. Ct. App. 1993).
  \item \textsuperscript{70} \textit{See In re N.G.}, 650 S.E.2d 45, 48 (N.C. Ct. App. 2007).
  \item \textsuperscript{71} \textit{See In re Eckard}, 547 S.E.2d 835, 838 (N.C. Ct. App. 2001).
  \item \textsuperscript{72} \textit{In re N.D.S.}, No. COA14-826, 2014 N.C. App. LEXIS 1386, at *1 (N.C. Ct. App. 2014).
  \item \textsuperscript{73} \textit{Id.} at *5-*6.
  \item \textsuperscript{74} \textit{Id.}
\end{itemize}
and need for a safe home within a reasonable time.”

Another close case was In re D.C., where the North Carolina Court of Appeals held the trial court’s order did not contain sufficient findings of fact to meet the requirements of section 7B-507(b)(1). Respondent mother enrolled in college classes, completed parent-child therapy, visited her child weekly, and regularly attended substance abuse treatment. However, the general findings by the trial court showed a lack of complete compliance with the drug treatment program. The court held the permanency planning order, on its own, did not contain sufficient findings of fact to justify ceasing reunification efforts.

iv. Cessation of Reunification Efforts

Until the court specifically states otherwise, the ultimate goal during the time period between removal and a cease reunification order is reunification of the juvenile with the parent. However, if the parent does not make sufficient reasonable efforts, the court may enter a permanency planning order, which ends the efforts of DSS and the court system to reunite the child and parent. The permanency planning order ceasing reunification efforts is a permanency planning order, but is referred to as a cease reunification order. A cease reunification order can be entered when the trial court finds facts that support its conclusion to cease reunification efforts. Specifically, the trial court may make “a finding that further efforts ‘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 . . . .”

75. Id. at *6.
77. Id. at 316–17.
78. Id. at 317.
79. Id. at 316–17.
80. Id. However, due to the holding in In re L.M.T., A.M.T.—which this Comment addresses in detail—the court of appeals read the cease reunification efforts order with the termination of parental rights order and thus held the findings for cease reunification efforts were sufficient. Id. at 317–18; see generally In re L.M.T., A.M.T., 752 S.E.2d 453 (N.C. 2013).
82. See N.C. GEN. STAT. § 7B-507; N.C. GEN. STAT. § 7B-101(18); see also L.M.T., 752 S.E.2d at 456.
83. See L.M.T., 752 S.E.2d at 456.
85. Id. (quoting N.C. GEN. STAT. § 7B-507(b)(1) (2005)). Another way by which a court may cease reunification efforts is if a “court of competent jurisdiction has
v. Termination of Parental Rights Process

If reunification efforts are ceased, the next step, the next step in the process is terminating parental rights. The process of terminating parental rights consists of two phases. First, “[i]n the adjudicatory stage, the petitioner has the burden of establishing by clear[,] cogent[,] and convincing evidence that at least one of the statutory grounds [listed supra] exists.” The second stage, the disposition stage, requires the court to consider whether terminating parental rights is in the best interests of the child. Unless terminating parental rights is not in the best interests of the child, the court is required to enter an order terminating the rights of the parent. The most common reason for the termination of parental rights is failure to make sufficient progress towards rehabilitation. However, section 7B-1111 lists all the grounds for terminating parental rights, ranging from murder to failure to pay custody costs.

If the court enters a termination order, all rights and obligations due to the child from the parents are severed, and the parent “no longer ha[s] any

involuntary terminated the parental rights of the parent to another child of the parent . . . .”

Id. (quoting N.C. GEN. STAT. § 7B-507(b)(3) (2005)).

86. See N. C. ADMIN. OFF. OF THE CTS., GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL 144 (2007), http://www.nccourts.org/Citizens/Gal/Documents/Manual/chapter04.pdf [https://perma.cc/6E6R-A2UQ]. The motion for termination of parental rights may be filed by, among others, a parent seeking the termination of the other parent’s rights, a county DSS, a licensed child-placing agency with custody of the child, or a person with whom the child has lived continuously for the two years preceding the petition. N.C. GEN. STAT. § 7B-1103(a) (2015).


88. Id.

89. Id.

90. Id. (citing N.C. GEN. STAT. § 7B-1110(a) (2001)).

91. BAKER & SILBAUGH, supra note 15, at 177.

92. N.C. GEN. STAT. § 7B-1111(a)(1)-(10) (2015) (listing as grounds for termination of parental rights: the parent has abused or neglected the juvenile; the parent willfully left the juvenile in foster care or placement outside the home for more than twelve months; the parent failed to pay for a reasonable portion of custody costs; probability that the parent will continue to be incapable to care for the juvenile; the parent willfully abandoned the juvenile for at least six consecutive months; the parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home, or other crimes concerning homicide; parental rights have been terminated concerning another child; where the juvenile has been relinquished to a county DSS or a license child placing agency for the purpose of adoption or placed with a prospective adoptive parent; and if the parent has been convicted of a sexual related offense that resulted in the conception of the juvenile).
constitutionally protected interest in [his or her] child[]."93 Furthermore, the parent is no longer considered a party to the proceedings and may not object or participate in the proceedings.94 Because the termination of parental rights results in a harsh severance of the juvenile and parent relationship, the burden of proof for a termination of parental rights order is clear95 and convincing evidence.96 After the order terminating parental rights, section 7B-90897 controls the case.98

II. In Re L.M.T., A.M.T. AND THE INTERSECTION OF PERMANENCY PLANNING AND TERMINATION OF PARENTAL RIGHTS ORDERS

The case that brought the relationship between permanency planning orders and termination of parental rights orders into the spotlight was In re L.M.T., A.M.T.99 In L.M.T., the findings at the trial court tended to show the respondent mother’s children, L.M.T. (“Linda”) and A.M.T. (“Andrew”),100 were neglected.101 The trial court found respondent mother had a history of drug use, unemployment, and mental instability.102 Further, respondent mother frequently left Linda and Andrew with various caretakers, instead of providing the majority of care for her two children.103
After ordering both Linda and Andrew dependent, but not neglected, the trial court established "a permanent plan of reunification with respondent and ordered DSS to continue to make reasonable efforts toward reunification." For ten months the ultimate goal remained to reunite Linda and Andrew with respondent mother. However, in October 2010, the trial court, upon noticing a lack of reasonable efforts by respondent mother, changed the ultimate goal from reunification with respondent mother to "placement with court-approved caretakers and a concurrent plan of adoption . . . ." Further, DSS was relieved from making any additional efforts with respondent mother towards reunification.

Respondent mother objected to the cease reunification efforts order. Following the order ceasing reunification efforts between respondent mother and Linda and Andrew, DSS filed a petition for an order terminating respondent mother's parental rights. The trial court granted the petition and entered an order terminating respondent mother's parental rights. Then, respondent mother gave notice of appeal from the termination of parental rights order.

On appeal at the North Carolina Court of Appeals, respondent mother argued the trial court failed to make "sufficient findings to cease reunification efforts pursuant to N.C. Gen. Stat. [section] 7B-507(b)" in the permanency planning order. The North Carolina Court of Appeals agreed with respondent mother that the permanency planning order was deficient and, accordingly, reversed and remanded the case. Specifically, the North Carolina Court of Appeals highlighted that although the trial court made findings of fact about respondent mother’s "troubled case

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104. N.C. GEN. STAT. § 7B-101(9) (2015) (defining a dependent juvenile as “[a] juvenile in need of assistance or placement because (i) the juvenile has no parent, guardian, or custodian responsible for the juvenile’s care or supervision or (ii) the juvenile’s parent, guardian, or custodian is unavailable to provide for the juvenile’s care or supervision and lacks an appropriate alternative child care arrangement”).
105. In re L.M.T., 2012 N.C. App. LEXIS 1426, at *2
106. Id.
107. Id.
108. Id.
109. Id.
110. Id.
111. Id.
112. Id. at *3.
113. Id. at *2.
114. Id. at *3.
history”, the trial court did not link the facts to the specific requirements mandated by statute.\textsuperscript{115}

On appeal at the North Carolina Supreme Court, the court agreed that the permanency planning order was sufficient because the specific language in section 7B-507(b) is not required to satisfy the statutory requirements.\textsuperscript{116} Unlike the court of appeals, which required a link between the facts of the case and the factors listed in section 7B-507(b), the supreme court only required the trial court to make clear the evidence showed reunification between the juveniles and parent(s) would be futile.\textsuperscript{117} Particularly, the supreme court stated the statute did not require a “verbatim recitation of its language”, although that is usually the best practice for a trial court.\textsuperscript{118} The supreme court then reviewed the permanency planning order in respondent mother’s case and found, without requiring the exact language of the statute, the evidence showed reunification efforts by DSS and respondent mother would be ineffective.\textsuperscript{119}

The justices, however, disagreed about the relationship between a permanency planning order and a subsequent termination of parental rights order when reviewed by an appellate court.\textsuperscript{120} The majority opinion held that a subsequent order terminating the parental rights can cure a prior permanency planning order that is deficient due to a lack of sufficient findings of fact in conjunction with section 7B-507(b) factors.\textsuperscript{121} Accordingly, that ensuing finding would “legitimize” the permanency planning order.\textsuperscript{122}

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\item \textsuperscript{115} Id. at *6. The court of appeals required an explicit link between findings of fact and factors listed in section 7B-507(b). Id. The factors listed in section 7B-507(b) are to be considered when determining whether reunification efforts should be ceased and are: if efforts would be futile or inconsistent with the juvenile’s health, safety, and need for a safe, permanent home within a reasonable period of time; it has been determines that the parent has subjected the child to aggravated circumstances; a court has terminated involuntarily the parental rights of the parent to another child of the parent; or if a court has determined that the parent has committed murder of voluntary manslaughter of another child of the parent, or other certain acts associated with homicide. N.C. GEN. STAT. § 7B-507(b) (2015).
\item \textsuperscript{116} See In re L.M.T., A.M.T., 752 S.E.2d 453, 458, 461 (N.C. 2013).
\item \textsuperscript{117} Id. at 456.
\item \textsuperscript{118} Id. at 455.
\item \textsuperscript{119} Id.
\item \textsuperscript{120} Id. at 456, 461–62.
\item \textsuperscript{121} Id. at 456–57.
\item \textsuperscript{122} Id. The majority opinion relied on a reading of section 7B-1001(a)(5)(a) of the North Carolina General Statutes:

The Court of Appeals shall review [an] order [entered under section 7B-507] to cease reunification together with an appeal of the termination of parental rights order if all of the following apply:
III. THE AFTERMATH OF L.M.T. AND THE ARGUMENT FOR SUPERSEDING ITS HOLDING

In L.M.T., the North Carolina Supreme Court struggled to balance the constitutional rights of parents and what is best for the child.\textsuperscript{123} In an effort to further the General Assembly and Juvenile Code's purposes, the majority and concurring justices did not require recitation of the statute requiring reasonable efforts, and, instead, held the findings of fact and instead held the findings of fact to be sufficient for the statute.\textsuperscript{124}

The majority further held a subsequent termination of parental rights order can cure a prior deficient order.\textsuperscript{125} Specifically, "incomplete findings of fact in the cease reunification order may be cured by findings of fact in the termination order."\textsuperscript{126} There are two major advantages of allowing a subsequent termination of parental rights order to cure a permanency planning order. First, subsequent curing by a permanency planning order will expedite the removal of children from abusive or neglectful environments. Second, courts are assured that a lack of findings of facts in a permanency planning order will not usurp progress towards termination of parental rights.

\textit{i. The Benefits of Simultaneous Review: Expedited Removal and Judicial Efficiency}

First, the efficiency of reading both orders together results in an expedited removal of children from an abusive or neglectful environment. In some permanency planning orders, a child may have visitation at the parental home or return to the parent's home for an intermediate, trial period.\textsuperscript{127} If the court continues this custody plan during the permanency planning hearing period, the child may be exposed to a situation that is abusive or neglectful. However, if the permanency planning order is

\begin{itemize}
  \item 1. A motion or petition to terminate the parent's rights is heard and granted.
  \item 2. The order terminating parental rights is appealed in a proper and timely manner.
  \item 3. The order to cease reunification is identified as an issue in the record on appeal of the termination of parental rights.
\end{itemize}

\textit{Id. at 456} (quoting N.C. GEN. STAT. § 7B-1001(a)(5)(a) (2011)).
\textsuperscript{123} \textit{Id. at 454–55}.
\textsuperscript{124} \textit{Id.}
\textsuperscript{125} \textit{Id. at 454}.
\textsuperscript{126} \textit{Id. at 457}.
merged with the termination of parental rights order, the parent would have no rights to the child, and since there may not be an intermediate, trial period, the child’s risk of being exposed to abuse or neglect is eliminated. In that sense, the current procedural delay of appealing the orders separately thwarts court action in the best interest of the child, and a merged review may prevent these issues.

Moreover, the efficiency of allowing a merged review aids the effort to provide the juvenile with a permanent plan as soon as possible and advances the aim of the Juvenile Code: “to provide for the ‘best interests of the juvenile’ within a ‘reasonable amount of time.’” Although appeals involving juveniles are “fast-tracked,” the process of appealing to the court of appeals may take up to eighteen months. Additionally, the time period would be further extended if the order were appealed to the supreme court. During this prolonged process, a juvenile may remain in nonsecure custody or in the custody designated in the permanent plan; this leaves the juvenile’s future placement uncertain during the appeal. Depending on the outcome of the appeal, a juvenile may then be shifted, again, from a permanent plan to nonsecure custody or remain in nonsecure custody with an unsure future.

Further, the permanency planning orders do not provide the juvenile with finality in their situation. For example, a permanency planning order can vary from remaining in nonsecure custody, permitting visitation time with the parent(s), or staying temporarily at the parental home. However, a termination of parental rights order provides finality to the juvenile because after termination, the court must soon thereafter provide the juvenile with a permanent placement plan.


129. In re L.M.T., 752 S.E.2d at 457 (quoting N.C. GEN. STAT. § 7B-100(5) (2011)).

130. See OFFICE OF INDIGENT DEF. SERVS., THE N.C. COURT SYS., QUESTIONS AND ANSWERS ABOUT YOUR APPEAL AND YOUR LAWYER 6 (2010) (estimating that the record takes at least four to six months, briefing takes three or four months, the court of appeals may take six months or longer to schedule to decide if there will be oral arguments for the case and two to six months after oral arguments for a decision), http://www.ncids.org/Rule s%20&%20Procedures/Policies%20By%20Case%20Type/Non-Cap-Non-CriminalAppeals/ AppellateGuide_English.pdf [https://perma.cc/6KLD-AL3P].

131. Id.


133. See N.C. GEN. STAT. § 7B-505(a) (2015); see also NEWMAN ET AL., supra note 45, at 126.

134. N.C. GEN. STAT. § 7B-908(a)–(b).
By allowing a termination of parental rights order to cure a deficient permanency planning order, courts reduce the risk of children being exposed to abusive or neglectful environments, provide the juvenile with a permanent plan as quickly as possible, and provide finality for the juvenile. The efficiency of reading both orders together and allowing the subsequent order to cure the prior order results in an overall expedited removal of children from abusive or neglectful environments.

Beyond the benefits to the child, allowing a permanency planning order to be read with a termination of parental rights order helps the DSS and trial court function with more ease. In some prior cases, a failure to establish a finding of fact at the trial court level showing reunification efforts would be futile invalidated the permanency planning order. Due to this misstep, a parent could appeal from the cease reunification order. However, if the finding of fact can be subsequently established in a termination of parental rights order, the misstep does not result in the parent's ability to reestablish reunification efforts or parental rights.

Before L.M.T., if a trial court failed to make the requisite findings in a permanency planning order, the court did not have the opportunity to correct its failure in a later order. Instead, the court would have to return to the permanency planning order stage in the removal process. However, because of the holding in L.M.T., the misstep of not establishing all necessary findings of fact in a permanency planning order no longer results in such harsh—and judicially inefficient—ramifications.

In conclusion, the majority holding in L.M.T. instructed the appellate courts to read the permanency planning order and termination of parental rights order together. The reasoning behind the majority’s decision was to further the purpose of the Juvenile Code, remove children from abusive or neglectful homes, and provide a permanent plan for juveniles within a reasonable time. Further, this approach helps the courts function with more ease when ordering permanency plans by assuring that a lack of findings of facts will not usurp the progress towards termination of parental rights. Thus, this result is both in the best interest of the child and furthers the efficiency of the court system.

136. Id.
137. See In re L.M.T., A.M.T., 752 S.E.2d 453, 453 (N.C. 2013).
138. See id.
139. Id. at 456–57.
ii. The Disadvantages of Simultaneous Review: Parental Procedural Protection and the Permanency Planning Order

The appellate courts’ practice of reviewing the permanency planning and termination of parental rights orders together results in several significant disadvantages, as well. The combined reading of the two orders results in (1) a lack of procedural protection for the respondent parent; and (2) the undermining of the importance of a permanency planning order.

The first consequence of reviewing a permanency planning order in conjunction with a termination of parental rights order is that the procedure cuts off a parent’s rights at a time when parents need more procedural protection and, thus, results in a loss of an opportunity to appeal.140 Although the instinctual reaction in cases involving abuse and neglect is only to establish, recognize, and analyze the procedural protection for juveniles, parents should still be afforded procedural safeguards.141 “The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.”142 Further, the United States Supreme Court stressed the importance of “fundamentally fair procedures” and a “critical need for procedural protections” when a parent is fighting to retain the family unit.143 By requiring the reading of the two orders together, there is a lack of procedural protection for a respondent parent.144

Prior to L.M.T., procedural protection for the parent during this period of permanency planning hearings came in the form of allowing a parent to appeal from each order filed against him or her. In L.M.T.’s aftermath, instead of procedural protection, the mingled reading of the two orders results in exposure to procedural unfairness. The simultaneous review process eradicates one of the respondent parent’s appeals. Before L.M.T., a parent was allowed to appeal both a deficient permanency planning order, or, specifically, a cease reunification order, and the termination of parental rights order.145 On appeal, the permanency planning order was viewed on its own, and the appellate court would determine if the findings of fact

141. See id.
142. Id. at 753.
143. Id. at 753–54 (“If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.”).
144. See id.; see also In re L.M.T., 752 S.E.2d at 462–64.
145. See supra Part II.
showed reunification between the respondent parent and juvenile would be futile. If the permanency planning order contained insufficient findings, the appellate court would reverse the trial court's order. Further, the parent appealing from an order terminating parental rights could argue that there was insufficient evidence to support the decision. 146 Likewise, if the subsequent order terminating parental rights lacked sufficient findings, the trial court would reinstate the parent's rights.

However, the approach supported by the majority opinion in L.M.T. essentially merges the permanency planning order and termination of parental rights order together. 147 Instead of both the permanency planning and termination of parental rights orders being reviewed independently, the findings in a subsequent termination of parental rights order can "cure" a deficient permanency planning order. 148 Consequently, as highlighted in the concurring opinion, this approach bypasses one of the parent's appeals. Instead of a respondent parent being afforded an unabridged appellate process for each order filed against him or her, the orders are read together, and there are no independent findings.

Rather than performing a simultaneous review, allowing a prior order to be admitted for consideration during review of a subsequent order does not abridge a respondent parent's right to appeal. A respondent parent would have the opportunity to appeal both the first order and any subsequent order. Further, the admittance and consideration of prior established facts does not result in the same backwards "curing" effect that was established in the majority opinion of L.M.T. 149 Although a prior order can be admitted for consideration for a subsequent order, the reverse method abridges the right to appeal and does not require independent findings for each order. The holding in L.M.T. allows findings from another order to be determinative for the order under review. 150 This is inappropriate given the recognized procedural rights of parents that attempt to maintain the family unit. L.M.T.'s "curing" effect unfairly dismisses parental procedural rights to appeal deficient orders and has devastating—and dispositive—impacts on the relationship between a parent and a child.

In addition to the procedural concern for parents, the reading of the orders together undermines the role of a permanency planning order. 151 If a

147. See In re L.M.T., 752 S.E.2d at 454, 456–57.
148. See id.
149. Id. at 454.
150. See id. at 454, 456–57.
151. See id.
deficient order can be cured later, the requirements for a permanency planning order are essentially considered moot. Before *In re L.M.T.*, a permanency planning order had to withstand appellate review on its own findings. Therefore, the findings in a permanency planning order had to be sufficient enough to sustain the permanent plan set by the lower court or to support the trial court’s finding that ceasing reunification efforts was proper. However, with the combination of the two orders, any finding absent in the permanency planning order can be included in a termination of parental rights order. This method undermines the importance and value of a permanency planning order.

**iii. The Future of Simultaneous Review: Why *L.M.T.* Should Be Superseded by Statute**

In light of these significant concerns, the courts should respect the differences in the two orders and acknowledge that each order should be able to stand on its own grounds, instead of relying on findings from other orders. In *In re Stewart Children*, the court of appeals was presented with multiple orders terminating respondent parents’ parental rights. In regard to the first order terminating parental rights, the district court found the first phase—a statutory ground for termination existed—of the two-phase test as satisfied. However, the second phase—a showing that termination would not be in the best interests of the child—of the test was not satisfied. The district court found that termination of parental rights was not in the best interest of the child. Two years later, the termination

152. See id.

153. See *In re L.M.T.*, A.M.T., No. COA12-743, 2012 N.C. App. LEXIS 1426, at *1 (N.C. Ct. App. 2012). There, the Court did not read the permanency planning and termination of parental rights orders together; instead, because the court found the permanency planning order to be deficient on its own face, the order was not proper. *Id.*

154. See id.

155. See *In re L.M.T.*, 752 S.E.2d at 454, 456–57.


157. *Id.*

158. *Id.*

159. *Id.* Grounds for termination existed. See *id.*; see also *In re Anderson*, 564 S.E.2d 599, 602 (N.C. Ct. App. 2002) (citing *In re Blackburn*, 543 S.E.2d 906, 908 (N.C. Ct. App. 2001)). The Court explained the process of terminating parental rights consists of two phases. *Id.* In the first phase, one of the grounds for terminated listed in the relevant statute must exist. *Id.* For the second phase, the court must decide whether termination is in the best interests of the child. *Id.*

160. *In re Stewart*, 347 S.E.2d at 497.

161. *Id.*
of parental rights order was filed against respondent mother. While reviewing the second set of termination orders, the court of appeals admitted and considered a prior order that adjudicated a parent of neglect. In the first termination of parental rights order, respondent mother was adjudicated of neglect, but termination was not proper. However, the court still required independent findings of the requisite facts for the subsequent orders.

By previously requiring independent findings of facts and giving due weight to the two separate orders, the courts recognized the procedural rights of parents and the importance of the permanency planning order, even if it came at the cost of judicial efficiency. If the end goal is to remove children from abusive and neglectful environments as quickly as possible, the courts should consider alternatives that do not infringe on the procedural rights of parents or create shortcuts when a fundamental right is at stake. In fact, alternatives are already in place to ensure the safety of children: the removal of children from abusive or neglectful homes can be achieved through the expedited procedures for juvenile cases in the court system. The General Assembly and court system have already taken the need for an expedited process into consideration and provided a specific, accelerated process for juveniles in the DSS system. With an expedited system in place, it is unnecessary for the court to make further accommodations in the name of expedited removal.

Because parental procedural and fundamental privacy rights are stake—and the safe removal of children is already provided for elsewhere—the North Carolina General Assembly should consider the ramifications of L.M.T. and overrule its decision.

IV. CONCLUSION

The legal system in North Carolina has, and should have, an interest in protecting juveniles who are abused, neglected, or abandoned. However,
the line between the desire to protect juveniles and invading a parent’s right is very fine.

Ultimately, a termination of parental rights order should not be allowed to cure a deficient permanency planning order. The role of curing is not appropriate for a termination of parental rights order because the procedure results in (1) a lack of procedural protection for the respondent parent, resulting in the loss of the respondent parent’s right to appeal; and (2) the undermining of a permanency planning order’s importance. Moreover, reinstating the parent’s right to appeal a deficient permanency planning order furthers the intent of the legislature.169

The benefits of L.M.T.’s holding do not outweigh its detriments. As explained above, the rationale behind L.M.T.’s holding was to expedite the removal of children from abusive or neglectful environments. Additionally, its simultaneous review provided courts with the assurance that lack of findings of facts in a permanency planning order would not usurp progress towards termination of parental rights.170 However, there are less problematic ways to achieve the same result.

Additionally, the expedited removal is not a significant enough reason to abridge a parent’s constitutional right. Although the instinctual reaction is to consider only the procedural protections for juveniles, parents should still be afforded procedural safeguards.171 Further, because the right to parent is so intensely guarded from state intrusion, this right should not have been abridged by the North Carolina courts.

Finally, allowing a subsequent termination of parental rights order to cure a prior, deficient permanency planning order undermines the importance of a permanency planning order. The General Assembly has extensively laid out the requirements for permanency planning orders;172 however, these requirements are in vain if a deficient permanency planning order can be subsequently cured. As it stands, there is no need to list requirements or offer findings of fact if those standards are not actually required.

In conclusion, the North Carolina General Assembly should revise 7B-1001(a)(5)(a) and, in effect, supersede the holding of L.M.T. In its revision, the General Assembly should reinstate a parent’s right to appeal both a permanency planning order and a termination of parental rights order and direct appellate courts to review the orders separately. This revision would reinstate parental rights in the complicated process of

170. See supra Part II.
reunification and termination between parents and children and strengthen the importance of permanency planning orders.

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