

Judging parents:
Courts, child welfare, and criteria for terminating parental rights

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Abstract

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Few legal proceedings in the U.S. have more profound consequences for families than the termination of parental rights. Previously described as family law's "death penalty," termination leads to the complete severance of the parent-child bond. Yet, despite its profound gravity, termination is infrequently addressed in social work scholarship. This dissertation aims to help fill this gap by examining North Carolina judicial opinions, written in 2010, that resolved disputed actions to terminate parental rights.

A total of 100 opinions were examined using content analysis. All of the cases involved child neglect. The study focused on neglect because of ongoing difficulty in clearly defining this common form of child maltreatment. A large majority (n=86) of the cases resulted in the termination of parental rights.

The study yielded a typology of factors appellate courts used to justify their termination decisions. Altogether, 39 factors were identified and organized into 10 different domains: parental conditions, service compliance, home environment, economic conditions, child conditions, bonding, child welfare history, physical abuse, physical presence, and sexual abuse.

These factors are significantly more expansive than the termination criteria listed in the federal Adoption and Safe Families Act as well as North Carolina statutes. Just as important, chi-squared analyses revealed that when courts made their termination decision, they looked to different factors depending upon which parents were involved in the cases (mothers, fathers, or both parents).

Two domains were selected for closer examination using discourse analytics: “service compliance” and “economic conditions.” Here, the goal was to understand the ideology and social values underlying the rulings. The results indicate that the courts placed great weight on parents’ compliance with case plans in justifying their termination decisions. The courts also emphasized parents’ poverty and their surrounding economic circumstances when explaining their decisions in the opinions.

Overall, the study underscores the critically important role the courts play in the child welfare system. The results indicate that the courts help create child welfare policy and that they contribute to setting the broad parameters of social work practice in the field.

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Introduction

This dissertation examines North Carolina appellate decisions, written in 2010, which resolve contested actions to terminate parental rights because of neglect. In-depth examination of these cases is warranted given their momentous consequences for families. In fact, few if any legal proceedings in the U.S. have graver consequences for families than the termination of parental rights (Carrieri, 1991; Hardin, 1985). Previously described as family law's "death penalty," termination leads to the "final and irrevocable severance of the parent-child bond" (Javier, 2007, p. 430; Hewett, 1983). According to the U.S. Supreme Court, an order terminating parental rights denies a parent "physical custody, as well as the rights ever to visit, communicate with, or regain custody of the child" (*Santosky v. Kramer*, 1982, p. 749). Children whose parental rights have been terminated frequently lose intestate inheritance rights to their kin's estates, and extended family members lose any rights they might possess to visit and contact their children. The Supreme Court has described judicial orders terminating parental rights as "working a unique kind of deprivation" (*Santosky v. Kramer*, 1982, p. 759).

Termination proceedings are among the most formal held in family courts and they stand distinct and apart from legal hearings authorizing children's placement in foster care (Hardin, 2005). For example, to initiate a termination proceeding, the state must file a written petition with a court alleging that sufficient statutory grounds exist to pursue the action. Parents involved in the case must be provided a summons notifying them of the proceeding, and once a final decision is reached, it can be appealed to a higher court. Just as important, a termination order requires a higher standard of proof than is needed to establish a foster care

placement (“clear and convincing” evidence in termination proceedings compared to a “preponderance” of evidence in foster care placements) (*Santosky v. Kramer*, 1982).

The law – including that surrounding the termination of parental rights – is not a frequent focus of social work scholarship. This is somewhat surprising given that courts and the judges who preside over them play a critical role in the child welfare system. Judges are ultimately responsible for deciding whether children who have been removed from their homes by child welfare social workers should remain in foster care. They also determine whether social work services provided to children and families meet statutory requirements, and they make final decisions regarding children’s permanent placements (Pecora, Whittaker, Maluccio, & Barth, 2000, p. 473). Perhaps the most critical decision a judge can make, however, is whether to terminate a parent’s rights to their children. Nonetheless, we have only limited knowledge of the factors judges use when making this relatively common decision.¹

This dissertation builds upon my previous research examining state statutory criteria for terminating parental rights (Vesneski, 2011). That work, published in *Family Court Review*, determined that the states have adopted additional legal justifications for terminating parental rights beyond the eight criteria set out in the federal Adoption and Safe Families Act (Public Law 105-89). My research showed that these additional statutory criteria are, at times, ambiguous and lacking in detail. To date, however, there are no research studies documenting the ways that state courts have interpreted these statutes or if these interpretations have led to terminations based on criteria outside ASFA. This dissertation aims to fill this gap.

The study does not focus on all types of termination cases; it examines only those cases

¹ A total of 615,000 children had their parental rights terminated between 2002 and 2009 (U.S. Department of Health and Human Services, 2011).

where child neglect was an allegation. Neglect is prioritized for two reasons. First, it is the predominant form of child maltreatment – as many as 60% of children in the child welfare system have been victims of neglect (U.S. Department of Health and Human Services, 2006). Second, despite its ubiquity, neglect is poorly defined in social work research with scholars struggling to precisely define the term for several decades (McSherry, 2007; Pecora, Whittaker, Maluccio, Barth, & Plotnick, 2000; Wald, 1975).

The dissertation research is important because it fills a significant gap in child welfare scholarship, and because it elucidates how federal child welfare policy is ultimately translated into local judicial decision-making. Moreover, by interrogating how judicial decisions interpret and extend state termination statutes we can better understand the social values and ideologies undergirding the child welfare system. Understanding these decisions also sheds light on the ways that social work practice can be shaped and informed by the courts.

Methodologically, the dissertation employs a case study approach, using as its data North Carolina appellate court decisions written in 2010. (The data and method section details the process through which North Carolina was selected as the focus of the research.) I utilize content analysis to complete the research and examine both manifest as well as latent content in the opinions. Overall, the dissertation was guided by the following research questions:

- 1) What are the key descriptive features of appellate cases involving the termination of parental rights due to child neglect?
- 2) Do North Carolina appellate courts justify termination decisions on criteria that are neither listed in state statutes nor in ASFA?
- 3) What social values and ideologies can be discerned in the appellate courts' termination

decisions?

The study's strategic focus on judicial decisions from one state that involve child neglect, along with its predominant use of qualitative methods, means that its results are not statistically generalizable to larger child welfare populations nor to different state court systems. Standing alongside this limitation are the unique strengths of a case study approach. By offering a detailed, in-depth, local analysis of a nationally ubiquitous, surpassingly high-stakes legal procedure, this research aims to reveal patterns and trends that are relevant to social workers, lawyers, and scholars across the country. Thus, the dissertation's value lies in the knowledge it contributes to our overall understanding of child welfare practice and the ways that federal and state child welfare law is translated into action.

The dissertation comprises seven chapters. The first three contain prefatory material: (1) a background chapter providing context for the study and reviewing pertinent scholarship; (2) a presentation of the theory framing the study; and, (3) a data and method chapter detailing the study's design and analytic strategies. The study's results are presented in the subsequent three chapters. They are: (4) a chapter that describes key factors in North Carolina appellate court decisions resolving termination disputes; (5) a chapter that examines the ways parental compliance with child welfare services is addressed by the courts, and (6) a chapter that analyzes the ways that poverty is embedded in the courts' termination decisions. The dissertation closes with chapter 7, a discussion and conclusion. The bibliography and two appendices follow.

Chapter 1 Background

Terminating parental rights because of child maltreatment is a technical legal procedure anchored in overlapping federal and state child welfare policies, intensive forms of social work and legal practice, as well as political ideologies. This chapter provides a path into understanding these complex issues. It includes three sections: (1) an overview of the federal Adoption and Safe Families Act – the most important federal law dealing with termination; (2) a review of the literature pertaining to key child welfare issues and concerns that are often at stake in termination cases (specifically: child neglect, poverty, substance abuse, mental illness, domestic violence, incarceration, stigma, and parent/child visitation); and, (3) a brief summary reviewing essential points from the chapter.

The Adoption and Safe Families Act (ASFA). To best understand the importance of termination to contemporary child welfare practice, it is useful to briefly review its history and place in federal law. Throughout the 1980s, child welfare services were principally focused on the rehabilitation of parents who had maltreated their children. The importance of this rehabilitative goal in federal law can be readily seen in the *Adoption Assistance and Child Welfare Act (AACWA)* passed by the U.S. Congress in 1980. AACWA was unique in that it was the first federal law requiring child welfare agencies to make “reasonable efforts” to maintain children in their homes before placing them in foster care (Public Law 96-272). And, once children were placed into care, AACWA mandated that child welfare agencies work to reunify families by providing social work services that helped parents resolve their problems. In other words, federal law during the 1980s emphasized the rehabilitation and reunification of families through the provision of casework services (McGowan, 2005; Stein, 2000).

Nearly 20 years after AACWA was enacted, the policy environment had changed noticeably and in 1997 Congress passed the *Adoption and Safe Families Act* (ASFA). The passage of ASFA can be linked to disturbing trends in child welfare statistics in the late 1980s and early 90s. Specifically, between 1980 and 1997 the number of children in foster care ballooned from 300,000 to 537,000 and there was significant growth in the number of children in state care waiting to be adopted (Wulczyn, Chen, & Hislop, 2006; Wulczyn, Barth, Yuan, Harden, & Landsverk, 2006, p. 197). ASFA aimed to reverse this trend by spurring an increase in the rate that foster children were adopted (Huntington, 2006, p. 649). Adoption rates were expected to increase after the passage of ASFA because the law, for the first time, clearly articulated criteria for terminating parental rights. By terminating parental rights children would be legally available for adoption. As an added incentive, ASFA authorized the provision of financial bonuses to states who increased their adoption rates. Today, the *Adoption and Safe Families Act*, and its focus on termination and adoption, continues to provide the general legal framework for social work practice and judicial decision-making in child welfare.

It is helpful to review ASFA's two specific provisions relating to termination. First, the law permits termination when children have been in foster care for 15 of the previous 22 months (the 15/22 month rule). Second, in what has become known as "fast track" termination, ASFA permits the termination of parental rights when children have been victims of egregious abuse. Few people would argue that children should not be permanently removed from their abusive parents in these situations. The criteria for fast-track termination include: murdering another child; committing a felony assault that results in serious bodily injury to a child; abandoning, torturing, sexually abusing, or chronically abusing a child; or previously having

rights to another child terminated (Public Law 105-89). It is important to note that these situations do not automatically lead to termination; instead, they permit the immediate launch of a termination proceeding against the abusive parent.

ASFA sets only the baseline criteria for terminating parental rights. Congress gave the states discretion to add to the list of criteria in the Act, and indeed they have. While ASFA includes eight termination criteria, the median number of criteria identified in state statutes is 14 (Vesneski, 2011). In general, the states have developed statutory frameworks for terminating parental rights that are, on the whole, more extensive than the federal law and also more highly varied. This dissertation research is focused on understanding how one state's courts – North Carolina – have interpreted and acted upon these statutory criteria.

This dissertation is premised on the fact that federal laws, particularly ASFA, set only the broadest parameters of child welfare policy. In reality, child welfare law comprises a large, diverse, and sometimes ambiguous set of both federal laws and state statutes; the latter are interpreted by state courts. These local statutes and court interpretations are only occasionally addressed in research.² Nevertheless, understanding them is essential because courts must apply their state's statutes to each family's unique situation. In the case of termination, courts must determine whether the facts at hand are sufficient to meet the state's criteria for terminating a parent's rights.

ASFA and child safety: Social work and legal scholars agree that ASFA prioritizes children's safety in child welfare decision-making (Adler, 2001; D'Andrade & Berrick, 2006; Lowry, 2004; Sanders, 2003; Stein, 2000). The prominence of this policy goal is underscored by

² When social work scholars focus on child welfare law, they tend to concentrate on federal statutes like ASFA (see, for example: D'Andrade and Berrick, 2006; Lowry, 2004; McGowan & Walsh, 2000; Stein, 2000).

Barth (1999). He writes that in the wake of ASFA “child welfare services are intended to, first and foremost, protect children from physical harm and personal degradation” (Barth, 1999, p. 245). Although safety is emphasized by ASFA, it has always been an essential focus of the child welfare system. The question that has beset scholars and practitioners for nearly a century is how to balance children’s need for safety while rehabilitating their families. AACWA and ASFA offer differing responses to this essential question.

ASFA’s emphasis on child safety is readily apparent from the law’s plain language. Specifically, the Act states that in child welfare proceedings a “...child’s health and safety shall be the paramount concern” (Public Law 105-89, §471[15][A]). Congressional floor speeches made at the time of its passage reinforce this “safety-first” view of the Act. For example, Sen. DeWine (a co-sponsor of ASFA) stated in the Senate in November 1997:

...reasonable efforts to reunify families must be governed by one overriding principle, and that overriding principle is that the health and safety of the child must always, always, always come first. (DeWine, 1997).

DeWine’s comments parallel those of other legislators and some social work scholars. These individuals believed that efforts to reunite children with their birth families under AACWA had usurped the need to keep children safe and in stable placements (Stein, 2000).

Rhetorical images surrounding ASFA. Along with a spike in the number of children in foster care, it is also clear that a powerful political and social context surrounded the passage of ASFA. This context was reflected in heartbreaking media stories in the 1990s about children who were murdered by abusive parents. Among the most notable of these was the December 11, 1995 *Time* Magazine cover story about Elisa Izquierdo, a six-year old New York City girl who was beaten to death by her mother. The cover story described Elisa’s murder as a “shameful

death” and stated that she “had been let down by the system, murdered by her mom” and “symbolize[d] America’s failure to protect its children” (VanBiema & Epperson, 1995, p. 32).

Other contemporaneous media reports focused on children who came to the attention of social workers but who were not placed into foster care and who were subsequently abused or even murdered by their families (Bailie, 1998, p. 2292).³

Richard Gelles (2003), social welfare scholar, proponent of ASFA, and critic of family preservation policy has pithily summarized current political and public opinion surrounding child maltreatment and the child welfare system. In an interview with PBS’ *Frontline* he stated that before ASFA there were:

...a substantial number of children being re-injured or killed by being left in families that were dangerous. That occurred because the law [AACWA] made it very clear that you were supposed to err on the side of reunification.

Similarly, in *Shattered Bonds*, Dorothy Roberts (2002) noted the galvanic effect that media accounts of child abuse and child deaths played in the passage of ASFA. She writes:

Advocates drummed up support for ASFA by pointing to cases where family preservation failed miserably. They recounted tragic stories of children who were killed after caseworkers returned them to blatantly dangerous parents. (Roberts, 2002, p. 107).

Congressional floor speeches in support of ASFA seized on these stories. Representative Todd Tiahrt of Kansas, for example, gave a speech in support of ASFA where he spoke of “Halie” – a young girl who had been tied to an electric heater and severely burnt – as an example of the

³To this day, media stories have sustained a sense of public outrage about and feelings of futility toward the child welfare system. Such stories include detailed press reports following the beating death of Nixmary Brown at the hands of her step-father in New York (Brick, 2006) as well as more recent coverage of two-year-old Addison Grace Lanham’s murder by her mother and her mother’s boyfriend in North Carolina (Allen, 2011).

kind of abuse ASFA would prevent (Tiaht, 1997).⁴ Likewise, Representative Barbara Kenelly explained her support for ASFA on the floor of the House in the following way

Let me say that in the best of all worlds, we all agree that the best place for a child is with his or her parents. But we must also recognize there are times when a child's safety is threatened by living at home. Every one of us in this body can turn to and refer to headlines in their papers, the terrible, heartbreaking case with little Emily in Michigan, other cases across these United States, headlines telling us the very worst can happen. This legislation is not only a reaction to these kinds of situations; this legislation is on the floor today so these situations will not make headlines, that that quiet child locked in that terrible situation will not be forced to stay there or will not be returned to that situation. (Kennelly, 1997).

In order to fully understand the meaning of ASFA and its legal purpose, it is essential to appreciate who the law was aimed at. The rhetorical image at the heart of Congressional floor speeches and media reports surrounding it is one of children whose physical safety, even life, are under constant threat by horribly abusive parents. The high valence nature of children's safety within this context is inarguable. It is, as Nelsen has previously described, "an issue that elicits a single, strong, fairly uniform emotional response and [does] not have an adversarial quality" (Nelsen, 1984, p. 27).

At the same time, it is critical to note which rhetorical images are absent from the media stories and Congressional floor speeches. They are not of families struggling in poverty or parents accused of some indeterminate form of child neglect. With this in mind, it is easy to see why the law's focus on termination made sense. Ever increasing child welfare caseloads,

⁴ Halie's story was recounted by Conna Craig (1995) in an article in *Policy Review* where she wrote the following: "Take the case of Halie (not her real name), a two-year-old girl who one day wouldn't eat her dinner. Her mother and mother's boyfriend tied her to an electric heater. Hours passed, until Halie's face, chest, and arm were disfigured. Her mother then threw her into a cold shower, dressed her, and took her to a hospital-claiming the child had spilled hot water on herself. After weeks of hospitalization, Halie entered foster care. For the next 10 years, her biological mother – coached by the local department of social services – maintained her legal rights to the child."

coupled with media stories of monstrously abusive parents, led to a morally justified and legally straightforward solution: permanently separate abused children from their violent abusers.

This contextual information about ASFA is important to the dissertation because the Act serves as the legal bedrock for all judicial decision-making about child welfare in the United States. In order for the states to receive federal child welfare funds, they must have statutes on their books that align with ASFA. The Act also signaled a key shift in federal policy – previously no federal child welfare statute had included the word “termination” among its provisions. With this context in mind, this study is keenly interested in the ways that local court decisions align with or diverge from the termination criteria listed in ASFA.

Literature review: Key issues and concerns in termination cases

This following section of the dissertation reviews child welfare scholarship pertaining to issues often involved in termination cases: child neglect, poverty, substance abuse, mental illness, domestic violence, incarceration, the stigmatizing effects of child welfare involvement, and parent/child visitation. All of these issues resurface later in the dissertation as part of the study’s findings.

Child neglect. By far, child neglect is the principal reason children become involved with the child welfare system in the U.S. In fact, approximately 60% of children in the system have been victims of neglect (U.S. Department of Health and Human Services, 2006). Despite its ubiquity, child neglect is not identified as a criterion for terminating parental rights in ASFA. It is, however, listed as a basis for termination in 35 states (Vesneski, 2011).

Neglect’s prominence in state termination law reflects the fact that it has served as a reason for parental involvement with the system for decades (Jones, Finkelhor, & Halter, 2006).

Typically, neglect is associated with a caregiver's failure to provide for a child's basic needs such that the failure either harms the child or poses a risk of harm (Depanfilis, 2005). Neglect can take a variety of forms including: failing to provide or secure medical treatment for a child, inadequately supervising a child, ingesting drugs while pregnant or exposing a child to drugs, failing to attend to a child's emotional and cognitive needs, and maintaining poor hygiene or sanitation in the home (Dubowitz & Bennet, 2007). Neglect also appears to be somewhat persistent within families as shown by the fact that it is the most common form of re-abuse (Johnson-Reid, Drake, Chung & Way, 2003). In general, parental mental illness, substance abuse, homelessness, family breakup, and poor medical care can contribute to child neglect (Hildyard & Wolfe, 2002; Pelton, 1994).

Although neglect is the most common form of child maltreatment – and there is a substantial body of research summarizing it – legal and social work scholars have struggled to define the term with precision and specificity (Besharov, 1985; Hand, 1996; McGowan, 1990; McSherry, 2007; Pecora, Whittaker, Maluccio, Barth, & Plotnick, 2000; Swift, 1991; Wald, 1975). In 1974, for example, Kadushin observed that neglect was “broadly defined” and included both “passive and active abuse and exploitation” that affected children’s “social, emotional, educational, and physical needs” (Kadushin, 1974, p. 221). This observation, though made 35 years ago, remains highly salient. In addition, Pecora and colleagues have written that precise definitions of neglect have proven difficult to develop because of disagreements over “the dividing line between responsible or minimal but adequate parental care” (Pecora et al., 2000, p. 196) Clarity about where this dividing line should be drawn is complicated by the possibility that child welfare social workers may make judgments about neglect which are reflective of

their own personal values (Tanner & Turney, 2003). Similarly, there is the potential for neglect to manifest itself differently across families, cultures, and social contexts (McSherry, 2007). In short, neglect remains a vexing issue for the child welfare system.

It has been well established in social work literature that families involved in the child welfare system are, overwhelmingly, very poor. Family poverty is very often implicated in children's placement into foster care, especially because of neglect (Barth, Wildfire, & Green, 2006; Pelton, 1989; Slack, Holl, McDaniel, Yoo, & Bolger 2004). More specifically, scholarship has shown that low family income and the use of welfare are more closely linked to child neglect than to any other form of maltreatment (Jones & McCurdy, 1992; Sedlak & Broadhurst, 1996). Similarly, rates of child neglect are highest in low-income neighborhoods (Coulton, Korbin, & Su, 1999; Drake & Pandey, 1996). Slack and colleagues (2004) have found that particular aspects of poverty – especially parental unemployment and perceptions of material hardship – are associated with a higher risk of child neglect.

Barth and colleagues have also described the extent to which families in the child welfare system experience poverty (Barth, Wildfire, & Green, 2006). Using data from the National Survey of Child and Adolescent Well-Being, they found that about half of the children in out-of-home care, and about a third who receive in-home child welfare services, came from families whose parents had difficulties providing for their basic needs. At the same time, considerably more than half of the families in the study had a history of involvement with TANF/AFDC and about half lived in households with incomes 50% below the poverty level (Barth et al., 2006).

Although family poverty is a key contributor to neglect and child welfare involvement,

the relationship among the phenomena is complex and indirect (Crittenden, 1999; Pelton 1989; Stevenson, 1998). Generally, it is believed that a family's economic circumstances (including a lack of material goods and income) interact with individual parental factors (such as mental health) as well as other contextual issues (like social support) to cause inadequate parenting and, subsequently, neglect (Pecora et al., 2000). Such neglectful parenting is then identified by schools, neighbors and health care providers, thereby bringing the family to the attention of child protective services.

Parental substance abuse. Social work research has consistently shown that substance abuse is a significant issue for parents involved in the child welfare system and that drug and alcohol addiction are linked to child maltreatment, especially for children under five years of age (Fenster, 2005; Maluccio & Ainsworth, 2005; Marcenko, Kemp, & Larson, 2000). Parental substance abuse has also been found to be more prevalent in neglect cases compared to other forms of abuse (Walker, Zangrillo, & Smith, 1994).

Estimates of the number of parents in the child welfare system who abuse substances have varied between 40% and 80% (Libby et al., 2006). For example, in 1998, the U.S. Government Accounting Office found that about two-thirds of all children in foster care in California and Illinois – approximately 85,000 – had at least one parent who abused drugs or alcohol and that most of these parents had done so for at least five years (U.S. Government Accounting Office, 1998). In addition, there appears to be a link between substance abuse, parental age, and child neglect. For example, women involved in the child welfare system and who participate in substance abuse treatment are younger and have more children than women who are not involved with the system (Shillington, Hohman, & Jones, 2002).

Once addicted parents enter the child welfare system they often face difficulty securing access to needed treatment (Green, Rockhill, & Furrer, 2006). This difficulty reflects nationwide trends: only about one-third of all individuals who need substance abuse treatment have access to it (Substance Abuse and Mental Health Services Administration, 1997). Similarly, research has shown that child welfare-involved parents must often wait up to four months to enter a treatment program (Green et al., 2006) – a lengthy period when a petition to terminate a parent’s rights can be filed once a child has spent 15 months in foster care.

Complicating matters further is the fact that attaining sobriety often necessitates multiple rounds of treatment. Previous studies indicate that child welfare-involved parents frequently experience relapse and may need two rounds of treatment, totaling eight months, before they overcome their addiction (Green et al., 2006). In fact, the GAO has found that only 11% of 173 mothers in Illinois with children in foster care had successfully completed treatment by the end of their children’s first year in care (GAO, 1998). Because of the complexities surrounding addiction and child welfare timelines, termination based upon children’s length of time in foster care has been criticized (Moye & Riner, 2002; Ross, 2003; Wulczyn, 2004). Despite these complexities, substance abuse can serve as the basis for termination in 33 states (Vesneski, 2011).

Parental mental illness. There is a large body of research, largely focused on mothers, showing a high incidence of mental illness among parents who are involved with the child welfare system because of neglect (McConnell, Llewellyn, & Ferronato, 2000; Trocmé, et al., 2005). Among the general population, mental illness clearly increases the risk of being investigated for child maltreatment (Westad & McConnell, 2012). For example, using both

Medicaid and child welfare datasets from Philadelphia, Park and colleagues found that mothers with a serious mental illness were almost three times as likely to have involvement with the child welfare system, including having a child placed into foster care (Park, Solomon, & Mandell, 2006).

Typical diagnoses for women involved in the system are major depression, bipolar disorder, schizophrenia, and schizophrenia-related disorders (Mowbray et al., 2000). Scholars have shown that these illnesses can have serious social sequelae. For instance, they are associated with weak or attenuated social networks (Ackerson, 2003), greater risk of homelessness (Lewis, Giovannoni, & Leake, 1997), and increased risk of domestic violence as well as substance abuse (Helfrich, Fujiura, & Rutkowski-Kmitta, 2008). For mothers, mental illness can compound social and environmental stressors in such a way that it dramatically compromises their parenting and leads to referrals to child protection authorities (Göpfert, Webster, & Nelki, 2004; Oyserman, Mowbray, Allen-Meares, & Firminger, 2000; Westad & McConnell, 2012). Notably, poverty is a significant risk factor for mental illness (Bruce, Takeuchi, & Leaf, 1991) and large numbers of individuals with chronic mental illness are poor (Mowbray et al., 2000).

The consequences of mental illness for a parent's child welfare case are significant. As Hollingsworth (2004) writes, a parent's severe mental illness is increasingly being used to justify "fast track" termination of their parental rights. In fact, legislation in 34 states permits the termination of parental rights because of a parent's mental illness (Vesneski, 2011). Those seeking to justify such terminations point to evidence that children in the child welfare system, whose mothers have a mental illness, are at heightened risk for learning disabilities, irregular

school attendance, and negative peer involvement (Westad & McConnell, 2012). These children are also at greater risk of suffering from a mental illness themselves (VanDeMark et al., 2005; Seeman, 2004). Despite these very real risks, most children surmount the challenges posed by a parent's mental illness (Westad & McConnell, 2012).

Domestic violence. Social welfare research has consistently shown that over the course of their lifetimes, as many as one in five women are at risk of becoming victims of domestic violence (Tjaden & Thoennes, 2000). Studies also show that this risk may increase when a woman becomes a parent (Hazen, Connelly, Kelleher, Landsverk, & Barth, 2004). At the same time, studies have found significant linkages between domestic violence and child maltreatment (Edleson, 1999; English, Edleson, & Herrick, 2005; Tajima, 2000). In fact, it is estimated that as many as 40% of the children of battered mothers are themselves also maltreated (Appell & Holden, 1998; Edleson, 1999). Even when not physically abused themselves, children residing in homes where there is domestic violence suffer. For example, children who witness domestic violence may suffer psychological symptoms, including withdrawal, anxiety, aggression, sleep disturbance, and somatic problems (Edleson, 1999; Kernic et al., 2003; Postmus, 2005). Although these research trends are disturbing, some caution must be exercised when interpreting them. Studies drawing links between domestic violence and child maltreatment have often faced sampling and methodological difficulties (Postmus, 2005).

Given the overlap between domestic violence and child maltreatment, it is not surprising that domestic violence is a problem for a significant percentage of families involved with the child welfare system. In fact, it is believed that more than one-third of child welfare

involved families experience domestic violence (Hazen et al., 2004; Edleson, 1999). Although a common problem, domestic violence is not a predominant statutory basis for terminating parental rights – 19 states include it among their termination criteria (Vesneski, 2011).

Determining how best to work with families experiencing both child neglect and domestic violence has been a point of tension between social workers and domestic violence advocates. These two groups of professionals have been viewed as having divergent philosophical and practical approaches to the complex interrelationship between domestic violence and child maltreatment.

In these situations, child welfare workers have typically focused on a mother's ability to protect her children. When a mother remains with a batterer or does not leave the family home after becoming involved with the child welfare system, she is often viewed as "failing to protect" her children (Postmus, 2005). From a somewhat contrasting perspective, domestic violence advocates work to support women through the complex, emotionally intensive, and often time-consuming process of extricating themselves from an abusive relationship. At times, advocates may seek to protect mothers from child welfare agencies whom they perceive as not understanding the needs of domestic violence victims (English, Edleson, & Herrick, 2005; Postmus, 2005; Schechter & Edleson, 1994). These differing perspectives have real consequences for child welfare cases. For example, some battered women have expressed hesitancy in seeking help from the child welfare system (Smith, 2008) and victims of domestic violence have been viewed as not properly caring for and safeguarding their children's safety (Magen, 1999).

There have been important efforts in recent years to improve the legal system's response to victims of domestic violence. This effort has included better aligning the child welfare system's response to domestic violence with the goals of the domestic violence advocacy community. The most visible example of this effort is the *Greenbook* initiative launched by the National Council of Juvenile and Family Court Judges. This initiative has been designed to address the lack of resources and tools needed to meet the needs of families involved in both systems (Schechter & Edleson, 1999).

Incarceration. The United States has the highest incarceration rate in the developed world with more than two million Americans imprisoned (Freudenberg, Daniels, Crum, Perkins, & Richie, 2005). While the vast majority of prisoners are men (and disproportionately African American) there are significant numbers of women behind bars, most of whom are mothers (Bloom, Ownen, & Covington, 2004). In fact, approximately 17% of all criminal offenders are women (Bloom et al., 2004). To a large degree, the life circumstances of both men and women at the time of their arrest and entry into the prison system mirror the circumstances surrounding families involved with the child welfare system. Few have earned a high school diploma and they cite inadequate income, substance abuse, and housing instability as primary problems in their lives (Freudenberg et al., 2005).

Incarceration has varied and negative collateral consequences on individuals as well as their families. Former prisoners report difficulties and barriers to securing employment, reestablishing family roles and commitments, and reintegrating themselves into civic life (Holzer, Raphael, & Stoll, 2004; Pager, 2003; Uggen, Manza, & Behrens, 2004; Visher & Travis, 2003). The families of prisoners suffer economically because of lost income when a relative is

imprisoned. Families may also experience housing instability and they frequently struggle to pay the costs associated with visiting their relatives in prison (Arditti, Lambert-Shute, & Joest, 2003; Christian, 2005; Rose & Clear, 2003). In addition, parents who are imprisoned – as well as their children – suffer the stigmatizing effects of incarceration, including social exclusion and negative mental health consequences (Murray, 2007).

Altogether, there are more than 1.5 million children in the U.S. with parents in prison (Glaze & Maruschak, 2010). For both men and women, imprisonment has a serious effect on their role as parents. For example, research has shown that fathers generally want to maintain their connection with their children while incarcerated and that they expect to live with them after their release (Hagan & Dinovitzer, 1999; Hairston, 1991; Lanier, 1991). However, statistics indicate that when one spouse is imprisoned, couples are more likely to divorce and that the temporary separation imposed by prison may become permanent (Girshick, 1996; Hagan & Dinovitzer, 1997).

Similarly, female inmates face significant barriers to maintaining their relationship with their children. Fewer than 50% of female prisoners report having had a personal visit with their children since becoming incarcerated (Glaze & Maruschak, 2010). This likely results from there being fewer women's prisons and their relative geographic isolation (Arditti & Few, 2006; Coughenour, 1995). There is also research showing that single women who are imprisoned are at increased risk of having their children placed into foster care and having their parental rights terminated (Genty, 1995; Johnston, 1995; Koban 1983). In terms of termination, 28 states explicitly identify incarceration as a statutory criterion for termination (Vesneski, 2011).

Stigma and the child welfare system. Parents involved in the child welfare system suffer significant intrusion into their personal lives with the courts and child welfare workers closely monitoring their behavior. Parents must also contend with being labeled a “bad” parent by powerful governmental systems. Altogether, these experiences are highly stigmatizing and they lead to intense feelings of shame and humiliation (Kemp, Marcenko, Hoagwood, & Vesneski, 2009; Scholte et al., 1999; Wells, 2011). These feelings may be exacerbated for women – the majority of parents involved in the child welfare system – because of a strong desire to identify oneself as a “good mother,” especially if other status-affirming identities (such as that of a high wage earner) are not available (Sykes, 2011).

The negative impact of stigma cannot be underestimated. Mental health research shows that individuals who feel highly stigmatized have anger and lowered self-esteem in response (Wahl, 1999). Such feelings can be a barrier to adherence with medication regimens for mental illnesses, such as major depression (Sirey et al., 2001) and they can prevent individuals from seeking needed mental health care (Corrigan, 2004; Hoagwood et al., 2009). In the child welfare setting, shame and stigma complicate parents’ and caseworkers’ ability to create trusting relationships with one another because they lead mothers to distance themselves from the system (Sykes, 2011). This suspicion and fear of child welfare workers may carry forward into future encounters with the system and complicate the building of trusting relationships (Kerkorian, McKay, & Bannon, 2006).

Parent/child visitation. Parent/child visitation is an integral component of child welfare services. Consequently, the topic must be addressed as part of any thorough examination of termination. Studies dating back to the 1980s indicate that parents’ visitation with their

children in foster care improves child welfare outcomes. These outcomes include both shorter stays in care and greater rates of reunification. For example, Mech (1985) reported a significant association between the rate of parent/child visitation and the mean length of time children spend in foster care – as visitation increases, the length of stay in foster care decreases. Similarly, Milner (1987, p. 116) identified “a high degree of correlation between frequent, positively-oriented visiting and short-term placement[s].” More recent studies have confirmed the positive relationship between regular visitation and shorter stays in foster care (Delfabbro, Barber, & Cooper, 2002; Perkins & Ansay, 1998).

In addition to decreasing children’s length of time in foster care, visitation is also linked to higher rates of family reunification. Specifically, children who regularly visit their parents are up to ten times more likely to be reunified with them (Davis, Landsverk, Newton, & Ganger, 1996). In contrast, children who see their parents only infrequently (one visit per year or fewer) are more likely to be in unsettled and unstable foster care placements (Browne & Moloney, 2002).

Social work research also indicates that visitation is linked to children’s wellbeing (Fanshel & Shinn, 1978; Hess, 2005). Children in care who regularly visit with their parents have stronger attachments to them (McWey & Mullis, 2004; Sanchirico & Jablonk, 2000) and they are less likely to exhibit behavioral problems (Cantos, Gries, & Slis, 1997). And, even when children are not reunified with their parents, visitation has positive effects on their emotional health. For example, Gardner (1998) has found that children who reach majority while in care, and who have had regular visits with their parents, have stronger parental attachments. These

children are also more likely to have loving and close relationships with their parents as young adults in comparison to children with less frequent visitation.

While the benefits of visitation have been consistently borne out in research, there is evidence to suggest that visitation rates vary based upon the race of the family involved (Delfabbro et al., 2002; Fanshel, 1975). Specifically, African American children have fewer visits with their families (Close, 1983; Stehno, 1990). Social work practice appears to contribute to differences in visitation rates based upon race. For example, a child's race has been linked to lower levels of contact between parents and social workers and this level of contact, in turn, is associated with lower rates of visitation (White, Albers, & Bitoni, 1996). Research also indicates that parents of color have mixed feelings about visiting their children when the visits are time-bound, inconveniently scheduled, held in out of the way sites, and structured so as to inhibit parent/child interaction (Roberts, 2002).

Conclusion

The law is not often analyzed in child welfare scholarship, even though courts and judges play a critical role in the child welfare system. The purpose of this dissertation is to help fill this gap, particularly as it relates to the termination of parental rights. Termination decisions are of immeasurable importance to the field because they lead to the "final and irrevocable severance of the parent-child bond" (Javier, 2007, p. 430; Hewett, 1983). This complex legal procedure has also gained significant policy and practice importance since Congress passed the *Adoption and Safe Families Act* (ASFA) in 1997. ASFA identifies eight criteria that can trigger actions to terminate parental rights. These criteria include murdering, torturing, assaulting,

chronically abusing, or sexually abusing a child. ASFA was the first federal statute to explicitly call for the termination of parental rights in child welfare social work.

Although several factors propelled Congress to enact ASFA, it was clearly, in part, the product of a social and political context charged by media accounts of egregious incidents of child abuse. These incidents resulted in the death of a number of small children. The parents involved in these cases stood at the rhetorical heart of both media stories at the time as well as Congressional speeches in support of ASFA. Ultimately, the law was intended to ensure that children in similar situations in the future would be kept safe and permanently separated from their abusive parents. Notably absent from the media stories surrounding ASFA were rounded or sympathetic accounts of impoverished families who had neglected their children. This absence is striking given that almost 60% of the children involved in the child welfare system are there because of neglect. Because child neglect is so prevalent within the system, this study focuses on termination cases involving it.

This chapter of the dissertation presented an overview of the child welfare literature. It began with neglect which – despite several decades of research – remains poorly defined in social work and legal research. Key scholarship concerning several other issues of critical importance to termination was also reviewed: poverty, substance abuse, mental illness, domestic violence, incarceration, stigma, and parent/child visitation. The literature surrounding these issues underscores their complexity and significant consequences for the reunification of families with children in foster care placement.

Taken as a whole, this scholarship makes clear that parents who struggle with substance abuse, mental illness, or domestic violence, must often engage in long-term psychological

change efforts. Simultaneously, they must contend with their material hardship and navigate the demands of other large, bureaucratic systems, such as the criminal justice system. While all of this takes time, parents whose children are in foster care, have very little of it. According to ASFA, parents must demonstrate that they are ready and able to parent within 15 months of the start of their child welfare cases, regardless of the issues and challenges they must confront. This dissertation examines these issues and sheds light on the ways they manifest themselves in judges' termination decisions.

Chapter 2

Theoretical Framework

This dissertation study aims to understand the criteria state courts use to terminate parental rights. In the process, it sheds light on how federal child welfare laws align with, or diverges from, local judicial decision-making. This chapter comprises five sections describing the theoretical influences on the study. They are: (1) law and society theory; (2) ideological currents in child welfare law; (3) appellate courts, policymaking, and ideology; (4) social workers as legal actors; and, (5) risk assessment. A brief summary concludes the chapter.

Law and Society Theory

Contemporary law and society scholarship, and its assertion that the law is an active social force in modern society, provides a major theoretical underpinning for the dissertation. This section provides a brief overview of this theory as well as its historical antecedents.

As a starting point, it is important to recognize that the law has not always been theorized as a dynamic social process. Marx and Durkheim, for example, saw the law as analogous to a code proscribing certain behaviors and, consequently, ordering social relations (Calavita, 2001). Marx focused on law's role in economic relations between the state and individuals, and he illuminated how law and legal institutions are entwined with private property rights (Tucker, 1978, p. 187). Durkheim shared a similar structural view of the law, seeing it as society's repository of social values or "collective conscience" (Garland, 1990, p. 25). When these values were violated, the law served as a vehicle for sanctioning and punishing transgressors. What both of these early theorists shared was a relatively narrow view of the law as an instrument of the state. From this perspective, the law is a set of rules and its power is

rooted in the state's ability, anchored in its political authority, to enforce the readily ascertainable meaning of these rules.

Although more than a century old, these earlier views still have relevance to a theoretical understanding of today's child welfare system, and they offer critical insight into the system's functioning. In assessing current child welfare legislation, Marxist theorists would likely focus on the fact that the system is comprised almost entirely of people living in poverty, so much so that child welfare law has been previously referred to as the "family law of the poor" (TenBroek, 1964). Marxists would also address the fact that the system is not intended to redistribute wealth nor to help poor families involved in it build material assets. In this sense it is similar to other "residual" social welfare interventions – those that provide only essential assistance to a small number of individuals who have not been economically successful (Parton, 1998). Thus, a Marxist critique would maintain that the child welfare system facilitates the perpetuation of capitalism by doing little to address fundamental economic inequality faced by the people it serves.

In a similar vein, Durkheim's notion of a collective conscience has resonance to today's child welfare system. Both the *Adoption and Safe Families Act* as well as state child welfare statutes explicitly identify behaviors that can lead to the termination of parental rights. Embedded within these statutory codes are social values pertaining to the family and the proper care of children. In other words, these codes are the literal manifestation of society's "collective consciences." When the codes and their associated social values are violated through child maltreatment, the statutes serve as a reference point against which parental

behavior can be judged and transgressions punished. In fact, termination is the child welfare system's ultimate punishment for child maltreatment.

A growing body of research and theoretical writing over the last three decades has greatly expanded our understanding of the law beyond the themes articulated by Marx and Durkheim. From this modern perspective, there is far more social process interwoven through child welfare law than either of these earlier theorists might envision. Today, the law and legal institutions are perceived as actively contributing to and constitutive of society. This view of the law has been heavily influenced by Foucault and the discursive turn in the social sciences, and the body of socio-legal scholarship associated with it is grouped under the "law and society" rubric. Calavita summarizes the overall thrust of this scholarship this way:

Collectively, this body of work leaves little doubt that law is a powerful force in the construction of social meaning, identity, and everyday consciousness, as well as in the more material production of social ordering and relations of power to which these ideological props approach. (Calavita, 2001, p. 101).

One chief exponent of a socially embedded view of the law is Alan Hunt (1993). In his writings Hunt extends, rather than replaces, earlier views of law. He agrees that the law is "an extensive collection of rules that is applied by specialized personnel (lawyers) in specialized institutions (courts)" (Hunt, 1993, p. 301). In this way, Hunt's understanding of the law mirrors that of Marx and Durkheim. However, he also asserts that law is a vehicle for transmitting and conveying ideology, or those attitudes or values that "reinforce and legitimize the existing social order" (Hunt, 1993, p. 25). Thus, Hunt and scholars like him have significantly expanded our understanding of law and its relationship to society.

Researchers using ethnographic research methods have explored the law's role as a conveyor and transmitter of ideology. For example, Merry (1985) has shown that working class

litigants in New England employ civil legal proceedings to resolve disputes because they believe the law and legal institutions are fair and guided by notions of equity. Their beliefs are anchored in an ideology about the law, namely that it can serve as a powerful tool for constructing a just society (Merry, 1985).

At the same time, the law can serve as an instrument of oppression and domination. An exemplar of this darker view of the law can be found in the colonization of Hawaii. During the colonial era, transplanted American courts played an essential role in criminalizing, and thus marginalizing, native Hawaiian cultural practices and familial patterns (Merry, 1990). In this way, the law helped transmit an ideology of western racial superiority and American hegemony across the Pacific (Merry, 1990).

Of particular relevance to the child welfare system and this dissertation are studies showing how the law is implicated in maintaining systems of inequality and poverty. For example, through in-depth interviews with individuals seeking welfare assistance, Sarat (1990) has shown that the various statutes and administrative regulations governing welfare eligibility – and the ideologies embedded within them about the deserving and undeserving poor – have become integrated into the consciousness of those seeking help. Put differently, the law is so omnipresent in the lives of the poor that it is like a spider web, enclosing them and influencing their personal and private decisions.

Other writers focus on the law's racialized nature, looking to the criminal justice system and its disproportionate attention to African Americans, in particular, as evidence of the law's inequity. Wacquant (2009, 2000) for instance, contends that criminal law is a highly racialized, active force for social control. From this perspective, the law's coercive power is anchored in its

“mutually reinforcing and deeply interpenetrating” relationship with hegemonic and ideologically-based views of morality (Cotterrell, 1995, p. 193). Similarly, Merry argues that the law has significant power to name and label socially normative behaviors. Thus, it gives rise to a social world through its categories, principles, and assumptions and, in the process, “creates structures of legitimation for relations of power that already exist” (Merry, 1990, p. 264).

While research has shown that the law has considerable power to marginalize and oppress, it can also be liberatory. McCann (1994), for example, has shown how litigation and public legal consciousness have contributed to greater pay equity between men and women. Similarly, Lazarus-Black and Hirsch (1994) have described ways that the law has become a space to resist hegemony, particularly in the developing world. And, as Ewick and Silbey (1998) illustrate, individuals routinely – and at times successfully – resist the law’s oppressive features. Such studies show that the law is complex and protean in its intent and application. Hunt underscores the law’s dual nature when he writes that it is neither a “good thing” nor a “bad thing,” but is, simultaneously, a vehicle for achieving “social domination” as well as “human emancipation” (Hunt, 1993, p. 327).

Ideological Currents in Child Welfare Law

With a general theoretical context for understanding the law’s role as an active social force in place, it is valuable to delve more deeply into the roots of child welfare law and its associated ideologies. U.S. Supreme Court cases are the primary vehicle for doing this. This additional theoretical information helps frame the dissertation study. It also underscores the essential legal tension in child welfare services. On the one hand, the state is empowered to

intervene in the family to protect vulnerable children. On the other, there is a strong ideological belief that the state should have only minimal involvement in its citizens' private affairs.

The state's ability to intervene in families and protect vulnerable children is rooted in its *parens patriae* power. *Parens patriae* is an ancient doctrine stemming from the Aristotlean principle that the state has the responsibility to defend those who cannot defend themselves (Pfohl, 1977). In the Anglo-American legal tradition, the doctrine enabled English Chancery Courts, acting in lieu of the sovereign, to serve as the "general guardian of all infants, idiots, and lunatics" (Harvard Law Review, 1980, p. 1222). Throughout American legal history, the doctrine has enabled the courts to remove children from their parents' custody given a showing of parental unfitness and a finding that the parents were not serving the state's interest in promoting their children's welfare (Harvard Law Review, 1980). The U.S. Supreme Court has explicitly stated that one of the core legal interests at stake in child welfare cases is the state's *parens patriae* power (*Santosky v. Kramer*, 1982).

At the same time, American ideology limits the state's *parens patriae* power. Over the last 40 years the U.S. Supreme Court has consistently held that this power is bounded. In fact, parental rights are among a very narrow group of rights rooted in the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and, as such, they warrant an exceptionally high level of legal protection from state infringement (McCarthy, 1988, p. 977). According to the Supreme Court, parents have a constitutionally protected interest in the "care, custody and management of their child" that does not "evaporate simply because they have not been model parents or have lost temporary custody of their child to the State" (*Santosky v. Kramer*, 1982, p. 753). Parents' interests in their children are also distinguished from those of foster parents

whose rights, regardless of the length of time children may be placed with them, are not equivalent to those of a child's biological family (*Smith v. Organization of Foster Families*, 1977).

In the child welfare context, the U.S. Supreme Court has also made it clear that the state has relatively limited responsibility for ensuring children's safety when the child is not directly in the state's care. This view is readily apparent in *DeShaney v. Winnebago County* (1989). The case involved four-year-old Joshua DeShaney who had been the subject of several child protection referrals and investigations in Winnebago County, Wisconsin. In all of these investigations, the local child protection agency declined to remove Joshua from his abusive father's custody. Ultimately, Joshua's father beat him so severely that he suffered permanent brain damage that resulted in severe retardation and institutionalization. Joshua's mother brought a constitutional due process suit against the county's child protection system for failing to protect him. The U.S. Supreme Court dismissed the case, finding that there was no "state action" and that a "private actor" had harmed Joshua. In other words the state had no duty to protect Joshua because he was not in the state's care.

The DeShaney case exemplifies how much child welfare law is embedded within a powerful ideological belief about personal liberty: namely, individuals lead atomized lives and should be free to do as they see fit with as little state interference as possible (Hunt 1993, p. 120). *DeShaney* taps a deep ideological current in Anglo-American jurisprudence: the exaltation of the "minimal state." According to the minimal state view, the state's primary duty, acting through the law, is to ensure that its citizens are able to manage their commercial interests and contract with one another without interference (Cotterrell, 1995, p. 258). The courts facilitate this goal primarily by protecting individuals' liberty interests and not interfering in their

personal conduct. In other words, the state has little affirmative duty to ensure its citizens' wellbeing or livelihood; instead, it should leave individuals free to pursue their own interests.

Overall, American courts hearing child welfare cases are constantly navigating between two competing ideological currents in the law. On the one hand, the state can intervene into the family and protect maltreated children through its *parens patriae* power. On the other hand, the state is held at bay and is not responsible for children's safety, as shown by *DeShaney*. This ideologically rooted choice – to intervene in the family or not – is at the crux of all child welfare legal proceedings.

Appellate Courts, Policymaking, and Ideology

Because the dissertation examines judicial decision-making, it is essential to understand the way state courts are organized as well as the potential influences on judicial behavior. This section provides content to help develop such an understanding.

State court systems are generally divided into three levels. First, at the lowest level, *trial courts* hear cases for the first time, review evidence, and determine the legally significant facts of a case. When a parent wants to contest a proposed termination, it is typically in trial court. Most states do not use juries in termination trials, thus a judge is responsible for identifying the legal facts of the case and rendering a verdict. Second, *appellate courts* review decisions made by trial courts. Appellate courts are principally focused on determining whether trial courts made the correct legal determinations. They do not hear evidence or conduct trials. In the context of a termination case, appellate courts are responsible for determining whether a trial court's findings are supported by clear, cogent, and convincing evidence and whether these

findings, in turn, support the court's conclusions of law. Third, *supreme courts* are courts of last resort and they review decisions made by appellate judges.

This dissertation focuses on appellate courts because they play a unique role as policy makers (Casper, 1976; Dahl, 1957; McCann, 1994; Shapiro, 1981). Appellate courts make policy by filling in the lacunae of statutes and then promulgating their decisions. Future courts are bound by these decisions. The most obvious example of a court with significant policymaking power is the U.S. Supreme Court. This power rests in that court's ability to determine the constitutionality of a law or statute. State appellate and supreme courts hold similar policymaking importance but within a narrower jurisdictional and geographic frame.

Although courts have the power to shape policy, this ability is not unfettered because all of their decisions must be tied to specific cases with a particular set of litigants and facts (Murphy, 1964). Appellate courts must also defer to a trial court's decision unless it believes that the trial court abused its discretion. Similarly, appellate courts generally cannot substitute their own judgment for a trial court's judgment where there is evidence to support the trial court's ruling.

When circumstances give judges an opening for policymaking, the judges' ideology will often play a role in what they decide. There is a robust body of political science research – much of it focused on the US Supreme Court – which shows how judges' ideology influences their decision-making (Brace, Langer, & Hall, 2000; Segal & Cover, 1989; Segal & Spaeth, 1993; Sisk, Heise, & Morriss, 1998). Research in other disciplines adds further evidence that judges are political actors whose decisions are motivated, at least in part, by their own social values and beliefs about what constitutes a “good policy” (Scott, 2006, see also: deFigueiredo, 2003;

Lax, 2007; Shapiro & Stone Sweet 2002; Sunstein, Schkade, & Ellman, 2004). Pinello (1998) went so far as a meta-study of 140 empirical studies of judicial decision-making. At the most basic level, he concluded that Democratic judges were more liberal in their rulings than their Republican counterparts.⁵

This research suggests that the judges hearing termination cases are, at least in part, influenced by their social values and political ideology. This is significant because, as the literature review in Chapter 1 shows, child welfare and termination cases – especially those involving neglect – are closely interrelated with key social problems. Poverty, domestic violence, incarceration and stigma are all interrelated with child maltreatment and the termination of parental rights.

Social Workers as Legal Actors

When one thinks of legal institutions and its actors, one typically conjures images of judges and lawyers. However, research has shown that legal personnel – clerks and other administrative staff – also wield considerable institutional and ideological power by serving as gate-keepers for the filing of court documents and by providing administrative assistance to litigants (Yngvesson, 1988). Such findings are in keeping with long standing insights about street level bureaucracy.

These research findings are important to the dissertation because they help reframe an understanding of the social workers who work with parents facing termination. Parents in the child welfare system are predominantly poor and they often feel powerless in their dealings

⁵ Research on the impact of judges' ideology in decision-making is not uncontroverted, however, and there are studies finding that ideology plays only a minimal role in judges' determinations (See: Ashenfelter, Eisenberg, & Schwab, 1995).

with social workers. Relatively few have sought help from the system on their own, and by the time they face a termination trial, they have had repeated encounters with social workers and court personnel that have eroded their sense of autonomy and privacy (Kemp, et al., 2009). Few, if any, parents trust their social workers by the time a termination proceeding is on the horizon.

An important contributor to these feelings of distrust is the way parents are expected to participate in casework services. For the most part, parents are required to comply with detailed social service plans, which they had little voice in creating, if they are to be reunited with their children. Parental compliance with these plans is regularly scrutinized by social workers and is an important issue before the court during a termination trial. Thus, social worker assessments of compliance carry a quasi-legal authority. When social workers determine that parents have not complied with a case plan, this determination can become an important issue before the court during a child welfare proceeding (Britner & Mossler, 2002; Littell, 2001; Wallace & Koerner, 2003). Social workers may testify in court about a parent's lack of compliance with the case plan. Through their attorneys, workers can seek court orders that end or modify parents' visitation with their children. In addition, workers routinely write detailed reports that describe parents' behavior which are entered into evidence during child welfare hearings. In these ways, social workers serve as legal agents, monitoring parental compliance with services, and reporting on parents' motivation in addressing their personal challenges to the court (Holland, 2000).

Given the influential legal power of social workers, it is unsurprising that many parents feel trapped by the child welfare system. One feature of casework services – concurrent

planning – likely contributes to this feeling. Before the passage of ASFA, most social work services were delivered to parents in a sequential fashion. First, social workers sought to reunify the family. Then, once hope for reunification had run out, efforts were directed toward other permanent placements, including the termination of parental rights and adoption. This sequential ordering underscored the importance of family reunification as the primary goal of the child welfare system (Cohen, Hornsby, & Priester, 2005). Since the passage of ASFA, however, social workers now work toward reunification and, simultaneously, prepare a contingency plan that generally consists of terminating parental rights (Cohen, et al., 2005; Schene, 2001). Thus social workers serve dual roles: that of parental helper and aid, and that of legal agent charged with planning and gathering evidence for a termination proceeding.

Dumbrill's interviews with parents in the Canadian child welfare system (which has large similarities to the US system) reveal the emotional toll of dealing with this inherently contradictory system. Simply put, parents often feel powerless to stop the legal proceedings against them and they frequently lack the knowledge and skills necessary to navigate their way through the system's complexities (Dumbrill, 2006; Kemp et al., 2009; Sykes, 2011; Wells & Marcenko 2010). And when they believe they can challenge a social worker in court, parents are generally too emotionally exhausted to do so. As Dumbrill writes of his interviews with parents involved in the system:

In contrast to their own fragility, parents perceived [social] workers as being reinforced by an efficient team of lawyers and supervisors who had ample resources to sustain litigation. To overwhelmed parents, child protection services appeared indomitable. (Dumbrill, 2006, p. 31)

Overall, parents in the child welfare system struggle in their relationships with social workers.

Workers wield significant legal power and parents, who are involuntarily compelled to engage

with workers, often feel at the mercy of this power dynamic. This dynamic is the backdrop for all of the termination cases studied in this dissertation.

Risk Assessment

Another feature of the current child welfare system with significant theoretical relevance to termination is the use of risk assessment strategies to guide casework services. A basic grounding in risk assessment is therefore useful for appreciating the dissertation's findings. For the past three decades, families in the system have been "categorized" through the use of actuarial risk assessment forms and tools. This categorization process not only facilitates decisions about whether child protection authorities should investigate a claim of child maltreatment, but it contributes to decision-making on whether a petition to terminate parental rights should be filed with a court. Risk assessment has become so commonplace in child welfare services that it is now considered a core function of social work in both the U.S. and Britain (English & Pecora, 1994; Parton, 1999).

From the perspective of child welfare managers, there are good reasons for the use of risk assessment. Among the most compelling is the sheer increase in social worker caseloads over the last three decades. In 1980, the number of child maltreatment reports per year was 1.1 million, or 18 reports per 1,000 children (Waldfoegel, 1998, p. 6). By 2006, this number had tripled to 3.3 million reports or 43.7 referrals per 1,000 children (Administration for Children and Families, 2006). Not surprisingly, the need to better manage the burgeoning numbers of referrals has become a top priority for system administrators.

Despite the need for systems to help manage the increased caseload, risk assessment strategies have been critiqued almost from the outset of their use. These criticisms fault the

mechanistic ways in which they are deployed and their potential to be over inclusive of families who are actually not at high risk of child maltreatment. Wald and Woolverton (1990), for example, have argued that risk assessment tools in the U.S. could result in the mandated, albeit unnecessary, removal of children from their homes. They also contend that child welfare agencies adopt mechanistic risk assessment strategies to deliver services rather than entail the expense of addressing fundamental, systemic problems, such as an inexperienced and understaffed workforce (Wald & Woolverton, 1990, p. 484).

These criticisms have continued in more recent years. In a review of 280 child welfare cases in Great Britain (another system with close U.S. analogs), White, Hall and Peckover (2009) found that a common assessment form had not standardized casework across agencies, as originally intended. Instead, it resulted in “practitioners making moral and strategic decisions about what information to write and how to present it” on the form (White, Hall, & Peckover, 2009, p. 1212). To all of these concerns one can add yet another – the knowledge base underlying risk assessment tools is largely unproven (Parton, 1997, 1998). Nevertheless, risk assessment is a core component of the child welfare system. All of the cases studied for the dissertation were handled by a child welfare agency incorporating risk assessment strategies (N.C. Division of Social Services, 2010).

Conclusion

There is a rich body of sociology and political science scholarship exists the theoretical underpinnings of the law and its role in society. This scholarship serves as the intellectual grounding for the dissertation. This literature has a clear historical trajectory, beginning with approaches that were predominant in the 19th and early 20th century. These views – especially

as articulated by Marx and Durkheim – emphasized the fact that the law often exists as a set of codes or list of proscriptions that help order social relations.

Although more than a century old, both theorists' views are relevant to a current understanding of the child welfare system. Marx's work, for example, informs scholars' belief that the child welfare system is a "residual system" that serves as the "family law of the poor." At the same time, Durkheim's theories suggest that child welfare law serves as society's "collective conscience" against which parental behavior can be judged and child maltreatment punished. Even today, there exists a significant body of statutory child welfare law and state administrative codes that aim to delimit, specify, and direct the work of child abuse investigators, social workers, and foster care providers.

While these earlier theories of the law are relevant to the child welfare field, they do not fully explain how the law influences and shapes child welfare practice and outcomes for children. Greater insights into the workings of the law, as well as their consequences for social work, can be ascertained by applying theories associated with the law and society movement. This movement has extended and supplemented earlier approaches to the law.

Law and society writings, especially that of Alan Hunt, assert that the law is an active social process. This is an important distinction from the work of Marx and Durkheim and it serves as an important theoretical foundation for the dissertation. Hunt contends that the law is rooted in ideology and that it both reinforces and legitimizes the existing social order (Hunt, 1993, p. 25). Evidence of the law's ideological roots within child welfare can be readily found in the tension between the state's protective *parens patriae* power and a competing priority, namely that the state should play a minimal role in the private affairs of its citizens. This tension

is visibly manifest in the U.S. Supreme Court's decision in *DeShaney v. Winnebago County*. In this case, the court ruled that Winnebago County, Wisconsin had no duty to protect an abused child who had not been brought under the protection of the county's child welfare system. Today, child welfare systems throughout the United States are required to navigate the ideological tension at the heart of the *DeShaney* case: they must protect children and help ensure that they grow up safely while also respecting family integrity, parents' legal rights, and the American political disinclination to interfere with family privacy.

The child welfare system involves a variety of socio-legal actors, particularly, courts, judges, and child welfare workers. Thus, theoretical literature pertaining to these groups is also highly relevant to the dissertation. For example, empirical political science research has shown that judicial decision-making is anchored both in judges' objective understanding of the law as well their ideological values. At the same time, child welfare literature sheds light on the ways that social workers act as legal agents. These writings indicate that social workers have an important legal role – they monitor parents' compliance with services, they gather evidence for potential use in a termination trial (while simultaneously working to reunify parents with their children), and they report on their findings to the courts. As a result, parents involved in the child welfare system may feel trapped by the system and be suspicious of the social workers who are charged to assist them.

Finally, risk assessment – and its ascendance as a framework for child welfare social work practice – is essential to the dissertation. Literature surrounding risk assessment suggests that families who are actually at low risk of child maltreatment may, nevertheless, become involved in the system. This scholarship also indicates that risk assessment contributes to

mechanistic decision-making in the child welfare system, despite a relatively weak knowledge base to support its wide scale adoption. The dissertation explores whether the concern for ascertaining and mitigating a child's risk of maltreatment has been infused into judicial decision-making.

Overall, this dissertation is anchored in a relatively large body of theoretical scholarship. Of paramount importance, however, is a theoretical view anchored in the law and society movement. This scholarship suggests that courts and the judges who preside over them are actively shaping and influencing society. In fact, the courts hearing termination disputes are not only making decisions relevant to individual families, but that they are also setting precedent and making policy that will have an impact on future families involved in the child welfare system. This theoretical understanding has significant implications for the child welfare field. In particular, it suggests that the courts do not simply act as referees or supporting players in child welfare cases; instead, it implies that the courts are critical and active players in the system and that they make an important contribution to child welfare outcomes.

Chapter 3 Data and Method

The data for this study are appellate court opinions written to resolve termination disputes involving child neglect in North Carolina in 2010. This *Data and Method* chapter includes five sections describing the collection and analysis of these opinions. First, there is a brief explanation of why appellate opinions are a sound form of data for empirical study. Second, the study's human subjects implications are summarized. Third, I explain how North Carolina was selected as the focus of the research and how the sample of opinions was developed. Fourth, an overview of content analysis is provided – this is the research method used to complete the research. Fifth, data collection and the specific analytic strategies used to analyze the data are explained. Sixth, a discussion of the study's focus and its limitations is presented. A brief summary closes the chapter.

Appellate Opinions as Data

As the previous chapter made clear, termination cases, like other child welfare legal proceedings, are handled by state courts. Most states have three levels of courts: trial, appellate, and supreme. At the trial level, witnesses are heard and evidence is submitted to the judge or a jury. In the context of child welfare, trial courts are often referred to as juvenile courts; juries are generally not used in juvenile courts.

Juvenile court judges have specialized knowledge of the rules and procedures pertaining to child welfare law because they tend to hear these cases on a regular basis. These judges are responsible for making decisions about the emergency removal of children, determining whether children have been abused or neglected, deciding if they should be placed into foster care (and the conditions under which such placement should occur), and holding review

hearings to determine progress in either reunifying the children with their parents or establishing an alternative, permanent placement (Hardin, 2005). In addition, juvenile court judges are responsible for determining whether a parent's rights should be terminated.

Termination decisions, like other judgments rendered at the trial court level, may be appealed to the second (appellate) and third (supreme) levels of courts. Panels of judges preside over these higher courts. Appellate courts do not hear witnesses, nor do they receive evidence and, consequently, they are more removed from the specific facts and details of a termination case than are trial courts. In general, though not always, appellate courts defer to a trial court's determination of facts. And unlike their trial court counterparts, appellate court judges tend not to be specialists in any one particular field of law.

Decisions made by appellate court judges are systematically organized and made publicly available. Most opinions can be accessed through online search tools, such as Google. In contrast, trial court decisions are not easily accessed and can only be retrieved through court offices; they are not searchable online. Given the private and confidential nature of child welfare cases, decisions made by juvenile court judges cannot be accessed by the general public either through court offices or online.

Appellate court opinions articulate the law and serve as guides to future judges as they rule on a case. In the Anglo-American system, judges and lawyers look to past decisions of higher courts (also known as judicial precedent) for guidance and insight when deciding new cases. Thus, appellate opinions are predictive of how courts will rule on similar cases in the future. In short, appellate decisions "shape and constrain" what a court can do in the present (White, 1995). Gibbons summarizes this dynamic in the following way:

...if the judgment has any significance in terms of extending or restricting a rule of law, or establishing a rule of statutory interpretation, then it is reported and becomes part of the huge volume of precedents that constitute case law...it is then a source of law and potentially an originating point for a new trial process with a new set of parties. (Gibbons, 1999, p. 15).

Because they are publicly available, articulate the law, and may serve as precedent, appellate court opinions written to resolve termination proceedings served as the data for this study.

As a source of information about termination and the operation of the child welfare system, appellate opinions are also highly valuable. They provide direct insight into the trial court's understanding of a case and they clearly articulate the legal and factual rationale justifying a decision to terminate parents' rights to their children. Appendix A includes a sample opinion written by the North Carolina Court of Appeals from March 2010. The opinion provides specific background about the mother in the case, the circumstances surrounding the child's placement into foster care, visitation patterns, the mother's substance abuse history, the child welfare services that were provided, excerpts from testimony at the termination trial, and the ultimate legal outcome. This content serves as a rich resource for empirical study.

Anonymity and Human Subjects

In making termination cases publicly available, appellate courts take steps to protect the confidentiality of the parties involved. Courts do this primarily through the use of anonymous identifiers for parents and children. Thus, a case title may be "In re Matter of J.W." Even this approach, however, is not guaranteed to ensure anonymity. Since people's initials are provided and the facts of the case are described in the opinion, it is possible to trace a decision to the actual individuals involved in the case. Therefore, to further protect the identity of these individuals, all opinions used in this dissertation have been given a number code. This code is

used when citing a case. Full legal citations corresponding to the codes in the dissertation are available upon request.

The Human Subjects Division at the University of Washington conducted a review of the proposed dissertation research in May 2011. The Minimal Risk Review Administrator at the Division found that the study did not meet the definition of “human subject” under federal guidelines 45 CFR 46.102(f). The Administrator determined that while some of the information obtained from the appellate opinions may be identifiable, “all of the data, including identifiable data is being collected from publicly available resources (therefore not private)” (Human Subjects Division, 2011). As a result, I did “not need to obtain IRB approval for this project” (Human Subjects Division, 2011).

Selection of North Carolina and Sample Development

The sample of opinions used in this dissertation was developed in four stages:

Step 1: Initial search. A search for termination opinions in each of the 50 states and the District of Columbia was completed using the LEXIS/NEXIS Academic database. The following search terms were utilized: [term!], [parent!], [right!] and [neglect]. Neglect was included because it is the most common form of child maltreatment, yet is poorly defined in social work scholarship. LEXIS/NEXIS returns only those court opinions in which all of the search terms appear at least once. Dates for the search were also entered into LEXIS so that only opinions written between and including January 1, 2010 and December 31, 2010 would be returned.

A preliminary review of the opinions returned by the LEXIS/NEXIS search was completed to ensure that they actually involved the termination of parental rights in a child welfare context. Therefore, those opinions that did not involve child welfare cases were deleted from

the sample. For instance, decisions involving criminal charges, divorce proceedings, or child custody cases were deleted. In addition, cases that involved child welfare proceedings but that did not address the merits of the termination claims were also removed. Examples of such cases include ineffective assistance of counsel claims or highly technical legal issues (including whether notice of the termination trial was properly provided to the parents). The first step of the sample development process led to the identification of 1044 appellate opinions from all 50 states and the District of Columbia. Table 1 lists the number of opinions for each state.

Table 1. Number of Opinions Returned by LEXIS/NEXIS Search

State	Opinions	Percent
California	143	13.7
North Carolina	103	9.9
Indiana	100	9.6
Michigan	95	9.1
New York	82	7.9
New Jersey	64	6.1
Arkansas	56	5.4
Texas	52	5.0
Ohio	50	4.8
Iowa	44	4.2
Tennessee	34	3.3
Massachusetts	20	1.9
Idaho	19	1.8
Virginia	16	1.5
Connecticut	10	1.0
Kentucky	10	1.0
Missouri	9	0.9
Montana	9	0.9
Illinois	8	0.8
Louisiana	8	0.8
Nebraska	8	0.8
South Carolina	8	0.8
Florida	7	0.7
Alabama	6	0.6
Georgia	6	0.6

Table 1. Number of Opinions Returned by LEXIS/NEXIS Search (continued)

State	Opinions	Percent
Minnesota	6	0.6
Utah	6	0.6
Wisconsin	6	0.6
Alaska	5	0.5
Colorado	5	0.5
DC	5	0.5
Hawaii	5	0.5
Vermont	5	0.5
Arizona	4	0.4
Kansas	4	0.4
Oklahoma	4	0.4
Washington	4	0.4
Pennsylvania	3	0.3
Rhode Island	3	0.3
West Virginia	3	0.3
Delaware	2	0.2
Maryland	2	0.2
Mississippi	2	0.2
Maine	1	0.1
Oregon	1	0.1
Wyoming	1	0.1
Nevada	0	0
New Hampshire	0	0
New Mexico	0	0
North Dakota	0	0
South Dakota	0	0
Total	1044	100

Step 2: Neglect criteria. Because it is poorly defined in social work scholarship, I was particularly interested in focusing the dissertation on child neglect. Consequently, I removed those states from the sample that do not explicitly identify neglect in their statutes as a criterion for terminating parental rights. The absence of neglect from a state's statutory scheme does not mean that parents' rights are not terminated because of neglect in that state. But it does mean that the state legislature made an intentional policy decision not to explicitly list it in the state's statute. Each legislature likely has different political, policy and historical reasons for

doing this. Determining these reasons is beyond the scope of this dissertation. Altogether, 16 states were eliminated because neglect is not explicitly included.⁶

Step 3: Missing data. An important goal of the study was to identify trends and patterns in case law and, ultimately, to develop a typology of factors that state courts look to when making termination decisions. Opinions from a number of states in the sample did not provide requisite data to meet these goals. In some instances, there were only a very limited number of opinions from any one state (less than 10), thus making it difficult to detect significant trends or patterns in the law. In other states, the opinions were exceptionally brief and provided only minimal data for analysis (such as New York). In both instances, these states were assessed as missing significant amounts of data for analysis and were removed from the sample. Altogether, 26 states were eliminated because of a lack of data.⁷

Step 4: Final selection. Nine states remained in the sample after steps two and three. They were: Arkansas, Idaho, Iowa, Kentucky, Massachusetts, New Jersey, North Carolina, Ohio, and Tennessee. North Carolina was selected for the study because of four reasons. First, it had the greatest number of opinions among the final group of states. Thus, as a matter of practicality, there was little missing data. This alone made North Carolina uniquely qualified as the state to focus on during the dissertation because it facilitated the detection of trends and themes in the opinions. Second, compared to other states in the sample, there are several features of North Carolina's child welfare system that make it an interesting state in which to examine termination. For example, according to 2009 data, it has a relatively large number of

⁶ The following states were eliminated from the sample because their statutes do not identify neglect as a basis for termination: AL, CA, CT, DC, HI, IN, ME, MI, ND, RI, TX, VA, VT, WA, WI, and WV.

⁷ The following states were eliminated because they did not provide sufficient qualitative data for analysis: AK, AZ, CO, DE, FL, GA, IL, KS, LA, MD, MN, MO, MS, MT, NE, NV, NH, NM, NY, OK, OR, PA, SC, SD, UT, and WY.

children in foster care among states remaining in the sample (Table 2). Third, among the states in the sample, it has a large percentage of children in care who have had their parental rights terminated (Table 3). Fourth, the state's appellate court system appears to take an active interest in termination cases. More than 6% of terminations in 2010 were reviewed by one of the state's appellate courts (Table 4). Taken together, these four features suggest that North Carolina is more active than other states in both terminating parents' rights and then reviewing termination decisions at higher court levels.

Table 2. Number of Children in Care and National Rank for Remaining States in Sample

State	Opinions	2009 Number in Care*	National Rank
Ohio	50	14,521	8
Massachusetts	20	9,726	12
North Carolina	103	9,645	13
New Jersey	64	7,851	19
Kentucky	10	7,119	21
Iowa	44	6,809	24
Tennessee	34	6,691	25
Arkansas	56	3,697	35
Idaho	19	1,451	46

*On 9/30/2009 per US Administration for Children and Families, <http://cwoutcomes.acf.hhs.gov/data/overview>

Table 3. Percent of Children with Terminated Rights Among States in Sample

State	2010 Number in Care*	2010 Terminations*	Percent Terminated
Idaho	1,462	313	21.4%
North Carolina	8,828	1,614	18.3%
New Jersey	7,172	1,261	17.6%
Arkansas	3,770	595	15.8%
Tennessee	6,786	856	12.6%
Iowa	6,533	790	12.1%
Kentucky	6,983	754	10.8%
Ohio	11,949	1,357	11.4%
Massachusetts	8,958	718	8.0%

*June 2011 estimates, http://www.acf.hhs.gov/programs/cb/stats_research/afcars/statistics/data10.htm

Table 4. Rates of Appellate Review for Remaining States in Sample

State	Opinions	Terminations*	Rate of Review
Arkansas	56	595	9.41%
Idaho	19	313	6.07%
North Carolina	103	1,615	6.03%
Iowa	44	801	5.49%
New Jersey	64	1,289	4.97%
Tennessee	34	857	3.96%
Ohio	50	1,359	3.68%
Massachusetts	20	726	2.75%
Kentucky	10	754	1.33%

*Fiscal year 2010, http://www.acf.hhs.gov/programs/cb/stats_research/afcars/adoptchild10.pdf

Overview of Content Analysis

Content analysis was used to analyze the 100 cases in the North Carolina sample. Scholars have offered varying and sometimes conflicting definitions of the method (Hsieh & Shannon, 2005), but they generally agree that it centers on analyzing and making valid inferences about texts within the contexts of their use (Krippendorff, 2004, p. 18).

For purposes of this dissertation, “text” and “data” are used interchangeably. It is important to note that text need not be written material in order to succeed as data for analysis. Text can include a variety of “other meaningful matter” such as art, images, maps and signs (Krippendorff, 2004, p. 19). Thus, the use of judicial opinions falls squarely within the broad meaning of “text” usually associated with content analysis.

Content analysis arose from within the discipline of communications and research using it has been published since the 1950s (Berelson, 1952). The analytic process associated with it ranges from “impressionistic, intuitive, interpretive analyses to systematic, strict textual analyses” (Hsieh & Shannon, 2005, p. 1277). The method is also flexible; content analysis has been used to quantify textual data and subject them to statistical analysis as well as to qualitatively describe and interpret them. Regardless of whether texts are subject to

quantitative or qualitative analysis, there is general agreement among methodologists that content analysis is used to identify patterns in text, categorize it, and aggregate it into “discernable constructs” (Gray & Densten, 1998, p. 428). Of particular relevance to this dissertation is the fact that content analysis is well suited to the study of legal texts because it resembles legal reasoning. Specific parallels include the systematic reading of texts, identifying and coding their consistent features, and drawing inferences about their use and implication (Hall & Wright, 2008; Lens, 2008).

Researchers employing content analysis have consistently drawn distinctions between *manifest* and *latent* content in their work (Neuendorf, 2002; Gray & Densten 1998; Hsieh & Shannon, 2005; Potter & Levine-Donnerstein, 1999). Scholars disagree on whether a clear divide actually exists between these two types of content and it seems best to think of text as existing on a continuum between the two, rather than being classified as either one or the other (Neuendorf, 2011). This dissertation pays equal attention to manifest and latent content. Throughout the study “content analysis” is used as an umbrella term that refers to analytic strategies involving both type of content. In the next two sections, I define each type of content and review studies focused on them.

Manifest content. Manifest content refers to the surface meaning of text, including those visible and obvious components that can be counted (Neuendorf, 2002, p. 23; Gray & Densten, 1998). An example of manifest content includes counting particular words or content that can be readily detected and which are discreet in nature (Hsieh & Shannon, 2005; Potter & Levine-Donnerstein, 1999). Analyses of manifest content often lead to development of a typology or dictionary.

Much legal scholarship – typically published in law reviews – focuses on analyzing manifest content. These studies likely focus on manifest content because the breadth and complexity of legal doctrine often requires that scholars help bring it coherence and structure. As the following examples of research illustrate, the manifest content of legal materials has been studied across a variety of disciplines.

One very clear example of research examining manifest content is that by Juliano and Schwab (2001). The authors devised a coding sheet that they used to collect and organize manifest content from more than 600 federal court opinions written to resolve sexual harassment claims between 1986 and 1995. This content was then reduced down to 100 variables that were analyzed using statistical methods. Study results yielded important insights about the litigants, success rates, and issues at stake in sexual harassment cases.

Vicki Lens (2003) also studied the manifest content of legal claims involving discrimination against women. In contrast to Juliano and Schwab, however, her work is primarily qualitative. Lens examined 21 key U.S. Supreme Court cases written to resolve gender discrimination claims related to employment. Although her analysis identified 23 employment practices that gave rise to the discrimination claims, she found that only 16 of them were actually determined by the courts to be discriminatory. Lens' work is notable because it synthesized a complex body of law and systematically distinguished discriminatory practices from non-discriminatory ones.

Although legal research on child welfare issues is limited, where it does exist, it primarily addresses the manifest content of the law. For instance, Lenore McWey from Florida State University has been involved in at least three recent studies analyzing appellate court opinions

resolving termination of parental rights cases in Georgia, Louisiana and Virginia (McWey, Henderson, & Alexander, 2008; Meyer, McWey, McKendrick, & Henderson, 2010; Olmstead, McWey, & Henderson, 2011). These studies describe the barriers that impede men from responsible fathering, illuminate the influence of federal statutory law on state court decisions, and detail the problems and challenges faced by families who were involved in termination proceedings. All of the studies involve a mix of qualitative and quantitative analytic techniques.

Another example of child welfare legal research concentrating on manifest content is a study by Kathleen Bean (2004). Bean studied state court opinions that interpreted the meaning of the “reasonable efforts” standard in child welfare proceedings. This standard is used to judge the type and intensity of casework services provided to families. Bean examined leading judicial opinions pertaining to the standard, she explained how courts from different states either diverged from or aligned with one another in their definitions of the standard, and she described continuing gaps in the interpretation of the standard’s meaning.

With these examples in mind, this dissertation, in part, focuses on the manifest content of legal opinions. It aims to identify the factors courts explicitly reference when making decisions to terminate parental rights and then it organizes these factors into a typology. In general, the dissertation employs the same analytic techniques previous researchers have used to shed light on the surface meaning of the law as well as to identify key patterns and trends within it.

Latent content. Latent content refers to the deeper, less visible ideologies and social values that give text meaning. Such content is often only tacitly communicated, though deeply embedded, within a text (Graneheim & Lundman, 2003; Yanow, 1993). In general, latent

content must be detected through textual proxies and oblique indicators of meaning (Neuendorf, 2002, p. 23). In this way, it resembles latent variables in statistical analysis, which cannot be assessed directly but, instead, must be assessed indirectly through concretely measured variables (Tabachnick & Fidell, 2007, p. 676).

When working with latent content, researchers must interpret and judge textual data (Potter & Levine-Donnerstein, 1999). Overall, the goal of the analytic process is to identify the “underlying meaning of communications” without relying upon the frequency with which particular words might occur (Rubin & Babbie, 2005, p. 475). For this reason, analyzing latent content mirrors discourse analysis. Discourse analysis assumes that a text can mean more than one thing at a time, that these different meanings are dependent upon the context in which a text is understood, and that ideology undergirds these meanings (VanDijk, 1997). Like discourse analysis, interpreting latent content requires intense, almost hermeneutic, examination of text (Hsieh & Shannon, 2005).

Studies addressing latent content in legal texts are less common than those addressing manifest context. Oftentimes, these studies are not explicitly described as employing content analysis. I look to three studies, in particular, as exemplars of research that addresses latent content in child welfare law. Their analytic approach provides a general guide for the dissertation.

First is Marlee Kline’s (1995) examination of leading Canadian court decisions written to resolve child welfare disputes. All of the opinions in Kline’s sample involved First Nation women (1995). Her goal was to understand how the dominant ideology of motherhood and socially constructed messages about “good” and “bad” mothers weaves their way through court

decisions affecting this marginalized group. Her research is particularly attuned to issues of oppression, power, and racism in the child welfare system and the ways they are communicated, *sub rosa*, within text.

Second, although not as concerned with surfacing ideological assumptions as Kline, Eamon and Kopel's (2004) study of child welfare court cases has a similar lens. Here, the authors focused their work on court challenges to child welfare policies that allowed children to be placed into foster care because of poverty. They found that some American child welfare agencies remove children from their homes and fail to reunify them with their families, in part, because of the parents' material hardship. Eamon and Kopel's work, as well as Kline's, underscores the fact that child welfare intervention in the family is tightly imbricated with societal views toward women and the poor.

Third, Pruitt and Wallace (2011) recently analyzed termination cases involving impoverished, rural families. By looking beyond the manifest meaning of the court decisions in these cases, they showed that geography and spatial obstacles prevent poor parents from meeting their children's needs and ensuring their family's reunification. Their research shows that poor, rural parents are often in a bind – unable to avail themselves of needed services and being labeled a failure for not completing these services.

Alongside these three studies is a general body of work generated over the last several decades by law and society scholars. This body of research also helps frame the analysis of latent content in the dissertation. Law and society scholars have previously described how written language roots the law in ideology. More specifically, judges do not simply decide disputes between individuals, but instead, they use “the power of the written word” to sort out

clashes in social values (Leval, 1996, p. 208, 210) and, in the process, maintain current power relations (Shapiro, 1981).

Martha Fineman's scholarship exemplifies this view of the law and her methodological approach informs the dissertation's concern with latent content (Fineman, 2004, 1993, 1991). Fineman, a feminist legal scholar, has argued that the law abounds with "rhetorical images" of mothers that are anchored in patriarchal ideology. Using an analytic framework that mirrors discourse analysis, she has identified examples of patriarchal images in the law. For example, she argues that the Family Support Act of 1988, the Uniform Marriage and Divorce Act, and several important U.S. Supreme Court decisions valorize mothers who are economically self-sufficient and who reside within idealized, male-headed families.

Data Collection and Analysis

Data for the study were gathered and analyzed in three stages:

Stage 1: Development of coding sheet. A coding sheet was developed to guide the initial collection of data from the case opinions. Development of the coding sheet was informed by (1) statutory case law and (2) previous child welfare scholarship.

First, North Carolina statutes pertaining to child neglect and the termination of parental rights provided a framework for the coding sheet. There are four statutes directly addressing termination cases in the state. These statutes flag and define key factors the courts should consider when making a termination decision. The factors were explicitly incorporated into the coding sheet. The statutes are:

1. N.C. Gen. Stat. §7B-101 which defines key terms in relation to child welfare services, including the definition of "abused juveniles" and "neglected juvenile."

2. N.C. Gen. Stat. §7B-507 indicates when reasonable efforts are no longer needed in child welfare cases.
3. N.C. Gen. Stat. §7B-1110 identifies several factors that courts are to consider when deciding whether to issue a termination order.
4. N.C. Gen. Stat. §7B-1111 sets out the grounds for terminating parental rights.

Second, the coding sheet mirrors one used by Chambers and Potter (2008, 2009) to complete an analysis of public child welfare files. The authors' coding sheet was designed with Bronfenbrenner's (1979) ecological model in mind. The Chambers and Potter coding sheet was organized around the following domains, all of which are incorporated into the coding sheet:

1. Family, parent and child characteristics: includes the number and identity of parents and caregivers involved in the case, the number of children and their ages, the educational level of children, as well as level of parent/child visitation.
2. Maltreatment characteristics: includes the type of neglect and any other maltreatment experienced by the children, the numbers of previous child welfare reports, and prior foster care placements.
3. Family, parent, and child needs: includes parental substance abuse, presence of domestic violence, mental health and medical issues.
4. Family economic needs: includes parental employment, transportation, and housing needs and any services provided to address these needs.
5. Outcomes: the court's termination decision as well as children's length of stay in care.

Overall, the primary purpose of the coding sheet was to guide collection of descriptive data about the cases and to identify the key factors that courts considered when rendering their decisions. (A copy of the coding sheet can be found in Appendix B).

Stage 2: Coding and analysis of manifest content. Microsoft Word, Excel and AntConc software were used to complete the analysis of manifest content. This analysis proceeded in three phases.

First, using the coding sheet, the opinions were searched for pre-determined key words and phrases found to be associated with neglect. Examples of these terms are: mental illness, substance abuse, and abandonment. At the same time that the opinions were searched for these terms, new words and phrases emerged that pertained to neglect. These emergent terms were recorded onto the coding sheet as they appeared and the opinions were subsequently searched for them.

Overall, the first phase of the analysis can be characterized by an iterative process of coding pre-determined key terms, identifying and recording new terms, and returning to the opinions to confirm, refute, modify and condense the catalog of terms until no additional ones were identified (Graneheim & Lundman, 2003; Lens, 2008). The frequency with which the key words and phrases appeared in the opinions is presented in tables in the dissertation. This approach to content analysis is best described as a *topical survey* because it involves the reduction of qualitative data to inventories or counts of key topics or ideas (Sandelowski & Barroso, 2003). Coding manifest content of this nature has also been equated with “clerical recording” where the occurrence of a particular fact or attribute is noted on a coding sheet each time it occurs (Potter & Levine-Donnerstein, 1999). Coding manifest content is relatively

straightforward, mechanistic, and places little interpretive burden on the researcher (Rourke, Anderson, Garrison & Archer, 2000).

Second, all of the key words and phrases that were coded were counted and grouped into domains. This grouping strategy led to the development of a typology of termination factors that is rooted in the factual circumstances of the cases. In this respect, the content analysis resembles a *thematic survey* (Sandelowski & Barroso, 2003). Such surveys describe themes that appear repeatedly in qualitative data and they help to discern patterns associated with the repetition. Throughout the first and second phases of the analysis, the focus was on pinpointing the factors courts looked to when making their termination decisions.

Third, the manifest content easily lent itself to quantitative analysis. Chi-squared analyses were completed to determine whether the courts considered different factors when making their decisions among three groups of cases. These groups were: (1) cases involving only mothers; (2) cases involving only fathers; and, (3) cases involving both parents. A rationale for the selection of these groups is provided in Chapter 4.

Stage 3: Coding and analysis of latent content. Along with its focus on manifest content, the dissertation study also aimed to elucidate latent content in the appellate court opinions. Because the interpretation of latent content is generally viewed as dependent upon a researcher's internal cognitive schema, it was important to articulate, *a priori*, key assumptions about the study before I began analyzing the data (Neuendorf, 2002). I made two key assumptions. First, as I undertook the analysis of latent content, I was guided by previous child welfare scholarship. In particular, this literature sensitized me to child neglect's relationship to poverty. Thus, I began the analysis with a keen interest in determining whether this relationship

was legible in the opinions. Second, I was also influenced by law and society scholarship. This literature sensitized me to the law's ideological roots and its role in helping to construct society. Consequently, I approached the latent content with a desire to determine whether the opinions evidenced core social values or political ideologies.

I followed the recommendation of several authors and postponed the analysis of latent content until after all of the manifest content had been coded and analyzed (Holsti, 1969; Rourke et. al, 2000). In general, such sequencing strengthens the trustworthiness of qualitative research. In the context of content analysis, this sequencing enabled me to triangulate manifest and latent content against one another by checking for (in)consistencies between the two (Patton, 2002, p. 559). It also allowed me to “fill out the meaning” of patterns in manifest content and “to give substance to the areas of focus” of the dissertation (Gray & Densten, 1998, p. 420).

To analyze the latent content, I incorporated analytic strategies typically associated with discourse analysis. In general, discourse analysis focuses on understanding both written and spoken language within its social and cultural context (VanDijk, 1997). Using discourse analytics in the dissertation makes sense for two reasons. First, the law is a profoundly linguistic institution (Gibbons, 1999). In fact, lawyers and judges spend most of their professional lives using, deploying, and manipulating language (Solan, 1993). Discourse analysis provides a mechanism for unearthing the deep meaning of such language. Second, judicial opinions are enmeshed in a social and policy context and discourse analysis is focused on understanding this context (Widdowson, 2004). For purposes of the dissertation, the opinions' context not only includes the families who are involved in the termination proceeding and the social service

professionals they interacted with, but also the political and policy environments surrounding the courts.

I utilized four specific analytic strategies, rooted in discourse analysis, when examining latent content:

1) Identifying adjectives and labels: To help surface the ideologies and social values embedded in the termination decisions, I searched the opinions for adjectives and labels that were used to describe the parents and children involved in the cases. I was especially interested in how the courts described the events that gave rise to the termination action and the parents' involvement in these events, the parents' participation in casework services, the parents' feelings toward their children, and descriptions of how children were doing in their placements. Given my interest in poverty, I was especially attuned to descriptions of parents' economic circumstances. I also paid close attention to adjectives and labels that were absent from the opinions (VanDijk, 1997, p. 169). By attending to both the presence and absence of adjectives and labels, I was able to apprehend which parental attributes were privileged and negated in the courts' decisions. This dissertation provides rich descriptions of these attributes.

2) Analyzing key words: Based upon a review of child welfare scholarship, I was sensitized to two key words, in particular, that have strong salience in child welfare services: "failure" and "compliance." My previous research shows that statutes in 31 states authorize termination when parents "fail to assume responsibility" for their children and 28 states allow termination when parents "fail to respond" to casework services provided by state child welfare agencies (Vesneski, 2011). As a result, I approached the analysis of latent content with the goal of determining whether courts in North Carolina were similarly focused on parental failure.

In addition, parental compliance with child welfare case plans is often a critical factor when judges and social workers decide whether children should be reunified with their parents (Brank, Williams, Weisz, & Ray, 2001; Littell, 2001; Smith, 2008). Consequently, I was interested in understanding whether and how North Carolina courts addressed parental compliance. To this end, I determined the frequency of both “failure” and “compliance” and sought to explicate their meaning through intensive review of the opinions.⁸

Key words have been similarly “unpacked” from a discursive point of view in prior scholarship. Fraser and Gordon’s seminal 1994 study of the word “dependency” in American social welfare policy is a primary example. Alongside Fraser and Gordon’s work is the longstanding attention to words and their underlying meaning in discourse analysis (VanDijk, 1997). Both “failure” and “compliance” are addressed more fully in Chapter 5.

3) Describing rhetorical images: I was interested in the images of parents that emerged from the termination opinions. In particular, I sought to compare these images against those of parents at the heart of media stories and Congressional floor speeches surrounding ASFA. Both sets of images can serve as “archetypal metaphors” which transmit value judgments about the subjects to which they are associated (VanDijk, 1997, p. 173). Rhetorical images emerged from the adjectives and labels courts used to describe parents as well as the overall tone of the opinions. Given the linkages between neglect and poverty, I was especially interested in whether courts placed blame for children’s neglect entirely upon the parents, or whether they found any structural bases for the children’s maltreatment. Determining whether courts

⁸ Calculating the frequency of a key word is best described as analysis of manifest content. However, because this calculation was only a modest component of my interrogation of these terms, I include it in the discussion of latent content.

perceived parents as “the problem” in the cases was an important focus of the analysis of latent content. I also aimed to compare the images of parents in the opinions with those surrounding the passage of ASFA.

4) Providing historical context: In order to help contextualize the termination decisions, I examined three historical trends of particular relevance to child welfare services: (i) the placing out movement of the late 1800s; (ii) the power of the juvenile court to intervene in the lives of poor families during the Progressive Era; and, (iii) historical attitudes about poor women’s worthiness for social welfare assistance. This concern for history is anchored in a belief that if we examine the past we can secure significant insights and understandings about the present (Park & Kemp, 2006). Put differently, “the present is nothing special” and if we tell its history we can “disturb its obviousness” (Hunt & Wickham, 1994, p. 6, 119).

Foucault (1972, 1979) variously described the analytic process of tracing historical antecedents of current phenomena as an “archeology” or “genealogy.” Although I do not attempt to complete either in the dissertation, my analysis of latent content was clearly informed by Foucault’s concern with history. I approached the latent content convinced that a present-day discursive formation, like the termination of parental rights, can be best understood by placing it within a larger historical context.

Study Focus and Sample Limitations

The dissertation’s principal aim was to identify the criteria state courts use to justify the termination of parental rights at a particular moment in time. Thus, the focus is, of necessity, relatively narrow. It analyzes 100 opinions from one state in 2010.

In contrast, the thousands of child welfare cases involving termination that are supervised by social workers each year are outside the focus of the study. As a consequence, the dissertation's results cannot be generalized to this larger population of child welfare cases. There are two primary reasons for this. First, it can be assumed that a majority of termination cases are settled outside the courtroom through open adoptions and agreed settlements.⁹ In this respect, termination actions reflect legal proceedings in other domains, particularly criminal law, where the vast majority of cases are resolved through negotiation, settlement, and plea-bargaining (Kopels & Chesnut-Sheridan, 2002). Because these cases are not contested during trials they are never heard by appellate courts and are, accordingly, outside the scope of the study.

Second, when terminations result in a trial, only those decisions that are actually appealed will lead to an appellate opinion. Because of limited access to North Carolina's court system data, it is unknown how many trials (including those involving terminations) were heard by the state's courts and then appealed in 2010 (See, generally, Eisenberg, 2004). Research on federal courts, where more data is available, suggests it may be a relatively small number. In the federal system, which has much greater resources than the state system, only 40% of civil trial decisions are appealed (Eisenberg, 2004).

Previous research about the functioning of the appellate courts is instructive to the dissertation study. This research shows that stronger parties, such as state governments, tend to prevail over weaker parties, such as criminal defendants, on appeal in state courts (Wheeler,

⁹ In general, these procedures allow parents facing termination to have a very minimal level of contact with their children, such as a yearly visit, in exchange for an agreement where they allow their rights to be terminated. These procedures help avoid the costs and emotional challenges of a termination trial.

Cartwright, Kagan, & Friedman, 1987). This advantage is believed to result, at least in part, from greater financial and manpower resources (Wheeler et al., 1987). However, it is important to note that in the context of termination cases, nearly all parents have a right to court appointed counsel at the trial and appellate levels when they are indigent (Calkins, 2004). Thus, parents who lose a termination trial may not be blocked from taking an appeal because they do not have access to a lawyer.

Conclusion

This study examines 100 North Carolina appellate court opinions written to resolve disputed proceedings to terminate parents' rights to their children. These opinions provide clear insight into termination law and they help us understand how courts in the future will rule in cases with similar facts.

Content analysis was used to analyze these opinions. Two types of content were examined: (1) manifest content, which refers to the surface meaning of text; and, (2) latent content, which refers to the deeper and ideological values at the heart of a text. Scholars across a variety of disciplines have focused on both types of content in their research.

Coding of the opinions was carried out in a staged process beginning with the development of a coding sheet. North Carolina statutory law as well as previous research on child welfare records guided development of the coding sheet. Once the sheet was in place, the manifest content was coded. Coding during this phase involved an iterative process of identifying pre-determined key terms, identifying and recording new terms, and condensing the terms until no additional ones were identified (Lens, 2008; Graneheim & Lundman, 2003). After the manifest content was coded, the opinions' latent content was examined. This process

involved identifying key adjectives and labels used to describe parents in the termination cases, analyzing key words, describing rhetorical images, and providing an historical context for the opinions.

The study is designed to yield rich insights about the children, families, and issues involved in appellate court cases involving termination. This richness flows from the unique strengths of judicial opinions: they provide a clear analysis of the legal and factual issues involved in a case and they directly articulate the reasons for a court's decision regardless of who benefits from it (Leval, 1996, p. 207). The opinions studied in this dissertation will be reviewed by judges in the future as they make termination decisions, they will guide lawyers in advising their clients (including parents facing the prospect of termination), and they will help set the legal boundaries for acceptable child welfare practice in the context of termination for years to come.

Despite the value of appellate opinions as a data source, there are important limits to this study. Specifically, it involves only one state, whose termination laws may have unknown divergences from that of other states. In addition, only a small percentage of termination cases are heard by appellate courts, thus this study does not utilize a statistically representative sample of cases. Nevertheless, the dissertation aims to provide guidance on how state courts address the termination of parental rights, the key criteria they look to when deciding these cases, and the ideologies and social values at stake in these decisions.

Chapter 4

Manifest Content: Factors in Termination Decisions

Analysis of the appellate opinions yielded two sets of results. The first set focuses on the manifest content in the opinions, or those findings that pertain to the surface meaning of the opinions. Manifest content is addressed in this chapter. The second set of results, with findings from the analysis of latent content, is the subject of Chapters 5 and 6.

In general, this chapter centers on the personal challenges parents faced as well as the larger social and structural barriers that impede their ability to reunify with their children. These issues are given prominence because they are the primary – though not exclusive – focus of the opinions. The courts also occasionally mention parental strengths. Consequently, I address them as well. Attending to strengths provides a fuller and more accurate understanding of the opinions.

The current chapter is divided into six different sections: (1) key descriptive statistics about the families in the sample; (2) a presentation of the 39 factors North Carolina courts look to when making a decision (these factors are grouped into 10 different domains); (3) a review of parental strengths identified by the courts; (4) a statistical analysis of group differences between cases involving only mothers, only fathers, and both parents; (5) a description of cases where trial court terminations were reversed; and, (6) a summary.

Descriptive Statistics

The final study sample was comprised of 100 appellate court opinions written in 2010. The mother was the appellant in 58 of the cases, the father the appellant in 21 cases, and, both parents appealed in 21 cases. The number of children was reported in 96 opinions. Altogether, there were 186 children; families ranged in size from one child to six. The median number of

children per family was 2.0 with a standard deviation of ± 1.26 . Children's ages were reported in 90 cases with a median age of 4.8. Dates of children's entry into care were provided in 92 cases. Overall, time in care ranged from 8 to 141 months (standard deviation of ± 20.52) with the median being 24 months.

Cases originated from 47 of the 100 counties in North Carolina with Mecklenburg (Charlotte) having the greatest representation with 10 cases. The opinions were written by 15 different appellate judges with one individual, Justice Hunter, authoring 20 opinions.

The large majority of the cases in the sample were decided against the parents. All cases in the sample involved an appeal by a parent of a termination ordered at the trial court level. In 86 cases the trial court's termination was sustained. Of the 14 cases where the termination was reversed, in only two instances was this reversal based on insufficient evidence. All of the other cases were reversed for technical reasons, often involving the format of the trial court's decision. Reversals are described more fully in this chapter.

Factors in Legal Decision-Making

The analysis yielded 39 individual factors that North Carolina appellate courts most frequently point to when sustaining a trial court's termination decision. Because appellate courts frequently quote – often extensively – from the trial court record when making their decisions, it is clear that many of these factors were first identified by the trial court. (An example of such a quote can be found in the case in the Appendix, page 3 to 4). The median number of factors cited by the courts, per case, was 9, ranging from 1 factor ($n=5$) to as many as 17 ($n=1$); the standard deviation was ± 3.8 factors.

After the factors were identified and labeled, I grouped them together based upon their underlying commonalities. I labeled these groups “domains.” There are 10 total domains. Four of them appear in a majority of the cases and are thus described as *primary* domains. They are: (1) parental conditions, (2) service compliance, (3) safety and home environment, and (4) economic conditions. They are followed by six *secondary* domains that appear in less than one-half of the cases: (1) child conditions, (2) bonding, (3) child welfare history, (4) physical abuse, (5) physical presence, (6) sexual abuse. Taken together, these 10 domains and 39 factors comprise a typology of criteria North Carolina appellate courts use to determine whether parental rights should be terminated in cases involving child neglect.

The domains and termination factors are described in detail in the following section of this paper. It is important to note that these descriptions are focused on the surface meaning of the factors and not their discursive elements. Excerpts from court opinions are used throughout to illustrate the factors. Table 5 summarizes the domains and factors as well their frequencies across the cases.

Table 5. Domains and Termination Factors in N.C. Appellate Opinions

Domain	Termination Factor	Number	Statutory Basis?
Parental conditions (<i>n</i> =87)	Drug use or addiction	48	Yes
	Domestic violence	48	No
	Mental health disorder or diagnosis	43	Yes
	Arrest or incarceration	42	No
	Alcohol abuse or addiction	18	Yes
Service compliance (<i>n</i> =75)	Did not complete mental health treatment	41	No
	Did not attend or participate in social work services	36	No
	Did not visit child or inconsistent visitation	30	No
	Did not complete or attend addiction treatment	24	No
	Did not maintain contact with service providers	22	No
Safety and home environment (<i>n</i> =69)	Unsafe or inappropriate home environment	34	Yes
	Inadequate medical care for child	19	Yes
	Not enough food for child	12	No
	Unclean or unsanitary home	12	No
	Exercised poor judgment	11	No
Economic conditions (<i>n</i> =61)	Lack of regular school attendance	6	No
	Lack of financial support	34	Yes
	Unstable housing	33	No
	Not employed	31	No
	Homelessness	17	No
	Sporadically or inconsistently employed	13	No
Child conditions (<i>n</i> =40)	Eviction	11	No
	Lack of sufficient transportation	9	No
	Child happy and doing well	21	No
	Child has special needs	12	Yes
	Child has a mental health disorder or diagnosis	11	Yes
Bonding (<i>n</i> =33)	Child has gross motor delays	3	No
	Child has failure to thrive	3	No
	Positive bond with foster parent	28	No
Child welfare history (<i>n</i> =30)	No bond with biological parent	12	Yes
	Bond with siblings	3	No
Physical abuse (<i>n</i> =21)	Long history of referrals	24	No
	Child physically abused by adult in household	21	Yes
Physical presence (<i>n</i> =17)	Previous termination of parental rights	8	Yes
	Parent left child unsupervised and did not return	9	Yes
	Parents' whereabouts were previously unknown	9	Yes
Sexual Abuse (<i>n</i> =14)	Parent abandoned child	3	Yes
	Parent permitted contact with sex offender	8	Yes
	Child victim of sexual abuse	7	Yes

Statutory criteria. One of the clearest findings to emerge from the data analysis is the large number of criteria. The number is markedly larger than the 16 criteria found in North Carolina child welfare statutes and the eight specified in ASFA. Perhaps most importantly, none of the factors in the service compliance domain are mentioned in the statutes. (Table 5, in the far right column, indicates which individual criteria are included in the state's statutes.) In addition, only one factor in the economic conditions domain is identified in state statutes. Put differently, both of these domains have little basis in state termination statutes. Both of these domains are addressed more fully in the next two chapters of the dissertation. Overall, the large number of criteria – and their absence from state statutes and ASFA – underscores the importance of the courts to child welfare proceedings. The table shows that the courts are very active agents in defining the criteria used to terminate parental rights.

Primary domains. Altogether, there are four primary domains of termination factors. These domains describe both the personal challenges that brought parents to the attention of the child welfare system and they suggest the presence of larger social and structural barriers faced by families in the system. Each of these domains is described in the following sections.

(1) Parental conditions. Five parental conditions were found among the families in the study: drug use, alcohol abuse, domestic violence, mental illness, and incarceration. In fact, 87 courts in the sample identified at least one parental condition as a basis for terminating their rights.

One of the most common termination factors in the sample was *drug use and addiction*. It was identified as a factor in 48 cases. The type of drug used by parents was noted in 32 opinions; their frequency is listed in Table 6.

Table 6. Frequency of Drugs in Appellate Opinions

Type of Drug	Frequency
Cocaine (including crack cocaine)	20
Marijuana	19
Prescription drugs (including opiates and benzodiazepam)	13
Heroin and methadone	4
LSD	1
Amphetamine	1

The courts typically described drug use by parents in the following ways:

Respondent-father was attending therapy with the child, and his home had been deemed safe and appropriate. Respondent-mother, on the other hand, was reported by respondent-father to be using crack cocaine and had been kicked out of a residential treatment program. (Case #40, p. 2-3)

Respondent/mother has failed to maintain sobriety and has failed to demonstrate the ability to remain drug and alcohol-free. Respondent/mother tested positive for cocaine, marijuana and alcohol on or about September 22, 2009. (Case #53, p. 4)

At respondent-father's F.I.R.S.T. assessment, he tested positive for marijuana and cocaine. Based on his assessment and case plan, he agreed to, among other things, complete substance abuse treatment, [and to] participate in random drug testing... (Case #74, p. 2)

The courts often distinguished drug use from *alcohol abuse or addiction* and 18 of them identified alcohol abuse as a basis for terminating parental rights.

Substance abuse is indeed identified as a basis for termination in state statute.

Specifically, North Carolina law indicates that substance abuse may render parents “incapable” of providing their children with proper care and, thus, can lead to the termination of parental rights (N.C. Gen. Stat. §7B-111[a][6]).

Domestic violence was also evident in the sample of opinions. Courts in nearly one-half of the cases identified it as a factor in their termination decision ($n=48$). When making their decisions, courts focused on both mothers, who were victims of violence, as well as children’s

fathers or mothers' partners, who were batterers. The following excerpts illustrate the court's attention to both victims and batterers in domestic violence situations:

[Mother] admitted that there was domestic violence in her relationship with her boyfriend.... (Case #82, p. 2).

It was reported by family members to DSS that domestic violence "both physical and verbal," was a pattern for respondent-mother and the father. The parents admitted to DSS that they had a problem with domestic violence. (Case #69, p. 3).

[DSS] first investigated reports of domestic violence, substance abuse, lack of supervision, and inappropriate medical care involving respondent-mother and her three older children.... (Case #11, p. 2).

A mental health disorder or diagnosis also served as a basis for terminating parental rights in the cases analyzed. It was present in 55 opinions and specific diagnoses were presented in 30 opinions. Table 7, which presents their frequency, indicates that parents in the sample suffered from serious disorders. Mental illness is listed as a basis for termination in North Carolina's child welfare statutes (7B-111[a][6]).

Table 7. Frequency of Mental Illness in Appellate Opinions

Disorder	Frequency
Bipolar disorder	13
Depression/Major Depression	11
Anxiety disorder	6
Personality disorder	5
PTSD	5
Limited intellectual functioning	3
Schizophrenia/schizoaffective disorder	3
Adjustment disorder	2
Obsessive Compulsive disorder	2
Psychosis	2
Borderline intellectual functioning	1
Emotionally unstable	1
Explosive personality disorder	1
Learning disorder	1
Narcolepsy	1
Panic disorder	1

Along with presenting a mental illness diagnosis, the courts usually offered specific details about the parents' symptoms that contributed to the termination ruling. For example:

...respondent-mother was ordered to obtain a psychological evaluation and follow any recommended treatment...the evaluation diagnosed respondent-mother with bipolar disorder, post-traumatic stress disorder, and assigned a Global Assessment of Function Score of 40. The evaluation recommended that respondent-mother receive a psychiatric evaluation for psychotropic medication and comply with any medication regime and recommendations; [and] that she participate in weekly individual or group therapy to address her PTSD. (Case #61, p. 3).

The opinions were not always as detailed as the excerpt above, however. At times they offered only sweeping descriptions of the parents' mental health issues:

In the [termination] petition, DSS recounted respondent-mother's history of emotional outbursts and erratic behavior. DSS alleged that "[t]he combination of [respondent-mother's] depression, uncontrollable temper, and emotional imbalance has rendered [her] incapable of properly caring for her child and creates and atmosphere of potential danger for the juvenile. (Case #12, p. 3).

A number of parents (primarily fathers) in the sample had a history of *arrest or incarceration* ($n=42$). At times, parents' crimes were both serious and violent, but more often, they involved drugs. Parents were also incarcerated for failing to abide by the terms of their probation or for failing to pay child support. Court interest in parents' criminal histories appears to stem from concern that parents who are incarcerated are not available to care for their children. The following quotes are typical of cases where incarceration was cited as a criterion for termination:

The respondent father has been incarcerated during the entire life of the minor child. [He has] had no contact with the minor child since she was born. He is currently incarcerated for probation violations for a consecutive term of 5 years. (Case #56, p. 3).

At the time of the hearing, respondent was incarcerated in the Wake County Jail for failure to pay child support for his children. Upon his release from the Wake County

Jail, respondent had to appear in Alamance County on another criminal charge. (Case #14, p. 2).

...[the father] finally entered into his case plan on 19 December 2008. However, he did not make any progress on it because he was incarcerated during the month of January on a driving while impaired (“DWI”) conviction...Respondent-father was again incarcerated. He had been in jail since 29 May 2009, after a sixty-day sentence was activated. The sentence was related to convictions for DWI and assault on a female. (Case #50, p. 3).

(2) Service compliance. Courts spent time noting whether parents had completed their case plans and whether they had fully participated in the multiple services that they were required to complete. Failure to participate in a specific type of service was coded as an individual termination factor in the analysis. Five different types of court ordered services are grouped together under the “service compliance” domain: mental health treatment, social work services, parent/child visitation, addiction treatment, and, maintaining contact with service providers. At least one of these factors appears in 75 cases in the sample. It is interesting to note that none of these factors is mentioned in North Carolina’s termination statutes which makes “service compliance” the only domain lacking an anchor in state law.

The most frequently discussed factor within this domain was the fact that parents *did not complete or participate in mental health treatment* ($n=41$), including attending sessions with therapists and taking prescribed medications. Examples include the following:

...the trial court found that Mother was referred for a neurological examination and was prescribed an anti-depressant, which Mother voluntarily discontinued taking because it made her feel “weird.” Mother was then referred to a therapist to learn relaxation and stress reduction techniques. The record does not show that Mother ever attended the therapy sessions. (Case #5, p. 4).

Respondent-mother was diagnosed with major depression, anxiety disorder, polysubstance abuse, and personality disorder; she failed to attend appointments regarding her mental health. (Case #78, p. 3).

The mother is diagnosed with Bipolar Disorder. She missed a medication appointment in March 2007. [Child welfare services] has no knowledge of the mother participating in therapeutic services. (Case #55, p. 3)

The courts also noted that parents *did not attend or participate in social work services*, including meeting with their caseworker and following-up on referrals. In 36 cases, the court found that parents had not adequately participated in social work services. The following quotes reflect the ways that courts described parents' lack of participation in services:

[Mother] argues that the evidence shows that she was prohibited from participating in the intensive family visitation program because of her purported lack of compliance with other programs or services aimed at reunification. Nevertheless, the evidence is uncontradicted that Mother failed to participate in the program. (Case #5, p. 4).

...multiple attempts to engage [the father] in services have been unsuccessful. He has not complied with requests for drug screens...[he] has not engaged in any therapy services, in spite of being given names of counselors who would accept [welfare benefits].... (Case #73, p. 2).

Another service compliance factor in the decisions was that parents *did not visit their children or did so inconsistently (n=30)*.¹⁰ Courts conceptualized parent/child visitation as both a service that parents were required to participate in and also as a "reward" that they received if they had been adequately involved with their case plan (Case #31). The following quotes exemplify how visitation was addressed:

When the child was initially placed in DSS custody, the mother did not want to visit the child, and only began visiting the child after the father's release from jail...They have not seen him in six months. (Case # 57, p. 3).

...the child has not had any contact with the mother since April of 2005 except for [one] unplanned contact at the Department. (Case # 72, p. 5).

¹⁰ Although it was not coded as a termination factor and is not included in Table 5, it is worth noting that in 14 cases a parent engaged in inappropriate behavior during visits, such as meeting with an abusive partner or coming to the visit under the influence of drugs or alcohol.

The parents had not attended any hearings and had not visited with the children since moving to New York. (Case #98, p. 2).

[The father] had not consistently participated in bi-weekly visitation...and had not visited with [the child] or spoken with the DSS social worker since 17 November 2008. (Case #100, p. 3).

Given the prevalence of substance abuse in the sample, it may not be surprising that there was a termination factor centered on the fact that *parents did not complete or attend addiction treatment*. Such treatment typically required completion of inpatient and outpatient services as well as regular attendance in 12-step groups. In 24 cases parents did not complete these services. The following excerpts illustrate this factor:

[County Human Services] claimed that respondent-mother had not followed through with the recommendations of her substance abuse assessment, which included inpatient treatment, participation in NA/AA groups, and random drug tests. (Case #40, p. 2).

Respondent mother began SACOT [Substance Abuse Comprehensive Outpatient Treatment]...but has not successfully graduated from it as of this hearing. Respondent/ mother missed several group sessions and has not attended twelve Alcoholics Anonymous/ Narcotics Anonymous meetings, nor obtained a temporary sponsor. (Case #53, p. 4).

In about one-quarter of the cases, the courts found that parents *did not maintain contact with service providers (n=22)* and they cited this as a basis for termination. Often workers requested information from parents, and the courts were interested in whether these requests for information were responded to. The following excerpts illustrate how the courts addressed parent/social worker communication:

[The father] contacted the social worker only two times between September 2009 and the 24 February 2010 termination hearing.... (Case #14, p. 3).

...[the trial court noted that mother-respondent] has not had any significant contact with DSS, and DSS has been unable to work on reunification if respondent mother continues her failure to be involved with DSS.... (Case #36, p. 2, 4).

...the trial court found that respondent-mother was not diligently working on her case plan...[she] did not provide the department of social services with her address in Tennessee...respondent-mother did not contact the department and did not meet with her case worker in early March 2008. (Case #66, p. 2).

(3) Safety and home environment. All six factors in this domain focus on the quality of the home environment and whether it supported proper care of children. The factors are: unsafe home environment, inadequate medical care, insufficient food, unclean home, lack of school attendance, and poor parental judgment. At least one factor from this domain appears in 69 cases in the sample.

The courts terminated parents' rights because they believed the parents *had an unsafe or inappropriate home environment* (n=34). The following excerpt provides an example of how the courts described these situations:

DSS found several individuals at the residence, and "excessive alcohol bottles and beer cans were found lying outside the home."...Several other individuals live in the grandmother's home other than the Mother...Many 911 calls have been made from the...residence since the minor child was placed in the Department's custody. (Case #15, p. 2)

This factor corresponds to state statutes that indicate that an "environment injurious to the juvenile's welfare" can serve as the basis for termination. This language was used by a number of courts to describe unsafe homes. The following passage is typical:

DSS filed a juvenile petition alleging the minor child was neglected due to living in an environment injurious to her welfare. The allegations in the petition detail the mother's substance abuse problems and incidents of domestic violence between the mother and her boyfriend. (Case #56, p. 2)

The courts also pointed to very specific circumstances in the home or environment that they judged a safety risk. For example, in some cases children did not receive *adequate medical care* (n=19), in others there was *not enough food* in the house or children were not properly fed

($n=12$). In addition, several homes were *not clean or too unsanitary* for children ($n=11$), and in a limited number of instances, children did not *regularly attend school* or arrive on time ($n=6$).

The following passages illustrate these often overlapping factors:

The DSS social worker gave respondent-mother phone numbers for four medical providers and informed respondent-mother that while she would help her, it was respondent-mother's responsibility to schedule the appointment. The DSS social worker performed a home visit on 31 July 2008 and discovered that respondent-mother had not contacted a geneticist [as advised]. (Case #69, p. 2).

...the mother's residence has sporadic electrical power and water. The interior of the house is below minimum standards for the community; it is dirty, cluttered, and has not been well cleaned. The exterior of the house is littered with junk and garbage. There is very little food available for the minor child. (Case #78, p. 2)

When DSS staff went to respondent-mother's residence to investigate the report, the home was filthy, with dirty clothes piled everywhere, and spoiled food lying out. (Case #8, p. 2).

On the first day of school, the children's registration materials had not been completed by [respondent parents]. They were tardy to school on February 1 and February 16, 2007. [Respondent parents] did not take the children to their medical appointments. (Case #19, p. 4).

There were some cases where courts concluded that mothers had *exercised poor judgment* in the care of children ($n=11$). Generally, such lapses in judgment were perceived as negatively affecting children's safety. The following excerpts illustrate this factor:

The court also found that, while respondent had "technically complied" with prior orders concerning her self-improvement, she had "not demonstrated improved judgment or improved parenting skills." (Case #22, p. 3).

Furthermore, respondent-mother's therapist...testified that respondent-mother has "consistently been in domestic violence situations. She's been in situations where I call her judgment into question about who she has living with her." (Case #24, p. 4).

(4) Economic conditions. The opinions pay close attention to indicators of parents' economic stability and security. In fact, seven different factors relating to parents' financial

security emerged from the data analysis: lack of financial support for child, unstable housing, homelessness, eviction, unemployment, sporadic employment, and lack of transportation. At least one of these factors was identified as a basis for termination in 61 cases.

The most frequent factor was parent's *lack of financial support* for children ($n=34$). State statutes indicate that failing to "pay a reasonable portion of the cost of care" can serve as a basis for termination (N.C. Gen. Stat. §7B-111[a][1]). In typical passages referencing this section of the statute the courts wrote:

DSS filed a petition to terminate respondent-mothers' parental rights...alleging the following grounds...willfully failing to pay a reasonable portion of the cost of care the juvenile pursuant to N.C. Gen. Stat. §7B-111[a][3]. (Case #18, p. 3).

DSS spent \$9,171 per child for room, board and clothing for children while they have been in DSS' custody and respondent-father has not paid any amount to DSS for the cost of this care. (Case #54, p. 3).

Unstable housing was also identified as a reason for termination ($n=33$). In general, the courts were concerned that parents frequently moved, were forced to live with friends and family because they could not afford their own housing, and lived in sub-standard housing facilities. Two excerpts exemplify this factor:

The trial court noted that respondent-mother had failed in two important aspects of her case plan: the maintenance of stable housing and employment...Since February 2008, when the children were taken into foster care, respondent-mother has lost three jobs and three residences...Respondent mother lost all three residences for non-payment of rent. (Case #93, p. 2-3)

Third, [child welfare social workers] recounted respondent-father's history of unstable housing. [Social workers] noted that respondent-father had a history of homelessness and had resided in six different locations while involved with [the department]. (Case #40, p. 2).

In a number of cases, housing instability was so severe that it caused parents to experience *homelessness* ($n=17$) or *eviction* ($n=11$), two additional factors.

The fact that parents were *not employed* and did not have a steady source of income was also a factor in one-half of the courts' decisions ($n=50$). This factor is reflected in the following excerpts:

In addition to the unsanitary and hazardous conditions of the home, DSS reported issues with the respondent-mother's lack of employment and the juveniles' poor attendance at school. (Case #64, p. 2).

...despite receiving public assistance, Respondent still has not obtained employment or other income sufficient to support four children. (Case #98, p. 6).

DSS further alleged that respondent had no income for the three months prior to the [termination] petition filing and had been deemed "unemployable" due to her limited commitment to securing and maintaining employment....[The respondent] had lost her job at National Wholesale and had not worked since. (Case #99, p. 3).

At times, the courts noted that parents had only *sporadic or inconsistent unemployment* ($n=13$):

The father has obtained sporadic employment since his release from prison. He worked in restaurants in Beech Mountain and Boone, and worked as a painter and landscaper in Florida in the past several weeks. (Case #28, p. 3).

The least common factor in the economic conditions domain concerned transportation ($n=9$). The courts found that some parents *lacked sufficient transportation* and that this interfered with their ability to participate in services or visit their children. The following excerpts illustrate this factor:

Respondent failed to attend her scheduled counseling session...because she had no transportation. [The social worker] had provided transportation assistance to Respondent-Mother previously, but Respondent-Mother did not request transportation assistance to her therapy appointments. (Case #10, p. 4).

The trial court, however, also found that while respondent-mother began individual therapy with [the mental health agency], she did not reschedule appointments she missed due to transportation issues. (Case #69, p. 4).

Secondary domains. Six additional domains of factors emerged from the analyses. They are framed as secondary domains because they appear in less than one-half of the opinions in

the sample. These domains were also less complex than the primary domains and generally included fewer factors. The domains are: child conditions, bonding, child welfare history, physical abuse, physical presence, and sexual abuse.

(1) Child conditions. At least one of the five factors from this domain was mentioned in 40 opinions. Overall, the domain focuses on children's status in placement and indicators of their physical and mental health. The factors exist when a child: is "happy" and "doing well," has special needs, has a mental health disorder, has gross motor delays, or has failure to thrive.

In 21 cases, courts justified their termination decisions, in part, on the fact that children were "*happy*" and "*doing well*" in their current foster care placements. Interestingly, few of the placements in the sample appear to be with relatives. Only eight opinions indicated that children had been placed with relatives – this may be because terminations were less common among cases where children had family placements. Case excerpts include the following:

The court also found that [the children's] academic and health needs are being met, that they are residing in loving and stable homes, and they no longer need therapy. (Case #14, p. 4).

...the juveniles are currently placed with the maternal great aunt and uncle...the juveniles are doing very well and have a strong, very strong bond with their [relatives]. (Case #67, p. 4)

The courts also indicated that a number of children had *special needs* ($n=12$) or had a *mental health disorder or diagnosis* ($n=11$). The following excerpts illustrate these interrelated factors:

In this case, the trial court made several findings as [to the child's] behavioral problems and special needs. Among them, the court found that [the child] suffers from an anxiety disorder and depression...and "continues to grieve her losses" ...The trial court also found that...[the child] "has significant behavioral and attachment problems." (Case #26, p. 3-4).

The court made several findings related to the juveniles' mental health issues. [The child] continued to have behavioral problems. After a troubling incident, [the child] was hospitalized for a week...and he was diagnosed with ADHD, Oppositional Defiant Disorder, and Adjustment Disorder. (Case #34, p. 3)

However, due to [the child's] behavior problems, DSS moved him to Ebenezer Children's Home...DSS subsequently arranged placement at the Home for [the child's sibling] so the juveniles could remain together. During their stay at the Home, [the child] had to be hospitalized on several occasions due to his mental instability. (Case 47, p. 2)

Finally, a very small number of opinions indicate that children suffered from *gross motor delays* ($n=3$) or were diagnosed with *failure to thrive* ($n=3$).

(2) Bonding. One-third of the opinions in the sample included at least one of the factors from this domain addressing children's bonds and attachment to their caregivers. The domain comprises three factors: positive bond with foster parent, no bond with biological parent, and bond with siblings.

North Carolina statutes indicate that courts should consider "the bond between the juvenile and the parent" when deciding whether to terminate parental rights (N.C. Gen. Stat. §7B-1110[a][4]). Although the statute focuses on children's biological parents, the appellate courts discussed whether children had a *positive bond with their foster parents* ($n=28$). The following quotes illustrate the ways that the courts addressed bonding with the foster parent:

...The juveniles have a bond with the foster parents' extended family...[In the past] each juvenile was protective of the respondent parents. Now the juveniles acknowledge that they miss and love the respondent parents while still being able to function. (Case #71, p. 3).

[The child] has a familial bond of mutual love and affection with her foster parents. (Case #18, p. 3).

In 12 cases the court found that "*no bond*" existed between children and their biological parents. The following quote illustrates this factor:

[The child] has no bond with his biological parents. This is evident from the relatively small amount of time the child spent with the parents from his birth until April, 2008 and the almost total lack of contact or involvement of the child and parents since that time; [the child] has a strong and loving bond with the foster mom.... (Case #37, p. 7).

Only three courts discussed *bonds between siblings* when making a termination decision.

(3) Child welfare history. Two factors make up this domain, which was cited as a basis for termination in 30 cases. The most common factor was a parent's *long history of referrals* to the state's child welfare service system ($n=24$). The following two excerpts are illustrative:

Respondent has two other children...who are not a part of these proceedings, but whose background is relevant as part of respondent's extensive history with the Forsyth County Department of Social Services. Briefly, the record reflects that DSS has been involved with respondent as far back as 1996. (Case #2, p. 2).

The Person County Department of Social Services (Petitioner) had received numerous reports concerning the welfare of the children beginning in 1998. (Case #17, p. 1).

Additionally, eight opinions indicate that families had *previously experienced termination of parental rights*. North Carolina statutes make clear that parental rights can be terminated if the parents' rights "with respect to another child...have been terminated involuntarily" (N.C. Gen. Stat. §7B-1111[9]). The following passage shows how courts approached the factor:

...the court further found that respondent has had a long history of involvement with child protective services dating back to 1997 when a report of improper care and lack of supervision by respondent of her first-born child was received. Respondent's parental rights to that child and two later-born children were ultimately terminated. (Case #58, p. 2).

(4) Physical abuse. Physical abuse occurred in 21 cases and may have been perpetrated by either a parent or a parent's partner. Courts described physical abuse in the following ways:

The allegations were that respondent-father, who was respondent-mother's boyfriend, was abusive toward [the child] and that respondent-mother

inappropriately disciplined the children...[there were] multiple bruises [on the child's] torso...[and the child] had a laceration on his forehead. (Case #6, p. 2).

...DSS determined that the children were exposed to acts of domestic violence occurring between the mother and respondent father, and that there were incidents of inappropriate discipline of the children which resulted in bruising. (Case #33, p. 2).

Throughout the respondent's history of involvement with child protective services, respondent would comply with a case plan for periods of time, but then would relapse or be unable "to hold it together." This pattern repeated itself in the case at bar when respondent complied with her case plan and the child was returned to her home, but shortly thereafter, respondent severely beat the child. (Case #58, p. 2)

(5) Physical presence. Three factors were grouped together under the "physical presence" domain and at least one of them is mentioned in 17 opinions. Parents *left their children unsupervised* (n=9), they could not be located by family members or child welfare services and their *whereabouts were unknown* (n=9), or they had completely *abandoned their children* (n=3). Courts described these three factors in the following terms:

At the time of the TPR hearing, however, respondent father had left the household for the fourth time and his whereabouts were unknown. (Case #45, p. 4)

After his birth, juvenile was placed in the neonatal unit until he gained weight and was no longer jaundiced. During this monitoring period, hospital staff became concerned about respondent-mothers' ability to care for juvenile... Respondent-mother frequently left the hospital for extended periods of time, without leaving her contact information.... (Case #63, p. 2).

DSS had trouble locating respondent-mother for nearly two weeks, and filed a missing persons report before she was finally located... The petition also alleged that respondent-father had willfully abandoned the juvenile. (Case #8, p. 3).

Upon further investigation, DSS discovered that Respondent-Mother had a tendency to leave the children for months at a time in order to go on drug binges, return for a few weeks, and then repeat the process. (Case #80, p. 2).

(6) Sexual abuse. Risk of sexual abuse, or actual abuse, was addressed in 14 cases.

Specifically, a parent had *permitted a child to have contact* with a perpetrator (n=8), or children

had been *victims of sexual abuse* ($n=7$). Both circumstances are reflected in the following quotes:

[The trial court found that father] was facing two counts of indecent liberties with a child... The unchallenged findings regarding his sexual contact with [the child] fully support the trial court's finding of abuse.... (Case #38, p. 7)

...Respondent-Mother has serious "co-dependency issues" and issues related to "her inability to provide a safe, stable, and appropriate home" for her children...these issues include exposing her children to sex offenders.... (Case #10, p. 6)

Parental Strengths

In their opinions, courts predominantly focused on parent's deficits, inadequacies in the family home, and barriers parents faced in reunifying with their children. Given that the large majority of terminations were sustained on appeal, it is not surprising that parental strengths only received minimal attention. Nevertheless, an accurate description of the courts' decision-making process must include a discussion of these strengths. Four strengths emerged from the analysis.

Bond with biological parent. The most frequent strength was a noticeable bond between parents and their children ($n=17$). While North Carolina statutes instruct the courts to assess the parent/child bond when making a termination decision (N.C. Gen. Stat. §7B-1110[a][4]), it is interesting that the majority of cases in the sample did not address parental bonding at all. Typical passages illustrating the court's discussion of bonding follow:

Additionally, the GAL's court report contains a subheading specifically addressing the bond between the biological parents and the children. Although the GAL described the bond as "very loving," the GAL nonetheless recommended termination of parental rights. (Case #74, p. 8)

Although the social worker acknowledged that the children did have some bond with respondent-mother, any bond between them was not strong enough, in light of

the other evidence, to overcome the conclusion that termination was in the children's best interests. (Case #46, p. 4)

Respondent-Mother has continued to visit at every opportunity, she loves her children and [the children] love her. However, the Court also considered the quality of the relationships between the children and their foster parents, the children's young ages, the high likelihood of adoption, and the fact that the termination of parental rights will aid in the achieving the permanency plan of adoption. (Case #93, p. 5).

[The child] still loved respondent-father very much but the last time [the child] saw him was [one year before the termination]; [the child's] relationship with her current foster parents was strong...[the child] would like to live with this family permanently.... (Case #100, p. 4).

Consistent visitation. Several opinions also noted that a number of parents regularly visited their children, especially during the early stages of the case ($n=14$). The following excerpts illustrate this finding:

During the [first year of the case], respondent-mother made progress carrying out her case plan. She completed parenting classes and a psychological evaluation. She also visited the children regularly, paid child support, and had full-time employment and a residence. (Case #10, p. 2).

During the next six months, respondent-mother made some progress on her case plan. She completed substance abuse classes, received negative drug screens, attended counseling, regularly visited [the child], and completed parenting classes. (Case #18, p. 2).

Respondent-mother was consistently visiting with the children, and had enrolled in a program for domestic violence, as well as in anger management counseling and family therapy. However, she had not obtained stable housing, nor had she secured stable employment. (Case #42, p. 3).

Respondent attended three classes of a parenting course, and regularly visited with the children until his incarceration (Case #88, p. 2).

Overnight or unsupervised visits with child. Parents were allowed extended visitation with children in a number of cases ($n=14$). At the time this visitation was permitted, parents were making good progress in their cases. However, regular visits were not sufficient to prevent

termination and the parents ultimately lost custody of their children. The following excerpts describe this situation:

During the period of time [the children] were placed in respondent parents' home [on a trial basis] respondent parents were unable to meet the children's needs... [they] did not take the children to their regular therapy appointments...[they] did not take the children to their medical appointments...the environment was neglectful. (Case #19, p. 4).

The district court found that respondent-father had exercised unsupervised visitation, including overnight visits. The court reported that the visits had gone well, and the juvenile looked forward to the visits. Respondent-father was attending therapy with the child, and his home had been deemed safe and appropriate....[At a later time] the court noted that respondent-father had been unable to maintain financial independence or stable housing.... (Case #40, p. 2).

These supervised visits went well...respondents were allowed to have supervised overnight visits every weekend from Saturday afternoon to Sunday afternoon. The overnight visitations, however, ceased after an incident of domestic violence.... (Case #37, p. 2).

Consistent employment. A small number of parents were consistently employed during their case ($n=6$), and as the following passage shows, the courts noted this in their opinions:

The district court found that respondent-mother had completed anger management and parenting classes and obtained income...At the adjudication hearing, [mother] testified that she provided in home health to two patients, one of whom had dementia, and she had a clean work history with both patients. (Case #12, p. 3-4).

Parental Group Differences

The opinions were divided into three groups corresponding to the parent involved in the termination proceeding: (1) cases involving only mothers ($n=58$); cases involving only fathers ($n=21$); and, cases involving both parents ($n=21$). These groups were selected because I was curious about the fathers in the sample and whether the factors leading to termination of their rights might differ from those justifying the termination of mothers' rights. This interest was

spurred by the growing awareness within social work research and practice that the child welfare system is not very effective at involving fathers in casework services (Pate, 2005). At the same time, there is greater appreciation of fathers' essential contributions to child wellbeing and healthy child development (Lamb, 2004). I wondered whether my dissertation might contribute to the small but important body of scholarship focusing on fathers and the child welfare system.

Chi-squared analyses suggest that the courts based their termination decisions on different factors depending upon which parents were involved in the cases. A summary of these analyses is provided in Tables 8 and 9. Table 8 includes chi-squared values for all termination factors, grouped by domain. The number column indicates the number of cases in the sample where the factor was present. The table also lists the number of cases within each sub-group (mothers, fathers, both parents) where the factor was present. Significance levels are provided for all factors where p was less than .10. Table 9 provides additional details. It focuses only on those factors where chi-squared values were statistically significant. The table indicates the *actual* number of cases where a factor was present and compares it to the *expected* number of cases for each factor. The table provides additional insight into how parents' cases differ from one another.

Table 8. Chi-squared Results for Termination Factors

Domain	Termination Factor	<i>n</i>	Mothers	Fathers	Both	χ^2	<i>p</i>
Parental conditions (<i>n</i> =87)	Drug use or addiction	52	25	15	12	5.52	.063
	Domestic violence	48	23	10	14	5.49	.064
	Mental health disorder or diagnosis	42	32	2	8	13.21	.001
	Arrest or incarceration	41	15	17	9	19.42	.000
	Alcohol abuse or addiction	18	13	1	4	3.29	--
Service compliance (<i>n</i> =75)	Did not complete/participate in mental health treatment	41	31	2	8	12.28	.002
	Did not attend or participate in social work services	35	19	5	11	4.77	.092
	Did not visit child or inconsistent visitation	29	15	10	4	4.57	--
	Did not complete or attend addiction treatment	24	8	8	8	8.35	.015
	Did not maintain contact with service providers	21	7	7	7	7.02	.030
Safety and home environment (<i>n</i> =69)	Unsafe or inappropriate home environment	34	17	10	7	2.30	--
	Inadequate medical care for child	19	10	4	5	.58	--
	Not enough food for child	12	8	2	2	.37	--
	Unclean or unsanitary home	12	6	3	3	.42	--
	Exercised poor judgment	11	11	0	0	8.75	.013
Economic conditions (<i>n</i> =61)	Lack of regular school attendance	6	4	0	2	1.97	--
	Lack of financial support	34	15	13	6	9.09	.011
	Unstable housing	33	24	4	5	4.24	--
	Not employed	31	18	7	6	.06	--
	Homelessness	17	12	2	3	1.44	--
	Sporadically or inconsistently employed	13	10	2	1	2.26	--
Child conditions (<i>n</i> =40)	Eviction	11	8	1	2	1.31	--
	Lack of sufficient transportation	9	6	3	0	2.80	--
	Child happy and doing well	21	11	5	5	.43	--
	Child has special needs	12	8	1	3	1.38	--
	Child has a mental health disorder or diagnosis	11	9	0	2	3.79	--
Bonding (<i>n</i> =33)	Child has gross motor delays	3	2	0	1	.96	--
	Child has failure to thrive	3	2	0	1	.96	--
	Positive bond with foster parent	28	16	7	5	.38	--
	No bond with biological parent	12	5	5	2	3.45	--
	Bond with siblings	3	1	2	0	3.98	--

Table 8. Table X. Chi-squared Results for Termination Factors (Continued)

Domain	Termination Factor	<i>n</i>	Mothers	Fathers	Both	χ^2	<i>p</i>
Child welfare history (<i>n</i> =30)	Long history of referrals	24	19	2	3	5.70	.058
	Previous termination of parental rights	8	7	0	1	3.34	--
Physical abuse (<i>n</i> =21)	Child physically abused by adult in household	21	13	3	5	.83	--
	Parent left child unsupervised and did not return	9	5	2	2	.04	--
	Parents' whereabouts were previously unknown	9	4	3	2	1.04	--
	Parent abandoned child	3	1	2	0	4.23	--
Sexual Abuse (<i>n</i> =14)	Parent permitted contact with sex offender	8	7	0	1	3.34	--
	Child victim of sexual abuse	7	5	0	2	2.07	--

Table 9. Actual and Expected Numbers of Cases for Significant Chi-squared Results

Domain	Termination Factor	<i>n</i>	Mothers	Fathers	Both
			<i>Actual (Expected)</i>	<i>Actual (Expected)</i>	<i>Actual (Expected)</i>
Parental conditions	Drug use or addiction	52	25 (30.5)	15 (11.0)	12 (10.5)
	Domestic violence	48	23 (27.5)	10 (10.0)	14 (9.5)
	Mental health disorder or diagnosis	42	32 (24.6)	2 (8.9)	8 (8.5)
	Arrest or incarceration	41	15 (24.0)	17 (8.7)	9 (8.3)
Service compliance	Did not complete/participate in mental health treatment	41	31 (24.0)	2 (8.7)	8 (8.3)
	Did not attend or participate in social work services	35	19 (20.5)	5 (7.4)	11 (7.1)
	Did not complete or attend addiction treatment	24	8 (14.1)	8 (5.1)	8 (4.8)
	Did not maintain contact with service providers	21	7 (12.3)	7 (4.5)	7 (4.2)
Safety and home environment	Exercised poor judgment	11	11 (6.4)	0 (2.3)	0 (2.2)
Economic conditions	Lack of financial support	34	15 (19.9)	13 (7.2)	6 (6.9)
Child welfare history	Long history of referrals	24	19 (14.1)	2 (5.1)	3 (4.8)

Salient among the chi-squared results is that eight of the 11 factors (73%) with statistically significant results are located in just two domains: parental conditions and service compliance. These results suggest that parents' gender and their status as a couple are interconnected with the types of conditions the courts focus on. It also suggests that parental compliance with child welfare services is tied to gender and their couple status.

(1) Mothers. As table 8 indicates, the most common factors among the mothers' cases were the presence of a mental health disorder or diagnosis ($n = 42$; $\chi^2 = 13.21$; $p = .001$) and mothers' failure to complete or participate in mental health treatment ($n = 41$; $\chi^2 = 12.28$; $p = .002$). These factors are cited as a basis for termination in more than 50% of the mothers' cases. In contrast, mental health issues were infrequently mentioned in fathers' cases. These findings align with previous research showing a high incidence of mental illness among mothers receiving child welfare services (McConnell et al., 2000; Trocmé et al., 2005).

Chi-squared results indicate that two other factors distinguish mothers from the other parent groups in the study. Specifically, in nearly one-third of their cases, but less often in others, the courts indicated that there had been a long history of referrals to the child welfare system ($n = 24$; $\chi^2 = 15.70$; $p = .058$). Similarly, the only parents described as exercising "poor judgment" in the sample were mothers ($n = 11$; $\chi^2 = 8.75$; $p = .013$). These findings point to the possibility of a discursive construction of mothers by the courts. Previous scholarship asserts that neglect is principally a problem attributed to mothers (rather than fathers), and that neglectful mothers are reported to be apathetic toward their children's needs and beyond the reach of rehabilitative assistance (Swift, 1998).

(2) Fathers. For fathers, three factors were frequently mentioned as a basis for termination. First, a father's current or previous incarceration ($n = 41$; $\chi^2 = 19.42$; $p = .000$) was identified in more than 81% of their cases, the highest chi-squared value for any factor among the three groups. Second, the courts focused on father's substance abuse issues. This focus mirrors the way the courts zeroed in on mother's mental health. Specifically, the courts identified a father's drug use or addiction in 71% of their cases ($n = 52$; $\chi^2 = 5.52$; $p = .063$) and it cited their failure to complete addiction treatment as a basis for termination in 38% of their cases ($n = 8$; $\chi^2 = 8.35$; $p = .015$). Third, a majority of fathers (62% of the 21 cases involving them) had their rights terminated, in part, because of a failure to provide financial support to their children ($n = 34$; $\chi^2 = 9.09$; $p = .011$). This factor was mentioned in fathers' cases far more frequently than it was for the other groups and it comports with larger normative constructions of responsible fathers as "good providers" and "bread winners" (Roy, 1999; Bernard, 1981).

The high rate of incarceration for fathers – in comparison to mothers and couples – is striking, as is the very low p value for this chi-squared result. A review of termination decisions by Olmstead, McWey and Henderson (2011) found that paternal incarceration was an important contextual factor for courts when making termination decisions. But the rate of incarceration (50%) for fathers in the Olmstead study was not as high as it is in this analysis (81%).

The impacts of incarceration on the provision of casework services cannot be underestimated. The logistics of arranging visitation between jailed fathers and their children, are, to be sure, often complex and laborious for social workers (Gabel & Johnston, 1995). This

study clearly indicates that incarceration is a significant issue for fathers facing termination and, arguably, case plans and services could do more to account for it.

(3) Both parents. The statistical analyses point to two patterns for cases involving both parents. First, courts based their termination decisions, in part, on the parents' lack of service compliance. This entailed failure to: participate in social work services ($n = 35$; $\chi^2 = 4.77$; $p = .092$), complete addiction treatment ($n = 24$; $\chi^2 = 8.35$; $p = .015$), and maintain contact with service providers ($n = 21$; $\chi^2 = 7.02$; $p = .030$).

The second pattern characterizing the "both-parents" group involved domestic violence. Domestic violence was identified as a basis for terminating parental rights in 70% of cases where both parents were involved in the legal proceeding ($n = 48$; $\chi^2 = 3.49$; $p = .064$). This finding is especially significant because domestic violence has consistently posed a challenge to the child welfare system. There is a perception in the social work literature that child welfare workers "always" expect women "to end relationships with abusive men" (Johnson & Sullivan, 2008). This expectation is complicated by clear empirical evidence that domestic violence may be at its most lethal when a woman attempts to leave her batterer (Campbell et al., 2003).

Reversing Terminations

In 2010, there were 14 cases where the appellate court did not sustain the trial court's termination, but instead, reversed the termination decision and sent the case back down to the trial court for further proceedings. The reasons for these reversals fall into two general categories: (1) substantive disagreements with the termination decision, and (2) technical procedural problems.

Substantive reversals. Two cases in the sample were reversed for substantive issues. Because this number was so small, I also reviewed appellate cases from 2009 that involved the termination of parental rights and that were reversed for substantive reasons. Six such cases were found. Thus, between 2009 and 2010, there were a total of eight termination decisions made by trial courts that were reversed for substantive reasons by appellate courts. These cases show that appellate courts can make independent conclusions about termination based upon the facts of the child welfare case. In other words, the courts are not automatically bound to the trial court's termination decision.

Several important themes emerged from review of these eight cases. In four of them (50%), the appellate court found that children had not been in out-of-home care for the statutorily required 12 months. These rulings clearly indicate that if a parent has not completely abandoned a child, then the state cannot reduce the amount of time it devotes to providing casework services to parents and working to reunify families, no matter how desperate the parents' situation may seem. A 2009 case is especially notable. Here, the state prevailed at the trial court level and successfully argued for terminating the parental rights of a mother whose child had been in care for only six months. The child was placed into foster care primarily because of neglect related to the mother's substance abuse; she had tested positive for cocaine and Ativan during her pregnancy (Case #202).

In reviewing the facts of the case, the appellate court found that the mother had not complied with every aspect of her case plan and, in fact, had tested positive for drugs while the child was in her care. She was dismissed from drug treatment as a result. However, she had also obtained substance abuse and psychiatric evaluations, submitted to random drug screens, not

violated the law, attended some medical appointments with her child, visited the child 11 times, and brought appropriate toys and clothes to these visits. Altogether, these facts led the appellate court to rule that termination was not justified given the “relatively short six month period” the case had been pending (Case #202, p. 6).

Three other cases among the 2009-2010 reversals warrant review. First, a termination decision was reversed when the appellate court found that the trial court did not properly consider the availability of a relative placement. Specifically, a young boy’s grandmother was able to serve as an appropriate relative placement in the case (Case #205). The termination was reversed and the case was remanded to the trial court for further consideration.

In its opinion, the appellate court pointed to evidence in the record that the grandmother had served as the permanent placement for the boy’s older brother. If the relative placement had been pursued by the state’s child welfare agency, termination might have been avoided. The appellate court wrote:

It is unclear to this Court, based upon the record before us, why placement with [the grandmother] was not pursued. She expressed a willingness, desire, ability, and preparedness to take custody of [the child]. [The child’s] brother has flourished in her care.... (Case #205, p. 5).

In issuing its reversal, the appellate court further noted the scant attention paid to the grandmother as a placement option. The opinion reads: “the record and transcript [from the trial court] paint a more nuanced picture of this family’s situation than does the order terminating parental rights.” (Case #205, p. 5).

Second, in another 2009 case the appellate court found the state’s child welfare agency failed to provide services to a child’s father. The father had not been in contact with the child or her mother when she came into foster care. However, upon learning of the placement, the

father contacted the child welfare agency and sought visitation with the child. The father also attended a court hearing (despite living in another state) and asked the agency for custody of the child. The child's therapist recommended against visitation with the father and the agency followed this advice. In reversing the termination order, the appellate court stated that the child "was not removed from her home because of any actions by [the father]" and it faulted the agency because it "never developed a family services case plan for [the father], as required by law" (Case #203, p. 2). The appellate court determined that the father's actions could not be interpreted as abandonment of the child. The appellate court reversed the termination against the father.

In a third case from 2010, the appellate court could not determine what burden of proof the trial court used when making its termination decision. In most family law and civil proceedings, parties prevail at trial by proving their case by a *preponderance* of evidence. In criminal proceedings, the burden is much higher, and a criminal conviction needs to be shown *beyond a reasonable doubt*. In termination cases, the burden is mid-way between these two standards and the state must prove its case against parents by *clear, cogent, and convincing* evidence. When this standard is not articulated in the court's ruling, an appellate court cannot determine whether a termination was appropriately ordered. This was the result in a case involving both parents' rights to a four-year-old child. In reviewing the case, the appellate court found that the standard of proof was "not affirmatively" stated in the trial court order and, accordingly, needed to be reversed (Case #97, p. 2).

Procedural reversals. The large majority of 2010 cases ($n=12$, 86%) involved technical procedural problems. Although based upon technicalities, the reversals were meaningful because they frequently involved the protection of the parents' or the children's rights.

In nine of the procedural reversals, there were defects in the trial court's termination order. These defects involved the nature of the trial court's written termination order and its failure to precisely identify the facts justifying the decision. It is important to note that the appellate court did not necessarily disagree with the termination decision in these cases. Instead, it ruled that the trial court did not follow the correct procedures in issuing its termination order. By sending the case back down to the trial court, the appellate court allowed the trial court to resolve the problems and reinstitute the termination. In the remaining three cases, key professionals associated with the cases did not appear in court during the termination trial, including one attorney and two guardians *ad litem*.

Overall, the 14 reversals in 2010 underscore that appellate courts have discretion when reviewing trial court decisions. Appellate courts must respect trial court determinations, but they also independently assess trial transcripts and draw their own conclusions from the evidence in the record. Appellate courts also look for the explicit articulation of key legal phrases and concepts in the trial court's decisions, such as the burden of proof. When these phrases do not appear in the record, or it is shown that procedural safeguards were not followed at trial, a termination decision may be reversed. Similarly, when a trial court's decision is not supported by sufficient findings of fact, the appellate court may reverse a termination decision. Taken together, these 14 reversals show that state appellate courts do not simply

rubber-stamp trial court decisions. They are able to closely analyze the trial court transcripts and come to a different conclusion about the case.

Conclusion

The analysis of manifest content in the opinions determined that appellate courts consider 39 factors, across 10 different domains, when making decisions to terminate parents' rights to their children. Most often, the courts point to parental conditions in their termination rulings. These conditions mirror those described in previous child welfare research: they primarily concern parental substance abuse, domestic violence, mental illness, and incarceration.

Another key finding is that North Carolina appellate courts have significantly more criteria for terminating parental rights than appear either in state statutes (16 criteria) or the federal Adoption and Safe Families Act (eight criteria). For example, the courts consider a range of criteria related to parental compliance with casework plans even though none of these criteria appear in state statutes. These results make clear that North Carolina's courts are active players in the state's child welfare system and that there is a gap between "law on the books" and "law in action." In other words, state statutory criteria only explain part of the reason why parents' rights to their children are terminated.

The breadth of the factors in the typology presented in Table 5 also points to the ambiguous nature of neglect. All of the cases studied for the dissertation involve allegations of neglect, which is the most commonly reported form of child maltreatment in the country. For several decades, child welfare scholars have struggled to develop a precise but meaningful definition of neglect. Given its prevalence, it is striking that neglect was not included in the

Adoption and Safe Families Act, possibly exactly because it was too poorly defined. The present study shows that neglect remains a large umbrella term, inviting judicial consideration of a broad array of parental behaviors, environmental conditions, and child attributes.

Also of import, the appellate courts appear to consider different factors depending upon which parent is involved in a termination case. Looking at cases involving only mothers, only fathers, and both parents, the chi-squared results find significant variation in what courts concentrate upon. In particular, courts focus on mental health issues in mothers' cases, incarceration in fathers' cases, and domestic violence when both parents are involved. The precise relationship between the parent's sex and the factors considered by the courts is unclear but warrants future exploration.

While the appellate courts pay significant attention to the problems and challenges parents face when justifying their termination decisions, they also note four parental strengths in their decisions. These strengths are described less often than parental problems and family challenges. The most frequently cited strength is the existence of an emotional bond between biological parents and their children ($n=14$). Given its prominence in child welfare research and practice, it is somewhat surprising that parent/child visitation was not addressed in more cases. It was addressed in 14 cases. Although a number of parents possessed important strengths, their presence in a case was not sufficient to help a parent prevail in the termination proceeding.

Finally, the analysis shows that appellate courts have the power to reverse trial court decisions terminating parental rights. There were 14 cases in the sample where a termination was reversed. In the majority ($n=12$), the appellate court based its reversal on technical legal

grounds. These grounds were significant because they were related to the protection of parent's procedural rights. For example, in some cases the appellate court found that needed professionals did not appear at trial and in other cases the courts found that children had not been in foster care for the statutorily mandated 12 months. The remaining two cases involved substantive issues. In these instances, the appellate court reviewed the trial court record and came to a different conclusion about the merits of termination. Collectively, these reversals make clear that appellate courts do not merely "rubber stamp" trial court termination decisions. Instead, they are able to critically review the lower court decision to ensure that parent's rights were protected and they are able to exercise their discretion and make an independent assessment of the evidence at trial.

Chapter 5

Latent Content: Service Compliance and Termination Decisions

This chapter and the next aim to surface unspoken, ideological assumptions about families involved in termination court cases. I do this by analyzing latent content in the opinions. This chapter focuses on parents' compliance with casework services, which emerged as a major theme in the manifest content of the opinions.

Because compliance was so prevalent in the opinions, I wanted to better understand how the courts addressed it in their rulings and I sought to explain its significance to the courts' decision-making. It is also notable that service compliance is the only domain where none of the individual termination criteria within it have a root in North Carolina's statutes. In other words, service compliance has no basis either in either ASFA or state law. This fact underscored the need for additional exploration of the issue. To complete the analysis, I look to two key words in the opinions ("failure" and "compliance"), adjectives and labels describing parents, and rhetorical images of parents.

The chapter begins with an overview of parents' compliance with services. The overview section is followed by four additional discussions that address: (1) the importance of risk assessment to judicial decision-making; (2) the moralistic judgment of parents in the opinions; (3) the ways that surveillance wends itself into parent/child visitation; and, (4) the tension between the courts' focus on compliance and the reasonable efforts standard in child welfare law. A brief summary ends the chapter.

Overview of Parental Compliance

The findings in Chapter 4 demonstrated how important service compliance is to judicial decision-making in termination cases. In that chapter, I identified five different factors that

were associated with service compliance:

- Parent did not complete or regularly participate in mental health treatment.
- Parent did not complete or regularly participate in social work services.
- Parent did not visit the child or did so inconsistently.
- Parent did not complete or regularly participate in addiction treatment.
- Parent did not maintain regular contact with service providers.

At least one of these factors was present in 75 different cases.

Although these “compliance behaviors” are identified throughout the North Carolina opinions, the courts vary in the depth of their descriptions of them. At times, the exact names of treatment programs or specific therapists are presented, while at others the services are only generally referenced. In the following sections, I address several issues related to findings about compliance: the servile nature of it, the use of task lists to ensure compliance with case plans, and several potential reasons why courts emphasize compliance in their decision-making.

Compliance and servility. When parents do not participate in the required services, the courts routinely find that they did not comply with their case plans. In fact, the term appears in all but one of the cases in the sample. Typical examples include:

Substance abuse was an issue and the respondent mother continued to not comply with services and the court continued not to return the child to her care. (Case #5, p. 4).

...the trial court ceased reunification efforts with the father, based on the father's failure to comply with substance abuse treatment and counseling. (Case #27, p. 2).

Throughout respondent's history of involvement with child protective services, respondent would comply with a case plan for periods of time, but then would relapse or be unable "to hold it together. (Case #90, p. 2).

This frequency of the use of “comply” in the opinions is important because the word has a particular valence and meaning. Not only does it refer to fulfilling or accomplishing a task, but it is also associated with “making oneself agreeable” to others and being “complaisant” and “compliant” in order to “accommodate oneself to the desires or wishes” of another (Oxford English Dictionary, 2012). Just as notable is what the term does not connote. Compliance does not imply a collaborative process where social workers and parents mutually agree upon a case plan (so that it meets a parent’s actual needs), nor does it suggest that parents partner with their social workers to build trusting, helpful relationships. Compliance has a distinctly servile hue.

Compliance and task lists. The opinions studied for this dissertation have a task-list nature about them. The following, typical passage both demonstrates the importance of parental compliance with casework services, and it exemplifies the laundry-list nature of termination criteria. The passage also shows how courts reduce the highly complex and emotionally charged process of personal growth and rehabilitation at the heart of child welfare cases into succinct, staccato-like lists. The term “comply” is italicized in the excerpt in order to demonstrate its frequency:

The joint case plan required respondent-mother to: (1) *comply* with recommendations from her parenting/psychological evaluation which referred her to individual counseling and vocational rehabilitation services; (2) actively participate in the Healthy Start Program and *comply* with recommendations; (3) actively participate in individual therapy through Healthy Start and *comply* with recommendations; (4) contact Vocational Rehabilitation and *comply* with their application process; (5) demonstrate her ability to function independently; (6) complete a domestic violence assessment at Family Services of the Piedmont and *comply* with recommendations; (7) receive regular medication monitoring and take only prescribed medications; (8) successfully parent [the child] by meeting her needs during visitation; (9) participate in shared parenting; (10) maintain contact with the DSS social worker; (11) sign release forms; (12) visit with [the child]; (13) attend all

court proceedings in regard to [the child]; (14) acknowledge her responsibility for [the child] being in DSS custody and demonstrate efforts to reunify by *complying* with all aspects of the case plan; and (15) enter into voluntary agreement with Child Support Enforcement. (Case #69, p. 2).

This passage is striking for the sheer number and extensiveness of the ordered services. It is also unclear how a parent, with limited financial resources and apparent psychological challenges, could both complete the specified services and demonstrate compliance with them. Items such as “(5) demonstrate her ability to function independently” and “(9) participate in shared parenting” are plainly vague and ambiguous. Plainly, the court glides over the fit and adequacy of these services to the mother’s circumstances and needs. The core question before it is whether the parent did what was ordered or not, regardless of how clear the standard for compliance is.

There is also a servile hue to the items in the opinion excerpt, especially number 14 requiring the mother to “acknowledge her responsibility” and “demonstrate efforts to reunify.” Previous research on social worker and parent interactions in child welfare has shown how categorization of parental behavior (e.g. compliant/not compliant) facilitates the moral assessment of parents (Hall, Slembrouck, & Sarangi, 2006). Implicit in this assessment is a belief that parents should acknowledge responsibility for their child’s maltreatment. Such acknowledgement makes it “easier” for social workers to engage with parents because they have “confessed some responsibility for their plight” (Altman, 2008, p. 559). If social workers (as well as judges) want to avoid situations where parents minimize or deny responsibility, it is essential that they demonstrate empathy in their relationships with parents. Research has shown that where workers demonstrate high levels of empathy in their communications,

parents are less resistant to help and disclose more information about their situations (Forrester, Kershaw, Moss, & Hughes, 2008, p. 46)

The seemingly canned list of services in the excerpted passage is also revealing. Families in the child welfare system often receive “boilerplate service plans” that are not customized to meet their unique needs (Bailie, 1997, p. 2319; Weinstein, 1997). Pelton (2008), for example, has shown that child welfare systems both define and then respond to parents’ needs in very narrow terms. In an examination of child welfare cases in Clark County, Nevada (Las Vegas), he found that:

Very frequently, parents, even if homeless, were merely provided with “extensive resource lists” or “extensive community resource packets” for parenting classes, drug treatment, and housing. They were given phone numbers of the county and municipal housing authorities, or were told that they “may contact the following offices to apply for housing assistance.....” (Pelton, 2008, p. 794).

The social workers in the North Carolina sample may have done more for parents than those in Pelton’s sample, but those efforts are not described in the opinions. In the end, Pelton’s conclusions are relevant to judicial decision-making. The North Carolina opinions show that a court’s final judgment in a termination case may resemble a boilerplate summary of ordered services without a subtle analysis of their fit and relevance to parents’ needs.

Reasons for emphasizing compliance. There are four likely reasons for this clear attention to compliance in the opinions. First, it is easier to determine whether a parent has completed social work services than it is to accurately assess a child’s risk of maltreatment. As Brank (2001, p. 341) and colleagues write, compliance with case plans is a “more concrete” approach to decision-making compared to determining a child’s risk of maltreatment or identifying what is in their best interests.

Second, compliance is likely emphasized in the opinions because it is viewed as a proxy for a deeper state of mind among parents. This state of mind is one in which parents have the “intrinsic motivation” to overcome their personal challenges and the moral and psychological capacity to properly care for their children (Smith, 2008, p. 528). In other words, compliance with case plans is a way for parents to show that they are trustworthy and can be relied upon to adequately care for their children in the future.

The third reason for emphasizing compliance relates to structural factors. Like child welfare social workers, judges – at both the trial and appellate levels – have significant case loads which likely impede their ability to individually scrutinize social work services. In North Carolina, for example, there are fifteen appellate judges working in panels of three. In 2011, more than 6,000 different filings were made to this court.¹¹ These caseloads likely contribute to the succinct and seemingly mechanistic analysis of parents’ participation in services. Judges may simply not have time for a more thorough or probing analysis.

Fourth, courts are political actors and this fact may lead them to emphasize parental compliance. Appellate judges in North Carolina are elected officials and like other elected individuals they are probably mindful of the media and its portrayal of child abuse and neglect. Child maltreatment cases, especially those involving child deaths, tend to be sensational and drive political discourse, as seen in the discussion of ASFA. Concern over placing a child at risk of abuse or even death may lead courts to use extreme caution when reviewing a parent’s progress. Courts may be disposed to “rubber stamp” a child welfare agency’s negative

¹¹ Specifically, 1,615 appeals, 953 petitions and 3,833 motions were filed with the court in 2011 (N.C. Court System, 2012).

assessment of parents' participation in services because that is perceived to carry less risk (Baillie, 1997, p. 2314).

Risk Assessment

The focus on compliance in the termination opinions also has roots in current social work and legal practice that emphasizes risk assessment. For more than 20 years, child welfare agencies have adopted actuarial-based risk assessment tools to determine which children should be removed from their homes or be reunified with the families (English & Pecora, 1994; Gambrill & Shlonsky, 2001; Shlonsky & Wagner, 2005; Wald, 1990). These tools aim to reduce errors in child welfare decision-making and improve children's safety by limiting individual discretion. They also help drive social work practice toward the achievement of key measurable outcomes – such as increasing the number of adoptions and decreasing the time children spend in foster care – rather than on increasing the level of responsive and supportive services offered to parents (Tilbury 2004, p. 237). Nigel Parton (1998, 1997, 1996) has written extensively about risk assessment. He argues that such assessments have become “the central concern” in child welfare policy and practice – even though the knowledge and research base needed to accurately assess and identify high-risk families is tentative and contested (Parton, 1998, p. 17).

Altogether, 29 North Carolina opinions explicitly reference children's risk of future harm. In these cases, the courts look to parent's past behavior as predictive of future caregiving. The following is a typical passage concerning risk assessment from one of the opinions. In this case, the court noted that the mother had received child welfare services for two years and concluded that,

Unfortunately, nothing changed. She is not in position now or in the foreseeable future to appropriately meet the juvenile's needs or to appropriately provide care

for the juvenile. Hence there is great risk of harm to the juveniles if they are returned to [respondent's] custody, care, or control. Moreover, [mother] experienced difficulty in addressing her own needs. (Case #82, p. 4).

On occasion, the courts directly mirror the language of clinical risk assessment in their decisions. One opinion directly relied on evidence from a clinical assessment tool when justifying its termination decision:

[The mother] had a high score on the Child Abuse Potential Inventory indicating that her profile matches those of people that have abused children. Additionally, a high risk of child abuse due to dysfunction across many dimensions...was noted. (Case #21, p. 3).

Both courts in these excerpts were concerned with trying to determine how a parent would behave in the future and whether this behavior would endanger the child's safety. Overall, the dissertation findings show that concerns about risk have become an important component of judicial decision-making in termination cases, just as they have in social work practice within the larger child welfare field.

Parents and Moral Judgment

The focus on compliance behaviors and risk assessment in the opinions bears similarities to what scholars in other contexts have called "eligibility compliance culture" (Lens, 2008). This culture prioritizes compliance with bureaucratic processes and paperwork over attending to individuals' unique needs (Bane & Ellwood, 1994; Lipsky, 1980). A significant body of research on eligibility compliance culture has focused on welfare reform and the use of sanctions to ensure individuals' adherence to TANF eligibility criteria (Lens, 2006; Riccucci, Meyers, Lurie, & Han, 2004). Those sanctions are often imbued with moral judgments.

More broadly, Hasenfeld (2010, 2000) has described human service organizations that seek to change individual behavior – child welfare systems being one example – as doing

“moral work.” These organizations uphold dominant values, rooted in normative behavior, and enforce these values through law, rules and regulations (Hasenfeld, 2000, p. 330). Since the courts in this study are making decisions about parents’ fitness for custody of their children, they too are doing moral work, and there is implicit evidence of moral judgments of parents throughout the opinions.

The analysis of latent content in the opinions points to two areas where courts’ decisions are entwined with moral judgments. They correspond to the frequent use of two key words: “failure” and “willful.”

“Failure” and moral judgment. Perhaps the most persuasive textual evidence of the way compliance with case plans and moral judgments are intertwined is the sheer frequency with which judges describe parents and their actions to rehabilitate themselves as “failures.” Altogether, the word “failure” appears in 71 of the opinions. The following two excerpts illustrate both the prominence and repetition of failure as a key descriptor of parents and the moral tinge to the courts’ assessments. I have italicized “failed” in the excerpts to show the frequency of the term:

...the court ceased reunification efforts with [the parents] due to their *failure to comply* with their case plans and the Court's previous orders....[the court concluded] that the *failure* of [respondent-mother] and [respondent-father] to obtain psychological evaluations had rendered reunification problematic...they have *failed* to send any correspondence or gifts to the minor children.... Due to the *failure* of [the parents] to demonstrate stability and to obtain psychological evaluations and recommended treatment, there is a reasonable probability that the neglect of the minor children would be repeated.... (Case #30, p. 4)

The respondent father has *failed* to provide any love, nurturance or care for the minor child. There is a reasonable likelihood of repetition of the neglect in that the respondent father has *failed* to successfully complete court ordered services, has never been in contact with the Department and has *failed* to participate in the court process, and events and the respondent father's actions since the adjudication in the

underlying file through the hearing of this matter do not indicate any likelihood that the respondent father's behavior will change in the future. (Case #62, p. 4)

It is notable that both courts in the excerpts weigh the parent's love for their children. In the first example, the court indicated that the parents had not provided gifts to their children. In the second, the court explicitly states that the father had "failed" to love his child. Both examples draw inferences from parental failure with services to make conclusions about parents' affection and feelings toward their children. The courts' conclusions are, perhaps, overdrawn; they are certainly morally laden. Failing in their compliance with services, failing in their love for their children, the parents failed in their efforts to regain custody of their children. Further efforts at reunifying these families would, in the courts' view, likely fail as well.

Parallels are readily visible between the compliance-focused nature of termination decisions and other compliance-oriented jurisprudence, such as that involving probation. Although probation revocations are technically administrative procedures, they have significant consequences for the probationer, including the possibility of imprisonment. Similarly, termination hearings are civil proceedings, and they too carry momentous consequences. Thus, both proceedings lead to the loss of constitutionally protected rights.

The discursive similarities between these two types of proceedings can be seen in *State v. McVay* a North Carolina appellate opinion also written in 2010. That case hinged on whether a defendant should be jailed for a probation violation. The opinion includes a passage that closely resembles the termination excerpts above and their emphasis on "failure":

On 15 January 2009, [the probation officer] filed new violation reports alleging the following violations: (1) Defendant *failed* to pay his court fines; (2) Defendant *failed* to pay his monthly supervision fee; and (3) Defendant was terminated from is drug treatment program (TASC) in violation of the requirement that he participate in any evaluation, counseling, treatment, or education programs

recommended. On 29 June 2009, [the probation officer] filed addendums...alleging the following...: (1) Defendant tested positive for marijuana; (2) Defendant *failed* to complete his community service requirement; (3) Defendant *failed* to obtain his G.E.D.... (*State of North Carolina v. McVay*, 2010)

In both this and the earlier passage from a termination opinion, the courts use clipped language, provide a numbered list of services and activities to be completed, frame participation in these services as a binary “completed/failed” variable, and seem to bring little nuance or subtlety brought to their analysis. The parallels in tone and tenor suggest a similar judicial mindset among termination and probation cases. Both are approached as quasi-criminal proceedings requiring a similar form of skeptical, moralistic inquiry.

The prominence of failure in the North Carolina opinions bears out Freundlich’s assertion that termination actions are, by definition, processes “designed to prove the parent a failure” (1999, p. 106). It also suggests that the legal system’s expectations of parents are exceedingly low and that courts believe parents are hopeless (Smith & Donovan, 2003). My reading of the North Carolina opinions also tallies with another examination of state child welfare law. Bean (2004, p. 339) describes how courts terminating parental rights view families as “irrevocably sundered” and conclude that rehabilitative services and other reasonable efforts are futile.

“Willfulness” and moral judgment. Coupled with the consistent use of “failure” in the opinions is a characterization of parents as “willful.” Altogether, 70 opinions include the use of “willful” or “willfully” to describe parents’ lack of compliance with casework services. The use of this term is doubtless spurred by North Carolina statutes, which state that termination may be ordered when parents “willfully” fail to pay child support or leave a child in foster care for more than 12 months (N.C. Gen. Stat. §7B-1111[4]).

North Carolina courts have explained the meaning of willfulness and they make clear that parents who have “willfully” failed to comply with services are making a volitional choice not to parent. For example, in a 2009 opinion interpreting the meaning of “willful,” the court stated:

Willfulness does not imply fault on the part of the parent, but may be established “when the [parent] had the ability to show reasonable progress, but was unwilling to make the effort.” (Case 205, p. 3).

The following excerpts illustrate how the courts used “willful” to describe parents in the North Carolina cases:

Based on our review of the record, we hold that the trial court properly concluded that respondent-father *willfully* left [the child] in a placement outside the home for more than twelve months prior to filing the petition without showing to the satisfaction of the trial court that reasonable progress had been made in correcting the conditions which led to removal of the child. (Case #77, p. 5)

The court further found that “[f]ull compliance with the court ordered case plan and showing positive results from such compliance” remained to be accomplished before reunification could be achieved... Furthermore, the trial court made clear in many of its orders that respondent-mother had to show positive results from compliance with her case plan for reunification with her children... All of the findings regarding the ground of reasonable progress indicate a lack of effort on respondent-mother's part rising to the level of willfulness. (Case #4, p. 3, 5)

By focusing on parents’ willfulness, the opinions add to the moral hue of their decisions. The courts squarely place the blame for children’s continued placement in foster care on parents’ shoulders. It also suggests that the courts are expecting parents to display commitment to their children by complying with its orders.

Surveillance and Parent/Child Visitation

Courts closely survey a wide array of life domains when determining whether parents should be reunified with their children. Within a single case, the court may examine a parent’s

psychological functioning, employment status, interpersonal relationships, and housekeeping.

Undoubtedly, maintaining children's safety should be a critical priority of the child welfare system. However, in order to meet this mandate, the system subjects parents to an exceptionally high level of scrutiny that strips away personal privacy and opens up all aspects of their lives to examination. Such scrutiny is one way to determine whether parents are complying with their case plans.

Home visits are one of the child welfare system's most powerful surveillance tools and strategies for determining compliance with case plans. As the following excerpt illustrates, the results of such visits may not only be ambiguous but can have a negative impact on the parent/social worker relationship:

Two DSS social workers conducted a home visit on the evening of 25 February 2009. Respondent [mother] took several minutes to answer the door. Smoke filled the house, two boys were playing video games in the living room, and three men were drinking and playing dominoes in the kitchen. Respondent was smoking a cigarette, and one of the social workers asked her to put it out, in consideration of [her son's] respiratory problems. [Her son] was lying in the middle of a bed in a bedroom, and respondent noted that she had a humidifier on for his breathing as directed by the pediatrician. Respondent then became emotional and accused the workers of trying to "catch" her with D.E., with whom she was not supposed to have contact. However, the social workers had spoken with respondent several times earlier in the day to let her know they would be making a home visit, although they did not give her an exact time for the visit. (Case #2, p. 3)

The quote illustrates how a home visit can deteriorate into a situation where the parent feels "caught" by social workers. Rather than building trust and rapport – which, ostensibly, a visit should contribute to – this visit led to the mother becoming "emotional" and essentially "accusing" the social workers of sabotaging her efforts to reunify with her children.

Along with home visits, the opinions also indicate that parent/child visitation can be an important venue for parental surveillance. In their review of parents' participation in services,

courts looked to see whether they had visited with their children. Altogether, 30 opinions referred to problems in visitation when making their termination decision.

In general, the courts had a rather narrow view of visitation. The quality and emotional content of visitation received scant attention. The opinions also rarely addressed the personal and financial barriers that stood in the way of visitation. One especially striking opinion skipped right past all such complexities:

...on 18 February 2009, respondent-mother missed an appointment, and in following up, DSS discovered an eviction notice posted on the door of respondent-mother's listed residence. Respondent-mother thereafter missed two home visits scheduled with DSS. (Case #63, p. 5)

Even when visits occur, they can be quite fraught. At times, courts used what parents said and did during visits as evidence that their rights should be terminated. Altogether, there were 14 cases in the sample where courts pointed to problematic parental behavior during visits to justify their termination decision. As the following excerpt shows, parents find themselves in a "visitation bind." On the one hand, visitation provides them with an opportunity to maintain and build their parenting skills and sustain their relationship with their children. On the other hand, visits are a venue for the state to gather evidence against them and police their behavior:

[The parent educator] as a result of her observations, surmised that [the mother] was unable to effectively parent [the children]...The [r]espondent . . . was not able to distribute affection and attention equally among [the children]. During the in-home sessions, [mother] spent a majority of her time holding [one child] even though [he] could walk...The [mother] had to be consistently prompted, coached, and shown how to interact with [the children] and utilize parenting techniques. (Case #82, p. 3).

This excerpt suggests, then, that visits can be both a blessing and a curse in the legal context. In this visits are also emblematic of the tensions present in concurrent planning of child welfare

services. The courts and child welfare agencies simultaneously offer assistive services to families while policing them. The Janus-faced nature of social welfare systems, like child welfare, has been well-described and critiqued by scholars (Abramovitz, 1996; Donezelot, 1979; Gilliom, 2001). Ultimately, this dualism is problematic because it contributes to parental ambivalence about the child welfare system and the services they are required to complete.

It is notable that while negative behavior during visits could be used against parents, actual compliance with visitation services seldom helped to defeat a termination action. Parents in 14 cases in the dissertation study consistently visited their children, yet all had their rights terminated. This is especially striking given that, overall, the visits were described in positive terms. In one case, the court wrote: "...all visits with the children had gone well" (Case #70, p. 2). In another, the court stated:

Unusual in a termination of parental rights proceeding is the quality of the relationship between the mother and the children. [The mother] has continued to visit at every opportunity, she loves her children, and [the children] love her.... (Case #93, p. 5).

Termination came regardless. Clearly, visitation is very complicated for parents and their compliance with the service does not necessarily lead to a finding that they have sufficiently complied with their case plan.

Reasonable Efforts

There is a tension between the courts' focus on compliance and statutory requirements surrounding child welfare practice. Both federal and state laws require child welfare agencies to provide "reasonable efforts" to "prevent or eliminate the need for placement" of children into foster care (N.C. Gen. Stat. §7B-507; Public Law 105-89). In North Carolina, legislation defines reasonable efforts in the following way:

...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...[or]...diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile. (N.C. Gen. Stat. §7B-507).

Aside from its reference to “diligent and timely use,” this definition provides few clear markers against which to judge reasonable efforts. In general, it is ambiguous and imprecise. Unfortunately, there is little clarity elsewhere in law or social work and practice about the meaning of reasonable efforts. Nevertheless, it remains a critical standard for the child welfare system.

Altogether, 20 opinions explicitly mentioned the standard in their decision. Given the stakes of termination proceedings, it is notable that reasonable efforts, and the statutory definition, were not more frequently mentioned by the courts. This absence of uniform attention suggests that the courts are not actively judging child welfare services in termination cases against the standard. Arguably, case reversals described in Chapter 4 can be attributed, at least partially, to a lack of reasonable efforts. However, these are a minority of cases within the sample. Instead, the majority of courts in the study focused their analysis on compliance with case plans. This lack of attention can actually perpetuate ambiguity about the standard because it means uncertainties in the state statute are not being fleshed out and clarified. At the same time, it means that the courts are not examining how closely casework services are tailored to meet a family's unique needs. Just as important, the courts hearing the appeals did not probe on the adequacy of the services offered families, they did not ask whether the services families were referred to and received had an evidence base to support them, they did not assess

whether the families' needs were met by the services, nor did they determine if the services were culturally appropriate.

Conclusion

Evaluating overall parental compliance with case plans is a hallmark of both judicial and social work decision-making in child welfare (Brank et al., 2001; Jellinek et al., 1992; Littell, 2001; Smith, 2008). Findings about compliance in this study parallel the results of other research in child welfare. For example, compliance with specific services – such as substance abuse counseling – has been shown to be a key factor judges and caseworkers consider when deciding whether to recommend family reunification or termination (Karroll & Poertner, 2002). This study extends these findings to appellate decision-making and also provides greater depth of understanding about the ways that judicial reasoning is shaped by a focus on compliance.

The findings reveal that compliance is linked to four key issues addressed in the opinions. First, there is evidence from the opinions that courts have adopted a risk assessment framework when deciding whether parental rights should be terminated. Second, parental failure and willfulness are key themes in the opinions and they are closely intertwined with compliance with service plans. Third, surveillance is a key feature of the child welfare system, including parent/child visitation. Parental behavior during visits is part of the judicial calculus in termination cases. This study shows that even when parents are in compliance with visitation, their rights to their children may still be terminated. Finally, while the courts are very concerned with casework services, they are not similarly interested in determining whether these services met the reasonable efforts standard in child welfare law.

Chapter 6 Latent Content: Poverty and Termination Decisions

This chapter, like the analysis of parental compliance with casework services, addresses latent content in the North Carolina termination opinions. Now the focus is on parental poverty and how it influences the courts' decisions. This paper's earlier review of manifest content showed that the courts regularly cite six different factors as a basis for termination. All of these factors are proxies for parental poverty. They are:

- Unstable housing
- Homelessness
- Eviction
- Unemployment
- Inconsistent employment
- Inadequate transportation

It is interesting that while the courts focus on these proxies of poverty, North Carolina statutes explicitly prohibit termination for the "sole reason that the parents are unable to care for the juvenile on account of their poverty" (N.C. Gen. Stat. §7B-111[2]). Accordingly, none of the opinions analyzed explicitly base termination upon a parent's economic situation and none include the words "poor" or "poverty." Even so, the opinions are replete with markers of parents' severe economic hardship. Consequently, I sought to illuminate the ways the courts considered and accounted for parental poverty in their decisions. To complete the analysis, I look to historic trends, adjectives and labels, as well as rhetorical images as part of the analysis.

The chapter begins with a discussion of three trends in social welfare history. This discussion provides a historical context for the findings and they help shed light on the ways

that poor families are discursively constructed by North Carolina courts. I then address three key issues related to parental poverty: housing, employment, and the “parent as problem” framework in child welfare practice. The chapter ends with a summary section.

Historical Trends

By reviewing child welfare history, we can gain a better understanding of why family poverty is an important factor in the courts’ termination decisions. Child welfare history also tells us that poverty is often linked to a belief that poor parents’ character is flawed instead of a belief that larger social and structural inequities contribute to poverty and child welfare involvement. Three specific key historical trends are addressed: the “placing out” movement, juvenile court intervention in the family, and women’s deservingness for social welfare assistance.

The “placing out” movement. The first historical trend concerns the “placing out” movement of the late 1800s. This movement was intended to save poor children from the deleterious environments that could lead to their maltreatment and abandonment. It lies at the historical heart of current termination law.

The father of the placing out movement is Charles Loring Brace. In 1852 Brace founded the New York Children’s Aid Society. Soon thereafter, the Society became actively involved in the removal of poor, immigrant children from their families in New York’s Lower East Side. By 1903, the society had removed as many as 100,000 children from their urban homes and placed them on “orphan trains” destined for new lives with farm families in the American mid-west (Schene, 1998). Although the children targeted by Brace were described as neglected, the historical evidence of their maltreatment is generally thin (Gordon, 1999; Murdoch, 2006). In

short, the children of many poor families during this time were declared to be orphans and their relationships with their parents – who were otherwise invested in their children’s care and emotional wellbeing – were permanently severed.

The placing out movement stemmed from a belief among child welfare workers of the era that poor children could be “rehabilitated” if they were provided healthy and wholesome homes. This belief was interwoven with deep-seated societal skepticism toward poor parents. At the same time, these beliefs were highly racialized – most of the parents who came under the scrutiny of the Children’s Aid Society were recent “ethnic” immigrants to the U.S. from Eastern Europe. Similarly, children in today’s child welfare system are disproportionately of color. For example, 40% of the children in North Carolina’s system are African American (Fostering Connections, 2012), compared to only 21.5% of the state’s total population (U.S. Census Bureau, 2011). The tendency toward “child saving” in American social welfare policy, and its focus on removing children from poor families – especially ethnic families and those of color – is a historically notable pattern in child welfare practice.

Juvenile court intervention. The second historical trend concerns court intervention in the lives of the poor. Anthony Platt (1977), for example, has offered a detailed account of the legal system’s role – especially the juvenile court – in monitoring poor families and “rescuing” children from their immoral influences. He explains, for example, that judges during the Progressive era were encouraged to act as “judicial therapists,” especially when dealing with juvenile offenders. These judges had the power to investigate the character, family and social backgrounds, as well “moral reputations” of the children before them. They then issued rulings

that would ensure the child's transformation from working-class delinquent to industrious, productive citizen (Platt, 1977, p. 140-142).

Julian Mack described the juvenile court's concern with immoral (in other words, poor) families in 1909 in the *Harvard Law Review*. Mack was Chicago's first juvenile court judge and a one-time head of the National Conference of Social Work. He states that it was the juvenile court's responsibility to provide impoverished parents of children before the court with "kindly assistance" so that they might "train the child right" (Mack, 1909, p. 117). The practice of removing poor children who had not committed crimes from the homes of "immoral parents and vicious environments" because of neglect reflected the predominant social view that such children would be offered a better life outside the influence of morally flawed families (Mack, 1909, p. 145).

Women and deservingness. There is a third trend that is relevant to the dissertation study. There is a long history of determining poor women's worthiness for social welfare assistance in American social policy. This trend is especially salient given that 54 of the cases in the North Carolina sample involved only mothers. The prevalence of mothers-only cases in the sample is not surprising given that women are typically held solely responsible when their children are neglected or abused (Appell, 1998; Featherstone, 1999; Wells & Marcenko, 2011, p. 420). Once they become involved in the child welfare system, these women are culturally inscribed as "bad mothers" – the antithesis of the "nurturing, sacrificing and nonviolent" ideal of American motherhood (Reich, 2005, p. 160). Legal and public opprobrium is especially directed toward women who use drugs while pregnant – a fact in 11 of the North Carolina cases studied (Beckett, 1995). As a result, these women are considered to warrant the morally tinged

assessments found among the examined opinions. As this study has shown, these parents are also found to be non-compliant with casework services and are deemed failures.

A number of scholars have traced the historical and policy roots of this focus on poor mothers' morality (Abramovitz, 1996; Fraser & Gordon, 1994; Katz, 1986). These writers have explained that it is far more stigmatizing for single women to be poor and to seek social welfare assistance through programs such as AFDC and TANF than it is for women who have become single because of widowhood or disability and who seek assistance through social security survivor benefits. From a societal perspective, these latter women are perceived as morally superior and deserving of public aid and assistance (Abramovitz, 1996; Gordon, 1994; Katz, 1986). In the child welfare context, poor women involved in the system have long been stigmatized because of their undeserving status. Whether they are homeless, unemployed, or victims of domestic violence, their problems are perceived as resulting from psychopathology or personal dysfunction, not social inequities or structural barriers. This negative view of poor women is reinforced by the court system where police and court officers often perceive people in poverty as living "chaotic lives" (Yngvesson, 1988). In fact, four opinions in the North Carolina sample refer to parent's lives as "chaotic," "full of chaos," or "out of control." Feminist legal scholars have long argued that these terms are actually tropes for propagating societal beliefs that poor women, alone, are responsible for their own predicaments because they are not married nor economically self-sufficient (Fineman, 1991; MacKinnon, 1989).

Housing

One of the clearest markers of extreme poverty among families in the study is housing instability, including homelessness and eviction. As Courtney and colleagues note, "housing

problems are both corollaries of poverty and threats to child and family wellbeing” (Courtney, McMurtry & Zinn, 2004, p. 394) The courts’ attention to housing can be easily detected in the opinions. Altogether, 34 families had “unsafe or inappropriate home environments” and 33 had “unstable housing.” As the following excerpts indicate, these families faced severe challenges in providing both themselves and their children with adequate housing:

The juveniles' parents have a documented history of inability to maintain stable and adequate housing (per CPS records). [Mother] has a documented DSS history of inability to maintain employment (per WorkFirst records). The juveniles' parents are currently homeless and staying with friends.... (Case #67, p. 2)

...the trial court also was presented with evidence regarding [the mother's] unstable appearance at other points in time during the history of the case, her past neglect of [the child], her erratic employment and housing history, and her continued problems managing her mental health issues, including her failure to follow medication and therapy recommendations.... (Case #8, p. 6)

The trial court found: (1) "mother has not presented any pay stubs to verify employment"; (2) her rent was overdue; (3) she was on the verge of eviction; and (4) she required "redirection at times." Mother was ordered to actively pursue employment by showing proof of application with fifty potential employers.... (Case #102, p. 2)

Such impoverishment was common across the opinions. For example, some families lacked a permanent home and moved from place to place, as often as six times in 18 months (Case #63). In other instances, mothers who had been victims of domestic violence lived in shelters or hotels after leaving an abusive relationship (frequently at the urging of child welfare services) (Case #11). Still other parents had been evicted from their homes and were living with relatives while their child welfare cases were pending (Case #4 and #75).

Although they comprise a relatively small group of cases, those involving parents who were homeless were particularly poignant. Among these 17 cases, 12 of them (70.5%) involved a parent with mental illness. Previous research has shown the corrosive impacts of

homelessness on wellbeing, including increased risk of physical and sexual assault (Goodman, Rosenberg, Mueser, & Drake 1997; Goodman, Saxe, & Harvey 1991; Sullivan, Burnam, Koegel, & Hollenberg, 2000). Once homelessness starts, parents' underlying mental illnesses are likely to be exacerbated and contribute to poor health and mental health outcomes for their children (Rog & Buckner, 2007).

Overall, the prevalence of housing problems among families in the sample mirrors findings in previous studies of child welfare services. These studies not only show that housing instability can lead to involvement with child welfare services (Torrico, 2009) but that as many as 30% of children who have been placed into foster care were removed from their homes primarily because of inadequate housing (Harburger & White, 2004).

Despite this, child welfare workers are generally not well positioned to help their clients navigate public housing systems and secure safe and stable housing (Shdaimah, 2009). A primary cause of this difficulty is the lack of safe, affordable housing available to families in the U.S. The recent economic recession and slowdown has only magnified this problem (U.S. Department of Housing and Urban Development, 2012).

Making matters still worse, the child welfare and public housing systems are not closely aligned in their goals. Parents thrust into the system often do not have stable housing or have housing that is grossly inadequate from a child protection standpoint. Even so, these parents may not meet federal definitions of homelessness because they are not living on the street or in a shelter, nor do they qualify for specialized housing programs (Shdaimah, 2009). Lacking viable housing, these parents may not be reunified with their children.

Employment

Among the cases analyzed, the courts cited a parent's unemployment or inconsistent employment as a basis for termination 44 times. The opinions also indicate that parents who are employed are usually in low-skilled positions that they struggle to maintain. Such employment is often in menial work, like serving as a housekeeper in a motel or working in a fast food restaurant.

Parents' lack of steady, livable wage employment is further complicated by the fact that they are unlikely to receive welfare support. Typically, parents lose most, if not all, of their welfare benefits when their children are removed from their homes and placed into foster care (Reich, 2005). Despite this, there are only a few cases where the courts discuss the fact that parents might lose public assistance benefits during the course of their child welfare case. Two examples:

The mother did receive Work First services while she resided in Forsyth County. The mother failed to comply with the terms of the Work First program during April and May 2008. As a result of this, she was sanctioned and her Work First benefits were suspended.... (Case #66, p. 3)

The exterior of the house is littered with junk and garbage. There is very little food available for the minor child...the Mother was receiving Food Stamps, Work First Assistance, and Medicaid, but has failed to re-qualify for these programs by failing to complete required documentation. (Case #76, p. 2)

The abject poverty of families in the child welfare system, like those in this study, has been a focus of extensive social work scholarship. These families have been characterized as "economically disconnected" because they receive neither employment income nor welfare benefits (Blank & Kovac, 2007; Loprest & Nichols, 2011; Marcenko, Hook, Romich & Lee, in press). Research has also shown that economic disconnection is associated with food insecurity (Blank & Kovac, 2007) and substance abuse (Turner,

Danziger, & Seefeldt, 2006) – both of which serve, as this dissertation makes clear, as bases for termination.

Despite the complexity and structural nature of the economic problems confronting parents, North Carolina appellate courts took a very narrow, binary view of their employment situation: parents were either satisfactorily employed or they were not. The barriers parents faced in securing livable wage employment were very rarely discussed. I found four cases where courts addressed them. Likewise, courts seldom discussed parents' lack of education or vocational training, and when they did, it was done so only cursorily. Yet, even these glancing comments give clues to the desperate economic state parents were in:

Respondent-father has a limited education. He finished school through the tenth grade, but is illiterate. Respondent-father was not employed at any time during the relevant time period, but has been pursuing a social security disability claim based on back pain and having a pin in his arm. (Case #77, p. 2).

Respondent/mother has not taken steps to obtain her General Educational Development (GED) diploma. Although Respondent/mother has been referred to Vocational Rehabilitation, she has not availed herself of Vocational Rehabilitation services... Respondent/mother has failed to maintain employment or sufficient income to provide for the juveniles' basic needs for food, shelter, clothing, education and health care.... (Case #53, p. 3).

The trial court then made findings about respondent-mother's lifestyle and behavior at the time of the termination hearing, specifically that she had: failed to comply with her case plan by maintaining employment, getting her GED and driver's license, completing various classes and meeting regularly with her social worker.... (Case #90, p. 4).

DSS further alleged that respondent had no income for the three months prior to the petition filing and had been deemed "unemployable," due to her limited commitment to securing and maintaining employment." (Case #99, p. 3)

Altogether, these excerpts suggest that courts see parents' lack of employment as a personal choice – something that follows from their "lifestyle" or having "not taken steps" to find work.

At the same time, implicit in the opinions is the belief that if parents really tried – if they displayed sufficient “commitment” – they would be employed.

This narrow view of parents’ employment situations is at odds with practitioners’ and researchers’ increasing advocacy for greater linkages between child welfare and employment systems (Building Changes, 2012). For example, McSherry (2004) has suggested that the use of intensive employment based training programs for parents at risk of child welfare involvement can improve case outcomes. He argues that these programs could help prevent child neglect not only because they address parents’ economic insecurity, but because they build parents’ self-esteem and life skills. Similarly, Berry and colleagues (2003) aver that child welfare services would be well served by a greater focus on concrete services that help families address their most immediate needs, including employment.

The opinions only attend to parents’ lack of education and limited employment prospects in a negative way and they fail to put these economic barriers into a larger structural context. Left unaddressed, these barriers can stand in the way of a child’s return home, even when the parents are on course for reunification. Altogether, there were 14 cases where parents had sufficiently progressed in their case plan to be granted overnight or unsupervised visits with their children. In other words, these families were on the cusp of being reunited. However, the parents ultimately failed to achieve their employment goals and their parental rights were eventually terminated.

One opinion, in particular, suggests how employment challenges can thwart reunification and ultimately lead to termination. This case involved the mother of three girls. The mother had been a victim of domestic violence – at one point her husband had attempted

to set her house on fire while she and the children were in it. During the course of the case there were two failed attempts to return the children to her.

During the first trial placement the mother was working two jobs as a food server and had not yet secured public housing assistance. The placement did not last and the children were moved back to foster care. The court described the circumstances leading to the children's reentry into care this way:

...the trial placement did not go smoothly. [One child] was late to school on several occasions, came to school with body odor, dirty clothes, and dirty hair, and slept during class. Respondent-mother failed to take [the two] children to scheduled medical and therapy appointments. Respondent-mother admitted to being overwhelmed, and she consented to having the children return to foster care.... (Case #74, p. 3).

Before the second trial placement, the mother had secured public housing and was able to quit one of her two jobs. In assessing the early stage of the second placement, the court wrote that the placement seemed to be "going well" and the mother "had continued to make good progress on her case plan" (Case #74, p. 3). Ultimately, however, the mother was not able to navigate all of her case plan's requirements. She was expected to participate in mental health treatment, drug abuse treatment, and domestic violence counseling along with caring for her two young children and maintaining stable employment. In reviewing the second placement, the court wrote:

...the mother had not followed through with some services for [one child] and had failed to contact the [children's] therapist to schedule further appointments. Unfortunately, circumstances had become worse...The girls' school attendance was poor, and they were not attending therapy. (Case #74, p. 3).

In the end, the mother relapsed into cocaine use and reunited with her abusive partner. The mother's parental rights were later terminated. The court noted testimony from the family's caseworker in rendering its decision:

And -- and I think . . . it became clear after a while that, no matter how good [the mother's] intentions were, and how much she had loved those children and wanted them back, that she wasn't able to do what she needed to do to provide a safe . . . home for them. (Case #74, p. 8).

This case demonstrates the complexity of the challenges facing parents in the child welfare system. Despite the mother's obvious desire to be reunited with her children, her substance abuse challenges – coupled with her poverty – proved overwhelming. One can imagine a different outcome if the mother had only needed to focus on parenting and maintaining her sobriety and not, simultaneously, juggling employment and navigating the public housing system.

The work of other scholars also illuminates this case. Research on economic disconnection, for example, shows that family poverty can be long and deep in its consequences – not only contributing to children's placement into care but also hindering their chances of reunification (Barth, Courtney, Berrick, & Albert, 1994; Courtney & Wong, 1996). Similar work has shown that even if children are returned home from foster care, all else being equal, family poverty makes it more likely that they will be returned to care and not remain at home (Courtney, 1995; Jones, 1998).

As the North Carolina opinions show, poor families have few material resources to draw upon as they navigate their case plans. Limited resources, coupled with social isolation, complicate the pathway toward successful reunification. As Jennifer Reich notes, "reunification is a full time job" (2005, p. 126), and parents need as much financial, logistical, and emotional

support as they can get while working to reunite with their children. Maintaining stable, livable wage employment for parents is very challenging and an often fraught task.

Parent as Problem

The analysis of latent content also shows that while courts are very concerned with a parent's economic situation, they do not address the structural barriers parents face in achieving greater economic security or stability. McConnell & Llewellyn (2005) have described this exclusive concern with the individual characteristics of parents in the child welfare system, and not the surrounding social context, as constituting the "parent as problem" framework for child welfare services. This framework suggests that parents are primarily responsible for their poverty. The framework further suggests that if parents only complied with the therapeutic services they were provided, their personal problems would be ameliorated. In other words, therapy and social work services – not providing material resources – is the best medicine for poor parents involved with the child welfare system (Polsky, 1991). A case vignette illustrates how the courts in the sample subscribe to the "parent as problem" framework.

The Mecklenburg County child welfare system first became involved with the "Smith" family after the mother was severely beaten by her boyfriend. He was later charged with attempted murder. Despite the gravity of the domestic violence in this family, the court dismissed the mother's psychological trauma by pointing out that she was someone "who liked to focus on her own victimization" during individual therapy sessions (Case #82, p. 4). While the mother's case proceeded over a period of two years, she was variously diagnosed by mental health providers as having intellectual impairments and suffering from depression.

Consistently, she faced serious economic difficulties. At best she had only part-time, low-wage employment requiring no skills. At no point in the opinion does the court discuss the mother's job skills, whether she graduated from high school, or whether she was enrolled in a vocational training program. Although her employment opportunities were clearly limited, this woman managed to secure work on two occasions. First at the "Waffle House" for \$5.50 an hour plus tips. Then at the Dollar Tree for \$7.25 per hour where she was assigned 10-15 hours every two weeks. Given its meager nature, it is not surprising that the court described this employment as "being insufficient to meet the [mother's] needs as well as the juveniles' needs" (Case #82, p. 4). Exacerbating her financial insecurity was the lack of a social support network – the court noted that she "did not have a significant or consistent support system" (Case # 82, p. 4).

Despite the social and economic barriers in this mother's life, she also possessed admirable strengths. She missed only two visits with her children in a two-year period (attending 81 visits altogether) and she was described as "affectionate" toward the children by the court. Nevertheless, her rights were terminated.

In making its decision, the court emphasized the behavioral and personal nature of the mother's problems and her failure to fully engage in psychological therapy in order to ameliorate her problems. In explaining its decision, the court wrote that during individual counseling sessions, the therapist

Discussed [the mother's] need to address her emotional stability, lack of problem solving skills, making healthy choices, and behaviors...[the therapist] believed that [the mother] needed additional work on taking responsibility for her actions...[the mother] had not achieved any of her therapeutic goals such that she could be successfully discharged from individual therapy. (Case #82, p. 4).

The court further acknowledged that the mother's therapist could not determine whether her "inability to accept" responsibility for her situation was due to "personality traits, other brain function(s), or a combination of the two" (Case #82, p. 4). At no point in the opinion was the mother's need for additional financial and social supports addressed. Her educational credentials or job skills were never discussed. The causes of this mother's child welfare involvement – including her domestic violence victimization – were entirely reduced to psychological deficits, her failure to accept sole responsibility for her troubles, and an inability to sufficiently engage in the therapeutic process. The mothers' parental rights were terminated and her request for continued visits with her children post-termination was unaddressed by the appellate court (and, presumably, left to the discretion of the agency).

Conclusion

Child welfare research has consistently shown that poverty is a major problem for parents involved in the child welfare system. This dissertation illustrates how poverty wends its way into appellate court decisions in termination cases. There are multiple indicators of parents' abject poverty in the opinions studied, including housing instability, homelessness, and unemployment. Although all of these indicators are proxies for parental poverty, the words "poor" or "poverty" never appear in the opinions. This is a significant finding because it is commonly understood among child welfare scholars and practitioners that the families involved in the child welfare system are overwhelmingly poor. The studious absence of a discussion of poverty in the opinions is notable given how pervasively it helps frame and shape the decision.

The findings are also historically situated. Since the turn of the century, poor parents have been at risk of losing custody of their children. The placing out movement, intervention by

the juvenile court, and determining women's deservingness for social welfare assistance are all historical antecedents for the termination of parental rights. Finally, the opinions studied mirror the "parent as problem" framework. This framework reflects larger ideologies and social values that place blame for parents' economic situations and child welfare involvement entirely on their perceived psychological deficits and personal failures. At the same time, it pathologizes dependency and reinforces a foundational American belief that individuals should be economically autonomous (Fineman, 2004). From this perspective, larger social forces and economic inequalities are irrelevant to judicial decision-making.

Overall, this chapter demonstrates how powerful discourses and ideologies about poverty surface judicial decision-making. Even when courts are not explicitly discussing these issues, they are pointing to commonly understood indicators of economic disconnection and material hardship as the justification for termination. Discussion of these indicators is enveloped in language about "parental responsibility" which implies that parents have made a personal choice not to be economically self-sufficient. In these ways, the termination of parental rights mirrors the placing out movement's focus on removing children from the homes of poor families.

Chapter 7

Discussion and Conclusion

The overall purposes of this study was to understand the criteria appellate courts use to justify the termination of parental rights and to discern the social values and ideologies embedded in the courts' decisions. I looked to both the manifest and latent content of judicial opinions to make these determinations. Content analysis and descriptive statistics were used to complete the research.

Ultimately, the dissertation's results show that there is a wide array of criteria, or what I term "factors," North Carolina courts look to when making termination decisions. These factors have several key attributes. First, their breadth and diversity suggests that neglect remains a large umbrella term encompassing a variety of parental behaviors and family conditions. Second, this research shows that there is a group of factors (or, a "domain") that corresponds to parents' compliance with casework services. Service compliance is found in neither state statutes nor in the Adoption and Safe Families Act. Third, the courts are clearly concerned with parents' poverty and their economic situation, but not as a structural impediment.

In the following sections of this chapter I address all of these issues. The chapter includes five sections: (1) a discussion of the breadth and diversity of neglect and my conceptualization of it as a "legal syndrome"; (2) a discussion of the active role courts play in the child welfare system; (3) a discussion of service compliance; (4) a discussion centering on parental poverty and termination; (5) an outline of avenues for future research; and (6) a concluding section that reflects on the need to rethink termination.

Neglect as “Legal Syndrome”

This dissertation identified 39 factors that North Carolina appellate courts most often use to justify their decisions to terminate parents’ rights to their children. These factors are organized into 10 domains. Overall, these factors and their domains can be viewed as a legal typology of termination criteria in child neglect cases.

This typology reveals that neglect is characterized by breadth and a diversity of factors. No single pattern or typical set of facts emerges from the analysis. In fact, the research shows that neglect may be best thought of as a “legal syndrome.” Approaching neglect as a syndrome avoids the challenge researchers have previously struggled with, namely trying to develop a specific and precise definition of it. Instead, the research underscores that neglect is primarily defined by its multidimensionality.

This view is borne out by the relatively large number of factors present at one time in any case. The median number of termination factors per case was 9.0 with a standard deviation ± 3.8 . In addition, viewing neglect as a syndrome recognizes the varied roots of this form of child maltreatment. This study shows that neglect is primarily defined by the simultaneous presence of multiple, interlocking factors, especially parental conditions, parent’s lack of compliance with casework services, an unsafe home environment, and family poverty. Although previous scholars have grappled with neglect’s ambiguity, none have created a typology of it that is anchored in everyday judicial decision-making. The research parallels and expands upon previous research showing that neglect is related to the existence of multiple, simultaneous factors.

Courts and the Child Welfare System

This dissertation clearly shows that parents' rights to their children may be terminated for reasons that are neither included in the Adoption and Safe Families Act nor in state statutes. ASFA lists eight criteria for terminating parental rights while North Carolina statutes identify 16 criteria. The dissertation reveals that appellate judges justify their termination decisions on 39 different criteria.

To some degree, the fact that termination may be based on criteria that are not listed in ASFA is unsurprising. The federal law clearly indicates that the states are free to add additional criteria to their termination statutes. North Carolina is hardly alone in having done this – all but one U.S. state has increased the number of criteria beyond the eight in ASFA (Vesneski, 2011). Similarly, courts in a common law system such as ours, by definition, are responsible for interpreting statutory law and applying it to actual disputes. No statute can address every potential dispute and it is the courts' job to discern the meaning of a statute and apply it to individual cases. Thus, it is not that surprising that additional termination criteria emerged out of the appellate courts' interpretation and application of North Carolina's legislation. This interpretive process underscores the notion that there is often a gap between statutory law ("law on the books") and the workaday world of the law ("law in action") (Silbey & Sarat, 1987). Child welfare law, like other fields of law, is neither static nor determinate, but in a constant state of development.

Nevertheless, it is surprising how broadly the courts have expanded the state's statutory framework. Not only have North Carolina's appellate courts more than doubled the number of statutory criteria – and quintupled the number of ASFA factors – they have added criteria that

have seemingly no connection to underlying statutes. The clearest example of this is the “service compliance” domain, which includes five different factors related to parents’ involvement in social work services. None of these criteria have antecedents in state legislation.

Moreover, the findings underscore the fact that the courts play a *leading* role – along with social workers – in the child welfare system. Previous research and commentary has consistently shown that the courts are important to the system, but this scholarship has not demonstrated the specific ways that the courts help create child welfare policy and inform social work practice. In other words, the courts are usually envisioned as supporting players whose primary job is to ensure that parents’ and children’s rights are protected (Hardin 2005, 2004). This is certainly a critical function, and my research shows that North Carolina courts play an important role in maintaining parents’ procedural rights. For example, there were 12 cases in the sample where the courts determined that parents’ rights had been violated at trial. The appellate courts reversed these termination decisions and remanded the cases to the trial level for further action. However, the research also shows that North Carolina’s appellate courts are active policy agents. Through their rulings, they are creating new termination criteria. And, because their rulings are publicly available and may serve as precedent, the appellate courts are helping shape and direct future social work and legal practice in the child welfare system.

Just as important, this study demonstrates that the courts have the power to immediately and directly affect social work practice by intervening in an individual case. Specifically, there were two opinions from 2010 where the appellate courts assessed the social

work services that were provided to families, made substantive statements about these services, and reversed the trial court's termination decision.

In one case, the court found evidence that a suitable relative placement might be available for a child involved in a termination proceeding, despite the fact that the state child welfare agency did not utilize the placement (Case #205). Because of this, the appellate court reversed the trial court's termination order and directed the agency to explore the relative placement option. In another case, the appellate court found that the state child welfare agency needed to develop a case plan and provide social work services to a father who had not been in regular contact with his child, even though the child's therapist recommended against visitation between the father and child (Case #203). In reviewing the evidence, the appellate court found that the father had not maltreated his child and had expressed sufficient interest in the child's wellbeing to warrant the delivery of casework services. These two cases underscore the court's potential power to scrutinize social work services and to directly intervene in a case where it believes it is necessary. In other words, appellate courts need not rubber-stamp a trial court's termination decision or the child welfare agency's assessment of a family's ability care for its children.

Nevertheless, despite this potential power, the dissertation's findings suggest that the courts do not consistently review social work services with a high level of scrutiny. The primary evidence for this conclusion is the courts' failure to uniformly address the "reasonable efforts" standard in their decisions. Altogether, 20 opinions explicitly mentioned the standard in their decisions. The lack of uniform attention to the standard suggests that courts are not closely

scrutinizing casework services. It also contributes to ongoing ambiguity and a lack of clarity about the meaning of the standard.

Courts, Social Values, and Termination Law

This dissertation adds to our understanding of the ways that ideology and social values undergird the child welfare system. Two particular influences can be seen. First, the opinions plainly reflect the child welfare systems' focus on compliance and surveillance as well as larger social expectations about the supervision of maltreating parents. Second, the opinions show how poverty is entwined with involvement in the child welfare system. Each issue is discussed in the following sections.

Compliance, Surveillance and Engagement in Child Welfare Services. The study reveals how significantly compliance with casework services is linked to judicial decision-making in termination cases. It also shows that surveillance of parents is a key feature of the child welfare system.

One of the principal ways the appellate courts determined whether parents' rights should be terminated was by assessing whether they had complied with their case plans. In fact, "service compliance" was a key domain in the typology of termination factors I developed. This domain includes five different criteria; one of which – parental participation in mental health treatment – was the fifth most frequent criterion mentioned in the opinions ($n=41$). The prevalence of these criteria reveals a somewhat mechanistic inquiry by the courts that focuses on whether parents demonstrated the "compliance behaviors" required by their case plans. Parental involvement in casework was usually reduced to a binary variable: comply or not comply.

At the same time, both social workers and courts deployed their surveillance power and monitored parents' behavior during the pendency of their child welfare cases. The appellate opinions make clear that evidence was gathered from a wide variety of sources, including parents' therapists and by inspecting parents' homes. Perhaps more importantly, the courts considered evidence of parents' behavior during visits with their children. Interestingly, the analysis shows that in all of the cases where parents complied with visits, their rights were terminated. Thus, parents found themselves in a bind – caught between the fact that visitation provides them with a lifeline to their children and the recognition that visits are a venue for the state to gather evidence against them for use during a termination proceeding. Just as important, regular visitation alone – even when it characterized by a loving parent/child relationship – is not a sufficient basis for defeating a termination action, despite parents' hopes and expectations to the contrary.

This deep attention to compliance and surveillance comes naturally to courts and legal institutions. Anglo-American law is dominated by the idea of “legal formalism,” which emphasizes rationality, neutrality and seemingly uniform application of principles and theories across disputes (Suchman & Edelman, 1996). Reducing parental behavior to a compliance/non-compliance binary is closely aligned with this traditional mode of legal decision-making. Three other forces reinforce this reductive approach to decision-making in termination cases.

First, courts involved in child welfare cases – like street level bureaucrats who are involved in making judgments about the people they interact with – are charged with distinguishing “good” citizens from “bad” ones (Maynard-Moody & Musheno, 2003, p. 94). In other words, termination cases require that courts decide which parents can responsibly and

safely care for their children and which ones cannot. Risk assessment, a key feature of the child welfare system, is one strategy for making such determinations. My research points to evidence that the courts have adopted the language and thinking typically associated with risk assessment tools. It also shows that court decisions have a distinct moralistic hue.

Second, although termination cases involve extraordinarily weighty matters, they also compete with a multitude of other cases and disputes facing the courts. More specifically, North Carolina's 15 appellate judges and their staffs handle more than 6,000 cases a year. To manage this workload efficiently, the courts try, to an extent, to routinize decision-making. Reducing complex social phenomena to simplistic formulations of compliance/non-compliance is one way to do this.

Third, the primary goal in litigation is to come to a swift resolution of the matter at hand. Streamlined decision-making helps achieve this. The U.S. court system, in general, is continually battling against dilatory legal tactics, delays, and obfuscations that can prolong the time needed to reach a verdict and finalize a case. In fact, for more than a decade, the U.S. Administration for Children & Families granted more than \$75 million toward improving state court systems' response to child welfare cases (Administration for Children and Families, 2012). Developing processes to speed resolution of these cases was a primary focus of the grant projects. The quasi-mechanical decision-making and borrowed thinking from risk assessment in the opinions I analyzed are also intended to speed the resolution of termination disputes.

Yet, the desire to simplify judicial decision-making comes at a price. As the legal scholar Martin Shapiro observes of litigation, "...it is more important that a termination be provided than that a just solution be reached" (Shapiro, 1981, p. 45). Simplified legal decision-making

avoids accounting for complicated ideas about social equity and fairness. It also means that courts hearing termination cases reduce exceedingly complex phenomena to binary variables that indicate either their presence or absence. Overall, the legal system strips away the complex personal stories at stake in termination decisions, the primal nature of the parent/child relationship, and complex social structures, and distills them down to flat, technocratic assertions.

Although this simplified approach to decision-making may be common in the law, there is a significant tension between it and historical and current conceptualizations of social work practice with parents involved in the child welfare system. Throughout its history, social work has been deeply concerned with the ways that workers and social welfare systems interact with clients. At its best, social work is unfailingly focused on people within their environmental contexts. The legal system, in contrast, strips away all context in order to categorize people and events and quickly resolve disputes.

The importance of context in child welfare services has had renewed emphasis in the last 15 years as scholars have become oriented to the quality of parents' "engagement" with services, as opposed to their mere, narrow compliance with case plans (Dawson & Berry, 2002; Dore & Alexander, 1996). Engagement connotes a multifaceted relationship between social workers and parents that is built on practical help, active collaboration, and partnership (Kemp et al., 2009). Similarly, engagement should be aimed at active parental involvement in the helping process (Yatchmenoff, 2005). This means that parents recognize their need for help, invest in casework services, and both workers and parents strive to establish a useful and meaningful relationship that acknowledges the reality of parents' lives. In the end, child welfare

services – like all forms of social work – should rest upon worker/client relationships that are anchored in partnership, mutuality, reciprocity, social integration, and the optimization of an individual’s personal and social assets (Kemp, Whittaker, & Tracy, 1997, p. 6).

In contrast, by emphasizing the constrained idea of “service compliance,” the appellate courts in this study reinforce an estranging, bureaucratic approach to social work practice. Such an approach prioritizes record keeping, paperwork, and court appearances instead of the emotionally challenging, relational work of providing in-person services to poor parents with significant personal challenges (Smith & Donovan, 2003). The courts I studied reified a narrow approach to decision-making. By focusing on compliance so consistently in their written opinions, they exalt it, concretize it in legal precedent, and offer it as a model to future social workers on how to “win” termination cases and what “counts” in child welfare practice. As a result, judicial decision-making and judge-made law stand in direct tension to the aspirations and goals of social work practice. And because it straddles both the law and social work, the U.S. child welfare system is the site where this tension becomes acute.

This tension calls for action. Stronger and more collaborative relationships between judges, lawyers, social workers, and scholars are needed. Interdisciplinary research across law and social welfare, and cross-publication of studies in law and social work journals, is necessary to educate both professions about developments in the field. Cross-disciplinary symposia – on the meaning of “reasonable efforts,” for example – could help build greater collaboration between social workers and legal personnel. The *Greenbook Initiative* is a model for building judges’ and social workers’ mutual knowledge (Schechter & Edleson, 1999). That project focuses on domestic violence and its impacts on families involved in the child welfare system.

Additional work can be done to ensure that parental engagement becomes a routine focus of judicial decision-making as well as social work and legal practice. For example, greater use of specialized courts where judges have in-depth, detailed knowledge of child welfare legal and social work practice is necessary. (These courts should be distinguished from family courts where judges hear, and are more likely to be familiar with, private custody and divorce matters.) Such courts hold the promise of reinforcing and modeling engagement-based approaches to child welfare service delivery. In addition, more studies like this dissertation – which integrate practical legal and social work knowledge in readily understood ways – can play an important role in raising awareness across the professions and building the empirical case for a different approach to judicial decision-making in termination cases.

Poverty. Not only do the courts I studied focus on service compliance, but they also consistently considered parents' economic conditions, namely their poverty, when making a termination decision. This attention is implicit – no opinion explicitly includes the terms “poor” or “poverty.” However, as the typology in Table 5 reveals, the opinions contain clear references to parents' marginal economic status, including unstable housing ($n=34$), unemployment ($n=31$), homelessness ($n=17$), and eviction ($n=11$).

To fully appreciate the implications of the courts' attention to poverty, it is worth reviewing the termination criteria identified in the *Adoption and Safe Families Act*. Along with the 15/22-month rule, these criteria include murder, felony assault, abandonment, torture, sexual abuse, chronic abuse, and the previous termination of parental rights. Overall, these criteria connote a particular image of a “bad parent,” namely someone whose behavior is violent, egregious and criminal. This image is embedded within Congressional floor speeches

and media stories of child maltreatment at the time ASFA was passed in 1997. It is apparent that such parents exist among the cases studied for the dissertation. For example, 21 opinions indicate that termination was based, in part, on physical abuse and 14 involved sexual abuse. The parents involved in these likely may pose serious threats to their children and that their rights are probably best terminated.

However, the prevailing image of parents in the cases is of extremely poor individuals confronting a myriad of personal and social challenges with minimal economic resources. Unlike the villainous parents at the center of ASFA-related discourse, many of the parents in the sample were relatively sympathetic. This sympathetic image is especially salient among the parents whose strengths were acknowledged by the courts, including those who had positive bonds with their children ($n=17$) and who consistently visited with them ($n=14$). The beleaguered and ineffectual parent – albeit neglectful – at the heart of the North Carolina cases is a striking contrast from the violent criminal envisioned by the termination criteria in ASFA.

It is significant that the parents in the analyzed cases are members of social groups who have long been marginalized and disempowered in American society. Most of these parents are poor mothers, the mentally ill, victims of domestic violence, and incarcerated men. This finding is in keeping with other scholars' assessments of American social welfare policies and their marginalizing impacts (Schneider & Ingram, 1993; Schram, 1995). Such scholarship explains how social policies maintain an abiding focus on determining poor people's worthiness for financial assistance and how they label the poor as "dependents" and "deviants" (Schneider & Ingram, 1993). At their core, these policies make moral and normative judgments about families; those who are self-sufficient are deemed good and proper. Families, like those in this study, wracked

by mental illness, domestic violence, and poverty, are regarded as victims of their own inadequacy. They are perceived as having willfully failed to do what is necessary to take care of themselves. They are morally deficient.

Despite the stripped down, de-contextualized view of parents in the opinions, they are real people, surrounded by problems of their own as well as society's making. They love their children. Yes, they often lack the personal capacity and wherewithal to resolve their personal problems. Certainly, they bear responsibility for their substance abuse, criminal behavior, and failure to fully participate in their own self-improvement. But, they are not entirely to blame for the dismal circumstances they find themselves in. They are also members of a society that does not keep people from falling into abject poverty, which incarcerates large numbers of men – especially African Americans – with little regard to the impact on family and community, and which maintains only the most minimally adequate public mental health care system. The circumstances surrounding the families in the study are the sequelae of deep poverty. And when families experience them, they are labeled neglectful by the child welfare system.

In the end, the dissertation adds to the body of scholarship describing how child welfare and other social welfare policies mirror larger class inequalities. I show that courts create termination criteria that are based on families' economic circumstances – without also interrogating the social work services designed to aid them or examining the deeper roots of their economic insecurity. In the process, I clearly suggest that the courts contribute to the marginalization of the poor.

Future Research

Although the courts are widely acknowledged as critical features of the child welfare system, there is little research in the social work press on the ways that legal and social work practice mutually inform one another. I suggest four avenues for future research that are rooted in an interdisciplinary understanding of both social work and the law. These ideas are influenced by O'Connor's (2001) critique of poverty-related research, which she terms "poverty knowledge." Rather than focusing on the ways that an individual's attributes and behaviors might contribute to their own poverty, she encourages social science research that examines the ways that larger social and political structures, including the court system, perpetuate economic stratification. Her call is very applicable to child welfare research. In her words:

In a new poverty knowledge, factors now treated, if at all, as mere background – history, politics, public and private institutions, ideology – become much more the stuff of direct, and critical, scrutiny (O'Connor, 2001, p. 293).

In this vein, I first advocate for an avenue of research that looks more deeply and widely into how state legal systems broadly handle child welfare cases. This "basic research" would greatly benefit from observational or ethnographic analyses of child welfare litigation and termination trials. Such analyses would shed light on the ways that trial judges actually preside over these cases and how they come to their decisions. More research on the ways that parents experience the court system is also urgently needed. We know very little about how parents navigate the legal elements of their child welfare cases, whether they receive adequate legal representation, and what kinds of impacts these legal experiences have on their emotional and psychological wellbeing. All of these lines of inquiry could benefit from comparative designs

that help pinpoint whether courts and judges in one state handle child welfare cases differently from the courts and judges in other states.

Second, there are specific trends in the chi-squared results that could benefit from in-depth exploration. In particular, this research shows that the courts are very interested in mothers' involvement with mental health treatment. Additional research is needed to understand what level of engagement in treatment is needed to meet the court's expectations and to avoid termination of parental rights. It is also unclear from the opinions whether these treatment services were aligned with mothers' needs and whether they had an evidence base to support them. Closer scrutiny of the language courts use to describe mothers with mental illness would also help surface ideologically-rooted discourses about women, mental illness, and motherhood and the ways these discourses are reiterated by the courts.

For fathers, the chi-squared analysis shows that incarceration is a salient factor in termination. This link needs closer examination, especially insofar as it can help inform services for fathers whose sentences are relatively brief and who expect to return to parenting. Also in respect to fathers, there is hardly any discussion of race in the opinions. Yet, we know that the criminal justice system disproportionately affects men of color. It is important to better understand if race has an impact on the ways that the courts respond to fathers (as well as mothers) involved in the child welfare system.

Turning to chi-squared findings about both parents, I found that domestic violence was a recurring theme in their cases. There are indications from some opinions that courts are interested in whether battered mothers "failed to protect" their children. I did not rigorously

examine this theme, but it warrants further attention especially since there are multiple policy and practice complexities surrounding domestic violence in a child welfare setting.

A third avenue for future research is an inquiry into how courts and judicial rulings inform social work practice. In particular, it is unclear how powerful an influence the law is on social worker's relationships and interactions with child welfare clients. For example, does the lack of uniform attention to the "reasonable efforts" standard in the North Carolina opinions have an impact on the strategies and methods social workers use in their work with families? Similarly, because the courts emphasize compliance with case plans in their decision making, do social workers, as a consequence, do the same? In general, there is significant opportunity to explore the ways that courts directly or indirectly influence the delivery of child welfare services. Such research would benefit from qualitative methodologies that explore social workers' knowledge of the law, their views toward the courts they work with, and their attitudes about lawyers and judges and the ways these legal professionals operate within the child welfare system.

A fourth and final avenue for additional research is aimed at building theoretical links between child welfare and law and society scholarship. One especially ripe area for exploration centers on what Garland calls the "carceral continuum," the spectrum of criminal justice and social welfare systems that police individuals who deviate from social norms (Garland, 1990, p. 151). Previously described as "a policy-regime concerned with governance of social marginality," the continuum ranges from less coercive systems, such as mandated therapeutic services required by public mental health systems and probation, to the highly coercive, including incarceration (Beckett & Western, 2001, p 47).

Little scholarship has tried to place the child welfare system and the termination of parental rights along this continuum. One relatively straightforward quantitative study could help fill this gap. It would compare rates of incarceration for each U.S. state against its rate of child welfare involvement. By controlling for key economic, demographic, and political variables it may be possible to identify links between an individual state's criminal justice and child welfare policies. Such research could help reveal ideological commonalities in these two policy frameworks.

Rethinking Termination

At the heart of termination is a societal belief that the best placement for maltreated children can be reduced to a binary decision: should children be reunified with their families or adopted? This reductionistic approach is driven by a number of factors, among which is the legal system's drive to resolve disputes with certainty and finality. It is also anchored in the feudal-era idea that children are fungible and that "rights" to them can be transferred or inherited, like property (Garrison, 1983, p. 434.)

Termination is deeply rooted in American social work. The profession's ideas about termination are articulated in an influential 1973 work by Goldstein, Freud and Solnit – *Beyond the Best Interests of the Children*. In it the authors assert that child welfare efforts should avoid disrupting children's attachments to their "psychological parents," even when they are foster parents (Guggenheim, 1995; Goldstein, Freud, & Solnit, 1973). Thus, "all child placements, except where specifically designed for brief temporary care, shall be as permanent as the placement of a newborn with its biological parents" (Goldstein et al., 1973, p. 35). This thinking deeply influenced the policy evolution of termination and propelled development of a child

welfare system that sees reunification and termination as a binary choice rather than anchor points along a placement continuum.

In the view of a number of scholars, this binary approach is overly simplistic and not in the best interests of children (Whittaker & Maluccio, 2002, p. 121; Maluccio, Pine, & Warsh, 1994). In 2002, Whittaker and Maluccio (2002) called for an expanded definition of reunification that moves beyond the blunt either/or choice at the heart of the cases in this dissertation. Their reformulated definition of reunification is:

...one that regards [reunification] as a dynamic process that seeks to meet the unique needs of children and their families in an individualized way and that underscores the value of maintaining and enhancing connectedness or reconnectedness between children in foster care and their families or members of their kinship system. (Whittaker & Maluccio, 2002, p. 121).

The present emphasis on termination runs counter to Whittaker and Maluccio's approach because it does not allow for children's ongoing, regular connection with kin when it can be healthy and foster positive emotional development. More importantly, because current termination law emphasizes exclusionary categorization of parents (e.g. "in compliance" and "not in compliance"), it fails to provide opportunities for individualized solutions aimed at meeting a family's unique needs.

Clearly, there are parents in this study who should not have a continuing connection with their children, especially those who committed acts of severe physical or sexual abuse. Nevertheless, there are cases – for example, the mother who visited her children 81 times and whose relationship with them was described as "affectionate" by the court – where the facts in the court's opinion strongly suggest that parental rights could, in some form, have been preserved. Such a parent, given proper supports, could likely maintain an affirming and healthy

relationship with her children, even if she is not the full-time caregiver. In such a situation, termination is a crude, even cruel outcome.

Both policymakers and social workers must actively create new models of caring for maltreated children that move beyond simple binaries. Comparative international analyses can inform such efforts because they show that countries vary in their orientations to child welfare policies and services (Gilbert, 2012; Anderson, 1999). Within the United States, these new models should build upon parents' strengths while, simultaneously, ensuring children's safety. These models should also freely acknowledge that parents may need continuing social service supports to make the arrangement succeed. Rather than pathologizing such "dependency" on public systems, social workers should try to interrupt the "dominant individualistic norms of self-sufficiency" that are embedded within child welfare policies and practices like termination (Fineman, 1991, p. 277). The idea that poor parents – and, in fact, any parents – can and must care for their children with minimal community help is diametrically at odds with the core values of social work. Social workers, even in the thick of demanding day-to-day casework, should hold fast to their historical values of inter-dependency, mutual support, and social justice, and be active advocates for state and federal policies that assist the poor and marginalized (Reisch & Andrews, 2002).

Because of a steady decline in support for programs that aid the poor, beginning with the Reagan Administration and continuing through the Clinton era, some have concluded that the prospects for meaningful reform of the child welfare system are "bleak" (Schorr, 2000). To the contrary, it seems that there is real cause for hope within the field today. For at least 30 years, social workers have been advocating for preventative policy solutions and practice

strategies that target the structural forces that create social problems like child maltreatment (Hartman & Laird, 1983, p. 45). Today, such approaches can be found throughout the country even in the face of daunting bureaucratic cultures: they build on local innovation, family strengths, and the use of flexible funds (Cahn, 2003). These innovative practices could help break the binary reunification/termination thrust of current child welfare casework and foster a way of serving troubled families that is more humane, compassionate, and responsive.

One clear example of an empowering and strengths-based approach to child welfare is family group decision-making (FGDM). This practice strategy has its origins in indigenous Maori cultural practices and it has been transported from New Zealand to other western child welfare systems. FGDM emphasizes the use of extended kin's assets and strengths in caring for maltreated children and it has become increasingly common in the United States, Canada, and Britain (Nixon, Burford, Quinn, & Edelbaum, 2005; Pennell, 2004). Although gaps remain in the evidence base, FGDM continues to hold genuine promise as a means for facilitating family engagement and commitment to children's care and safety (Morris & Connolly, 2012).

Similarly promising is an approach called parent mentoring. This strategy pairs foster parents and birthparents with the goal of helping birthparents resolve the problems that led to their children's placement into care (Marcenko, 2008). At the same time, the Family Unification Program (FUP) at the U.S. Department of Housing and Urban Development is intended to assist families who do not have adequate housing and whose children are at imminent risk of out-of-home placement. This dissertation study underscored the highly corrosive impact of unstable or inadequate housing on a parent's prospects for defeating a termination petition. The FUP program could be particularly helpful to the families in this study because it supports even

those parents who have experienced previous terminations, thereby helping them to avoid termination to their other children (U.S. Department of Housing and Urban Development, 2012). Finally,

The termination of parental rights – and all of its complicated and consequential sequelae – is deeply embedded with the American legal system and child welfare casework. Yet, available and increasingly well-proven social work strategies have the potential for expanding our repertoire of child placement arrangements so that maltreated children are kept safe, feel loved, and remain connected to their kin. Such arrangements benefit society as a whole, whose very essence is strong, continuing, mutually reinforcing human bonds. Continued development and refinement of these practices is a matter of urgency, as is our profession's vigorous advocacy for changes in law and policy that will make a more compassionate future possible.

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Appendix A. Sample Opinion

IN THE MATTER OF: Doe, A Minor Child.
NO. COA09-1321
COURT OF APPEALS OF NORTH CAROLINA
2010 N.C. App. LEXIS 495
March 8, 2010, Heard in the Court of Appeals
March 16, 2010, Filed

NOTICE:

PURSUANT TO RULE 32(b), NORTH CAROLINA RULES OF APPELLATE PROCEDURE, THIS DECISION IS NOT FINAL UNTIL EXPIRATION OF THE TWENTY-ONE DAY REHEARING PERIOD. THIS IS AN UNPUBLISHED OPINION. PLEASE REFER TO THE NORTH CAROLINA RULES OF APPELLATE PROCEDURE FOR CITATION OF UNPUBLISHED OPINIONS.

SUBSEQUENT HISTORY: Reported at *In re A.M.M.*, 692 S.E.2d 194, 2010 N.C. App. LEXIS 526 (N.C. Ct. App., Mar. 16, 2010)

PRIOR HISTORY: [*1]

Dare County. No. 08 JT 32.

DISPOSITION: Affirmed.

CORE TERMS: respondent-mother's, parental rights, termination, juvenile, neglect, medication, respondent-father, prescribed, best interest, permanency, terminate, neglected, guardian, phase, judgment terminating, reunification efforts, visitation, planning, notice, notice of appeal, recommendations, repetition, custodian, staff, biological, mental health, prior orders, appointments, probability, convincing

COUNSEL: Sharp, Michael, Graham & Evans, L.L.P., by Steven D. Michael, for petitioner-appellee.
Windy H. Rose for respondent-appellant.
Pamela Newell Williams for guardian ad litem-appellee.

JUDGES: HUNTER, Robert C., Judge. Judges McGEE and ERVIN concur.

OPINION BY: HUNTER

OPINION

Appeal by respondent from judgment entered 12 June 2009 by Judge Amber Davis in Dare County District Court. Heard in the Court of Appeals 8 March 2010.

HUNTER, Robert C., Judge.

Respondent-mother appeals from the trial court's judgment terminating her parental rights with respect to her minor daughter ("Doe").¹ Respondent-mother primarily argues that the trial court failed to make independent findings of fact in its judgment terminating her parental rights. We conclude, however, that the trial court did not improperly delegate its fact-finding duty and made extensive findings supporting

its determination that a ground for termination exists and that it was in [Doe's] best interest to terminate respondent-mother's parental rights. We, therefore, affirm the trial court's judgment.

1 Pseudonyms are used throughout this opinion to protect the privacy of the children and for ease of reading.

Facts

Respondent-mother [*2] is the biological mother of [Doe], who was born in [2002], and [Doe2] born in [2005]. Respondent-father is [Doe's] biological father, but not [Doe2's].² The Dare County Department of Social Services ("DSS") became involved with respondent-mother's family in February 2008, when it received reports from [Doe's] elementary school that she had missed numerous days of school and was chronically late. For that school year, [Doe] ultimately missed 24 days and was late an additional 40 days. In addition, [Doe] often came to school dirty and inappropriately dressed for the weather.

2 Respondent-father does not challenge the trial court's termination of his parental rights and thus is not a party to this appeal.

When DSS staff went to respondent-mother's residence to investigate the report, the home was filthy, with dirty clothes piled everywhere, and spoiled food lying out. There was only convenience and snack food for the children to eat. The house also appeared to be infested with rodents. Respondent-mother blamed [Doe's] tardiness and absenteeism on [Doe's] unwillingness to get up on time in the morning or to get to the bus stop on her own. Respondent-mother told DSS that [*3] numerous people, some of whom she does not know, came over to her house, with many of them spending the night, including at least one registered sex offender. [Doe] told school staff that sometimes men slept in her room on the floor and that the visitors made so much noise that she could not sleep.

Respondent-mother also exhibited delusional thoughts and behavior, saying that she is famous and has conversations with God, and insisting that she is African-American despite actually being Caucasian. She accused DSS staff of being paparazzi and of taking pictures of her. DSS assisted respondent-mother by getting her a mental health assessment, which resulted in her being diagnosed as bipolar. Respondent-mother was prescribed medication, but she refused to take it on a consistent basis. During the evening of 8 April 2008, respondent-mother left [Doe] and [Doe2] with someone she barely knew and went with two female friends to her ex-boyfriend's house and got into an altercation with his current girlfriend.

On 9 April 2008, DSS filed a juvenile petition alleging that [Doe] and [Doe2] were neglected and dependent based on a lack of proper care, supervision, and discipline and that the minor children [*4] lived in an environment injurious to their welfare. DSS was granted non-secure custody, and the children were placed with [Doe2's] paternal aunt and uncle]. DSS developed a case plan for respondent-mother and reviewed it with her on 8 May 2008. The plan included the following objectives for respondent-mother: (1) attend mental health counseling as recommended by her therapist; (2) attend psychiatry appointments and follow recommendations; (3) take medications as prescribed; (4) apply for benefits, including SSI and unemployment; (5) find and maintain employment; (6) find appropriate housing; and (7) maintain a clean and sanitary living space, including keeping healthy food in the home.

On 15 May 2008, the trial court adjudicated [Doe] and [Doe2] as being neglected after respondent-mother stipulated to the truth of the allegations in the juvenile petition. The trial court gave DSS custody of the minor children and approved their continued placement with the [aunt and uncle]. Respondent-

mother was granted supervised visitation at DSS's discretion, and she was ordered to comply with her case plan.

A review hearing was conducted on 29 August 2008. The trial court determined that [*5] respondent-mother was not consistently taking her medication, but that she was continuing to attend appointments and therapy, and that she was complying with the visitation plan. Visitation with [Doe] and [Doe2] had been taking place at the [the aunt and uncle's], but was moved to DSS offices at [the aunt's] request. The trial court authorized continued supervised visitation for respondent-mother and ordered that she maintain weekly contact with DSS, attend all scheduled appointments, take her medicine as prescribed, and participate in parenting classes.

At the next review hearing, held on 31 October 2008, the trial court found that respondent-mother had missed four visits with the minor children and as a result did not visit for almost a month. DSS had trouble locating respondent-mother for nearly two weeks, and filed a missing persons report before she was finally located. DSS paid for a five-week parenting class, provided transportation, paid for respondent-mother's prescriptions and temporary housing, and assisted with applications for disability and Medicaid benefits. Respondent-mother told DSS that she stopped taking her medications on 25 September 2008 and that she believed her mental illness [*6] was terminal. The trial court authorized continued supervised visitation for respondent-mother and ordered DSS to cease reunification efforts with [Doe's] biological father.

After conducting a permanency planning review hearing on 25 November 2008, the trial court entered an order on 15 December 2008 ceasing reunification efforts with respondent-mother and the minor children. The court changed the permanent plan for [Doe] to termination of respondent-mother's and respondent-father's parental rights and adoption by the [the aunt and uncle]. With respect to [Doe2], the court ordered DSS to continue reasonable efforts for reunification with her biological father. At the next permanency planning hearing on 11 December 2008, the trial court continued [Doe's] permanent plan of termination of respondent-mother's parental rights and adoption. The court also continued [Doe2]'s permanent plan of reunification with her biological father.

On 9 February 2009, DSS filed a petition to terminate respondent-mother's and respondent-father's parental rights with respect to [Doe] only. The petition alleged that respondent-mother and respondent-father had neglected [Doe] and willfully failed to pay a reasonable portion [*7] of the cost of care for the minor child for six months preceding the filing of the petition. The petition also alleged that respondent-father had willfully abandoned the juvenile. On 3 March 2009, DSS filed an amendment to the petition to correct the name of the guardian *ad litem* ("GAL"). On 15 April 2009, respondent filed an answer denying the material allegations of the petition.

After conducting a hearing on 13 May 2009 on DSS's petition, the trial court entered a judgment on 12 June 2009, in which it determined that grounds for termination existed in that respondent-mother and respondent-father had "neglected [Doe] within the meaning of North Carolina General Statute[s] Section 7B-101 and it is probable that there would be a repetition of the neglect if the child was returned to the care of her parents." In the dispositional portion of its judgment, the trial court concluded that termination of respondent-mother's and respondent-father's parental rights was in [Doe's] best interest. Accordingly, the trial court terminated their parental rights with respect to [Doe]. Respondent-mother timely appealed from the trial court's judgment.

Cessation of Reunification Efforts

Respondent-mother [*8] first argues that the trial court erred in ceasing reunification efforts. Respondent-mother's assignment of error on this issue identifies the trial court's 25 November 2008 permanency planning hearing, which is also referenced in respondent-mother's notice of appeal from the judgment terminating her parental rights. It appears that respondent-mother is attempting to appeal from the trial court's resulting 15 December 2008 permanency planning order under N.C. Gen. Stat. § 7B-507(c) (2009), which provides that "[a]n order entered under G.S. 7B-507(c) with rights to appeal properly preserved as provided in that subsection" can be appealed "together with an appeal of the termination of parental rights order" to this Court.

N.C. Gen. Stat. § 7B-507(c) provides in pertinent part that

[a]t any hearing at which the court finds and orders that reasonable efforts to reunify a family shall cease, the affected parent, guardian or custodian of that parent, guardian or custodian's counsel may give notice to preserve the parent, guardian, or custodian'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 [*9] hearing at which the Court orders the efforts to reunify the family to cease. . . .

N.C. Gen. Stat. § 7B-1001(a)(5) (2009), in turn, sets out three further requirements: (1) a motion or petition to terminate parental rights was heard and granted; (2) the termination order was appealed properly and timely; and (3) the order to cease reunification was assigned as an error in the record on appeal of the termination order.

Here, the record does not indicate that respondent-mother complied with the statutory requirements for appealing the 15 December 2008 order. Although respondent-mother's notice of appeal from the judgment terminating her parental rights states that "Respondent-Mother preserved her objection on the record on the date that the Court ceased such reunification efforts[,]," the transcript from the 25 November 2008 hearing is not included in the record. Thus, this Court cannot verify whether respondent-mother gave notice of appeal in open court. In a subsequent permanency planning order and in the court's final judgment, the trial court noted in its findings that it had ceased reunification efforts with respondent-mother after its 25 November 2008 hearing, but neither indicates [*10] that respondent-mother gave notice of appeal from the trial court's decision in open court. The record on appeal contains no written notice of appeal from the 15 December 2008 order other than the one filed on 13 July 2009, well beyond the 10-day period following the 25 November 2008 hearing. Thus, there is nothing in the record to show that respondent-mother properly preserved her right to appeal the order under N.C. Gen. Stat. § 7B-507(c). This Court, therefore, lacks jurisdiction to consider the 15 December 2008 order.

Termination of Parental Rights

Respondent-mother next challenges the trial court's judgment terminating her parental rights with respect to [Doe]. Respondent-mother contends that the trial court's findings of fact in both the adjudication and disposition portions of its judgment are insufficient to support termination.

A termination of parental rights proceeding is conducted in two phases: (1) an adjudication phase that is governed by N.C. Gen. Stat. § 7B-1109 (2009) and (2) a disposition phase that is governed by N.C. Gen. Stat. § 7B-1110 (2009). *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). During the

adjudication stage, the petitioner has the [*11] burden of proving by clear, cogent, and convincing evidence that one or more of the statutory grounds for termination listed in N.C. Gen. Stat. § 7B-1111 (2009) exist. The standard of appellate review is whether the trial court's findings of fact are supported by clear, cogent, and convincing evidence and whether those findings support the court's conclusions of law. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000), *appeal dismissed and disc. review denied*, 353 N.C. 374, 547 S.E.2d 9 (2001).

If the petitioner meets its burden of proving that at least one ground for termination exists, the trial court moves to the disposition phase and must determine whether termination of parental rights is in the best interests of the child. N.C. Gen. Stat. § 7B-1110(a). The trial court's decision to terminate parental rights is reviewed under an abuse of discretion standard. *In re Nesbitt*, 147 N.C. App. 349, 352, 555 S.E.2d 659, 662 (2001).

I. Adjudication Phase

Respondent-mother first contends that the trial court erred by failing to make independent findings of fact in the adjudication portion of its judgment. Respondent-mother specifically points to findings 19 through 30 and their [*12] extensive sub-parts, complaining that these findings are taken virtually verbatim from the juvenile petition, court reports submitted for various hearings, and prior court orders. Relying on *In re J.S.*, 165 N.C. App. 509, 598 S.E.2d 658 (2004), respondent-mother argues that the trial court erred in incorporating these outside sources as its findings of fact.

In *J.S.*, this Court recognized that the trial court has a duty to make independent findings of fact "through 'processes of logical reasoning,' based on the evidentiary facts before it," and must "'find the ultimate facts essential to support the conclusions of law.'" *Id.* at 511, 598 S.E.2d at 660 (quoting *In re Harton*, 156 N.C. App. 655, 660, 577 S.E.2d 334, 337 (2003)). Thus, "the trial court may not delegate its fact finding duty[,]" and "should not broadly incorporate . . . written reports from outside sources as its findings of fact." *Id.*

Contrary to respondent-mother's contention, the trial court did not improperly delegate its fact-finding duty in this case. In contrast to the "cursory two page order" at issue in *J.S.*, *id.*, the adjudication portion of the trial court's judgment in this case is 46 pages and contains extensive [*13] findings. Review of the judgment shows that findings 19 through 30 describe the appearances made at different hearings conducted during the history of this case, the findings made by the trial court based on the evidence presented during those hearings, and the outcome of those hearings. Although the trial court incorporated the substance of findings made in prior orders, the trial court specified that it was making its findings based on "clear, cogent, and convincing evidence" after "reviewing the file, taking judicial notice of the prior juvenile files, reports and Orders, and receiving evidence and testimony"

This Court has repeatedly held that "[a] court may take judicial notice of earlier proceedings in the same cause." *In re J.W., K.W.*, 173 N.C. App. 450, 455, 619 S.E.2d 534, 539 (2005) (quoting *In re Byrd*, 72 N.C. App. 277, 279, 324 S.E.2d 273, 276 (1985)), *aff'd per curiam*, 360 N.C. 361, 625 S.E.2d 780 (2006). A trial court may take judicial notice of prior orders even where those orders are based on a lower evidentiary standard as "the trial court in a bench trial 'is presumed to have disregarded any incompetent evidence.'" *In re J.B.*, 172 N.C. App. 1, 16, 616 S.E.2d 264, 273 (2005) [*14] (quoting *Huff*, 140 N.C. App. at 298, 536 S.E.2d at 845).

Here, the trial court was allowed to take judicial notice of prior orders in the same case, and its findings 19 through 30 reflect its acknowledgment of findings made in previous proceedings. These findings properly reflect the history of the case and are supported by testimony presented at the termination hearing as well as the prior orders. The trial court, therefore, did not improperly delegate its fact-finding duty.

Even assuming that these findings are insufficient to support a determination that a ground existed to terminate respondent-mother's parental rights, the trial court's remaining findings are sufficient to support its conclusion. Here, the trial court determined that a ground existed under N.C. Gen. Stat. § 7B-1111(a)(1) (neglect) to terminate respondent-mother's parental rights.

N.C. Gen. Stat. § 7B-101(15) (2009) defines a neglected juvenile as

[a] juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in [*15] an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law.

When, as here, the juvenile was removed from the parent's home pursuant to a prior adjudication of neglect, "[t]he trial court must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect." *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984). In such cases, although "there is no evidence of neglect at the time of the termination proceeding . . . parental rights may nonetheless be terminated if there is a showing of a past adjudication of neglect and the trial court finds by clear and convincing evidence a probability of repetition of neglect if the juvenile were returned to her parents." *In re Reyes*, 136 N.C. App. 812, 815, 526 S.E.2d 499, 501 (2000).

With respect to the ground of neglect, the trial court found:

32. Those who testified all observed noticeable differences between [respondent-mother] on medication and off medication. When she was [on] Respiradal [sic], she was more organized, interested in her children, working and paying bills. Off [f] her medication, she is easily confused, [*16] disorganized, can be delusional at times and is unstable. By her own statements, she last took any prescribed medications around the end of September, beginning of October 2008.

33. [Respondent-mother] has moved a number of times since April 2008. She lived with her brother in Nags Head from April 2008 until October 2, 2008. From September 29, 2008 until October 6, 2008 the Department of Social Services was unaware of [respondent-mother]'s whereabouts as she missed several visits with her children. On October 6, 2008, her Adult Services worker arranged for her to stay at The Traveler's Inn Motor Lodge. The Department was unable to locate her on October 7, 2008. On October 10, 2008, the Department arranged for her to stay at The Traveler's Inn and then arranged for her to move into Cannady's Guest Home in Manteo. [Respondent-mother] states that she went to Englehard in early October of 2008 and stayed with one of Mr. M[]'s family members who offered for her and the children to come and live with them. In early December of 2008, [respondent-mother] moved out of Cannady's Guest Home into a residence in Nags Head with six other people. In February of 2009, [respondent-mother] told the staff [*17] that she was living from place to place with friends and at the March 17, 2009 Permanency Planning Team Meeting she reported that she was moving to a room in Manteo that day.

34. [Jane Smith], who is employed with Albemarle Mental Health, is a licensed clinical social worker. She has an undergraduate degree in psychology and a Masters Degree in social work from Temple University. She has been licensed by the State of North Carolina as a licensed clinical social worker

for five years. She has twenty five years of experience in the mental health field including providing therapy and counseling and individuals and in groups. The Court found her to be an expert in the field of clinical social work. She has seen [respondent-mother] on an "emergency basis" thirteen times since March of 2008. She indicated that her sessions with her were too short and her appointments were inconsistent and therefore there was no ability to engage in any meaningful therapy with her. Ms. DeMooy observed that [respondent-mother] was more organized and less paranoid when she took her medications as prescribed. [Respondent-mother] has been diagnosed as Bi-polar, which is typically treated with medications. Ms. [Smith] [*18] last saw her on December 1, 2008 and observed that she was depressed but seemed to be fairly connected in her behavior. Her case was terminated at that time as she was not following the recommendations of the psychiatrist and her counselor. Ms. [Smith] had encouraged [respondent-mother] throughout the time that she saw her to take her medications as prescribed, but [respondent-mother] declined to do so stating there were too many side effects.

35. [Sue Adams], the Adult Protective Services Worker observed that when [respondent-mother] took her Respiridal [sic] as prescribed, she was constantly organized in her thoughts, but she was also depressed. [Respondent-mother] accepted her diagnosis of being Bi-polar and she seems to find a way to meet her own essential needs. During the time that Ms. [Adams] has worked with [respondent-mother], [her] mother has never offered to allow [respondent-mother] to live with her.

36. [Respondent-mother]'s work history is spotty, having worked at Beach Haven during April and May of 2008, the Duck Thru for one and one half months beginning June 24, 2008, the Brew Threw for one and one half weeks beginning August 20, 2008, The Outer Banks Beach Club beginning [*19] September 2008 and Kentucky Fried Chicken from January 2009 through April, 2009.

37. It is apparent to the Court that [respondent-mother] struggles to meet her own essential needs and does so only with the assistance of others. It is clear that she could not meet the needs of her child. She has refused to follow the recommendations of professionals and take her medication as prescribed which by all accounts improves her ability to think, be organized and have an opportunity to provide a safe and stable home for herself and her child. The Court has given her numerous opportunities to show that she will follow the recommendations and show that she can care for her child, but she has chosen not to do so. She has made little, if any, progress.

Based on its findings, the trial court concluded: "[Respondent-mother] . . . ha[s] neglected [Doe] within the meaning of North Carolina General Statute[s] Section 7B-101 and it is probable that there would be a repetition of the neglect if the child was returned to the care of [respondent-mother]."

Respondent contends these findings do not adequately address the existence of neglect at the time of the termination hearing. Respondent-mother points to [*20] evidence that her counselor and therapist both testified that respondent-mother sounded organized while testifying at the hearing and did not exhibit any signs of paranoia; that at the time of the hearing, respondent-mother had stable housing in that she was living with her mother; and, that although she did not have a job at the time of hearing, she was receiving disability benefits with which she could support [Doe].

While respondent-mother points to evidence supportive of her position, the trial court also was presented with evidence regarding her unstable appearance at other points in time during the history of the case, her past neglect of [Doe], her erratic employment and housing history, and her continued problems managing her mental health issues, including her failure to follow medication and therapy recommendations. The trial court was entitled to weigh the evidence regarding respondent-mother's recent improvement and determine whether it was sufficient to justify the conclusion that there was no probability of neglect in the future. *See Smith v. Alleghany County Dept. of Social Services*, 114 N.C. App.

727, 732, 443 S.E.2d 101, 104 (holding that trial court adequately considered [*21] mother's improved psychological condition and living conditions at time of hearing despite finding, due to recency of improvement, that probability of repetition of neglect was great), *disc. review denied*, 337 N.C. 696, 448 S.E.2d 533 (1994).

The evidence presented supports findings 32 through 37, indicating a pattern of instability by respondent-mother throughout DSS's involvement in this case. We, therefore, conclude that the evidence supports the trial court's ultimate finding that respondent-mother has made "little, if any, progress," which, in turn, supports its conclusion that past neglect is likely to be repeated if [Doe] were returned to respondent-mother's care.

II. Disposition Phase

Similar to her argument regarding the adjudication portion of the trial court's judgment, respondent-mother contends, based on *J.S.*, that the trial court failed to make independent findings supporting its conclusion that termination of respondent-mother's parental rights was in [Doe's] best interests. Of the 57 findings in the disposition portion of the court's judgment, respondent-mother points out that 49 of them are taken virtually verbatim from DSS's court report submitted at the termination hearing [*22] and that another six of the findings are taken from the GAL's court report.

Again, respondent-mother's reliance on *J.S.* is misplaced. Here, in contrast to *J.S.*, the trial court did not simply incorporate by reference the DSS and GAL reports but instead properly used the reports as a basis for making its own independent findings, which span eight pages. As this Court held in *J.S.*, 165 N.C. App. at 511, 598 S.E.2d at 660, "[i]n juvenile proceedings, it is permissible for trial courts to consider all written reports and materials submitted in connection with those proceedings." Respondent-mother, moreover, does not point to anything in the trial court's judgment or the record suggesting that it failed to make sufficiently specific findings to permit appellate review or that it was simply "reciting allegations" at the expense of logical reasoning. *Harton*, 156 N.C. App. at 660, 577 S.E.2d at 337. *See also In re L.B.*, 181 N.C. App. 174, 193, 639 S.E.2d 23, 33 (2007) ("We hold that the trial court properly incorporated DSS and guardian *ad litem* reports and properly made findings of fact . . . based on these reports. Moreover, these findings are sufficient to support the trial court's ultimate [*23] determination, and there is no evidence that [the court] relied on information from the reports that [it] then failed to include as a finding of fact in [its] order.").

We note, moreover, that both the DSS foster care social worker and the GAL were called as witnesses in support of their reports. Respondent-mother thus had the opportunity to cross-examine both witnesses regarding their reports -- she simply elected not to do so. The record also shows that respondent-mother was able to present evidence rebutting or contradicting the evidence presented. In addition, much of the information included in the DSS and GAL court reports was heard by the trial court during the adjudication phase, which was conducted immediately prior to the disposition. *See Blackburn*, 142 N.C. App. at 613, 543 S.E.2d at 910 ("Evidence heard or introduced throughout the adjudicatory stage, as well as any additional evidence, may be considered by the court during the dispositional stage."). Respondent-mother nonetheless argues that the trial court's findings fail to show that it considered the factors listed in N.C. Gen. Stat. § 7B-1110. N.C. Gen. Stat. § 1110 provides that in determining whether termination of [*24] parental rights is in the best interest of the juvenile the court is required to consider:

- (1) The age of the juvenile.

- (2) The likelihood of adoption of the juvenile.
- (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
- (4) The bond between the juvenile and the parent.
- (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
- (6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a)(1)-(6).

With respect to N.C. Gen. Stat. § 1110(a)'s factors, the trial court found that [Doe] was five years old at the time of the hearing; that the [aunt and uncle's] "desire to adopt [Doe]" and "make her a permanent member of their immediate family"; that terminating respondent-mother's parental rights is necessary to facilitate the [the aunt and uncle's] desired adoption of [Doe]; that [Doe] is more excited about seeing DSS staff than her mother during visitations and that [Doe] does not ask about her mother; and, that [Doe] has "strong emotional attachments to" the [aunt and uncle] and "has made it clear that she would like to remain in the [aunt and uncle's] home . . . where she has been cared for and nurtured [*25] for over a year[.]" In addition to these findings, the trial court ultimately found:

It is clear to this Court that [§Doe] needs permanency and that [respondent-mother] has made no progress in the last year in being able to care for [Doe] and provide a stable and safe home. . . . Termination of the parents' rights is clearly in this child's best interest as return of the child to the mother is not likely to occur in the foreseeable future and the prospect of being neglected if with [sic] the mother is almost certain. . . .

These findings address each of the factors enumerated in N.C. Gen. Stat. § 7B-1110(a), indicating that the trial court properly considered the factors in determining whether termination of respondent-mother's parental rights was in [Doe's] best interest. *See In re S.C.R.*, N.C. App. , , 679 S.E.2d 905, 912 (concluding "trial court's findings . . . reflect a reasoned decision based upon the statutory factors listed in N.C.G.S. § 7B-1110(a)" where "findings indicate it considered the age of S.C.R., the desire of the foster parents to adopt S.C.R., the nurturing and affectionate relationship between S.C.R. and the foster parents, the strong bond between S.C.R. and [*26] her foster parents as compared to the lack of a bond between S.C.R. and respondent-mother and respondent-father, the likelihood of adoption, and the consistency of adoption with the permanent plan"), *appeal dismissed*, 363 N.C. 654, 686 S.E.2d 676 (2009). The trial court, therefore, did not abuse its discretion in determining that it would be in [Doe's] best interest to terminate respondent-mother's parental rights. The trial court's judgment terminating respondent-mother's parental rights is affirmed.

Affirmed.

Judges McGEE and ERVIN concur.

Report per Rule 30(e).

Appendix B. Coding Sheet

Case _____ Termination Date _____ Dep. Date _____

Citation _____ Mother _____ Father _____

Children _____ Age1/Sex1 _____ Age2/Sex1 _____ Age3/Sex1 _____ Age4/Sex1 _____

Instructions:

- If present, briefly describe the listed termination criterion under appropriate parent.
- Use blank spaces, indicated with **, to describe additional and emergent criteria.

Mental Health	Mother	Father
Disorder/diagnosis		
Complying with treatment		
Not taking medication		
Not participating in treatment		
**		
**		
Housing		
Homeless		
Eviction		
Unsafe/inadequate environment		
Home not clean/filth/unsanitary		
Unstable housing		
Smoking in house		
**		
**		

Parenting duties	Mother	Father
Child not in school		
Child not being fed properly		
Not providing child care/support		
Not receiving medical care		
No interest in children		
**		
**		
Substance abuse		
Drug use		
Alcohol use		
Did not complete/attend tx		
Relapse		
Did not submit/complete drug test		
Positive drug test		
**		
**		
Abandonment		
Abandoned		
Left children/did not return		
Whereabouts unknown		
**		
**		

Employment	Mother	Father
Not employed		
Sporadic employment		
Consistently employed		
**		
**		
Other Criteria		
Long history of involvement		
Previous termination		
Poor judgment		
No transportation		
**		
**		
Domestic violence		
Violent relationship		
Violation of no contact order		
**		
**		
Engagement		
Did not schedule services		
Did not attend/participate in svcs		
Did not maintain contact		
Did not provide information		
**		
**		

Criminal justice	Mother	Father
Incarceration		
Arrest		
Arrest/incarceration for CAN		
**		
**		
Physical abuse		
Physical abuse present		
Physical aggression toward children		
**		
**		
Sexual abuse		
Sexual abuse present		
Allowed contact with offending parent		
**		
**		
Visitation		
Consistent visitation		
Did not visit		
Sporadic visitation		
Overnights/unsupervised visits		
Inappropriate behavior at visit		
**		
**		

Child Issues	Mother	Father
Mental health diagnosis		
Gross motor delay		
Special needs		
Failure to thrive		
**		
**		
Bonding		
No bond with parent		
Bond with foster parent		
Sibling bond		
**		
**		
Placement		
Relative placement		
Child happy/doing well/thriving		
**		
**		

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RESEARCH INTERESTS

- Social welfare policy and law
- Street-level bureaucracy and policy implementation
- Innovation in child welfare, including family group decision making
- Intersections between criminal justice and child welfare
- Program evaluation

EDUCATION

PhD in Social Welfare (August 2012), University of Washington, Seattle, WA

Dissertation title: Judging parents: Courts, child welfare and criteria for terminating parental rights

Committee: Susan Kemp (Chair), Marcia Meyers (Public Affairs), Emiko Tajima (Social Welfare), Fred Wulczyn (Chapin Hall, University of Chicago), and Katherine Beckett (Sociology).

- Recipient, University of Washington Presidential Dissertation Fellowship
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Graduate Certificate (June 2012), Law and Society Studies, University of Washington, Seattle, WA

MSW (1998), School of Social Work, University of Washington, Seattle, WA

- Children, Youth and Families concentration
- Thesis: Family Group Conferencing in Washington State

JD (1991), School of Law, Seattle University, Seattle, WA

- Dean's List, first year coursework
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BS cum laude, in Biology (1987), St. Martin's College, Olympia, WA

PUBLICATIONS

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Vesneski, W. (2001). Computer learning centers in Washington State. Evaluation report prepared for the Bill & Melinda Gates Foundation.

Vesneski, W. (1998). Evaluation of Washington State's family group conference pilot project. Unpublished report. Northwest Institute for Children and Families, University of Washington.

RESEARCH EXPERIENCE

The Hague Domestic Violence Project, University of Washington, Seattle, WA
Research Associate (2008 – 2012)

Member of an interdisciplinary research team examining the Hague Convention's implications for battered women. Primary responsibility was to design and implement a mixed-methods research study examining U.S. judicial opinions issued in Hague cases. Specific tasks included development and finalization of study sample, creation of coding sheets for data collection, content analysis of judicial opinions, presentation of findings to research team and at conferences, and preparation of manuscripts.

School of Social Work, University of Washington, Seattle, WA
 Research Assistant (Principal Investigator: Susan Kemp) (2006-2007)

Collaborated on research projects related to parental engagement in child welfare services. Completed literature reviews and assisted in preparing manuscripts as well as materials for conference papers.

Child Welfare Partnership, Portland State University, Portland, OR
 Contract Research Associate (2005-2006)

Designed and managed an impact study of a leadership development program for all employees of Oregon's Department of Human Services. Study focused on assessing employee learning and behavior change resulting from the program. Responsible for all aspects of study implementation, including development of surveys, conducting focus groups with employees, completing data analysis, and report writing.

TEACHING EXPERIENCE

University of Washington, School of Social Work, Seattle, WA

- *Intellectual and Historical Foundations of Social Work Practice* (Social Work 500)
 Sole Instructor: Autumn 2008, 2009, 2010, 2012
 Required foundational MSW course introducing students to the intellectual, historical, and ethical foundations of the social work profession. Intensive and critical engagement with key social justice frameworks, crucial aspects of the profession's history, and future directions of the field.
- *Concepts and Methods of Policy Analysis* (Social Work 561)
 Sole Instructor: Winter 2009, 2010, 2011
 Final required course for MSW policy concentration students teaching key concepts and applied practice of social welfare policy analysis. Special attention to the ways in which interests are represented in or excluded from policy analysis and their implications for social justice. Core topics include policy decision-making, cost/benefit analysis, outcomes evaluation, and memo writing.
- *Readings in Social Work* (Social Work 599)
 Sole Instructor: Spring 2011
 Designed and facilitated a small group tutorial for four second-year MSW students focused on participatory and empowerment approaches to program evaluation. Students completed an evaluation of an out-of-school-time program for middle-school girls during the quarter.
- *Practicum Instructor* (2012-2013 school year)
 Serve as on-site instructor and mentor for second year advanced practicum placement (administration and policy practice) through The Paul G. Allen Family Foundation. Field placement is organized around a program evaluation of the Foundation's asset building and social service giving.

Seattle University, College of Arts and Sciences, Seattle, WA
Program Evaluation (Nonprofit Leadership 540), Guest Lecturer (2003)

- Presenter on evaluation design and data collection for small nonprofits.

George Washington University, Trachtenberg School of Public Policy, Washington, DC
Nonprofit Program Evaluation (Public Administration 260), Guest Lecturer (2001)

- Presenter on ethical issues and challenges in program evaluation consulting with nonprofits.

PRACTICE EXPERIENCE

The Paul G. Allen Family Foundation, Seattle, WA

Director of Research, Evaluation and Planning (2007 – Present)

Serve as the program officer for \$8 million in grants to 60 social service organizations. Responsibilities include sourcing potential social services projects, developing grant proposals, completing due diligence on proposals (including financial reviews), conducting site visits, reviewing progress reports and approving payments. In addition, administer all of the Foundation's internal evaluation systems. Key tasks include developing logic models, designing evaluations of key initiatives, creating and disseminating surveys, completing interviews, analyzing quantitative and qualitative data, preparing reports, and supervising contractors. Projects have included assessments of the Foundation's funding for public education, out-of-school time learning, and nonprofit capacity building.

National Court Appointed Special Advocate (CASA) Association, Seattle, WA

Contract Consultant (2000 – 2007); Child Welfare Program Evaluation Specialist (1998-2000)

As a consultant, provided strategic assistance on several planning and applied research projects, including an analysis of judicial attitudes toward CASA advocacy. Also served as a peer reviewer for program accreditation, a grant reviewer for federal pass-through funds, and chair of the Association's evaluation task force. While an employee, served as project manager for a multi-year evaluation initiative. This initiative included design of a national database for use by 300 local CASA agencies as well as development and delivery of a program evaluation curriculum for these agencies.

Case Foundation (PowerUp), Washington, DC

Contract Program Evaluator (2001-2002)

Managed a three-person team assessing the impact of a national Computer Learning Center initiative in affordable housing sites. Developed and disseminated a survey of staff at more than 100 centers, conducted focus groups with youth in five states, and completed interviews with key stakeholders. Evaluation is included in the Harvard Family Research Project's database of out-of-school time outcomes evaluations.

Zero to Three, Washington, DC

Contract Program Evaluator (2001)

Completed two evaluation projects for the organization. The first focused on outcomes resulting from an intensive coaching and reflective leadership program for childcare workers in Head Start centers across Washington, D.C. The second focused on assessing the impact of the "Learning and Growing Together" series of booklets and supplemental materials. Both evaluations utilized surveys, focus groups, and interviews.

LEGAL EXPERIENCE

Office of Assigned Counsel, Olympia, WA

Juvenile Court Indigent Defense Counsel, Olympia, WA (1991 – 1997)

Served as lead counsel in child abuse and neglect cases as well as juvenile offender proceedings. Duties included pre-trial appearances, preparing motions and pleadings, serving as counsel during bench and jury trials, and providing appellate representation. Acted as a liaison and advocate for parents in negotiations with state child welfare social workers, prosecuting attorneys, attorneys-general, mental health

professionals, and Guardians ad Litem. Court appearances included Washington State Appellate and Supreme Courts.

PROFESSIONAL SERVICE

- *Child and Family Social Work*, ad hoc reviewer
- *Journal of Interpersonal Violence*, ad hoc reviewer
- American Evaluation Association, Member and Former Co-Chair, LGBTQ Interest Group
- Society for Social Work and Research, Member
- Law and Society Association, Member
- National Association of Latino Community Builders, grant reviewer
- Seattle Foundation, grant reviewer

PRESENTATIONS

Vesneski, W. (2011). Defining neglect in actions to terminate parental rights. Graduate student presentation at the *West Coast Law and Society Retreat*, Los Angeles, CA. (Recipient of travel scholarship.)

Vesneski, W. (2010). U.S. judicial implementation of the Hague Convention. Presented at the *National Institute of Justice Research Mini-Conference*, Seattle, WA.

Vesneski, W., Lindhorst, T., Edleson, J. & G. Mehrotra (2010). Fleeing domestic violence and crossing international boundaries: Implications for child custody. Presented at a meeting of the *Society for Social Work & Research*, San Francisco, CA.

Lindhorst, T., **Vesneski, W.**, Edleson, J., Mehrotra, G., & Lopez, G. (2010). Battered mothers fleeing across international borders: Examining Hague Convention cases involving domestic violence. Presented at a meeting of the *Society for Social Work & Research*, San Francisco, CA.

Kemp, S. P., Marcenko, M. O., & **Vesneski, W.** (2008). Engaging birth parents in child welfare services: Promising practices and policy opportunities. *EUSARF Conference*, Padua, Italy.

Vesneski, W. (2008). Punishing mothers: The new penology and child welfare. Invited presentation to the *Sociology Deviance Seminar*, University of Washington, Seattle, WA.

Kemp, S., Marcenko, M., **Vesneski, W.**, and K. Hoagwood. (2007). Engaging parents in child welfare services: Challenges, promising practices and policy opportunities. Presented at the *Best Practices for Mental Health and Child Welfare Consensus Conference*, Arlington, VA.

Kemp, S., Marcenko, M., **Vesneski, W.**, and K. Hoagwood. (2007) Engaging birth parents in child welfare and child mental health services. Presented at the *Building on Family Strengths Conference*, Portland, OR.

Vesneski, W. (1998). Research findings on Family Group Conferencing in Washington. Presented at the *CWLA Regional Training Conference*, Seattle, WA.

Licensed to practice law in Washington State, #21687