

Continuances in Abuse, Neglect, Dependency and Termination of Parental Rights Proceedings

Relevant Statutes

§ 7B-803. Continuances.

The court may, for good cause, continue the hearing for as long as is reasonably required to receive additional evidence, reports, or assessments that the court has requested, or other information needed in the best interests of the juvenile and to allow for a reasonable time for the parties to conduct expeditious discovery. Otherwise, continuances shall be granted only in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile. Resolution of a pending criminal charge against a respondent arising out of the same transaction or occurrence as the juvenile petition shall not be the sole extraordinary circumstance for granting a continuance. (1979, c. 815, s. 1; 1987 (Reg. Sess., 1988), c. 1090, s. 9; 1998-202, s. 6; 1999-456, s. 60; 2013-129, s. 19.)

§ 7B-1109. Adjudicatory hearing on termination.

...

(d) The court may for good cause shown continue the hearing for up to 90 days from the date of the initial petition in order to receive additional evidence including any reports or assessments that the court has requested, to allow the parties to conduct expeditious discovery, or to receive any other information needed in the best interests of the juvenile. Continuances that extend beyond 90 days after the initial petition shall be granted only in extraordinary circumstances when necessary for the proper administration of justice, and the court shall issue a written order stating the grounds for granting the continuance.

(1977, c. 879, s. 8; 1979, c. 669, s. 1; 1981, c. 966, s. 3; (Reg. Sess., 1982), c. 1331, s. 3; 1983, c. 870, s. 2; 1989 (Reg. Sess., 1990), c. 851, s. 1; 1998-202, s. 6; 1999-456, s. 60; 2000-144, s. 19; 2000-183, s. 9; 2001-208, ss. 7, 22; 2001-487, s. 101; 2003-304, s. 2; 2005-398, s. 16; 2011-295, s. 15; 2013-129, s. 34.)

The above controlling statutory provisions are more restrictive than G.S. 1A-1, Rule 40(b):

Rule 40. Assignment of cases for trial; continuances.

(b) No continuance shall be granted except upon application to the court. A continuance may be granted only for good cause shown and upon such terms and conditions as justice may require. Good cause for granting a continuance shall include those instances when a party to the proceeding, a witness, or counsel of record has an obligation of service to the State of North Carolina, including service as a member of the General Assembly or the Rules Review Commission. (1967, c. 954, s. 1; 1969, c. 895, s. 9; 1985, c. 603, s. 8; 1987 (Reg. Sess., 1988), c. 1037, s. 43; 1997-34, s. 10.)

Instructive Case Law

Application of G.S. 7B-803 to Juvenile Hearings

While G.S. 7B-803 does not specify that it applies to dispositional hearings as well as the adjudicatory hearing, appellate cases have generally applied the statute to any type of hearing in an abuse, neglect or dependency action. See e.g. In re E.K., 202 N.C. App. 309, 688 S.E.2d 107 (2010)(Applying G.S. 7B-803 in determining the appropriateness of the court's multiple continuances of a permanency planning hearing). In re C.M. *infra* (Applying G.S. 7B-803 to the disposition hearing).

Abuse of Discretion Standard

On appeal, a judge's decision to grant or deny a motion to continue is reviewed under an abuse of discretion standard. In re J.B., 172 N.C. App. 1, 10, 616 S.E.2d 264, 270 (2005).

Abuse of discretion occurs when a decision is "manifestly unsupported by reason." Clark v. Clark, 301 N.C. 123, 129, 271 S.E.2d 58, 63 (1980).

The trial court did not abuse its discretion in denying the mother's third request to continue the termination of parental rights hearing where the mother's incarceration was due to her own actions in abducting her child and the prior two continuances were granted for the express purpose of allowing the mother to obtain documents. In re J.B. *supra*.

Must Show Prejudice in Delay

Respondent father failed to show prejudice in delay of completion of dispositional hearing since the delay was due to the court granting the parents' joint motion to continue based on the need for the court to review the father's psychological evaluation pursuant to G.S. 7B-803, the father failed to complete the evaluation, but the adjudication was held timely pursuant to G.S. 7B-801 and reunification efforts were not ceased until disposition. In re C.M., 183 N.C. App. 207, 644 S.E.2d 588 (2007).

It was not an abuse of discretion when the trial court granted a continuance due to an attorney's medical needs and again due to a death in the mother's family as these situations could be considered extraordinary circumstances; however, the trial court did abuse discretion in granting continuances seven times due to a crowded docket, three times due to absence of the parents, four times due to the absence of attorney and a new trial was necessary since the parents were prejudiced by the delays. In re R.L., 186 N.C. App. 529, 652 S.E.2d 327 (2007).

It was not error for the trial court to hold the termination of parental rights hearing outside the initial 90-day requirement when the mother's request for appointment of counsel led to the delay. In re S.N.H., 177 N.C. App. 82, 627 S.E.2d 510 (2006).