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THE NATURE OF ABUSE CLERICAL V. MATERIAL ERROR WHERE DOES NORTH CAROLINA STAND?

BRITTANY N. GUFFEY*

INTRODUCTION

In North Carolina, the court may permit a juvenile petition to be amended when the amendment does not “change the nature of the conditions upon which the petition is based.”¹ On August 28, 2009, the Supreme Court of North Carolina (hereinafter “Supreme Court”) reversed the North Carolina Court of Appeals (hereinafter “Court of Appeals”) decision in *In re M.G.*² The issue raised was whether the amendment to the juvenile petition changed the nature of the condition upon which the original petition was based.³ The Supreme Court broadly construed the meaning of “the nature of abuse” and developed a new definition for the term.⁴ The new definition, as defined by the Supreme Court, encompasses all of the components listed in the statutory definition.⁵ Based on the Supreme Court’s holding, it appears that the original juvenile petition can be amended to include all different types of factual allegations of “abuse,” as long as the original petition simply alleges “abuse.”⁶ The Supreme Court determined that the respondents had notice of the new factual allegations prior to the adjudicatory hearing.⁷ However, would the result be the same if the respondents did not have notice of the new factual allegations in the amended petition?

In *In re M.G.*, the Supreme Court held that the additional allegations of sexual abuse included in the amended petition “fell within the nature of the abuse condition that was initially alleged.”⁸ The Su-

* B.S.W., University of North Carolina Wilmington, Social Work, 2008; J.D. (cand.) North Carolina Central University School of Law, 2011. I would like to dedicate this casenote to my husband, David Guffey, and my parents Melissa and Charlie Nickels, for their love, endless support and encouragement.

1. N.C. GEN. STAT. § 7B-800 (2009).

2. *In re M.G.*, 363 N.C. 570, 570, 575, 681 S.E.2d 290, 290, 293 (2009).

3. *Id.* at 571, 681 S.E.2d at 291 (quoting N.C. GEN. STAT. § 7B-800 (2007)).

4. *Id.* at 574, 681 S.E.2d at 292.

5. *Id.*

6. *Id.*

7. *Id.* at 575, 681 S.E.2d at 293.

8. *Id.* at 574, 681 S.E.2d at 292.

preme Court based their decision on their newly created interpretation of the term “abuse,” which included “the existence or serious risk of some non-accidental harm inflicted or allowed by one’s caretaker.”⁹ Although the original petition alleged that the children were abused, as defined in the subdivision referencing sexual abuse, the only factual allegations involving sexual abuse referenced K.R., and not M.B.¹⁰ The Supreme Court also emphasized that the respondents had ample notice, prior to the adjudicatory hearing, of the new factual allegations that were added to the petition.¹¹ North Carolina allows amendments to a petition under N.C. Gen. Stat. § 7B-800.¹² However, prior case law illustrates that the real purpose of N.C. Gen. Stat. § 7B-800 is to provide a remedy for clerical or procedural errors that were made to the original petition.¹³

This note will first focus on *In re M.G.* and the recent history of N.C. Gen. Stat. § 7B-800, which provides for amendments to a juvenile petition in abuse, neglect and dependency proceedings.¹⁴ In particular, this note will focus on when an amendment to a juvenile petition for abuse, neglect or dependency “changes the nature of the condition upon which the petition is based.”¹⁵ While this note will address prior cases involving the amendment to a juvenile petition alleging neglect and dependency, the central focus will be on the amendment to a juvenile petition alleging abuse. Next this note will discuss the Supreme Court’s new definition for the term “abuse” and how this can affect future cases involving an amendment to a juvenile petition alleging abuse.¹⁶ This note will also discuss the Supreme Court’s emphasis on the requirement of notice to the respondents of the amendment, and whether this is the real deciding factor in determining what constitutes a “change” in the nature of the condition initially alleged.¹⁷ Finally, this note will briefly address the Supreme Court’s prior discussion as to the purpose of N.C. Gen. Stat. § 7B-800, and consider the possible implications of the Supreme Court’s holding on future cases involving allegations of abuse.¹⁸

9. *Id.*

10. *In re M.G.*, 187 N.C. App. 536, 547, 653 S.E.2d 581, 588 (2007).

11. *In re M.G.*, 363 N.C. at 575, 681 S.E.2d at 293.

12. N.C. GEN. STAT. § 7B-800 (2009).

13. *See In re T.R.P.*, 360 N.C. 588, 603, 636 S.E.2d 787, 798 (2006).

14. *In re M.G.*, 363 N.C. 570, 681 S.E.2d 290 (2009); N.C. GEN. STAT. § 7B-800 (2009).

15. N.C. GEN. STAT. § 7B-800 (2009).

16. *In re M.G.*, 363 N.C. at 574, 681 S.E.2d at 292.

17. *Id.* at 575, 681 S.E.2d at 293; N.C. GEN. STAT. § 7B-800 (2009).

18. *See In re T.R.P.*, 360 N.C. at 603, 636 S.E.2d at 798.

THE CASE

On May 18, 2006, the Cumberland County Department of Social Services filed a juvenile petition alleging that four juveniles, including M.G., M.B., K.R. and J.R., were each abused, neglected and dependent.¹⁹ The initial petition alleged abuse with reference to four subdivisions of N.C. Gen. Stat. § 7B-101(1), including subdivision (d), which states “the commission, permission, or encouragement of any of several enumerated sexual offenses.”²⁰ The petition contained factual allegations of sexual abuse as to K.R.²¹ However, the initial petition did not contain any factual allegations of sexual abuse as to M.B.²² The allegations of abuse relating to M.B. included the placement of M.B. “with a person who left them in the care of someone whose home ‘was deplorable,’ respondent father’s use of alcohol and marijuana, and respondents’ domestic violence.”²³

On July 17, 2006, a medical evaluation was conducted on M.B., where she disclosed inappropriate sexual conduct by the respondent father.²⁴ Following this disclosure, on December 5, 2006, the Department of Social Services (hereinafter “Social Services”) filed a motion to amend its original petition to include M.B.’s sexual abuse disclosure in the factual allegations.²⁵ On January 4, 2007, the trial court granted the motion filed by Social Services and allowed the amendment to the original petition.²⁶ The adjudicatory hearing occurred on February 19 and 20, 2007.²⁷ The trial court found as a matter of fact “that M.B. had been subjected to sexual contact by respondent-father, along with other factual findings relating to abuse of M.B.”²⁸

On review, the Court of Appeals vacated the trial courts’ portion of the order which concluded that M.B. was a sexually abused juvenile as defined by North Carolina statute.²⁹ The Court of Appeals held that the additional allegations of M.B.’s sexual abuse “changed the nature of the conditions relied upon in the original petition as to M.B.”³⁰ The Court of Appeals stated that the “new allegations gave rise to a different status for M.B. than alleged in the original petition,” and this

19. *In re M.G.*, 363 N.C. at 571, 681 S.E.2d at 291.

20. N.C. GEN. STAT. § 7B-101(1) (2009).

21. *In re M.G.*, 187 N.C. App. 536, 547, 653 S.E.2d 581, 588 (2007).

22. *Id.*

23. *Id.*

24. *In re M.G.*, 363 N.C. at 572, 681 S.E.2d at 291.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *In re M.G.*, 187 N.C. App. 536, 547, 653 S.E.2d 581, 588 (2007).

violated N.C. Gen. Stat. § 7B-800.³¹ The Court of Appeals reasoned that even though the original petition alleged factual allegations of inappropriate sexual conduct by respondent father towards K.R., it did not allege inappropriate sexual conduct by respondent father as to M.B.³² The Court of Appeals further reasoned that abuse, neglect, and dependency proceedings should focus on the status of each child and not on the culpability of the parent.³³

The Supreme Court granted discretionary review in this case to determine when an amendment to a juvenile petition “changes the nature of the condition upon which the petition is based.”³⁴ The Supreme Court first determined that abuse was “the nature of the condition” at issue in this case.³⁵ The Supreme Court reviewed the “acts or omissions” that support a finding of abuse as set out in N.C. Gen. Stat. § 7B-101(1).³⁶ Based upon the six criteria listed in the statute, the Supreme Court held that the “nature of abuse . . . is the existence or serious risk of some non-accidental harm inflicted or allowed by one’s caretaker.”³⁷ The Supreme Court then applied this definition to the facts of the case and determined that the additional factual allegations of sexual abuse, as related to M.B., still fell within the “nature of the abuse” condition that was initially alleged because they “related to harm inflicted upon M.B. by a parent or caretaker.”³⁸ The Supreme Court reasoned that a juvenile will often reveal additional information that supports a finding of abuse after the original petition has been filed, and that the inclusion of this new information by “amendments to a petition alleging abuse will not typically change the nature of the conditions upon which the petition is based.”³⁹

The Supreme Court emphasized that the respondents in this case had notice of the amendment prior to the adjudicatory hearing.⁴⁰ The Supreme Court stated that the motion to amend was filed by Social Services on December 5, 2006, and the trial court granted the motion to amend on January 4, 2007.⁴¹ The trial court granted the amendment and stated that the parties knew about the additional factual allegations which were being added to the initial petition.⁴² The adju-

31. *Id.* at 548, 653 S.E.2d at 588.

32. *Id.*

33. *Id.* at 547, 653 S.E.2d at 588.

34. *In re M.G.*, 363 N.C. at 571, 681 S.E.2d at 291; N.C. GEN. STAT. § 7B-800 (2009).

35. *In re M.G.*, 363 N.C. at 573, 681 S.E.2d at 292.

36. N.C. GEN. STAT. § 7B-101(1) (2009).

37. *In re M.G.*, 363 N.C. at 574, 681 S.E.2d at 292.

38. *Id.*

39. *Id.* at 574, 681 S.E.2d at 293.

40. *Id.*

41. *Id.*

42. *Id.*

dicatory hearing occurred the following month on February 19, 2007.⁴³ The Supreme Court stated that the respondents “had sufficient notice and time to prepare to answer the additional allegations.”⁴⁴

BACKGROUND

The Court of Appeals addressed the issue of amending a juvenile petition in child abuse, neglect and dependency proceedings in *In re Brown*.⁴⁵ In *Brown*, the respondent-mother made statements to a social worker, who in turn filed the initial petition which alleged that the children were neglected and dependent.⁴⁶ The mother stated that she despised one of her children and that she feared she might kill this particular child.⁴⁷ The following month, Social Services filed a motion to amend the petition to include additional allegations that: (1) the respondent-father used inappropriate discipline, screamed and cursed at the children; and (2) the respondent-mother’s brother was allowed to stay in the home despite suspicions of sexual molestation on the mother and children.⁴⁸ The Court of Appeals upheld the amendment to the original petition stating that “it neither added any additional charges, such as abuse or delinquency, to those set forth in the original petition, nor changed the nature of the allegations previously set forth therein.”⁴⁹ In accordance with *In re M.G.*, the Court of Appeals emphasized the fact that the respondents had notice of the additional factual allegations and were given plenty of time to address these allegations.⁵⁰

The following year, the Court of Appeals addressed the same issue with slightly different facts in the case of *In re A.D.W.*⁵¹ The original petition filed by Social Services alleged neglect and focused on the mother’s mental illness and inability to adequately provide for her newborn child.⁵² Social Services later filed a motion to amend the original petition to allege dependency and include additional factual allegations regarding the mother’s mental illness and inability to properly care for her child.⁵³ The Court of Appeals upheld the trial court’s ruling, allowing the amendment to the juvenile petition.⁵⁴ The Court

43. *Id.*

44. *Id.*

45. *In re Brown*, No. 03-346, 2004 N.C. App. LEXIS 214 (N.C. Ct. App. Feb. 3, 2004).

46. *Id.* at *2-3.

47. *Id.* at *2.

48. *Id.* at *3.

49. *Id.* at *17-18.

50. *Id.* at *18.

51. *In re A.D.W.*, No. 04-1243, 2005 N.C. App. LEXIS 1243 (N.C. Ct. App. July 5, 2005).

52. *Id.* at *3.

53. *Id.*

54. *Id.* at *4.

of Appeals stated that “the amended petition merely expanded upon the information contained in the original petition.”⁵⁵ The Court of Appeals reasoned that the amended petition did not contain any new substantive factual allegations against the mother.⁵⁶ The Court of Appeals further noted that the respondent-mother did not object to the amendment of the petition when the motion was filed.⁵⁷

The next North Carolina Supreme Court case which provided commentary on the statute and issue discussed in this note was the case of *In re T.R.P.*⁵⁸ In that case, the Supreme Court held that the trial court did not have jurisdiction over the matter because the juvenile petition was not properly verified, as required by North Carolina statute.⁵⁹ In the dissenting opinion, Justice Newby, joined by Chief Justice Parker and Justice Brady, discussed N.C. Gen. Stat. § 7B-800 and the purpose of the statute.⁶⁰ Justice Newby stated that the amendment statute was created because “[t]he General Assembly anticipated procedural mishaps . . . like the one which occurred in this case.”⁶¹ Justice Newby further stated that “errors in the form of a petition, such as a verification omission, can be cured through amendment.”⁶² This commentary appears to interpret the purpose of N.C. Gen. Stat. § 7B-800 as a remedy for clerical or procedural errors in the original petition.⁶³

In the initial review of *M.G.*, which is the central focus of this note, the Court of Appeals relied heavily on the case of *In re D.C.*⁶⁴ In that case, the original petition filed by Social Services alleged neglect and dependency as to juvenile D.C., due to lack of supervision, mental health issues, and a history of domestic violence.⁶⁵ Several months later, the respondent gave birth to C.C. and Social Services filed a motion to amend the original petition to include C.C. and alleged dependency.⁶⁶ Social Services included all of the factual allegations

55. *Id.* at *3.

56. *Id.*

57. *Id.* at *3-4.

58. *In re T.R.P.*, 360 N.C. 588, 636 S.E.2d 787 (2006).

59. *Id.* at 598, 636 S.E.2d at 795. *See also In re D.D.F.*, 187 N.C. App. 388, 395, 654 S.E.2d 1, 5 (2007) (the Court held that the juvenile code would not prevent the amendment to a petition which would allow a party to sign the pleading because this was considered a minor amendment).

60. *In re T.R.P.*, 360 N.C. at 604, 636 S.E.2d at 798 (Newby, J., dissenting).

61. *Id.* at 603, 636 S.E.2d at 798.

62. *Id.*

63. *See Id.* at 604, 636 S.E.2d at 798 (Justice Newby recognized in his dissent that no North Carolina cases appear to have applied Rule 11 to the statutory verification requirements, but that these requirements should be treated as procedural since federal court decisions with similar verification requirements have treated a failure to comply as a procedural, instead of a jurisdictional requirement).

64. *In re M.G.*, 187 N.C. App. 536, 547, 653 S.E.2d 581, 587-88 (2007).

65. *In re D.C.*, 183 N.C. App. 344, 346-47, 644 S.E.2d 640, 641 (2007).

66. *Id.* at 348, 644 S.E.2d at 642.

from the original petition as to D.C., as well as allegations that the respondent provided inadequate prenatal care, and was unequipped and unable to properly care for C.C.⁶⁷ The trial court adjudicated both children to be neglected juveniles, even though the amended petition did not allege that C.C. was neglected, but only dependent.⁶⁸

On review, the Court of Appeals reversed the trial courts order that found C.C. to be neglected.⁶⁹ The Court of Appeals reasoned that the trial court “essentially amended the juvenile petition by allowing [the Department of Social Services] to proceed on a condition not alleged in the petition.”⁷⁰ The Court of Appeals stated that adjudicating the child based on neglect, when the petition alleged only dependency, violated N.C. Gen. Stat. § 7B-800.⁷¹ The Court of Appeals emphasized that the holding was not based on the mere fact that Social Services alleged dependency, instead of neglect, in the original petition.⁷² The Court of Appeals stated that “if the specific factual allegations of the petition are sufficient to put the respondent on notice as to each alleged ground for adjudication, the petition will be adequate.”⁷³ The Court of Appeals stated that the factual allegations which supported the dependency claim did not provide the respondent mother with notice that neglect was also an issue as to C.C.⁷⁴

Recently, the Court of Appeals addressed the issue again as to whether an amendment to the original and supplemental petition “change[d] the nature of the condition[] upon which the petition [was]based.”⁷⁵ In the case of *In re E.H.*, the initial petition, including a supplemental petition, alleged neglect based in part on a history of domestic violence between the mother and respondent-father.⁷⁶ During the adjudicatory hearing, several prior instances of domestic violence in the home were revealed and the trial court allowed Social Services to amend the original petition to include the evidence that was presented at the hearing.⁷⁷ On review, the Court of Appeals held that the amendment was proper because Social Services had already alleged neglect based on the history of domestic violence between the mother and respondent-father.⁷⁸ The Court of Appeals again empha-

67. *Id.*

68. *Id.*

69. *Id.* at 350, 644 S.E.2d at 643.

70. *Id.* at 349, 644 S.E.2d at 643 (internal quotations omitted).

71. *Id.*

72. *Id.* at 350, 644 S.E.2d at 643.

73. *Id.*

74. *Id.*

75. N.C. GEN. STAT. § 7B-800 (2009).

76. *In re E.H.*, No. 08-362, 2008 N.C. App. LEXIS 1642, at *7-8 (N.C. Ct. App. Sept. 2, 2008).

77. *Id.*

78. *Id.* at *8.

sized that the respondent-father was prepared “to defend himself against the allegations of neglect based on domestic violence.”⁷⁹

Last year, in the case of *In re A.S.*, the Court of Appeals made reference to the purpose of N.C. Gen. Stat. 7B-800 as a remedy for clerical or procedural errors in the original petition.⁸⁰ In that case, Social Services alleged in the original petition that A.S. was abused and dependent due to “a serious injury that could not have occurred in the manner described by respondent-mother.”⁸¹ Social Services filed a motion to amend the original petition to include “a claim of neglect and additional factual allegations, including an allegation that respondent-mother ‘continues to demonstrate the same drug seeking behavior that caused DSS involvement in the past’”.⁸² The Court of Appeals held that the trial court improperly allowed the petition to be amended and that the respondent-mother was deprived of sufficient notice.⁸³ The Court of Appeals specifically stated that “[t]he amended petition did not merely correct clerical or procedural errors, but added new factual allegations to support its additional claim that A.S. was neglected.”⁸⁴ The Court of Appeals noted that even if the amendment was proper, “[t]he respondent-mother was not given notice of the additional allegations.”⁸⁵

ANALYSIS

This case does not seem to follow the prior cases decided in this area with regards to amending a juvenile petition in an abuse, neglect or dependency proceeding. Instead, the Supreme Court is developing a new test for when an amendment to a juvenile petition “change[s] the nature of the conditions upon which the petition is based” and is broadening the definition of “the nature of abuse.”⁸⁶

Prior to the Supreme Court’s decision in this case, the Court of Appeals provided a narrow and restrictive view as to the definition of “the nature of abuse” and what particular types of abuse change the nature of the allegations originally alleged.⁸⁷ The Court of Appeals determined that in the original petition, the sexual abuse allegations

79. *Id.* at *8-9.

80. *In re A.S.*, No. 08-1225, 2009 N.C. App. LEXIS 185, at *7 (N.C. Ct. App. Feb. 17, 2009). See also N.C. GEN. STAT. § 7B-800 (2009).

81. *In re A.S.*, 2009 N.C. App. LEXIS 185, at *7.

82. See *Id.*

83. *Id.* at *8.

84. *Id.* at *7.

85. *Id.* at *8.

86. See *In re M.G.*, 363 N.C. 570, 681 S.E. 2d 290, (2009) (understand the court may permit a petition to be amended when the amendment does not change the nature of the conditions upon which the petition is based). See also N.C. GEN. STAT. § 7B-800 (2009).

87. *In re M.G.*, 187 N.C. App. 536, 653 S.E.2d 581 (2007).

pertained to K.R. and not M.B.⁸⁸ The Court of Appeals further stated that the allegations of abuse relating to M.B. “involved placement of M.B. . . . with a person who left [her] in the care of someone whose home ‘was deplorable,’ respondent father’s use of alcohol and marijuana, and respondent’s domestic violence.”⁸⁹ The Court of Appeals held that the new allegations of sexual abuse as to M.B. changed her status as was originally alleged in the initial petition.⁹⁰

However, the Supreme Court broadened the definition of “the nature of abuse” to encompass all facets of abuse.⁹¹ The Supreme Court developed its own definition as to “the nature of abuse,” which is “the existence or serious risk of some non-accidental harm inflicted or allowed by one’s caretaker.”⁹² The Supreme Court stated that when abuse is already alleged, an amendment to allow factual allegations of sexual abuse that were disclosed after the petition was filed was not an error.⁹³ The Supreme Court’s reasoning seemed to hinge on its broad interpretation of the word “abuse” and the fact that the respondents were aware of the new factual allegations before the adjudicatory hearing.⁹⁴

This leads into the next issue that was emphasized and discussed in all of the cases leading up to *In re M.G.*. Is notice the real deciding factor in all of these cases? If so, what is the real purpose of N.C. Gen. Stat. § 7B-800 and why not repeal this statute and simply require that notice be given to each party after an amendment is filed?⁹⁵ In the case of *In re D.C.*, the Court of Appeals sets out the importance of notice.⁹⁶ The Court of Appeals stated that:

We emphasize that this holding is not based on DSS’s mere failure to ‘check the box’ for ‘neglect’ on the form petition. While it is certainly the better practice for the petitioner to ‘check’ the appropriate box on the petition for each ground for adjudication, if the specific factual allegations of the petition are sufficient to put the respondent on notice as to each alleged ground for adjudication, the petition will be adequate.⁹⁷

It seems that N.C. Gen. Stat. § 7B-800 should be repealed and should mirror the rule of law that the Court of Appeals stated in its decision: “If the specific factual allegations of the petition are sufficient to put

88. *See Id.*

89. *Id.* at 547, 653 S.E. 2d at 588.

90. *Id.*

91. *In re M.G.*, 363 N.C. 570, 681 S.E. 2d 290 (2009).

92. *Id.* at 574, 681 S.E. 2d at 292.

93. *Id.*

94. *See Id.*

95. N.C. GEN. STAT. §7B-800 (2009).

96. *In re D.C.*, 183 N.C. App. 344, 644 S.E. 2d 640 (2007).

97. *Id.* at 350, 644 S.E. 2d at 643.

the respondent on notice as to each alleged ground for adjudication, the petition will be adequate.”⁹⁸ Each case discussed in the background portion of this note emphasized the fact that either the respondents had or did not have notice of the amendment.⁹⁹ Each holding was in accord with whether or not the respondents had notice of the amendment and whether the respondents were prepared to answer the additional allegations in the amended petition.¹⁰⁰ While the respondents in this case were given sufficient notice of the amendment, it is yet to be seen whether the a North Carolina Court would proceed with an amended petition that changed the nature of the condition upon which the petition was originally based, but failed to give respondents sufficient notice as to the amended petition.¹⁰¹

As a final note to the true purpose of the N.C. Gen. Stat. 7B-800, and what exactly constitutes a change to the nature of the condition upon which the petition was based, there must be a discussion of the most recent cases arguing that the purpose of this statute is to correct clerical or procedural errors in the original petition.¹⁰² Beginning with the dissent in the case of *In re T.R.P.*, the dissenters reasoned that “the General Assembly anticipated procedural miscues and thus included a remedy in [N.C. Gen. Stat. § 7B-800] for mistakes like the one that occurred in this case.”¹⁰³ The mistake which occurred in that case was the omission of verification of the juvenile petition.¹⁰⁴

In the most recent case of *In re A.S.*, the court specifically stated the new factual allegations changed the nature of the condition because the new allegations did not merely correct clerical or procedural errors.¹⁰⁵ In this case, the Court of Appeals stated:

In this case, we conclude that the amended petition changed the nature of the condition upon which the petition was based so as to deprive Respondent-Mother of sufficient notice. The amended petition did not merely correct clerical or procedural errors, but added new factual allegations to support its additional claim that A.S. was neglected.¹⁰⁶

98. *Id.*

99. See *In re Brown*, No. 03-346, 2004 N.C. App. LEXIS 214, at *1 (N.C. Ct. App. Feb. 3, 2004); see *In re A.D.W.*, No. 04-1243, 2005 N.C. App. LEXIS 1243, at *1 (N.C. Ct. App. June 13, 2005); see *In re T.R.P.*, 360 N.C. 588, 636 S.E.2d 787 (2006); see *In re D.C.*, 183 N.C. App. 344, 644 S.E. 2d 640 (2007); see *In re E.H.*, No. 08-362, 2008 N.C. App. LEXIS 1642, at *1 (N.C. Ct. App. Sept. 2, 2008); see *In re A.S.*, No. 08-1225, 2009 N.C. App. LEXIS 185, at *1 (N.C. Ct. App. Feb. 17, 2009) (addressing the issue of notice and whether the respondents were prepared to answer the additional allegations in the amended petition).

100. *Id.*

101. *In re M.G.*, 363 N.C. 570, 574, 681 S.E.2d 290, 293 (2009).

102. N.C. GEN. STAT. § 7B-800 (2009).

103. *In re T.R.P.*, 360 N.C. 588, 603, 636 S.E.2d 787, 798 (2006).

104. *Id.* at 598, 636 S.E.2d at 795.

105. *In re A.S.*, No. 08-1225, 2009 N.C. App. LEXIS 185, at *7 (N.C. Ct. App. Feb. 17, 2009).

106. *Id.*

It appears from the language in this case that the purpose of N.C. Gen. Stat. § 7B-800 and the reason it was created, was to allow the petitioners to correct clerical or procedural errors.¹⁰⁷

In the case that is the central focus of this note, the amended petition which included new sexual allegations as to M.B., were not “merely correct[ing] clerical or procedural errors, but added new factual allegations” to support its claim of abuse.¹⁰⁸ The original petition did not contain any factual allegations of sexual abuse as to M.B., and it seems that the Supreme Court stretched its reasoning when it reached the conclusion that these additional allegations of sexual abuse did not change the nature of the condition which was initially alleged.¹⁰⁹ While “abuse” was initially alleged, the factual allegations to support this condition only included acts of leaving M.B. in the care of someone whose home “was deplorable,” the father’s use of drugs and alcohol, and the respondent’s domestic violence.¹¹⁰ The additional factual allegations of sexual abuse as to M.B. were in no way mentioned or addressed in the original petition.¹¹¹ This amendment, which was allowed by the Supreme Court, was not correcting clerical or procedural errors, but was changing the nature of the original petition by adding substantive allegations that were not originally alleged.¹¹² The Supreme Court allowed the amendment by developing their own definition of “the nature of abuse” to encompass every type of abuse.¹¹³ This reasoning and holding does not appear to be the purpose and reason that N.C. Gen. Stat. § 7B-800 was created in the first place.

CONCLUSION

While it is unclear what exactly constitutes a “change in the nature of the conditions upon which the petition was based,” the Supreme Court in this case has not only broadened the meaning of the term “abuse,” but the Supreme Court has broadened the scope of amending a juvenile petition in abuse, neglect and dependency proceedings.¹¹⁴ The new definition which the Supreme Court in this case developed regarding “the nature of abuse” will encompass every type and form of abuse. According the Supreme Court, “the nature of

107. *Id.*; see also N.C. GEN. STAT. § 7B-800 (2009).

108. *In re M.G.*, 363 N.C. 570, 681 S.E.2d 290 (2009); *In re A.S.*, 2009 N.C. App. LEXIS 185, at *7.

109. *In re M.G.*, 363 N.C. at 574, 681 S.E.2d at 292.

110. *In re M.G.*, 187 N.C. App. 536, 547, 653 S.E.2d 581, 588 (2007).

111. *In re M.G.*, 363 N.C. at 570, 681 S.E.2d at 290.

112. *Id.* at 574, 681 S.E.2d at 292.

113. *Id.*

114. N.C. GEN. STAT. § 7B-800 (2009).

abuse” is “the existence or serious risk of some non-accidental harm inflicted or allowed by one’s caretaker.”¹¹⁵ Thus, the conclusion that can be reached is that as long as Social Services alleges “abuse” in the original petition, any additional factual allegations relating to that condition, that are non-accidental, shall be allowed by way of amendment.

However, in future cases, when a North Carolina court is deciding whether to allow the amendment to the juvenile petition, the court must consider whether the respondents had notice of the amendments and whether the respondents were prepared to address the additional allegations in the amended petition at adjudication. While it appears that the Department of Social Services may have free reign to amend the original petition, Social Services must remember the notice requirement and notify the respondents of the amendment. Instead of wasting a court’s time by filing needless motions to amend and requiring the court to determine whether the amendment “changes the nature of the conditions upon which the petition is based,” the statute should be changed to simply require that, upon amendment to the original petition, all parties must be notified and have sufficient time to prepare an answer to the additional allegations.¹¹⁶

Finally, it must be noted that the Court of Appeals did not allow the amendment to a juvenile petition in the case of *In re A.S.* because “[t]he amended petition did not merely correct clerical or procedural errors, but added new factual allegations to support its additional claim”¹¹⁷ This statement clearly interprets the meaning and purpose of N.C. Gen. Stat. § 7B-800, as a remedy for clerical and procedural errors, and not as a remedy to add new factual allegations to support additional claims.¹¹⁸ The Supreme Court in the case at issue applied N.C. Gen. Stat. § 7B-800, to add new factual allegations and not to correct clerical or procedural errors.¹¹⁹ Given the generality of the statute, future courts should rely on the Court of Appeals’ interpretation of the statute in the case of *In re A.S.*, and address each case accordingly.

115. *In re M.G.*, 363 N.C. at 570, 681 S.E.2d 290.

116. N.C. GEN. STAT. § 7B-800 (2009).

117. *In re A.S.*, No. 08-1225, 2009 N.C. App. LEXIS 185, at *7 (N.C. Ct. App. Feb. 17, 2009).

118. *Id.*; N.C. GEN. STAT. § 7B-800 (2009).

119. *See In re M.G.*, 363 N.C. 570, 681 S.E.2d 290 (2009).