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A Blow to Reunification: How the Supreme Court of North Carolina's Ruling in *In re J.M.* Eviscerates the Hopes of Parents in Reunifying with Their Children

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In North Carolina, a court may remove a child from the home if the child is abused or neglected. In an attempt to reunify a parent with his or her child, the court may place the parent under a case plan to rectify the various issues that led to the child's initial removal. If a court finds sufficient evidence that such issues have been resolved, it may allow the parent to reunify with his or her child. However, if such issues consistently remain unresolved, a court may opt to eliminate reunification from the parent's case plan. Such a decision is not to be made lightly and should only be considered after a careful evaluation of all relevant factors and evidence. Nevertheless, in June 2023, the Supreme Court of North Carolina opted to eliminate reunification for the respondent-parents in In re J.M. *all because of one factor that was firmly in the past despite a litany of positive factors showcasing the parents' growth and change. This Recent Development will argue that the Supreme Court of North Carolina erroneously applied the reasoning of precedential cases in reaching its decision in* In re J.M.*, and will then examine the costly implications this decision will have for parents looking to reunify with their children in the future.*

INTRODUCTION

Imagine this scenario: You are a parent who has committed a horrendous mistake that left your child injured. The government has taken your child away, and your only hope is to comply with the rules of the system to ensure a reunion. Seeing this as your final chance for redemption, you decide to leave your troubled life behind and change for the better. By properly complying with the rules of the system, you trust that reunification will result. And so, every step taken signals progress towards this goal. Hope rises every day and every week, and you feel confident that your actions reflect positive signs of changed behavior. Yet, because of one blemish—one singular factor—the court decides to ignore all the positives you have accumulated because of something that is now in the past.

In *In re J.M.*,[1] this nightmarish scenario unfolded in real time for the parents.[2] The North Carolina Court of Appeals originally ruled in favor of the parents by reversing the trial court's judgment that reunification of the parents

1. 384 N.C. 584, 887 S.E.2d 823 (2023).
2. *Id.* at 604, 887 S.E.2d at 836.

with their children would not be in the "best interest" of the children.[3] Thus, the central issue of *In re J.M.* was whether the North Carolina Court of Appeals had "erred in reversing the trial court's decision to eliminate reunification from the permanent plan."[4] The Supreme Court of North Carolina had an opportunity to permanently establish a holistic review process involving a multi-factored approach—previously elaborated by the court in *In re D.W.P.*[5]—that would give both parents in the case and many future parents legitimate prospects of reunifying with their children by changing for the better.[6] Instead, the court in *In re J.M.* placed ultimate weight on a singular factor: the parents' failure to acknowledge who caused the child's injuries or an adequate explanation of what caused the child's injuries. In doing so, the court adopted a far narrower perspective in *In re J.M.* that has unfortunately left reunification prospects diminished moving forward.[7]

This Recent Development analyzes the court's erroneous reasoning in reaching its judgment in *In re J.M.* In the process, it will examine the inherently inconsistent approach the court took in applying a key precedential case, and the implications that this ruling will likely have on the juvenile system moving forward. This Recent Development argues that the approach adopted in *In re J.M.* will create an insurmountable roadblock to many parents trying to reunify with their children. The analysis will proceed in four parts. Part I will discuss the background and relevant facts of *In re J.M.* Part II will take a step back and examine the "best interests" standard that the court has applied in prior cases. Part III will examine the flaws in the court's reasoning in *In re J.M.* Part IV will then weigh the widespread negative implications that the court's decision may have moving forward and provide a recommendation.

I. BACKGROUND OF *IN RE J.M.*

Respondent-father and respondent-mother are the parents of Nellie, born July 3, 2018.[8] On the morning of August 15, 2018, when she was just six weeks old, Nellie began crying.[9] The respondent-father responded by feeding her and

3. *Id.* at 590, 887 S.E.2d at 828.

4. *See id.* at 595, 887 S.E.2d at 831. A permanent plan in this context refers to the primary and secondary plan adopted by the court under N.C. Gen. Stat. section 7B-906.2. The primary or secondary permanent plan must always be reunification, unless the court makes written findings under N.C. Gen. Stat. section 7B-901(c) or N.C. Gen. Stat. section 7B-906.1(d)(3). N.C. GEN. STAT. § 7B-906.2(b) (LEXIS through Sess. Laws 2024-3 of the 2024 Reg. Sess. of the Gen. Assemb.).

5. 373 N.C. 327, 838 S.E.2d 396 (2020).

6. *Id.* at 339–40, 838 S.E.2d at 404–05.

7. *See In re J.M.*, 384 N.C. at 615, 887 S.E.2d at 843 (Earls, J., dissenting) (arguing that the majority misinterpreted the former case's approach to make a singular factor determinative when a holistic review was the correct approach instead).

8. *Id.* at 586, 887 S.E.2d at 825 (majority opinion). In its opinion, the court used "Nellie" and "Jon" as pseudonyms to protect the minor children's identities. *Id.* at 586 n.1, 887 S.E.2d at 825 n.1.

9. *Id.* at 586, 887 S.E.2d at 825.

changing her diaper.[10] Both parents stated that the child screamed while being changed, though the mother claimed that she had been in another room while this all occurred.[11]

Later that morning, Nellie fell limp and the parents took her to the hospital.[12] Medical examinations indicated that she had suffered bleeding in the brain, damage to her eyes, and broken ribs.[13] The severity of the injuries was strongly indicative of child abuse, with one of the ribs suggesting that Nellie was the victim of a previous instance of abuse.[14] The Catawba County Department of Social Services ("DSS") quickly responded by filing a juvenile petition claiming that Nellie had been abused and that she and her one-year-old brother, Jon, had both been neglected.[15] DSS was granted nonsecure custody[16] of the children shortly thereafter.[17]

The provisions of Chapter 7B of the General Statutes of North Carolina ("Juvenile Code") state that abuse, neglect, and dependency proceedings are divided into two phases: adjudicatory and dispositional.[18] During the adjudicatory phase, DSS carries the burden of proof to show by clear and convincing evidence that a juvenile was indeed abused, neglected, or dependent as defined in the Juvenile Code.[19] If the court adjudicates a child as being abused, neglected, or dependent, the court then proceeds to the dispositional

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* at 587, 887 S.E.2d at 826.

14. *Id.*

15. *Id.*

16. *Non-Secure Custody Hearing*, ARNOLD & SMITH, PLLC, https://www.arnoldsmithlaw.com/non-secure-custody-hearing.html [https://perma.cc/DK97-UCCG] (stating that in a nonsecure custody order, the child is temporarily removed from his or her home).

17. *In re J.M.*, 384 N.C. at 587, 887 S.E.2d at 826.

18. *See* N.C. GEN. STAT. §§ 7B-802, 7B-900 (LEXIS through Sess. Laws 2024-3 of the 2024 Reg. Sess. of the Gen. Assemb.).

19. *See id.* § 7B-805. *See generally Abuse, Neglect and Dependency*, N.C. JUD. BRANCH, https://www.nccourts.gov/help-topics/family-and-children/abuse-neglect-and-dependency [https://perma.cc/AHX5-2SV7] [hereinafter *Abuse, Neglect and Dependency*] (describing what actions constitute "abuse," "neglect," or "dependency" in juvenile cases). One category of "abuse" is when a "parent, guardian, custodian, or caretaker . . . [c]auses serious physical injury to the child that does not happen by accident, or allows another to do so." *Id.* This is likely the category that the trial court determined was met when adjudicating Nellie as "abused." *See infra* notes 26–29 and accompanying text. "Neglect" can also be categorized several ways in North Carolina. For example, a "child is neglected if the child does not receive proper care, supervision . . . or the child has been abandoned. A child is [also] neglected if the child lives in an environment injurious to the child's welfare." *Abuse, Neglect and Dependency*, *supra*. The Supreme Court of North Carolina's opinion does not expound on what category of "neglect" the respondent-parents' actions met, but this Recent Development infers that a combination of the former and present abuse that Nellie experienced likely created an environment that the court deemed to be too "injurious to the [children's] welfare" that both Nellie and Jon had to be removed. *Id.*

phase.[20] The central goal of this latter phase is to adopt a permanent plan[21] that "the court finds is in the juvenile's best interest."[22] During this latter phase, parents are put under a case plan[23] to make improvements in such a way as to ensure that they can one day reunite with their children.[24] However, if the court finds that the parents have not made sufficient improvements, or that circumstances are insufficient, such that the evidence indicates it would not be in the best interests of the child to return to the parents' home, the court may eliminate the option of reunification and put the child up for a different permanent plan, such as adoption or guardianship.[25]

The trial court adjudicated that Nellie had been abused and proceeded to the dispositional phase.[26] In making this decision, the court relied on expert testimony from doctors who described Nellie's injuries as resulting from "nonaccidental trauma, or child abuse."[27] It also relied on the parents' admission that they were the only caretakers of Nellie, affirming the understanding that the child's injuries "were not caused by another child or caretaker . . . ."[28] However, neither parent would admit to who or what caused Nellie's injuries.[29]

20. *See* N.C. GEN. STAT. § 7B-101(1), (9), (15) (LEXIS through Sess. Laws 2024-3 of the 2024 Reg. Sess. of the Gen. Assemb.).

21. The motivation behind permanency planning is to "recogniz[e] the need for a final decision to be made consistently with the child's developmental needs and sense of time." 2 ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES § 12:36 (3d ed. 2023). An adult's sense of time differs from that of a child, where the former can

> tolerate the delays inherent in litigation, [but] children [cannot] . . . . Every change of placement makes it more difficult for the child to form another attachment. Further, the child needs the security of knowing where he or she will be living and going to school. It is difficult for children to understand case plans and time lines. They need answers, and they need them soon.

Id.

22. N.C. GEN. STAT. § 7B-906.2(a). For more information on the "best interests" standard, see *infra* note 52.

23. "When the state intervenes in a family, taking some jurisdiction over the child, it must make some effort to reunite the family if at all possible. The case plan represents the social worker's proposal for offering services to the family and child and for working towards reunification." 2 HARALAMBIE, *supra* note 21, § 12:33. North Carolina is one such state that utilizes the case plan. *North Carolina Case Decision Summary/Initial Case Plan*, N.C. DEPT. HEALTH & HUM. SERVS., https://policies.ncdhhs.gov/wp-content/uploads/cws-al-08-09a6.pdf [https://perma.cc/329E-YUDK (staff-uploaded archive)] (showing an example of a form used to document and prepare an initial case plan).

24. *See* § 7B-906.2(d)(2) ("At any permanency planning hearing . . . the court shall make written findings as to . . . [w]hether the parent is actively participating in or cooperating with the plan.").

25. *See id.* § 7B-906.2(b).

26. *In re* J.M., 384 N.C. 584, 587, 887 S.E.2d 823, 826 (2023).

27. *Id.* at 596, 887 S.E.2d at 831.

28. *Id.* at 587, 887 S.E.2d at 826.

29. *Id.* at 589, 887 S.E.2d at 827.

During the dispositional phase,[30] over the course of several permanency-planning hearings, the trial court noted the steady progress of the parents in their case plans.[31] Both parents consistently received counseling and therapy, underwent multiple psychological evaluations, submitted to random drug testing, and partook in different programs, including "substance abuse treatment" and "mate abuser treatment."[32] The respondent-mother successfully passed all eighteen drug tests she submitted to,[33] while the respondent-father successfully passed all but one of his drug tests.[34] Both also found and maintained employment as proof of their ability to financially care for the children.[35] Yet, despite these positive indications that reunification was likely, the trial court expressed substantial concern over the parents' lack of acknowledgement of who caused Nellie's injuries.[36] Without acknowledgement of responsibility or any plausible explanation of who caused the injuries, the trial court determined that returning the children to the parents' home was not in the children's "best interests"[37] and subsequently removed reunification from the permanent plan.[38]

Upon appeal,[39] the North Carolina Court of Appeals reversed the trial court's ruling.[40] It determined that there were shortcomings in DSS's investigation and the significant compliance of the parents with their case plans did not warrant an elimination of reunification in the permanent plans.[41] The court of appeals took note of how both parents completed full psychological examinations, submitted to and passed random drug tests, and took clear and

30. At the dispositional phase, there is either a review hearing or a permanency planning hearing. N.C. GEN. STAT. § 7B-906.1(a) (LEXIS through Sess. Laws 2024-3 of the 2024 Reg. Sess. of the Gen. Assemb.). "If custody has not been removed from a parent, guardian, caretaker, or custodian, the hearing shall be designated as a review hearing. If custody has been removed from a parent, guardian, or custodian, the hearing shall be designated as permanency planning hearing." *Id.* In the present case, the child had been removed from the parents, thus making permanency planning hearings the option for the court to proceed under. *See In re J.M.*, 384 N.C. at 587, 887 S.E.2d at 826.

31. *See In re J.M.*, N.C. at 589, 887 S.E.2d at 827.

32. *Id.*

33. *Id.* at 606, 887 S.E.2d at 837 (Morgan, J., concurring in part and dissenting in part) ("The Mother has screened negative for all eighteen drug screens since her children entered foster care.").

34. *Id.* at 589, 887 S.E.2d at 827 (majority opinion) ("Similarly, respondent-father . . . screened negative for drugs consistently after failing his first drug test.").

35. *Id.*

36. *Id.* ("Despite the progress on case plans and the foster mother's positive assessment, the trial court expressed concern that, '[w]ithout some acknowledgement by the parents of responsibility for the injuries, there can be no mitigation of the risk of harm to the children.'").

37. *See infra* note 52 (discussing the "best interests" standard relevant in family law).

38. *In re J.M.*, 384 N.C. at 590, 887 S.E.2d at 828.

39. Elimination of reunification is one of only six scenarios under which a juvenile matter may be appealed. 17A ELIZABETH WILLIAMS, N.C. INDEX 4TH INFANTS OR MINORS § 133 (2024).

40. *In re* J.M., 276 N.C. App. 291, 308, 856 S.E.2d 904, 915 (2021).

41. *Id.* at 302–03, 856 S.E.2d at 912–13.

active steps that forecasted changed behavior moving forward, such as attaining employment.[42]

However, the Supreme Court of North Carolina reversed the court of appeals ruling because it determined there was competent evidence that supported the trial court's conclusions of law.[43] In making its ruling, the court emphasized that it was bound by the legal precedent set in *In re D.W.P.*[44] The court found similarities between *In re D.W.P.* and *In re J.M.* in that both involved the physical abuse of an infant, where the two parents were the only ones who could have inflicted the abuse.[45] And like *In re J.M.*, *In re D.W.P.* involved a lack of sufficient explanation from the parents as to who or what could have caused the child's injuries.[46] The trial court in *In re J.M.* exclusively honed in on the insufficiency of these explanations in its findings when eliminating reunification, which the court felt compelled to abide by and affirm when applying *In re D.W.P.* as precedent.[47]

II. EXAMINING THE COURT'S PRECEDENT ON THE "BEST INTERESTS" OF THE JUVENILE STANDARD

When a trial court proceeds to permanency-planning hearings[48] during the dispositional phase, it is to "adopt one or more . . . permanent plans the court finds is in the juvenile's best interest."[49] Guidelines for how these permanency planning hearings are conducted are found in N.C. Gen. Stat. section 7B-906.2(b), which provides:

> At any permanency planning hearing, the court shall adopt concurrent permanent plans and shall identify the primary plan and secondary plan.

42. *Id.* at 296, 856 S.E.2d at 908.

43. *In re J.M.*, 384 N.C. at 586, 887 S.E.2d at 825.

44. *Id.* at 599, 887 S.E.2d at 833 (citing *In re* D.W.P., 373 N.C. 327, 328, 838 S.E.2d 396, 399 (2020)). For a description of the holding in *In re D.W.P.*, see *infra* notes 79–84 and accompanying text.

45. *In re J.M.*, 384 N.C. at 601, 887 S.E.2d at 834.

46. *Id.*

47. *Id.* at 589, 601, 887 S.E.2d at 827, 834.

48. *See generally* N.C. DEPT. OF HEALTH & HUM. SERVS., PERMANENCY PLANNING IN CHILD WELFARE 8 (2020), https://www.ncdhhs.gov/documents/files/dss/training/permanency-planning-participant-workbook-12-2020/open [https://perma.cc/4XPZ-F3YQ] (highlighting that the Adoption Assistance and Child Welfare Act of 1980 "[l]egislatively introduced the concept of permanency and 'reasonable efforts' to keep families together and, when a child entered foster care, 'reasonable efforts' to reunite them with their families"); *Adoption Assistance and Child Welfare Act of 1980 - P.L. 96-272*, CHILD WELFARE INFO. GATEWAY, https://www.childwelfare.gov/resources/adoption-assistance-and-child-welfare-act-1980-pl-96-272/ [https://perma.cc/RN7Y-79S8 (staff-uploaded archive)] (stating that a major provision of the Act was to "[r]equire[] the court or agency to review the status of a child in any nonpermanent setting every 6 months to determine what is in the best interest of the child, with most emphasis placed on returning the child home as soon as possible").

49. N.C. GEN. STAT. § 7B-906.2(a) (LEXIS through Sess. Laws 2024-3 of the 2024 Reg. Sess. of the Gen. Assemb.).

> Reunification shall be a primary or secondary plan[50] unless the court made written findings . . . [that] the permanent plan is or has been achieved in accordance with subsection (a1) of this section, or the court makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety. The finding that reunification efforts clearly would be unsuccessful or inconsistent with the juvenile's health or safety may be made at any permanency planning hearing, and if made, shall eliminate reunification as a plan. Unless permanence has been achieved, the court shall order the county department of social services to make efforts toward finalizing the primary and secondary permanent plans and may specify efforts that are reasonable to timely achieve permanence for the juvenile.[51]

At these hearings, in determining what is in the "best interests"[52] of the child, N.C. Gen. Stat. section 7B-906.2(d) states:

> [T]he court shall make written findings as to each of the following, which shall demonstrate the degree of success or failure toward reunification:
>
> (1) Whether the parent is making adequate progress within a reasonable period of time under the plan.
>
> (2) Whether the parent is actively participating in or cooperating with the plan, the department, and the guardian ad litem for the juvenile.
>
> (3) Whether the parent remains available to the court, the department, and the guardian ad litem for the juvenile.

50. While it remains a desirable goal, reunification is not the only "end" to permanency planning hearings. Though the Adoption Assistance and Welfare Act of 1980 was a landmark law that introduced the concept of permanency for reunification, it was not without its problems. Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (codified as amended in scattered sections of 42 U.S.C.). Far too many juveniles were forced to remain in foster homes for years because child welfare agencies were so preoccupied with carrying out reunification as an "end." With the passage of the Adoptions and Safe Families Act in 1997, Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (codified as amended in scattered sections of 42 U.S.C.), which North Carolina then enacted with its own version of in 1998, Act of November 6, 1998, ch. 229, 1998 N.C. Sess. Law 1543 (codified as amended in scattered sections of N.C. GEN. STAT. chapters 7A, 7B, 48, and 114), "[r]eunification as a plan for abused, neglected, or dependent children was transformed from an 'end' to a 'means' through the new legislation, reunification being one of several routes to achieving the ultimate goal of obtaining a safe, permanent home for children." THOMAS R. YOUNG, NORTH CAROLINA JUVENILE CODE: PRACTICE AND PROCEDURE § 1:3 (2024).

51. § 7B-906.2(b).

52. "Best interests" is the most widely used standard that courts use when deciding custody cases. When applying this standard, "[d]ecisions made using the best interests of the child standard focus on the needs of the children rather than the rights of the parents." 2 HARALAMBIE, *supra* note 21, § 1:7. North Carolina courts similarly apply the "best interests" standard in a variety of scenarios. 1 LLOYD T. KELSO, N.C. FAMILY LAW PRACTICE § 13:11 (2024). While not specifically enumerated, courts have tended to use a "totality of the circumstances" approach that weighs all relevant factors to determine what is best for a child. *Id.*

> (4) Whether the parent is acting in a manner inconsistent with the health or safety of the juvenile.[53]

Historically, the court has held that these written findings do not need to apply the statutory language verbatim, but that they "must make clear that the trial court considered the evidence in light of whether reunification would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time."[54] This gives the trial court tremendous discretion in making its findings, and in reviewing many such cases, the court has consistently found that the trial court did not abuse its discretion in determining whether to eliminate reunification from the permanent plan.[55] While the court did not adopt it as a formal approach, in each of these past cases, the court weighed evidence in a manner suggestive of a holistic approach—an approach described by Justice Earls' dissent from *In re J.M.*[56]

While a deeper exploration of Justice Earls' dissent in *In re J.M.* will be discussed later,[57] she largely suggests that a determination of the "best interests" of a child should be grounded in a "totality of the circumstances" analysis where all relevant factors are weighed.[58] This type of analysis is prevalent throughout family law, particularly in custody cases, as a court must make the weighty decision of where to place a child permanently that would ultimately be in the

53. § 7B-906.2(d); *see also* 1 KELSO, *supra* note 52, § 13:11. There is generally no universal set of factors that constitute the "best interests" standard. *See* 2 HARALAMBIE, *supra* note 21, § 1:7. Different states may set forth their own sets of factors that courts should weigh when evaluating the "best interests" of a child. *Id.* But as a whole, courts are looking at the "totality of the circumstances" in making a decision. *See infra* note 58.

54. *In re* H.A.J., 377 N.C. 43, 49, 855 S.E.2d 464, 470 (2021).

55. *See* Jeffrey Billman, Whitney Clegg & Nick Ochsner, *Best Interest of the Child*, ASSEMBLY (Dec. 5, 2023), https://www.theassemblync.com/politics/courts/child-welfare-investigation/ [https://perma.cc/PT4M-QH9U] ("[D]espite federal and state laws requiring 'reasonable efforts' to reunify families, most will never go home."). This tracks with the latest data from 2021, which shows that most children in custody in North Carolina do not reunify with their parents or original family. CHILD.'S BUREAU, EXIT OF CHILDREN FROM FOSTER CARE (2017–21), https://cwoutcomes.acf.hhs.gov/cwodatasite/threeOne/index [https://perma.cc/J7UK-7DYE] (showing that in 2021 only 45.6 percent of children in foster care within North Carolina reunified with their parents).

56. *In re* J.M., 384 N.C. 584, 615, 887 S.E.2d 823, 843 (2023) (Earls, J., dissenting) ("In other words, in *In re D.W.P.*, *all* of the circumstances . . . led this Court to conclude that the mother's inability 'to recognize and break patterns of abuse that put her children at risk' prevented her from 'mak[ing] a realistic attempt to understand how [her child] was injured or to acknowledge how her relationships affect her children's wellbeing.'" (quoting *In re* D.W.P., 373 N.C. 327, 340, 838 S.E.2d 396, 406 (2020))).

57. *See* discussion *infra* Part III.

58. *See In re J.M.*, 384 N.C. at 615, 887 S.E.2d at 842–43 (Earls, J., dissenting); 1 KELSO, *supra* note 52, § 13:11. This Recent Development uses "totality of the circumstances" in this context to capture the standard Justice Earls advocates for in her dissent from *In re J.M.*, and which the Supreme Court of North Carolina first announced in *In re D.W.P. See id.* at 615, 887 S.E.2d at 842.

child's best interest.[59] While different states may vary in what specific factors to weigh,[60] courts have historically considered a common set of factors, like "[t]he need for continuing a stable home environment," "[t]he mental and physical health of the parents," and "[t]he parenting ability of each parent."[61] An examination of several North Carolina court cases highlights that this "totality of the circumstances" analysis has often been behind the court's reasoning in determining the "best interests" of the child.

For example, in *In re A.P.W.*,[62] the court described how the trial court weighed several evidentiary findings in eliminating reunification for the parent:

> Specifically, the trial court cited respondent-mother's failure to obtain stable and appropriate housing or employment, her continued cohabitation with [her boyfriend] despite the children's detailed accounts of his domestic violence against her, the unfavorable results of her psychological evaluation, and her apparent inability "to learn from past mistakes and . . . make the necessary changes in her life to provide a safe and secure environment for the children."[63]

Another example can be found in *In re D.M.*,[64] the court described how the trial court also weighed several key evidentiary findings in eliminating reunification with the parent:

> At the time of the permanency-planning hearing respondent-father had made no meaningful steps toward reunification; he was incarcerated for a recent act of domestic violence; he had submitted to just one drug screen, which was positive for marijuana and cocaine; and he had failed to attend a scheduled appointment to begin substance abuse treatment. The trial court's ceasing of reunification efforts with respondent-father thus comports with the requirements of N.C.G.S. § 7B-906.2(b).[65]

And a final example for illustrative purposes can be seen in *In re M.K.*,[66] the court described where the trial court terminated the parental rights of the mother after weighing several relevant evidentiary findings:

59. *See* 2 HARALAMBIE, *supra* note 21, § 12:36 (describing the urgency and importance of placing children in a permanent place due to the child's developmental timeline).

60. *Id.* (providing examples of how different state courts, such as the Arizona Supreme Court and the Supreme Court of California determine the "best interests" of the child while considering the "totality of the circumstances").

61. Jade Yeban, *Focusing on the "Best Interests" of the Child*, FINDLAW (May 30, 2023), https://www.findlaw.com/family/child-custody/focusing-on-the-best-interests-of-the-child.html [https://perma.cc/M34Y-LRZU].

62. 378 N.C. 405, 861 S.E.2d 819 (2021).

63. *Id.* at 414, 861 S.E.2d at 828.

64. 378 N.C. 435, 861 S.E.2d 740 (2021).

65. *Id.* at 439, 861 S.E.2d at 743.

66. 381 N.C. 418, 873 S.E.2d 320 (2022).

> Similarly, respondent-mother failed to maintain safe and suitable housing or verifiable employment for any significant portion of the time after Marco's removal from her home. At the time of the termination hearing, respondent-mother was behind on her rent payments, was seeking alternative housing and lacked employment, with nothing in the present record tending to show that respondent-mother's inability to care for Marco stemmed solely from respondent-mother's poverty. In addition, respondent-mother's continued struggles with domestic violence had caused her to lose employment and independent housing within six months of the termination hearing. Finally, respondent-mother failed to submit to several requested drug screens in accordance with the requirements of her case plan. Thus, for all of these reasons, we hold that the trial court's order refutes respondent-mother's contention that she had made reasonable progress in satisfying the requirements of her case plan as of the date of the termination hearing.[67]

With each of the three cases illuminated above, the court found that the parent would not be able to prove a stable home environment, the parent had not addressed their physical or mental health concerns, and the parent lacked the parenting capacity to care for their child. Thus, what the court did in each of these cases was use a "totality of the circumstances" analysis that weighed all relevant factors to ultimately make a decision that was in the "best interests" of the child.

This is the kind of holistic review that was suggested in *In re D.W.P.*, where the court affirmed the trial court's findings in ceasing reunification efforts and terminating parental rights[68] after weighing several key pieces of evidence, which included a failure to explain the cause of the child's injuries despite evidence that only the two parents alone could have caused them.[69] Therefore, a determination of what is in the "best interests" of a child is meant to be seen as an exercise in holistic review that incorporates a "totality of the circumstances" analysis that weighs all relevant evidentiary findings.[70]

67. *Id.* at 438, 873 S.E.2d at 336.

68. Elimination of reunification efforts can be considered and granted, but it does not amount to an automatic termination of parental rights. Courts are free to decide that while ceasing reunification efforts is necessary, terminating parental rights is not warranted as the latter may not be in the "best interests" of the child. Termination of parental rights ought to be viewed as a more drastic action than cessation of reunification efforts. *See In re* J.M., 384 N.C. 584, 602, 887 S.E.2d 823, 835 (2023) ("Additionally, *In re D.W.P.* concerned the termination of parental rights—a final order—not a permanency planning order, which can be modified at any time in response to new developments in a case. The permanency planning order on appeal here does not foreclose the possibility that one or both respondents might one day regain custody of Nellie and Jon.").

69. *See In re* D.W.P., 373 N.C. 327, 329, 838 S.E.2d 396, 400 (2020).

70. N.C. GEN. STAT. § 7B-100(2) (LEXIS through Sess. Laws 2024-3 of the 2024 Reg. Sess. of the Gen. Assemb.) (stating that the statutes are to be interpreted to "develop a disposition in each juvenile case that reflects consideration of the facts, the needs and limitations of the juvenile, and the strengths and weaknesses of the family").

However, the court in *In re J.M.* failed to recognize and formally adopt this holistic model of review when it applied *In re D.W.P.* in its ruling.

III. FLAWS IN THE COURT'S REASONING IN *IN RE J.M.*

In reversing the intermediate court's ruling, the court relied extensively on its previous ruling in *In re D.W.P.*, noting significant similarities in the fact patterns between the two cases.[71] In *In re D.W.P.*, the court affirmed the trial court's ruling that eliminated reunification and ultimately terminated parental rights in a case that also involved the physical abuse of an infant by the two parents who alone could have inflicted the abuse.[72] The court noted that the trial court particularly focused on the insufficient explanations for what could have caused the child's injuries:

> Among other things, the [trial] court specifically focused on respondent-mother's refusal to honestly report how [the child's] injuries occurred . . . . Without knowing the cause of the injuries, the [trial] court believed [that there was not an appropriate] plan to ensure that injuries would not occur in the future.[73]

Like in *In re D.W.P.*, the court in *In re J.M.* noted that the infant had been physically abused and injured where the two parents were the only ones who could have caused the injuries.[74] And like *In re D.W.P.*, the court in *In re J.M.* noted the insufficient explanations for the child's injuries.[75] Regarding this final consideration, the court noted the explanations offered in both cases "bordered on the absurd."[76] *In re D.W.P.* involved multiple false explanations, including blaming a dog.[77] Similarly, in *In re J.M.*, the respondent-father stated that he believed that bowel movements were responsible for Nellie's injuries.[78]

In reaching this decision, the court overlooked the true significance of what the precedential case, *In re D.W.P.*, was meant to represent: a model of what constitutes a truly holistic approach (the "totality of factors"[79] or the "totality of the circumstances") for a court to follow in determining what is in the "best interests" of a child before removing reunification.[80] As noted by

71. *In re J.M.*, 384 N.C. at 601, 887 S.E.2d at 834 ("The parallels between *In re D.W.P.* and this case are obvious and compelling.").

72. *In re D.W.P.*, 373 N.C. at 329, 838 S.E.2d at 399.

73. *Id.* at 329, 838 S.E.2d at 400.

74. *In re J.M.*, 384 N.C. at 601, 887 S.E.2d at 834.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *See* 1 KELSO, *supra* note 52, § 13:11.

80. *In re J.M.*, 384 N.C. at 615, 887 S.E.2d at 843 (Earls, J., dissenting) ("Contrary to the majority's conclusion that *In re D.W.P.* requires this Court to affirm the trial court's elimination of

Justice Earls in her dissent, when the court ruled on *In re D.W.P.*, it grounded its reasoning on a variety of factors, including the mother's failure to complete therapy[81] or a psychiatric evaluation.[82] Justice Earls also noted the troubling sign that there would not be a safe home for the child to return to, stating that the mother "resumed a relationship with the child's father who was potentially responsible for the child's injuries and in spite of the fact that there had been multiple incidents of domestic violence between the parents."[83] Justice Earls noted that the abundance of these circumstances allowed the court to holistically review the parents' conduct in such a way to make a reasonable decision that reunification must be removed for the child's sake.[84]

In making its decision, the court in *In re J.M.* placed ultimate weight on a singular factor: the parents' failure to acknowledge or explain who or what caused the child's injuries.[85] In doing so, the court disregarded the holistic approach demonstrated by *In re D.W.P.* This stark departure is further exemplified when the major distinctions between the former and present cases are examined. In *In re D.W.P.*, the mother had been criminally charged,[86] failed the psychiatric exam that was a part of her probation,[87] and at one point, even resumed a relationship with her fiancé, the children's biological father and the only other person who could have possibly caused the injuries.[88] Another concern the court expressed was how the mother had intentionally concealed her marriage to another man when she was required to disclose such information to the social worker.[89] Thus, considering the "totality of the circumstances," *In re D.W.P.* painted a picture of a parent who failed to make reasonable progress on numerous factors to the point where the court felt it simply could not trust that the parent could provide a safe home for the children to return to.

reunification from the permanency plan here, *In re D.W.P.* suggests that a holistic review of respondent-parents' subsequent conduct was required.").

81. *Id.* at 614, 887 S.E.2d at 842.

82. *Id.* at 614–15, 887 S.E.2d at 842.

83. *Id.* at 614, 887 S.E.2d at 842.

84. *Id.* at 615, 887 S.E.2d at 842 ("In other words, in *In re D.W.P.*, *all* of the circumstances, including the mother's decision to 're-establish[ ] a relationship with' her boyfriend who she previously acknowledged could have been responsible for injuring her child, led this Court to conclude that the mother's inability 'to recognize and break patterns of abuse that put her children at risk' prevented her from 'mak[ing] a realistic attempt to understand how [her child] was injured or to acknowledge how her relationships affect her children's wellbeing.'"(quoting *In re* D.W.P., 373 N.C. 327, 340, 838 S.E.2d 396, 406 (2020))).

85. *Id.* at 616, 887 S.E.2d at 843 (Earls, J., dissenting) ("In holding to the contrary, the majority allows trial courts to abandon the holistic approach of *In re D.W.P.* and instead focus exclusively on one factor that may say very little about parents' ability to protect the well-being of their children or the children's best interests.").

86. *In re D.W.P.*, 373 N.C. at 337, 838 S.E.2d at 404.

87. *Id.* at 339, 838 S.E.2d at 405.

88. *Id.* at 333, 838 S.E.2d at 402.

89. *Id.* at 334–35, 838 S.E.2d at 403.

In contrast, in *In re J.M.*, the parents had not been criminally charged, complied with and made significant progress in their case plans, and did not live together or resume a relationship afterwards.[90] They even maintained employment, which provided proof that they were taking steps to financially provide for the children in a safe home.[91] Thus, there are significant differences in facts between the two cases. Yet rather than simply applying the reasoning, the court in *In re J.M.* felt compelled to match the outcome of the *In re D.W.P.* because both cases involved parents failing to explain the cause of the children's injuries. In reality, the earlier case simply sets forth a holistic process of review as demonstrated by the totality of the mother's shortcomings in various circumstances. But with its decision in the present case, the court hyperfocused on one singular factor and let that factor guide its decision.[92]

It is important to acknowledge that parents' mere compliance with their case plan does not preclude a court from eliminating reunification from the permanent plan.[93] In *In re L.G.G.*,[94] the court affirmed the trial court's judgment in eliminating reunification for the respondent-parents and terminating their parental rights despite the respondent-parents having substantially complied with their case plans.[95] However, there are several major distinctions between *In re L.G.G.* and *In re J.M.* that need to be examined. The first major distinction is that in *In re L.G.G.*, the court still applied a holistic approach that was grounded in the "totality of the circumstances" in determining what was in the "best interests" of the children in the case.[96] The court noted that while the respondent-parents had participated in their case plans, "they waited for more than a year after the children entered DSS custody [before engaging] in the case plans."[97] The court also noted that the respondent-parents "were not able to secure suitable housing and the suitability of their housing had been a reoccurring issue in the case."[98] While the court expressed concern over the parents' lack of acknowledgement over why their children were removed,[99] this lack of acknowledgment is dissimilar from the lack of acknowledgment the court in *In re J.M.* was concerned about, which was about who had caused the injuries

90. *In re J.M.*, 384 N.C. at 615, 887 S.E.2d at 842 (Earls, J., dissenting).

91. *See id.* at 612–13, 887 S.E.2d at 841.

92. *Id.* at 615–16, 887 S.E.2d at 843.

93. *See In re* L.G.G., 379 N.C. 258, 270, 864 S.E.2d 302, 310 (2021) ("However, '[a]s this Court has previously noted, a parent's compliance with his or her case plan does not preclude a finding of neglect.'" (quoting *In re* J.J.H., 376 N.C. 161, 185, 851 S.E.2d 336, 352 (2020)).

94. 379 N.C. 258, 864 S.E.2d 302 (2021).

95. *Id.* at 274, 864 S.E.2d at 312–13.

96. *See infra* notes 97–104 and accompanying text.

97. *In re L.G.G.*, 379 N.C. at 265, 864 S.E.2d at 307.

98. *Id.* at 266, 864 S.E.2d at 308.

99. *Id.* at 263, 864 S.E.2d at 306.

to the parents' child, a matter that lacked a clear explanation due to the trial court's failure to make sufficient factual findings based on the record.[100]

In contrast, in *In re L.G.G.*, there is a clear explanation for why the children were removed. Aside from the deplorable state of the respondent-parents' home,[101] a major concern was the children's sexualized behaviors that they exhibited when they entered foster care.[102] In speaking with a therapist, the children acknowledged that that they had viewed pornography in the respondent-parents' own home, which contributed to engaging in sexual behaviors with one another and while in foster care.[103] When asked about these disclosures made by their own children, the respondent-parents reacted so angrily that the court stated that "the failure by [the parents] to accept responsibility appears heightened and has persisted through the life of the case."[104]

The second major distinction between *In re L.G.G.* and *In re J.M.*, and what is most troubling, was the trial court's failure in *In re J.M.* to fully make all its evidentiary findings.[105] In *In re L.G.G.*, no justices expressed concerns about the trial court's role as fact finder.[106] However, in her dissent in *In re J.M.*, Justice Earls noted that far more could have been done at the trial court level to find evidence that would have better justified the trial court's rulings, especially considering that the trial court played the role of fact finder.[107] For example, she noted that while the trial court seemed disturbed by the lack of acknowledgement over the child's injuries, it did not do more work to identify which parent was likely more responsible for the child's injuries or which parent was likely telling the truth in the first place.[108]

She further noted that the trial court disregarded the fact that DSS had failed to interview with or procure testimony from key individuals who personally knew the parents, particularly the respondent-mother's older children "who likely had unique and intimate insight into respondent-parents' treatment of Nellie and her brother."[109] She called these "untapped avenues of

100. *See infra* notes 107–14 and accompanying text.

101. *Compare In re L.G.G.*, 379 N.C.at 260, 864 S.E.2d at 304 (noting that the social worker at the beginning of the case noted that the respondents' home to be "in an extreme state of despair and filth"), *with id.* at 266, 864 S.E.2d at 308 (showing that the housing issue of the respondents had not been adequately addressed during the termination of parental rights hearing).

102. *Id.* at 266, 864 S.E.2d at 307–08.

103. *Id.* at 262, 864 S.E.2d at 305.

104. *Id.* at 268, 864 S.E.2d at 309.

105. *In re* J.M., 384 N.C. 584, 616–17, 887 S.E.2d 823, 843–44 (2023) (Earls, J., dissenting).

106. A reading of the opinion in *In re L.G.G.* showed no sign of the court expressing concerns over a lack of evidentiary findings. *See In re L.G.G.*, 379 N.C. at 259–74, 864 S.E.2d at 304–13.

107. *In re J.M.*, 384 N.C. at 616, 887 S.E.2d at 843 (Earls, J., dissenting).

108. *Id.*

109. *Id.* at 616–17, 887 S.E.2d at 843.

evidence"[110] that the trial court should have spent more time thoughtfully identifying before making a decision. This is important because a "trial court's findings of facts are conclusive on appeal if supported by any competent evidence,"[111] which may include "any evidence . . . that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition."[112] Thus, on appeal, the "trial court's dispositional choices—including the decision to eliminate reunification from the permanent plan—are reviewed [primarily] for abuse of discretion."[113] According to Justice Earls, had these "untapped avenues of evidence" been put on the record by DSS for review, or explored by the trial court, there may have been a possibility for a different outcome.[114] Thus, the failure to fully use all the "untapped avenues of evidence" is a major distinction that makes *In re L.G.G.*'s holding inapplicable to *In re J.M.* Instead, *In re L.G.G.*, as a whole, similarly encompasses the holistic approach espoused in *In re D.W.P.*, an approach that the court in *In re J.M.* missed and failed to apply appropriately.

However, Justice Earls is not alone in her concerns with the majority's opinion in *In re J.M.* Another justice has also responded that the court incorrectly applied the statute as listed in the Juvenile Code. As Justice Morgan noted, "reunification is statutorily defined as the placement of a juvenile in the home of *either* parent from whom the child was removed."[115] This comment, when combined with the distinctions made by Justice Earls noted above, makes the court's decision far more problematic. The facts of the present case indicate that both parents were making great strides in complying with their case plans.[116] If the trial court had done its job properly by considering which parent was lying or more likely to be responsible for the child's injuries, it would make sense to consider removing reunification from that particular parent rather than from both parents as this court had done. In the present case, the facts would suggest that the respondent-mother was the more sensible candidate for reunification considering she was not even in the room when the respondent-father was changing the child's diapers.[117] Accordingly, she should not have been lumped together with the respondent-father in being stripped of the opportunity to reunite with her children.

As a final point, it is worth noting that the trial court in *In re J.M.* did not have to resort to eliminating reunification from the permanency plan.[118] The

110. *Id.* at 617, 887 S.E.2d at 844.
111. *Id.* at 591, 887 S.E.2d at 828 (majority opinion).
112. *Id.*
113. *Id.*
114. *See id.* at 617–18, 887 S.E.2d at 844 (Earls, J., dissenting).
115. *Id.* at 609, 887 S.E.2d at 839 (Morgan, J., concurring in part and dissenting in part).
116. *Id.* at 595, 887 S.E.2d at 830–31 (majority opinion).
117. *Id.* at 586, 887 S.E.2d at 825.
118. *Id.* at 617, 887 S.E.2d at 844 (Earls, J. dissenting).

trial court was not limited to the dual option of eliminating reunification or returning the children back to the parents.[119] Instead, "the parents simply requested that reunification remain part of the permanency plan . . . [while] the trial court was free to fashion a plan that maintained the status quo and DSS's involvement with the family."[120] To Justice Earls, this "unobtrusive approach was warranted given the significant efforts that respondent-parents made to correct the circumstances that resulted in [the child's] injuries."[121] Thus, the court could have remanded the case back for further proceedings so the trial court could make full evidentiary findings while maintaining reunification as part of the parents' permanency plan.

With this decision, the court has arguably raised the barrier to potential reunification even higher than before. Consider the court's previous rulings in *In re A.P.W.*, *In re D.M.*, *In re M.K.*, and *In re L.G.G.*[122] All these cases were decided after *In re D.W.P.*, and the court's reasoning in these cases were suggestive of a holistic review. All these cases looked at several evidentiary factors that, under the "totality of the circumstances," showed parents who so lacked the capacity and responsibility to care for the children that the court determined eliminating reunification was appropriate.[123] Contrast that with our present case, *In re J.M.*, in which both parents substantially complied with their case plans in hopes of reunifying with their children despite the trial court's making sufficient factual findings based on the record that would have likely benefitted the parents' case.[124] Had holistic review been consistently applied in our present case as was done in the previous cases, the outcome may have been different (at least in the eyes of Justice Earls). And yet, the court focused on one singular factor—the unexplained cause of injuries—to completely discard all the other positive factors weighing in favor of the parents to eliminate reunification. In doing so, the court has now firmly set a dangerous precedent that makes the hopes of reunification far more difficult for parents moving forward.

119. *Id.*

120. *Id.*

121. *Id.*

122. *Compare In re* A.P.W., 378 N.C. 405, 414–15, 861 S.E.2d 819, 828–29 (2021) (noting the various relevant factors that weighed against the parents), *and In re* D.M., 378 N.C. 435, 439, 861 S.E.2d 740, 743 (2021) (explaining the various relevant factors that led the trial court to eliminate reunification), *and In re* M.K. 381 N.C. 418, 438, 873 S.E.2d 320, 336 (2022) (highlighting the various relevant factors the trial court weighed when terminating parental rights), *and In re* L.G.G., 379 N.C. 258, 263–66, 864 S.E.2d 302, 306–08 (2021) (stating the relevant factors the trial court evaluated upon appeal of termination of parental rights), *with In re J.M.*, 384 N.C. at 612–13, 615–16, 887 S.E.2d at 841–43 (showing the relevant factors the court ignored when doing its "best interest" analysis).

123. *See supra* note 122.

124. *Id.*

IV. LOOKING TO THE FUTURE: THE NEGATIVE IMPLICATIONS OF THE COURT'S DECISION IN *IN RE J.M.*

There are several negative implications to consider following the court's decision in *In re J.M.* First, abandoning the holistic approach articulated in *In re D.W.P.* for a single, conclusive factor approach goes against the purposes of the Juvenile Code that courts are to consider when interpreting and applying the law:

> (1) To provide procedures for the hearing of juvenile cases that assure fairness and equity and that protect the constitutional rights of juveniles and parents;
>
> (2) To develop a disposition in each juvenile case that reflects consideration of the facts, the needs and limitations of the juvenile, and the strengths and weaknesses of the family.
>
> (3) To provide for services for the protection of juveniles by means that respect both the right to family autonomy and the juveniles' needs for safety, continuity, and permanence; and
>
> (4) To provide standards for the removal, when necessary, of juveniles from their homes and for the return of juveniles to their homes consistent with preventing the unnecessary or inappropriate separation of juveniles from their parents.
>
> (5) To provide standards, consistent with the Adoption and Safe Families Act of 1997, P.L. 105-89, for ensuring that the best interests of the juvenile are of paramount consideration by the court and that when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a safe, permanent home within a reasonable amount of time.[125]

These purposes show that while the "best interests" of the child is of paramount importance,[126] the ideal goal for all families is to maintain family autonomy,[127] which necessitates providing fair standards to help parents avoid being "unnecessar[ily] or inappropriate[ly]"[128] separated from their children. If *In re D.W.P.* embodies a holistic approach that looks at the "totality of the circumstances" to ensure that parents are provided fair standards in being evaluated for reunification, then *In re J.M.* represents a step back from such

125. N.C. GEN. STAT. § 7B-100 (LEXIS through Sess. Laws 2024-3 of the 2024 Reg. Sess. of the Gen. Assemb.).

126. *See* YOUNG, *supra* note 50, § 1:6 ("While the preceding goals are significant and should guide procedure with respect to abuse, neglect, or dependency cases, the over-riding goal in such cases is always to further the best interest of the juvenile.").

127. *In re* N.K., 274 N.C. App. 5, 16, 851 S.E.2d 389, 397 (2020) ("As a general proposition, North Carolina's statutes recognize 'family autonomy' as an ideal goal for all families." (quoting § 7B-100)).

128. *Id.*

standards because a single, conclusive factor can now wash away all the numerous relevant factors weighing in favor of the parents, especially when this factor is now firmly in the past. As a result, the path towards reunification has become much tougher.

From a policy standpoint, *In re J.M.* raises serious questions about how much a court will now weigh subsequent conduct in its evaluation. First, we have all made mistakes, some that are worse than others, and everyone deserves a chance to change for the better. As established earlier, one of the purposes of the Juvenile Code is to provide parents with fair standards that would guide them to change so that they can reunify with their children while keeping the "best interests" of the child in mind.[129] These standards are to give parents an opportunity to learn from their mistakes so that courts can evaluate, under the "totality of the circumstances," whether parents have changed for the better and for the sake of their children. But if courts follow the precedent set in *In re J.M.*, wherein one mistake can forever be held against them, then the parents' hopes of correcting their mistakes may be doomed from the start.

Second, the court in *In re J.M.* may incentivize a parent to lie when faced with a similar situation. Justice Earls noted this possibility in her dissent in *In re J.M.*:

> This result risks perverse consequences. For example, consider that a child sustains injuries that a court determines could only have been caused by abuse. The parents were the child's sole care providers, and the court therefore determines that one of the parents must have caused the injuries. As here, both parents maintain that they do not know how their child was injured, but for purposes of this example, the mother is, in fact, responsible. If the mother eventually falsely accuses the father of causing the injuries, she at least has a chance of regaining custody over the child. But if the father truthfully maintains that he does not know how the child was injured, he will not have this opportunity. In this example, not only could the child be returned to the parent who caused the injuries, but an innocent parent who was unwilling to lie for his own benefit would suffer.[130]

After all, if the singular roadblock towards reunification is an acknowledgment of the cause of a child's injuries, why would a parent not lie if the inverse would cause them to lose their child? That, therefore, raises the question: Would the result in our present case have been different if either one of the parents had lied? It seems likely that the answer is yes, especially when one considers the litany of positive factors that were met in favor of the parents. In that sense, the court's decision in *In re J.M.* could spur parents to act in an

129. *See supra* notes 125–28 and accompanying text.

130. *In re* J.M. 384 N.C. 584, 613, 887 S.E.2d 823, 841 (2023) (Earls, J., dissenting).

adverse manner to reunite with their child rather than change for the better because they have been stripped of fair standards that would assist them when being evaluated for reunification. Thus, the court ought to reverse the current ruling of *In re J.M.* and formally adopt the holistic approach first demonstrated in *In re D.W.P.* that incorporates a "totality of the circumstances" analysis to ensure the process of reunification is equitable for all parties,[131] including the parents, and close any such loopholes.

CONCLUSION

The Supreme Court of North Carolina in *In re J.M.* failed to apply the proper reasoning of *In re D.W.P.* and only applied the earlier case's outcome in reversing the intermediate court's judgment against the respondent-parents. As noted by Justice Earls in her dissent, *In re D.W.P.* represented a holistic process of reviewing multiple factors in determining whether to eliminate reunification. Instead, with the decision in *In re J.M.*, the court created a dangerous precedent where a singular factor can completely overrule all other factors in a court's determination of when to eliminate reunification. In the process, the path towards reunification between parents and their children in North Carolina has now gotten much more difficult. Thus, the court ought to formally reverse its current ruling in *In re J.M.* and formally adopt the holistic process of *In re D.W.P.*, cementing that as the official approach in reviewing reunification cases moving forward.

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131. Besides the issue that this court's decision in *In re* J.M. would present in terms of the process of reunification, this decision will likely have a disproportionate impact on African Americans and the poor from reuniting with their children. *See* Billman et al., *supra* note 55 ("Nearly 1,200 N.C. parents have their rights terminated each year, and they are disproportionately Black and overwhelmingly poor.").

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