Chapter 9
Termination of Parental Rights

9.1 Purpose and Overview of Termination of Parental Rights

A. Overview of Termination of Parental Rights

Termination of parental rights (TPR) is the state's ultimate interference with the constitutionally protected parent-child relationship, severing all legal ties between the parent and the child. A TPR may occur only when the district court determines that at least one statutory ground for TPR has been proved by clear and convincing evidence and the TPR is in the child's best interests.

All TPR proceedings are in juvenile court, before a district court judge without a jury. Informally they are characterized as "private" actions (when initiated by one parent against the other, for example) or as "agency" actions (when the child is in the custody of a department of social services (DSS)). If an abuse, neglect, or dependency case is pending and the primary permanent plan for the child is adoption, DSS may be required to initiate a TPR proceeding when a TPR is necessary for the child to be adopted. See Chapter 7.8.D (discussing initiation of TPR under certain circumstances) and 7.10 (discussing various permanent plans).

Note, for purposes of this Manual, "department of social services" or "DSS" refers to a department as defined by G.S. 7B-101(8a) regardless of how it is titled or structured.

Additional Note, this Manual focuses on abuse, neglect, or dependency cases, some of which require a TPR for the child to achieve a permanent plan of adoption. The various laws and procedures that apply to TPR proceedings related to an abuse, neglect, or dependency action are discussed throughout this Manual. This Chapter is not meant to be a stand-alone explanation of the TPR process in North Carolina and regularly cross-references other Chapters where TPR is discussed. Although a TPR may be initiated and obtained without there ever being DSS involvement with a family, those private TPRs are not the focus of this Chapter.

A TPR proceeding is divided into two stages: adjudication and disposition. At adjudication, the party initiating the proceeding (petitioner or movant) has the burden of proving by clear, cogent, and convincing evidence that one or more of the alleged statutory grounds for termination of parental rights found at G.S. 7B-1111 exist.

If the court adjudicates one or more grounds, the court moves on to disposition where it determines whether TPR is in the child's best interests. At the disposition stage, which is governed by G.S. 7B-1110, there is no burden of proof. After considering additional relevant evidence, the court makes findings of fact and, based on those findings, makes a discretionary determination as to whether the TPR is in the child's best interests.

If the court does not find that grounds for TPR exist or, after adjudicating a ground, determines that TPR is not in the child's best interests, the court must dismiss the action. If the court adjudicates at least one alleged ground and determines TPR is in the child's best interests, the court orders the termination of the respondent parent's rights to the child who is the subject of the action.

If the court terminates parental rights and the child is in the custody of DSS or a licensed child-placing agency, post-termination review hearings must be held at least every six months

to examine progress toward achieving the permanent plan for the child. See Chapter 10, discussing post-TPR review hearings and issues related to the child's adoption, including the selection of prospective adoptive parents.

B. Purpose of the Juvenile Code's Termination of Parental Rights Provisions

The overarching purposes of the Juvenile Code (G.S. Chapter 7B) set forth at G.S. 7B-100 are considered in TPR proceedings. One purpose includes "protection of children by constitutional means that respect both the right to family autonomy and the needs of the child." *In re A.L.L.*, 376 N.C. 99, 108 (2020) (quoting *In re T.R.P.*, 360 N.C. 588, 598 (2006)); *see* G.S. 7B-100(3). Article 11 of the Juvenile Code governs termination of parental rights (TPR) proceedings specifically and reflects additional policies and purposes, as set out in G.S. 7B-1100.

1. Procedures. Article 11 provides judicial procedures for terminating the legal relationship between a child and the child's biological or legal parents when the parents have demonstrated that they will not provide the degree of care that promotes the child's healthy and orderly physical and emotional well-being. G.S. 7B-1100(1). *See also In re R.D.,* 376 N.C. 244 (2020) (when making dispositional findings of fact, it is not improper for the trial court to look to the legislative purpose of the Juvenile Code and Article 11 specifically); *In re B.L.H.*, 190 N.C. App. 142, *aff'd per curiam*, 362 N.C. 674 (2008).

2. Balancing needs. TPR provisions are meant to recognize the necessity for any child to have a permanent plan of care at the earliest possible age, while also recognizing the need to protect children from the unnecessary severance of the parent-child relationship. G.S. 7B-1100(2). *See also In re B.B.A.,* 299 N.C App. 179 (2025); *In re T.A.M.*, 378 N.C. 64 (2021); *In re L.O.K.*, 174 N.C. App. 426 (2005).

3. Child's best interests. If the interests of the child and parents (or others) are in conflict, the child's best interests control. G.S. 7B-1100(3). *See In re T.A.M.*, 378 N.C. 64; *In re F.S.T.Y.,* 374 N.C. 532 (2020); *In re Montgomery*, 311 N.C. 101 (1984).

4. No circumvention of UCCJEA. TPR provisions in the Juvenile Code may not be used to circumvent the provisions of G.S. Chapter 50A, the Uniform Child-Custody Jurisdiction and Enforcement Act. G.S. 7B-1100(4).

9.2 Jurisdiction and Procedure

A termination of parental rights (TPR) occurs exclusively through judicial procedures that are established in the General Statutes. *See In re C.K.C.*, 263 N.C. App. 158 (2018) (reversing TPR; holding consent order in G.S. Chapter 50 civil custody action between father and grandparents that included a provision that grandmother would file a petition to terminate father's rights that no other party, including father, would oppose is void as against public policy and is neither a properly executed consent or relinquishment under the adoption statutes); *In re Jurga*, 123 N.C. App. 91 (1996) (holding written statement that voluntarily terminated the parents' rights was ineffective and contrary to the statutorily required judicial procedures); *In re J.N.S.*, 165 N.C. App. 536 (2004) and *Curtis v. Curtis*, 104 N.C. App. 625 (1991) (both holding summary judgment not permitted by Juvenile Code). The judicial

procedures are set forth in Article 11 of the Juvenile Code. However, if there is not a TPR action that resulted in a TPR order, under the adoption statutes, a final decree of adoption severs a parent's legal rights to and relationship with their child. G.S. 48-1-106(c); 48-3-607(c); 48-3-705(d).

A. Subject Matter Jurisdiction

See Chapter 3.1 through 3.3 for a detailed discussion and case law related to subject matter jurisdiction.

The district court has exclusive, original jurisdiction over termination of parental rights (TPR) actions. G.S. 7B-200(a)(4); 7B-1101. A district court's subject matter jurisdiction in a TPR proceeding is not dependent on the existence of an underlying abuse, neglect, or dependency proceeding. *In re E.B*., 375 N.C. 310 (2020). In addition to the general jurisdiction statute, G.S. 7B-200, that establishes the district court's jurisdiction over various types of juvenile proceedings, the Juvenile Code has a specific "jurisdiction" statute that applies to TPR proceedings: G.S. 7B-1101. The jurisdictional conditions imposed by G.S. 7B-1101 include

- the child resides in, is found in (meaning is physically present in, *see In re M.A.C*., 291 N.C. App. 35 (2023)), or is in the legal or actual custody of a DSS or licensed child-placing agency in the judicial district at the time the TPR petition or motion is filed in district court (*see In re N.P.,* 376 N.C. 729, 735 (2021) (emphasis in original) (stating "Section 7B-1101 properly focuses the question of subject matter jurisdiction on the custody, location, or residence of the subject *child* in a termination of parental rights proceeding rather than on the residential state of the *parents*");
- the court has jurisdiction under the Uniform Child-Custody Jurisdiction Enforcement Act (UCCJEA), specifically G.S. 50A-201, 50A-203, or 50A-204 (note that the UCCJEA does not authorize a TPR when a court is exercising temporary emergency jurisdiction under G.S. 50A-204);
- for a nonresident respondent parent, the court has initial custody or modification jurisdiction under the UCCJEA, and the court finds process was served pursuant to G.S. 7B-1106 on the nonresident parent.

Failure to comply with some of the provisions of G.S. 7B-1101 will result in a lack of subject matter jurisdiction. *See, e.g*., *In re D.A.Y.*, 266 N.C. App. 33 (2019) (vacating TPR order for lack of subject matter jurisdiction under UCCJEA to modify California custody order when mother was presently residing in California after relocating out of state and there was no finding (order) by the California court that it no longer had exclusive continuing jurisdiction); *In re J.M*., 249 N.C. App. 617 (2016) (originally unpublished on October 4, 2016, but subsequently published) (vacating TPR order for lack of subject matter jurisdiction as child did not reside in, was not found in, and was not in the legal custody of a DSS in the judicial district at the time the action was filed); *see also* N.C. R. CIV. P. 12(h)(3).

Not all provisions of G.S. 7B-1101 impact subject matter jurisdiction. The North Carolina Supreme Court held that the language regarding service on a nonresident parent relates to personal jurisdiction, not subject matter jurisdiction. *In re A.L.I*., 380 N.C. 697 (2022) (affirming TPR of nonresident father). Unlike subject matter jurisdiction, a defect in personal jurisdiction can be waived, which the father in *In re A.L.I.* did when he participated in the proceeding without raising an objection to insufficient service of process. Father was

represented by counsel, wrote letters to the court, and participated in the hearing by speakerphone.

Regarding the reference to the UCCJEA in G.S. 7B-1101, a lack of an explicit finding demonstrating that the court has jurisdiction under the UCCJEA is not required; however, the record must reflect that the requirements for jurisdiction under the UCCJEA were met when the court exercised its jurisdiction. *In re M.S.L.*, 380 N.C. 778 (2022) (affirming TPR; general statement of personal and subject matter jurisdiction in order was sufficient; specific findings using statutory language of G.S. 7B-1101 not required); *In re K.N.*, 378 N.C. 450 (2021) (affirming TPR; rejecting father's argument that G.S. 7B-1101 requires explicit findings demonstrating jurisdiction under the UCCJEA), *relied on by In re J.D.O.*, 381 N.C. 799 (2022) (affirming TPR; record supported jurisdiction under the UCCJEA).

Resources: For a further discussion on G.S. 7B-1101, see

- Sara DePasquale, *It's Complicated: Venue vs Jurisdiction in A/N/D and TPR Actions*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (Feb. 22, 2017).
- Sara DePasquale, *NC Supreme Court Addresses Jurisdiction in TPRs of Out-of-State Parents*, UNC SCHOOL OF GOV'T: ON THE CIVIL SIDE BLOG (April 14, 2022).

Key factors in determining subject matter jurisdiction in TPR cases include the following, all of which are discussed in detail as referenced below:

- proper petitioner (standing), see section 9.3.B, below, and Chapter 3.2.B.1;
- proper initiation of proceedings, see Chapter 3.2.B.2;
- verification of petition or motion, see Chapter 3.2.B.3;
- compliance with the UCCJEA, see Chapter 3.3;
- location of child, see Chapter 3.2.B.7; and
- compliance with the Indian Child Welfare Act (ICWA), see Chapter 3.2.B.4 and Chapter 13.2 (detailing ICWA application and requirements).

Any order entered by a court that lacks subject matter jurisdiction is void. *See In re A.L.L.*, 376 N.C. 99 (2020) (a void judgment is no judgment and has no legal effect); *In re T.R.P.,* 360 N.C. 588 (2006) (concluding that because trial court lacked subject matter jurisdiction, review hearing order was void ab initio).

The jurisdictional requirements of a TPR must be followed regardless of whether the TPR is initiated by a petition or motion. The North Carolina Supreme Court has stated that when a TPR motion is filed in an underlying abuse, neglect, or dependency proceeding, jurisdictional requirements under G.S. 7B-1101 must be satisfied because jurisdiction over an abuse, neglect, or dependency proceeding, standing alone, does not establish subject matter jurisdiction in a subsequent TPR action. *In re O.E.M.*, 379 N.C. 27 (2021); *see In re S.W.*, 298 N.C. App. 39 (2025) (affirming denial of motion to dismiss TPR based on underlying dependency action; jurisdictional requirements of G.S. 7B-1101 must be satisfied for a TPR to be heard in an underlying abuse, neglect, or dependency proceeding).

The Juvenile Code does not have a requirement that a TPR be heard in the same district court with jurisdiction over an underlying abuse, neglect, or dependency action if one is pending. Instead, the provisions of G.S. 7B-1101 apply to jurisdiction for a TPR even if there is an

abuse, neglect, or dependency action that is pending in a district court in another county. *In re A.L.L.*, 376 N.C. 99, *cited in In re S.W.*, 298 N.C. App. 39. There are different jurisdictional statutes in the Juvenile Code—one that applies to an abuse, neglect, or dependency proceeding, G.S. 7B-200(a), and two that apply to a TPR proceeding, G.S. 7B-200(a)(4) and 7B-1101. "Exclusive, original jurisdiction" in an abuse, neglect, or dependency action does not include jurisdiction over the TPR action. *In re S.W.*, 298 N.C. App. at 47. The prior pending doctrine action does not apply to an abuse, neglect, or dependency and TPR action because the two actions involve different subject matter, issues, and requested relief. *In re S.W.*, 298 N.C. App. 39.

Appellate courts have determined that several specific issues do *not* affect subject matter jurisdiction in TPR cases. These are discussed in detail as referenced below:

- defects in or lack of summons, see Chapter 3.2.C.1;
- failure to include certain information in petition, see Chapter 3.2.C.2;
- failure to comply with statutory timelines, see Chapter 3.2.C.3; and
- different court hearing underlying abuse, neglect, or dependency action, see Chapter 3.2.C.4.

Subject matter jurisdiction in a TPR also is not affected by an earlier deficiency in the appointment of a guardian ad litem (GAL) for the child in an underlying abuse, neglect, or dependency proceeding when the child is represented by a GAL in the TPR proceeding. *In re J.E.*, 362 N.C. 168 (2008) (noting the prior orders in the neglect action in which the children were purportedly unrepresented at the hearings are not on appeal), *rev'g per curiam for the reasons stated in the dissent*, 183 N.C. App. 217 (2007).

Although a district court has subject matter jurisdiction in a TPR proceeding when an appeal of an order in an underlying abuse, neglect, or dependency action is pending, the district court may not exercise jurisdiction in the TPR proceeding until the appeal of the underlying order is resolved. *See* G.S. 7B-1003(b)(1); *In re J.M.*, 377 N.C. 298 (2021) (holding TPR order is void; after GAL filed TPR motion, father appealed underlying neglect adjudication and dispositional orders that were entered after remand of a previous appeal; trial court violated G.S. 7B-1003(b)(1) by proceeding with TPR hearing while appeal of remand orders was pending); *In re M.I.W.*, 365 N.C. 374 (2012) (TPR affirmed; trial court was not divested of jurisdiction when a TPR motion was filed while an appeal was pending, but the trial court was prohibited from exercising jurisdiction over the TPR proceeding until after the issuance of a mandate by the appellate court in the underlying appeal).

B. Personal Jurisdiction

Generally, proper service of a summons under G.S. 7B-1106 for termination of parental rights (TPR) confers personal jurisdiction when a TPR proceeding is initiated by petition. *In re C.T.T.*, 288 N.C. App. 136 (2023). (A TPR may also be initiated as a motion in an existing abuse, neglect, or dependency proceeding pursuant to G.S. 7B-1102.) A parent may waive the defenses of lack of personal jurisdiction or insufficiency of process or service of process by making a general appearance or by filing an answer, response, or motion without raising the defense. *See* N.C. R. CIV. P. 12(b), (h); *In re A.L.I.*, 380 N.C. 697 (2022); *In re W.I.M.*, 374 N.C. 922 (2020); *In re M.L.C.*, 289 N.C. App. 313 (2023). However, when service is made by publication under Rule 4(j1), "[a] defect in service of process by publication is jurisdictional,

rendering any judgment or order obtained thereby void." *In re S.E.T.,* 375 N.C. 665, 669, 668 (2020) (vacating TPR for lack of personal jurisdiction over respondent; petitioner did not file an affidavit showing "the circumstances warranting the use of service [by] publication, and information, if any, regarding the location of the party served" as required by Rule 4(j1)).

Additionally, some TPR cases involving out-of-state parents present unique issues related to personal jurisdiction. See Chapter 3.4 for a detailed discussion and case law relating to personal jurisdiction (and for TPR proceedings involving out-of-state parents specifically, see section E).

C. Applicability of the Rules of Civil Procedure

Where the Juvenile Code provides a procedure, that procedure prevails over the Rules of Civil Procedure. *In re L.O.K.*, 174 N.C. App. 426 (2005). Where the Juvenile Code does not identify a specific procedure to be used in termination of parental rights cases (TPR), the Rules of Civil Procedure may be used to fill procedural gaps. *See In re S.D.W.,* 187 N.C. App. 416 (2007). For example, the TPR statutes do not address venue, but the court of appeals has recognized a respondent parent's right to seek a change in venue. *See In re J.L.K.*, 165 N.C. App. 311 (2004) (holding respondent waived his right to seek a change of venue when he failed to either move for a change in venue or object to venue in his answer pursuant to Rule 12(b) of the Rules of Civil Procedure).

Appellate cases that have analyzed the application of specific rules or discussed the Rules of Civil Procedure generally in the TPR context are discussed in detail in Chapter 4.1, and some are referenced in relevant sections of this Chapter.

9.3 Initiation of Proceedings and Standing

A. Initiation of TPR

1. Only by petition or by motion in pending abuse, neglect, or dependency proceeding. A proceeding for termination of parental rights (TPR) may be initiated only by (1) filing a petition or (2) filing a motion in a pending abuse, neglect, or dependency proceeding.

(a) Termination of one's own parental rights not permitted. Parents cannot unilaterally and extra-judicially terminate their own parental rights. *In re Jurga*, 123 N.C. App. 91 (1996) (affirming dismissal of guardianship of minor action under G.S. Chapter 35A for lack of subject matter jurisdiction when child had natural parents; holding that a written declaration of voluntary termination of parental rights contravened statutory procedures and was ineffective); *see also In re C.K.C.*, 263 N.C. App. 158 (2018) (reversing TPR; holding consent order in G.S. Chapter 50 civil custody action between father and grandparents that included a provision that grandmother would file a petition to terminate father's rights that no other party, including father, would oppose is void as against public policy and is neither a properly executed consent or relinquishment under the adoption statutes). Note that a parent's consent or relinquishment for adoption results in termination

of the parent's rights only when the child's adoption is final. *See* G.S. 48-3-607(c); 48-3-705(d).

(b) TPR cannot be initiated by counterclaim. A parent cannot initiate a TPR action by filing a counterclaim to terminate parental rights in the other parent's civil action for visitation. *In re S.D.W.*, 187 N.C. App. 416 (2007).

(c) Initiation of TPR via intervention. Any person or agency with standing to initiate a TPR may intervene in a pending abuse, neglect, or dependency proceeding for the purpose of filing a TPR motion. G.S. 7B-1103(b).

2. DSS required to initiate TPR in certain circumstances. If a termination of parental rights (TPR) is necessary to perfect the primary permanent plan for a child, G.S. 7B-906.1(m) requires that DSS file a TPR petition or motion within sixty days from entry of the permanency planning order unless the court makes findings as to why this sixty-day time frame cannot be met. *See, e.g., In re A.R.A.*, 373 N.C. 190 (2019) (facts show that in January 2018, after a permanency planning order was entered that identified adoption as the primary plan and reunification as the secondary plan, DSS filed petition to terminate both parents' rights). If the court finds that the sixty-day time period cannot be met, the court shall specify the time in which any needed TPR petition or motion must be filed. G.S. 7B-906.1(m).

In cases examining DSS's late filing of a TPR action, the court of appeals has held that this statutory sixty-day requirement is "directory" rather than "mandatory" and, therefore, is not jurisdictional. The court of appeals noted that the purpose of the specified time period is to provide for a speedy resolution of a case involving custody of a child and reversing or vacating an order because the action was filed outside the time limit would only cause further delay as a new petition and hearing would be required. The court also looked to whether the failure to timely file a TPR action caused prejudice to the respondent when determining if there was reversible error. *See In re B.M.,* 168 N.C. App. 350 (2005) (decided under former statute; respondents were not prejudiced by late filing); *In re T.M.*, 182 N.C. App. 566, *aff'd per curiam*, 361 N.C. 683 (2007).

To remedy noncompliance with a statutory time limit, a party should petition the court of appeals for a writ of mandamus. *See In re L.Q.,* 298 N.C. App. 540 (2025) (relying on *In re C.R.L.*, 377 N.C. 24 (2021), and holding father missed opportunity to remedy timing violation over course of nineteen months and twelve continuances by not filing petition for writ of mandamus); *In re C.R.L.,* 377 N.C. 24 (relying on *In re T.H.T.*, 362 N.C. 446 (2008) and holding that a writ of mandamus and not an appeal is the appropriate remedy to enforce the statutory time limit for holding a TPR hearing; in this case, the TPR hearing occurred thirty-three months after the TPR petition was filed); *In re T.H.T.,* 362 N.C. 446 (holding that a writ of mandamus, and not a new hearing, is the appropriate remedy to enforce statutory time limits in an appeal involving delay in entry of an order; stating delay is directly contrary to the child's best interests, which is the polar star of the Juvenile Code).

In other circumstances specified in G.S. 7B-906.1(f), DSS is required to initiate TPR proceedings unless the court makes certain findings. These are discussed in Chapter 7.8.D.

Practice Notes: Although the Juvenile Code directs that DSS initiate the TPR action, the child's guardian ad litem, the child's court-appointed guardian of the person, or the person

with whom the child has resided with for a continuous period of eighteen months or more has standing to and may initiate a TPR action. *See* G.S. 7B-1103(a)(2), (5), and (6).

Additionally, the Juvenile Code does not prohibit the commencement of a TPR when the achievement of a secondary permanent plan or the sole permanent plan requires a TPR. Under G.S. 7B-906.2(b), when reunification requires concurrent permanency planning, the court must order DSS to make efforts toward finalizing the primary and secondary permanent plans. See S.L. 2025-16, sec. 1.13(b), amending G.S. 7B-906.2(b), effective October 1, 2025.

B. Standing to File Petition or Motion

1. Introduction. Standing is a jurisdictional issue as it affects subject matter jurisdiction. *See In re M.R.J.*, 378 N.C. 648 (2021); *In re Z.G.J.*, 378 N.C. 500 (2021); *In re J.A.U.*, 242 N.C. App. 603 (2015). The court does not have subject matter jurisdiction if the petition or motion to terminate parental rights (TPR) is filed by someone who does not have standing. *See In re A.S.M.R.*, 375 N.C. 539 (2020); *In re Miller*, 162 N.C. App. 355 (2004). Standing to file a TPR petition or motion is conferred by G.S. 7B-1103, which limits the parties to eight categories of persons or agencies having an interest in the child. *In re Z.G.J.*, 378 N.C. 500; *In re N.G.H.*, 237 N.C. App. 236 (2014); *In re E.T.S.*, 175 N.C. App. 32 (2005). The petition, motion, or record must include any document or order pursuant to which the petitioner claims standing. *See In re N.G.H.*, 237 N.C. App. at 237 (G.S. 7B-1104(2) requires petitioner to state "the facts sufficient to identify the petitioner or movant as authorized by [G.S.] 7B-1103 to file a petition or motion"); *In re T.B.*, 177 N.C. App. 790, 793 (2006) (the requirement in G.S. 7B-1104(5) that a copy of the order giving petitioner custody be attached to the petition or motion "implicitly recognizes" that a trial court has subject matter jurisdiction only if the record includes the required document).

The supreme court has addressed challenges to the sufficiency of allegations and findings about the petitioner's standing. When standing is challenged, "the record must contain evidence sufficient to sustain a finding [of standing]." *In re A.A.*, 381 N.C. 325, 332 (2022) (citation omitted). The Juvenile Code does not require that specific language must be included in a TPR petition to establish standing, nor does the Juvenile Code or case law require the trial court to make specific findings of fact about standing. *In re A.A.*, 381 N.C. 325.

Only the following persons or agencies have standing to file a TPR petition or motion:

- a parent,
- a child's guardian of the person,
- a DSS or child-placing agency with custody of the child,
- a DSS or child-placing agency to whom the child was surrendered (including a safely surrendered infant or a relinquishment) for adoption,
- a person with whom the child has continuously resided for eighteen months or more preceding the filing of the TPR petition or motion,
- a child's guardian ad litem appointed in an abuse, neglect or dependency action,
- a person who has filed a petition to adopt the child,
- a child's grandparent in the limited circumstance where all known parents are deceased and a motion to TPR is against an unknown parent.

G.S. 7B-1103(a).

2. Either parent. Either parent has standing to initiate an action seeking termination of the other parent's rights, except a parent convicted under

- G.S. 14-27.21 or 14-27.22 of first- or second-degree forcible rape (formerly codified at G.S. 14-27.2 and 14-27.3),
- G.S. 14-27.23 of statutory rape of a child by an adult (formerly codified at G.S. 14-27.2A), or
- G.S. 14-27.24 of first-degree statutory rape (previously G.S. 14-27.2(a)(1)) occurring on or after December 1, 2015 (or December 1, 2004 under previous statute)

when the rape resulted in the conception of the child who is the subject of the TPR proceeding. G.S. 7B-1103(a)(1), (c).

3. Guardian. Any judicially appointed guardian of the person of the child has standing to initiate a TPR proceeding. G.S. 7B-1103(a)(2). *See also In re D.C.*, 225 N.C. App. 327 (2013) (affirming the guardians' authority to file for TPR and noting that the statute places no preliminary requirements on guardians before filing); *In re J.A.U.,* 242 N.C. App. 603 (2015) (maternal grandmother with physical and legal custody of child pursuant to a G.S. Chapter 50 custody order was a custodian and lacked standing as a guardian to file a petition to terminate respondent father's parental rights; grandmother also did not meet any other category enumerated in G.S. 7B-1103); *In re B.O.,* 199 N.C. App. 600 (2009) (explaining that the Juvenile Code does not equate custody and guardianship, and it gives guardians, but not legal custodians, standing to petition for TPR; decided under former definition of "custodian" that also included a person who assumes the status of parent without being awarded legal custody (*see* S.L. 2013-129, sec. 1 amending G.S. 7B-101(8))).

4. DSS or child-placing agency with custody order. A TPR proceeding may be initiated by any county DSS or licensed child-placing agency to whom a court has given custody of the child. G.S. 7B-1103(a)(3).

(a) Must establish custody order. Unless the child has been relinquished to DSS for adoption or an infant was safely surrendered on or after October 1, 2023, if DSS does not have court-ordered custody of the child or fails to establish that there is a court order giving DSS custody, DSS will not have standing to initiate a TPR proceeding and the court will not have subject matter jurisdiction. *In re E.X.J.*, 191 N.C. App. 34 (2008), *aff'd per curiam*, 363 N.C. 9 (2009); *In re Miller,* 162 N.C. App. 355 (2004).

- When DSS did not attach to the petition or remedy the omission by amending the petition or by otherwise including in the record a copy of the order giving DSS custody that was in effect at the time the TPR petition was filed, DSS failed to establish that it had standing. The trial court lacked subject matter jurisdiction. *In re T.B.*, 177 N.C. App. 790 (2006).
- Custody pursuant to a valid nonsecure custody order is sufficient to confer on DSS standing to file a TPR petition pursuant to G.S. 7B-1103(a)(3). *In re T.M.*, 182 N.C. App. 566, *aff'd per curiam*, 361 N.C. 683 (2007).

- Where the court had placed the child in the legal custody of relatives before DSS filed its petition, DSS did not have standing to file a TPR petition because it no longer had custody. *In re D.D.J.*, 177 N.C. App. 441 (2006).

Cases that have considered the failure to attach a custody order, if one exists, to a TPR petition or motion as required by G.S. 7B-1104(5) have found that the failure to attach the order does not deprive the court of subject matter jurisdiction where the court can get the necessary information concerning custody from the petition itself or from the record, and no party is prejudiced by the omission. *See, e.g., In re H.L.A.D.*, 184 N.C. App. 381 (2007), *aff'd per curiam*, 362 N.C. 170 (2008); *In re T.M.H.,* 186 N.C. App. 451 (2007); *In re B.D.*, 174 N.C. App. 234 (2005); and others discussed in Chapter 3.2.C.2.

(b) Custody order must be valid. If the order giving DSS custody is invalid, DSS will not have standing to initiate a TPR proceeding. For example, when the petition in the underlying abuse, neglect, or dependency action was not properly signed and verified, the district court did not have subject matter jurisdiction. The orders entered in that action, including the orders giving DSS custody, were void such that DSS did not have standing to initiate the TPR proceeding. *In re S.E.P.*, 184 N.C. App. 481 (2007). *See also In re A.J.H-R.,* 184 N.C. App. 177 (2007) (holding custody order void for lack of proper verification of petition).

However, a respondent's challenge to DSS's standing to initiate a TPR based on a non-jurisdictional defect in an order entered in the underlying abuse, neglect, or dependency action is without merit. *In re A.S.M.R.*, 375 N.C. 539 (2020) (TPR affirmed; holding DSS had standing to file a TPR motion as adjudication order conferred custody on DSS and was not appealed; relying on a line of opinions from the court of appeals, a respondent's failure to appeal an adjudication order in the underlying action precludes a collateral attack on that order, for non-jurisdictional reasons, in a subsequent appeal of a TPR order). See Chapters 3.2.B.3 (discussing verification) and 4.2.B (discussing proper signatures). See also Chapter 3.3 (discussing subject matter jurisdiction under UCCJEA).

(c) DSS must have court-ordered custody when the petition is filed. Where the court had placed the child in the legal custody of a couple before DSS filed its petition, DSS did not have standing to petition for termination of parental rights. *In re D.D.J.*, 177 N.C. App. 441; *In re Miller*, 162 N.C. App. 355.

(d) Authorized representative: DSS social worker. The TPR petition or motion may be signed and verified by the DSS director or authorized representative. *See* G.S. 7B-101(10) (definition of "director"). See Chapter 3.2.B.3(b) (discussing verification). In a case where the DSS social worker signed and verified the TPR petition and identified herself as the petitioner but included (i) her employer as the county DSS, (ii) the DSS address, and (iii) DSS as having standing under G.S. 7B-1103(a)(3), the supreme court determined that the DSS social worker filed the TPR petition as a representative of DSS and that the social worker's allegation, when read as a whole, identified DSS and not the individual social worker as the petitioner. DSS had standing to initiate the TPR action. *In re Z.G.J.*, 378 N.C. 500 (2021).

5. DSS or child-placing agency to whom the child has been surrendered for adoption. A county DSS or a licensed child-placing agency has standing to initiate a TPR proceeding

involving a child who has been surrendered to the agency for adoption pursuant to G.S. 48-3-701 by a parent or guardian of the child's person. G.S. 7B-1103(a)(4); *In re E.B.,* 375 N.C. 310 (2020) and *In re A.L*., 245 N.C. App. 55 (2016) (in both cases, DSS had standing to file a petition to terminate father's rights pursuant to G.S. 7B-1103(a)(4) based on mother's relinquishment of her parental rights and surrender of the child for adoption pursuant to G.S 48-3-701). *See* G.S. 48-1-101(8) (definition of "guardian" for purposes of adoption limited to appointment under G.S. Chapter 35A). A county DSS that has received an infant who was safely surrendered on or after October 1, 2023 has standing to initiate a TPR proceeding for that infant. *See* G.S. 7B-525(a).

6. Person child has lived with for eighteen months. Any person with whom the child has resided for a continuous period of eighteen months or more immediately preceding the filing of the TPR petition or motion has standing to initiate the TPR proceeding. G.S. 7B-1103(a)(5). Note that prior to October 1, 2021, the time period was two years or more. *See* S.L. 2021-132, sec. 1.(*l*). The opinions cited here are based on the previous statutory language.

In *In re A.A*., 381 N.C. 325 (2022), a challenge to standing was based on the petition not specifically alleging that the juvenile had lived with the petitioner for the two years immediately preceding the filing of the TPR petition and that the trial court did not make findings about petitioner's standing. The record showed the petitioner had standing when the TPR petition alleged that the child lived with petitioner and respondent from the child's birth and parties' marriage, which was several years, and continued to live with petitioner as of the date the TPR was filed in 2019. Further, in a custody complaint that the court took judicial notice of the petitioner alleged the child had lived with her since the parties separated in 2017. The court also took judicial notice of custody orders that corroborated the petitioner had sole custody of the juvenile for one year of the relevant two-year period for standing. Finally, there was no evidence presented by any party that suggested the juvenile resided outside of petitioner's home at any point during the statutory time period.

In *In re S.C.L.R*., 378 N.C. 484 (2021), a challenge that implicated standing was brought under G.S. 7B-1104(2), which requires that the petition state the name and address of the petitioner or movant and sufficient facts to identify the petitioner or movant as one who has standing under G.S. 7B-1103 to file a TPR petition or motion. The petitioners included their names and address but as to identifying themselves as persons with standing based on the juvenile having continuously resided with petitioners for two or more years, they did not use the statutory language in G.S. 7B-1103(a)(5). The supreme court considered the petition as a whole – the petitioners' names, address, and other facts in the TPR petition – to determine whether the petitioners properly identified themselves as persons with standing. The supreme court determined that (i) references in the petition to the dated custody order (exceeding the two-year time period for standing) granting permanent custody to petitioners to which the respondents were parties and (ii) the fact that the child was residing with the petitioners were sufficient.

The determining factor is the length of time the child has resided with the person and not the relationship between petitioner and the child. *See In re J.A.U.,* 242 N.C. App. 603 (2015) (vacating TPR; holding the court lacked subject matter jurisdiction as petitioner (maternal grandmother) did not have standing when evidence established child had lived with petitioner

pursuant to a G.S. Chapter 50 custody order continuously for less than one year at the time the petition was filed); *In re B.O.,* 199 N.C. App. 600 (2009) (holding that the petitioners did not have standing because, when petition was filed, the child had not resided with them for two years and they did not satisfy any other criteria in G.S. 7B-1103 for standing).

Appellate cases have interpreted "residing with" to mean the same as "living with," looking at the number of nights a child spends with a person per year without regard to whether the person has primary, shared, or joint legal custody of the child. *See In re A.D.N.*, 231 N.C. App. 54 (2013) (although the trial court did not make detailed findings as to standing, it did make the ultimate finding that the child had resided with the TPR petitioner for a continuous period of two years before the petition was filed; evidence in the record showed that the child spent an average of eighty-five percent (85%) of his nights with petitioner). The language "continuous period of two years" does not require that the child spend every single night with the person for that period, and a period of temporary absence will not necessarily prevent a determination that the child's stay was "continuous." *In re A.D.N.*, 231 N.C. App. 54 (using the child support guidelines and UCCJEA for guidance and holding that "continuous" allows for a limited number of nights away from the person's home).

7. Guardian ad litem for child. A guardian ad litem (GAL) appointed under G.S. 7B-601 to represent the child in an abuse, neglect, or dependency proceeding, who has not been relieved of that responsibility, has standing to initiate a TPR proceeding. G.S. 7B-1103(a)(6). The GAL appointed under G.S. 7B-601 is a team that typically consists of a GAL volunteer, local GAL program staff, and an attorney advocate. The court of appeals has examined the issue of standing in the context of GAL team representation. Relying on the North Carolina Supreme Court case *In re J.H.K.,* 365 N.C. 171 (2011), the court of appeals held that a TPR petition signed by the GAL program specialist "by and through the undersigned Attorney Advocate" and not by the volunteer GAL directly involved in the action was not improper. *In re S.T.B.*, 235 N.C. App. 290, 293 (2014).

See Chapter 2.3.D (discussing child's GAL).

8. Adoption petitioner. Any person who has filed a petition to adopt the child has standing to initiate a TPR proceeding. G.S. 7B-1103(a)(7). *See also* G.S. 48-2-302(c) (providing that a petition for adoption may be filed concurrently with a petition to terminate parental rights). See Chapter 10.3 (discussing selected adoption provisions). Petitioners in a private TPR action failed to establish standing pursuant to G.S. 7B-1103(a)(7) when they did not attach to the TPR petition a copy of the petition for adoption, the TPR petition did not incorporate by reference any adoption petition, and testimony at the TPR hearing did not establish that an adoption petition had been filed. *In re N.G.H.*, 237 N.C. App. 236 (2014). (Note that G.S. Chapter 48 governs adoption proceedings and prohibits the disclosure of records such that the adoption petition itself is not authorized to be disclosed in a TPR action; *see* G.S. 48-9-102(a); *see also* G.S. 7B-908(e) (prohibiting disclosure of final decree of adoption in post-TPR hearing.)

9. Grandparent in limited circumstance. Effective for TPR actions initiated on or after July 8, 2024, a grandparent has standing to file a TPR motion against an unknown parent only if all of the child's known parents are deceased. Note that the statutory language refers to a "motion" and not a petition, suggesting that there must be an underlying abuse, neglect, or dependency

action where the motion is filed. G.S. 7B-1103(a)(8); *see* G.S. 7B-1102; 7B-1104; *see* S.L. 2024-33, sec. 25.

9.4 Counsel and Guardians ad Litem for Parent and Child

A. Counsel for Parent

The respondent parent has a right to be represented by counsel, and to appointed counsel if indigent, but may knowingly and voluntarily waive the right. G.S. 7B-1101.1(a), (a1). For a discussion of the appointment of counsel, the right to privately retained counsel, knowing and voluntary waiver of counsel, forfeiture of counsel, and withdrawal of counsel, see Chapter 2.4.E.

The procedure for appointment of counsel is different for termination of parental rights (TPR) proceedings initiated by petition and TPR proceedings initiated by motion – provisional counsel is automatically appointed when a petition is filed and is appointed upon request of the respondent parent when a motion is filed. *Compare* G.S. 7B-1106(b)(4) (petition) *to* 7B-1106.1(b)(4) (motion). Regardless of whether a TPR petition or motion is filed, when a respondent parent is represented by appointed counsel in an underlying abuse, neglect, or dependency action that attorney continues to represent the parent in the TPR proceeding unless otherwise ordered by the court. *See* G.S. 7B-1106(a2), (b)(3); 7B-1106.1(b)(3); *In re D.E.-E.Y.*, 297 N.C. App. 724 (2025) and *In re D.E.G.*, 228 N.C. App. 381 (2013) (both holding attorney representing parent in underlying abuse, neglect, or dependency proceeding was not provisional counsel in TPR proceeding).

When provisional counsel is appointed, the court acts on the status of that provisional appointment at the first hearing in the TPR proceeding after the respondent is served. The court of appeals has stated, "[t]he purpose of provisional counsel is to ensure a respondent parent's rights are adequately protected for termination proceedings." *In re C.T.T.*, 288 N.C. App. 136, 142 (2023) (citation omitted). If the respondent parent is served and does not appear, provisional counsel is released. G.S. 7B-1101.1(a)(1); *see In re R.A.F.*, 384 N.C. 505 (2023) and *In re C.T.T.*, 288 N.C. App. 136 (both holding trial court acted properly in releasing provisional counsel at TPR hearing when mother in each case did not appear).

If provisional counsel is released, the court may reconsider a parent's eligibility and desire for appointed counsel at any stage of the proceeding. G.S. 7B-1101.1(a). Additionally, if a parent appears at the adjudication hearing and is not represented by counsel, the court must conduct an inquiry into whether the parent desires counsel but is indigent and cannot retain counsel. If the court determines that the parent is indigent and desires counsel, the court must appoint counsel and grant the parent an extension of time to permit counsel to prepare. G.S. 7B-1109(b).

All appointments are pursuant to the policies of the Office of Indigent Defense Services (IDS).

AOC Forms:

- AOC-J-144, Order of Assignment or Denial of Counsel (Abuse, Neglect, Dependency; Termination of Parental Rights; Post-Disposition Motion to Modify; Post-DSS-Placement Review and Permanency Planning Hearings (Delinquent/Undisciplined))
- AOC-J-143, Waiver of Parent's Right to Counsel

Practice Notes: Appointment of provisional counsel probably is not required for an unknown respondent parent who is not "named in the petition." *See* G.S. 7B-1101.1(a); *see also* G.S. 7B-1105(d) (contents of publication notice do not refer to provisional counsel).

In the process of informing a respondent parent of the right to appointed counsel, the court should explain that even though an attorney is appointed, the respondent may be responsible for some costs, which can include the costs of any appeal. *See* G.S. 7B-603(b1).

Caution should be exercised in appointing one attorney to represent both parents, given the potential for conflicting interests and evidence. *But cf. In re Byrd*, 72 N.C. App. 277 (1985) (holding that the failure to appoint separate counsel for respondent parents was not error, where they did not object when the appointment was made, the record showed that evidence was sufficient to terminate both parents' rights, and there was no indication that the court treated respondents as a couple rather than as individuals).

Resources:
The Office of the Parent Defender within the North Carolina Office of Indigent Defense Services (IDS) coordinates, assists, and trains parents' attorneys. Information about the office as well as resources for parents' attorneys can be found on the IDS website under "Parent Representation."

For more information about appointment and release of counsel, see Sara DePasquale, *Parents Forfeited Their Right to Court-Appointed Counsel in TPR: What Is the Law for Attorney Representation of Parents in A/N/D and TPR Actions?*, UNC SCHOOL OF GOV'T: ON THE CIVIL SIDE BLOG (Dec. 6, 2023).

B. Guardian ad Litem for Parent

In some circumstances the court will either be required or have discretion to appoint a guardian ad litem (GAL) for a respondent parent in a termination of parental rights (TPR) proceeding pursuant to Rule 17 of the Rules of Civil Procedure.

See Chapter 2.4.G (discussing GAL for respondent parent in detail).

1. GAL for minor parent. A minor parent's rights may be terminated. G.S. 7B-1101 ("The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent."); *In re N.P.*, 376 N.C. 729 (2021) (declining minor mother's invitation to address public policy considerations of terminating the parental rights of a minor parent given the plain and unambiguous language of G.S. 7B-1101). The minor parent is not deemed to be under a disability. G.S. 7B-1102(b)(2); 7B-1106(a). However, the court must appoint a GAL

pursuant to Rule 17 of the Rules of Civil Procedure to represent any parent who is an unemancipated minor. G.S. 7B-1101.1(b).

Appellate courts have not specifically addressed the failure to appoint a GAL for a minor parent in a TPR proceeding, but they have held that failure to appoint a GAL for the child or an adult parent, when the statute required one, was reversible error. *See, e.g., In re R.A.H.,* 171 N.C. App. 427 (2005) (failure to appoint a GAL for a child); *In re B.M.*, 168 N.C. App. 350 (2005) (failure to appoint GAL for parent when former law required appointment). However, when the respondent mother was an adult at the time the TPR was filed, the failure to appoint a GAL to her as a minor parent in an earlier dependency proceeding as required by the applicable statute could not be considered in the TPR proceeding. *In re E.T.S.*, 175 N.C. App. 32 (2005).

2. GAL for parent who is incompetent. On motion of any party or on the court's own motion, the court may appoint a GAL pursuant to Rule 17 of the Rules of Civil Procedure for a parent who is incompetent. G.S. 7B-1101.1(c). Note that legislation in 2013 substantially changed GAL representation for parents and eliminated the role of GALs of assistance based on diminished capacity, now only authorizing GALs of substitution based on incompetency. *See* S.L. 2013-129, sec. 17 and 32.

The court has discretion to determine if there is a substantial question as to whether a respondent is incompetent requiring a hearing to determine the need for a GAL. *In re Q.B.,* 375 N.C. 826 (2020); *In re Z.V.A.*, 373 N.C. 207 (2019); *In re T.L.H.*, 368 N.C. 101 (2015). When there is a substantial question as to incompetence, the court should address that question as soon as possible. See Chapter 2.4.G.3 and 5 (discussing determination of incompetence for GAL appointment).

3. GAL appointment and role. The Juvenile Code prohibits appointing the parent's counsel as GAL for the parent but does not say anything else regarding who should be appointed. *See* G.S. 7B-1101.1(d). The North Carolina Supreme Court has held that the parent's attorney and GAL cannot be the same person; this allows the parent to receive the benefit of both representatives. *In re J.E.B.*, 376 N.C. 629 (2021).

In practice, attorneys are often appointed to act as parents' GALs, although there is no requirement that the GAL be an attorney. Rule 17(b)(2) of the Rules of Civil Procedure refers to the appointment of "some discreet person." The role of the parent's GAL is not well defined by either the Juvenile Code or Rule 17. The GAL is required to actively participate in the proceedings for which the GAL is appointed, and when a GAL is appointed in the underlying abuse, neglect, or dependency case, that GAL's responsibilities continue throughout the TPR proceeding as long as the reasons for the appointment still exist. *In re A.S.Y.,* 208 N.C. App. 530 (2010) (holding in a TPR case initiated by motion that it was reversible error for the trial court to excuse the parent's GAL and not appoint another GAL when the parent did not appear for the TPR hearing). See Chapter 2.4.G.6 (discussing role of parent's GAL).

AOC Form:
AOC-J-206, Order to Appoint, Deny, or Release Guardian Ad Litem (For Respondent)

Resource: For a thorough discussion of guardian ad litem representation of respondent parents, see Timothy Heinle and Sara DePasquale, *Rule 17 Guardians ad Litem for Respondents in Abuse, Neglect, Dependency, and Termination of Parental Rights Proceedings: Frequently Asked Questions*, JUVENILE LAW BULLETIN No. 2026/01 (UNC School of Government, Feb. 2026).

C. Guardian ad Litem for Child

The child is a party to the termination of parental rights (TPR) action. G.S. 7B-1104; *see* G.S. 7B-601(a) ("the juvenile is a party in all actions under this Subchapter"). The child's best interests are represented by a guardian ad litem (GAL). See Chapter 2.3.C (discussing the rights of the child including participation in the proceeding).

When there is an underlying abuse, neglect, or dependency proceeding, the GAL representing the child in that proceeding will continue to represent the child in a TPR proceeding, regardless of how the TPR is initiated (petition or motion), unless the court orders otherwise. G.S. 7B-1106(a1); 7B-1106.1(a)(5); 7B-1108(d). The court must appoint a GAL for a child who does not already have one in any TPR case in which an answer or response is filed denying any material allegation of the petition or motion. G.S. 7B-1108(b); *In re R.D.*, 376 N.C. 244 (2020). Even when not required to do so, the court has discretion to appoint a GAL for the child at any stage of the TPR proceeding to assist the court in determining the child's best interests. G.S. 7B-1108(c). *See In re M.J.M.*, 378 N.C. 477 (2021) (discussing G.S. 7B-1108); *In re R.D.*, 376 N.C. 244. At a pretrial hearing, the court must address whether a GAL should be appointed for the child, if a GAL was not previously appointed. G.S. 7B-1108.1(a)(2). *See In re P.T.W.*, 250 N.C. App. 589, 609 n.11 (2016) (discussing G.S. 7B-1108.1).

If the child does not already have a GAL, the court makes a new appointment pursuant to G.S. 7B-601. However, GALs trained and supervised by the GAL Program may be appointed only in cases in which the child is or has been the subject of an abuse, neglect, or dependency petition (i.e., not private TPR cases), unless for good cause the GAL Program consents to the appointment. G.S. 7B-1108(b). See Chapter 2.3.D for an explanation of the GAL Program and GAL team representation. When the GAL Program is not appointed and the GAL who is appointed for the child is not an attorney, an attorney is also appointed. G.S. 7B-1108(b). The supreme court has held that "if the GAL is an attorney, that person can perform the duties of both the GAL and the attorney advocate," which involve both in-court and out-of-court responsibilities. *In re C.J.C.,* 374 N.C. 42, 46 (2020) and *In re R.D.,* 376 N.C. at 250 (both quoting *In re J.H.K.*, 365 N.C. 171, 175 (2011)) (in both *In re C.J.C.* and *In re R.D.*, attorney appointed in dual role of GAL and attorney).

AOC Form:
AOC-J-207, Order to Appoint or Release Guardian Ad Litem and Attorney Advocate

Practice Note: A court order that appoints an attorney to serve in both roles should specifically state that the attorney is to serve in both the attorney advocate and GAL roles. The AOC form order recognizes the attorney advocate may also be acting as the GAL with a checkbox in the "Order of Appointment" section. *See In re C.J.C.*, 374 N.C. 42.

Resource: For a discussion of 2022 Formal Ethics Opinion 1 about an attorney acting in both GAL roles, see Timothy Heinle, *New Ethics Opinion on Dual Role GAL-Attorney Advocates in Juvenile Proceedings*, UNC SCHOOL OF GOV'T: ON THE CIVIL SIDE BLOG (Aug. 17, 2022).

The timing of the answer does not impact the requirement that a GAL be appointed. *See In re J.L.S.*, 168 N.C. App. 721 (2005) (holding that although the respondent waited until the day of the hearing to file an answer, the court was required to appoint a GAL for the child). Something less than a formal answer is not likely to trigger the requirement for a GAL. *See In re Tyner*, 106 N.C. App. 480 (1992) (holding that appointment of a GAL for the child was not required, where the court of appeals could not determine from the record when or for what purpose the respondent had filed a letter he later claimed was an "answer").

In the case *In re A.D.N.*, 231 N.C. App. 54 (2013), the court of appeals held that the issue of failure to appoint a GAL for the child when an answer denying a material allegation was filed must be preserved for appeal, and it refused to rule on the failure of the trial court to appoint a GAL because the failure was not objected to at trial. However, in two earlier cases the court of appeals invoked Rule 2 of the Rules of Appellate Procedure to reach the issue, which was not objected to at trial, and in both cases found prejudicial error in the trial court's failure to appoint a GAL for the child when the respondents filed an answer denying a material allegation, triggering the statutory mandate that a GAL be appointed for the child. *See In re Fuller,* 144 N.C. App. 620 (2001); *In re Barnes*, 97 N.C. App. 325 (1990). See Chapter 12.3.C (discussing Appellate Rule 2).

In *In re M.J.M.*, 378 N.C. 477 (2021), the North Carolina Supreme Court held that mother did not preserve for appellate review the issue of whether the trial court erred in not appointing a GAL for her children, even though mother had not filed an answer. In the trial court, there was no motion for appointment of a GAL or objection to the lack of a GAL. In assuming arguendo that the issue had been preserved, the supreme court determined that the trial court did not misapprehend the law or abuse its discretion when the trial court recognized that a GAL had not been appointed since an answer had not been filed. The trial court decided to proceed with the TPR to avoid further delay after hearing that the mother's only evidence at the TPR hearing would be her testimony.

The court of appeals also addressed this issue in *In re P.T.W.,* 250 N.C. App. 589 (2016). In that case, respondent mother did not file an answer denying a material allegation that would have required the trial court to appoint a GAL for the child and also did not preserve for appeal her argument that the trial court abused its discretion by failing to appoint a GAL. However, the appellate court considered the issue and found that the trial court acted within its discretion when it did not appoint a GAL to represent the child's best interests in the TPR proceeding. The trial court heard testimony from petitioner, respondent, and a member of respondent's family and carefully weighed the child's best interests against the evidence presented. The trial court's determination to forego GAL assistance in determining child's best interests was not unreasonable.

The GAL appointment, duties, and payment in a TPR proceeding are the same as for a GAL appointed in an abuse, neglect, or dependency action unless the court determines the child's best interests require otherwise. G.S. 7B-1108(d); *see* G.S. 7B-601.

See Chapter 2.3.D for a full explanation of the child's GAL appointment, role, and duties and Section 9.12.B.8, below, for a discussion of the GAL responsibilities at disposition.

9.5 Contents of Petition or Motion

For a discussion of amendments to TPR petitions, see Chapter 4.2.C.2.

A. Identifying Information

1. Title. The petition or motion must be entitled "In Re (*last name of child*), a minor juvenile." G.S. 7B-1104.

2. Child. The petition or motion must include the child's name as it appears on the birth certificate, the date and place of the child's birth, and county of the child's residence or it must state that the information is unknown. G.S. 7B-1104(1). In *In re A.J.B.*, 298 N.C. App.143 (2025), the court of appeals examined whether noncompliance with G.S. 7B-1104(1) is a jurisdictional defect. The petitioner identified the child in the petition by his first name, middle initial, and last name, and the petition did not allege the child's name is as it appears on the child's birth certificate. The petition did not comply with G.S. 7B-1104(1). Additionally, the record did not contain the child's birth certificate or any information that confirmed the child's identity and name. In applying the reasoning of *In re T.M.*, 182 N.C. App. 566, *aff'd per curiam*, 361 N.C. 683 (2007), the court of appeals vacated and remanded the trial court's order of dismissal for lack of subject matter jurisdiction based on noncompliance with G.S. 7B-1104(1). On remand, the trial court must determine whether the statutory noncompliance prejudiced the respondent parent as statutory noncompliance will deprive the trial court of subject matter jurisdiction only if prejudice exists.

3. Petitioner or movant. The petition or motion must include the petitioner's or movant's name and address and facts sufficient to show that the petitioner or movant has standing to initiate the action. G.S. 7B-1104(2). See section 9.3.B, above (discussing standing).

4. Parents. The petition or motion must include the names and addresses of the child's parents. If a parent's name or address is unknown, the petition or motion or an attached affidavit must describe efforts that have been made to determine the name and address. (See section 9.6, below, related to a hearing on an unknown parent and for parents of a safely surrendered infant.) A parent need not be named in the petition if they have been convicted of first- or second-degree forcible rape under G.S. 14-27.21 or 14-27.22, statutory rape of a child by an adult under 14-27.23, or first-degree statutory rape under 14-27.24, and the child who is the subject of the action was conceived as a result of the rape. G.S. 7B-1104(3).

Practice Note: The Juvenile Code does not specifically address naming and serving a respondent parent in the TPR action when that respondent parent has been convicted of one of those four enumerated rape offenses and the rape resulted in the child's conception. However, that criminal conviction is one of the grounds to terminate the parent's rights. *See* G.S. 7B-1111(a)(11), discussed in section 9.11.K, below. The parent whose rights are sought to be terminated is a necessary party to the TPR action. In addition, due process requires that the respondent parent have notice and an opportunity to be heard. Presumably, the exclusion of a

parent's name and address from the TPR petition (or motion) under G.S. 7B-1104(3) relates to a petition or motion that is not naming that parent as the respondent but is instead seeking to terminate the other parent's rights.

5. Guardian of the person or custodian. The petition or motion must include the name and address of any court-appointed guardian of the child's person and of any person or agency to whom a court of any state has given custody of the child. A copy of any related court order must be attached. G.S. 7B-1104(4), (5). See section 9.3.B.4, above (discussing standing and need to attach custody order showing custody in effect at time TPR petition or motion is filed).

In a private TPR action, the petitioner's failure to include a prior custody or "guardianship" order with the petition and failure to include the name and address of any appointed guardian, or a statement declaring the petitioner had no such knowledge, rendered the petition facially defective. The record contained no information about the guardianship order the court found void. *In re Z.T.B.*, 170 N.C. App. 564 (2005).

B. Addressing the UCCJEA

See Chapter 3.3 (discussing UCCJEA).

1. No circumvention of UCCJEA. The petition or motion must include a statement that it has not been filed to circumvent the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA). G.S. 7B-1104(7); *see* G.S. Chapter 50A (UCCJEA). Omission of the statement will not deprive the court of jurisdiction or require dismissal where there is no showing of prejudice. *See In re J.D.S.,* 170 N.C. App. 244 (2005); *In re B.D.*, 174 N.C. App. 234 (2005).

2. Child status information required by UCCJEA. Information about the child's status, as required by the UCCJEA in G.S. 50A-209(a), must be set out in the petition or motion or an attached affidavit. Failure to attach the affidavit does not divest the court of subject matter jurisdiction and can be cured by filing the affidavit within a time specified by the court. *In re J.D.S.*, 170 N.C. App. 244 (2005). See Chapter 3.2.C.2(c).

AOC Form:
AOC-CV-609, Affidavit as to Status of Minor Child

C. Facts to Support Grounds for Termination

The petition or motion must include facts sufficient to support a determination that one or more grounds for terminating parental rights exist. G.S. 7B-1104(6); *see In re M.B.S.*, 296 N.C. App. 56 (2024). The court cannot adjudicate a ground that is not alleged in the petition. *In re S.R.G.*, 195 N.C. App. 79 (2009). *Cf. In re T.J.F.*, 230 N.C. App. 531 (2013) and *In re A.H.*, 183 N.C. App. 609 (2007), set out below in this section.

G.S. 7B-1104 does not distinguish between the facts that must be alleged in a petition or in a motion to terminate parental rights. Either pleading must comply with the requirement for factual allegations in G.S. 7B-1104(6). *In re J.S.K.,* 256 N.C. App. 702 (2017).

Practice Note*:* The petition or motion should allege specific facts supporting one or more grounds for termination of parental rights that are sufficient to put a respondent parent on notice. While using attachments to petitions may be helpful, it is generally not helpful for them to be used as a substitute for alleging specific facts in the petition or to be voluminous.

Appellate cases discussing this requirement have focused on whether the facts alleged are sufficient to put a party on notice of a ground, rather than whether a particular statute number is alleged. Allegations need not be exhaustive or extensive, but they must put a party on notice as to acts, omissions, or conditions that are at issue and must do more than recite the statutory wording of the ground. *In re B.C.B.*, 374 N.C. 32, 34 (2020) (agreeing with and quoting court of appeals decision in *In re Hardesty*, 150 N.C. App. 380, 384 (2002); trial court appropriately denied respondent's motion to dismiss), *quoted in In re D.R.J.*, 381 N.C. 381 (2022). Although appellate cases have focused on the facts alleged rather than the stated grounds, they have also noted that the better practice is to specifically plead a particular ground for termination pursuant to a specific statutory section. *In re B.S.O.*, 234 N.C. App. 706 (2014); *In re T.J.F.*, 230 N.C. App. 531.

Cases finding that the pleading provided sufficient notice of a ground for termination.

- Mother's TPR petition was sufficient to put respondent father on notice of the ground of willfully failing to pay child support under G.S. 7B-1111(a)(4) when it stated, " 'father failed and *refused* to pay child support' for approximately a year-and-a-half" (emphasis in original). *In re A.H.D.*, 287 N.C. App. 548, 554 (2023). "Refused" indicates a willful decision to not pay. Failing to plead there is a child support order does not make the petition insufficient, although it is the better practice to include that allegation. *In re A.H.D.*, 287 N.C. App. 548.
- The trial court did not err in denying respondent's motion to dismiss when the petition alleged the grounds of abandonment and failure to pay child support under G.S. 7B-1111(a)(7) and 7B-1111(a)(4). The facts alleged were more than a recitation of the statutory grounds and included references to respondent's violations of custody and child support orders. *In re B.C.B.*, 374 N.C. 32.
- The petition did not allege willful abandonment under G.S. 7B-1111(a)(7) but did refer to respondent father's "abandonment" of his children in the context of alleging neglect. This, coupled with allegations that his whereabouts were unknown since his incarceration and deportation approximately eight months prior to the filing of the petitions, was sufficient to put the father on notice of a potential adjudication on the ground of abandonment. *In re B.S.O.*, 234 N.C. App. 706.
- Where the petition alleged only the neglect ground under G.S. 7B-1111(a)(1) but the court adjudicated the abandonment ground under G.S. 7B-1111(a)(7), the court of appeals held that the petition put the father on notice as to abandonment. The petition's language alleged the father's "lack of involvement with or regard for the minor child constitute[d] neglect," and contained several allegations suggesting that the father had foregone his parental responsibilities and withheld his presence, care, and parental affection from the child despite consistently available opportunities for involvement; failure to contact the child in the six months preceding the TPR petition; and failure to provide a reasonable amount for the cost and care of the child. *In re T.J.F.*, 230 N.C. App. at 533.

- Although the petition did not specifically reference G.S. 7B-1111(a)(6), the allegations gave the respondent sufficient notice that termination of parental rights would be sought on the basis of the parent's inability to provide proper care for the child. *In re A.H.*, 183 N.C. App. 609. *See also In re Humphrey*, 156 N.C. App. 533 (2003).
- Bare allegations that the parent neglected the child and willfully abandoned the child for six months did not comply with this requirement, but an attached custody decree incorporated into the petition did contain sufficient facts. *In re Quevedo*, 106 N.C. App. 574 (1992).

Cases finding that the pleading did not provide sufficient notice of a ground for termination.

- Motion DSS filed to terminate parental rights did not include notice of the grounds of G.S. 7B-1111(a)(1)–(2) even with the incorporation of prior orders and court reports entered in the underlying neglect action because "to hold otherwise would nullify the notice requirements of N.C.G.S. § 7B-1104(g) and contravene the delineation of specific grounds for terminating parental rights." *In re D.R.J.*, 381 N.C. at 389. The arguments by DSS and the GAL that the motion was sufficient is "an impermissible attempt to conform the termination of parental rights motion to the evidence presented at the termination hearing." *In re D.R.J.*, 381 N.C. at 389. The ground of abandonment under G.S. 7B-1111(a)(7) was not raised in the motion for respondent father, but was only raised for respondent mother, and, therefore, was insufficient notice of the ground for father. *In re D.R.J.*, 381 N.C. 381.
- In two instances the court of appeals has held that a motion or petition to terminate parental rights that "merely recited the statutory grounds" were insufficient to put respondent mothers on notice of the acts, conditions, or omissions at issue. Unlike *In re Quevedo*, 106 N.C. App. 574, above, the TPR motion and petition in these cases did not incorporate any prior orders, and the custody order attached to the TPR motion did not contain any additional facts that would warrant a determination that a TPR ground existed. *In re J.S.K.,* 256 N.C. App. 702 (trial court erred in denying mother's G.S. 1A-1, Rule 12(b)(6) motion to dismiss when DSS's TPR motion contained bare recitations of the statutory grounds in G.S. 7B-1111(a)(1)-(3) and (6)); *In re M.B.S.*, 296 N.C. App. 56 (mother received ineffective assistance of counsel when counsel failed to move to dismiss a deficient private TPR petition; the petition contained bare recitations of the statutory grounds in G.S. 7B-1111(a)(1), (2), (4), (6), and (7) and no prior orders were incorporated; had mother's counsel made the motion, the court would have dismissed the action or erred in failing to do so).
- When neither the petition nor the affidavit of the DSS social worker that was incorporated by reference mentioned the respondent father's progress or lack thereof in correcting the conditions that led to the child's removal from her mother's home, the TPR was reversed for not providing prior notice that G.S. 7B-1111(a)(2) was a potential ground and an issue in the TPR hearing. *In re L.S.*, 262 N.C. App. 565 (2018).
- When the TPR petition did not refer to the ground in G.S. 7B-1111(a)(4) and did not allege respondent's willful failure to pay child support as required by a court order or custody agreement, a TPR order was reversed in part for not providing sufficient notice to respondent father of this ground. *In re I.R.L.*, 263 N.C. App. 481, 486 (2019) (petition alleged only that father "[h]as failed to provide substantial financial support or consistent

care for the minor child", which the court of appeals noted "may be an assertion under the ground of abandonment").

Resource: For a discussion of pleading requirements and *In re D.R.J.*, 381 N.C. 381, see Timothy Heinle, *You are on Notice: Pleading Requirements, a Recent N.C. Supreme Court Opinion, and Parent Representation*, UNC SCHOOL OF GOV'T: ON THE CIVIL SIDE BLOG (Sept. 21, 2022).

D. Verification

G.S. 7B-1104 requires that the petition or motion be verified by the petitioner or movant, and the failure to verify deprives the court of subject matter jurisdiction. *In re O.E.M.,* 379 N.C. 27 (2021) (TPR motion filed by DSS, relying on *In re T.R.P.,* 360 N.C. 588 (2006), which involved petition in neglect proceeding filed by a party); *In re E.B.*, 249 N.C. App. 614 (2016) (motion to terminate parental rights verified by child's guardian ad litem invoked the trial court's jurisdiction); *In re C.M.H.,* 187 N.C. App. 807 (2007); *In re Triscari Children*, 109 N.C. App. 285 (1993) (explaining that a petition that is signed and notarized as "subscribed and sworn before" me is insufficient to constitute verification).

See Chapter 3.2.B.3 (discussing proper verification).

E. Request for Relief

A motion or petition that neither contains a prayer for relief nor requests the entry of any order is not a proper pleading, and the court does not have jurisdiction to proceed. *In re McKinney*, 158 N.C. App. 441 (2003). *Cf. In re Baby Boy Scearce*, 81 N.C. App. 531 (1986) (holding that district court had jurisdiction when petition alleged that mother had placed child with DSS, father was unknown, North Carolina was child's home state and no other state had jurisdiction, and child's best interest would be served by court's assuming jurisdiction).

9.6 Hearings Involving an Unknown Parent or Parents of a Safely Surrendered Infant

A. Preliminary Hearing under G.S. 7B-1105 to Determine Identity of Unknown Parent

1. When required. If the name or identity of a parent whose rights are sought to be terminated is unknown, the court must conduct a preliminary hearing to determine that parent's name or identity. G.S. 7B-1105(a). *See also In re M.M.*, 200 N.C. App. 248 (2009). This preliminary hearing on an unknown parent is not required when a parent's identity is known but their whereabouts are not. *In re Clark*, 76 N.C. App. 83 (1985). Naming "John Doe" in the alternative does not trigger the need to hold a preliminary hearing on an unknown parent so long as one person is identified as a parent and named as a respondent. *See In re A.N.S.*, 239 N.C. App. 46 (2015) (in a private termination of parental rights (TPR) case, a putative father was named by the petitioner and "John Doe" was named in the alternative; naming "John Doe" in the alternative did not negate the fact that the identity of the father was known and a preliminary hearing was, therefore, not required).

A hearing on an unknown parent does not apply to a TPR that involves an infant who has been safely surrendered on or after October 1, 2023 when there is not an underlying abuse, neglect, or dependency action. See sections 9.6.C and D, below, for a discussion of a preliminary hearing for parents of a safely surrendered infant. See Chapter 5.8 for a discussion of safely surrendered infants.

2. Timing. The preliminary hearing on an unknown parent must be held within ten days after the petition is filed or if there is no court in the county during that ten-day period, at the next term of court in the county where the petition is filed. G.S. 7B-1105(a). The court must make findings and enter its order within thirty days of the preliminary hearing, unless the court finds that additional time is required for investigation. G.S. 7B-1105(e).

3. Notice. Notice of the preliminary hearing need be given only to the petitioner, but the court may direct that a summons be issued directing any other person to appear and testify. G.S. 7B-1105(c).

4. Inquiry by court. The court may inquire of any known parent about the identity of the unknown parent and may order the petitioner to conduct a "diligent search" for the parent. G.S. 7B-1105(b).

5. Order. If the court determines the parent's identity, the court must enter that finding and direct that the parent be summoned to appear. G.S. 7B-1105(b). If the parent is not identified, the court must order that the unknown parent be served by publication (see section 9.6.B, below). The court in its order must specify

- the place(s) of publication and
- the contents of the notice the court concludes is most likely to identify the juvenile to the unknown parent.

G.S. 7B-1105(d).

6. Amendment of petition to allege identity not required. When the unknown respondent is identified as a result of the preliminary hearing, an amended TPR petition adding them as a respondent is not necessary for the court to obtain personal jurisdiction over them. Instead, the procedure set forth in G.S. 7B-1105 requires that the court make a finding as to the parent's identity and that the parent be served with a summons as provided for in G.S. 7B-1106. *In re M.M.*, 200 N.C. App. 248, 255 (2009) (determining DSS was not required to amend petition when the parent was identified as a result of the hearing required by G.S. 7B-1105; holding the amended petition, which the appellate court referred to as "no more than a supplemental pleading" clarifying that respondent was the biological father, did not constitute the filing of a new action; rejecting respondent's argument that the judicial determination of his paternity between the filing of the original and amended petitions precluded termination of his parental rights under G.S. 7B-1111(a)(5) for failure to establish paternity).

7. Noncompliance with statutory provisions. In *In re K.P.W.*, 386 N.C. 596 (2024), *rev'g* 291 N.C. App. 310 (2023) (unpublished), the respondent father appealed the order terminating his parental rights arguing he was prejudiced by the court's failure to comply with certain provisions of G.S. 7B-1105. In that case, there was an underlying neglect action where a different man was named as the father. Paternity testing revealed that man was not the father

and ultimately a TPR was initiated naming "John Doe" as one of the respondents. Seventy-six days after the TPR was filed, a preliminary hearing was held where respondent father was identified and DSS sought to amend the petition to name respondent father if it was determined he was the biological father. DSS located father, who informed them he believed he was the child's father as far back as two years earlier. DNA testing confirmed respondent was the biological father, and DSS amended the TPR petition. Father was served with a summons and the petition. After a hearing, father's rights were terminated on the grounds of neglect and abandonment. In a split opinion, the court of appeals held father was prejudiced by the delay in holding the preliminary hearing, the failure to summons father or to order publication on an unknown father, and the lack of a separate order for the preliminary hearing because it delayed father's appointment of counsel and preparation for trial. The supreme court reversed that holding based on the dissent, which relied on *In re W.I.M.*, 374 N.C. 922 (2020), and determined the filing and service of the amended TPR petition made any deficiencies in the proceeding that occurred before then irrelevant. Further, father was not prejudiced as he was aware he was the child's father but showed little to no interest in the child for four years.

Practice Note: Although rare, it is possible that respondent mother's identity will be unknown.

B. Service on Unknown Parent

1. No summons required. No summons shall be required for a parent whose name or identity is unknown and who is served by publication as provided in G.S. 7B-1105(d). G.S. 7B-1105(g).

2. Publication. When the court orders that an unknown parent be served by publication, notice must be published in a newspaper qualified for legal advertising under G.S. 1-597 and 1-598 and published weekly, for three successive weeks, in locations specified by the court. After service, a publisher's affidavit must be filed with the court. G.S. 7B-1105(d).

The published notice must

- be directed to the mother, father, mother and father of (male) (female) child born at a specified time and place;
- designate the court, docket number, and name of the case (at the direction of the court, "In re Doe" may be substituted);
- state that a petition seeking to terminate the parental rights of the respondent has been filed;
- direct the respondent to answer the petition within thirty days after the specified date of first publication; (Note that this time period differs from N.C. R. CIV. P. 4(j1), which provides for forty days from the date of first publication of the notice for the defendant to respond.)
- follow the form set out in Rule 4(j1) of the Rules of Civil Procedure; and
- state that parental rights will be terminated if no answer is filed within the time period.

G.S. 7B-1105(d).

For more detail on service by publication, see Chapter 4.4.B.2.

3. Failure of unknown parent to answer. If an unknown parent served by publication does not answer within the prescribed time, the court must issue an order terminating the parent's rights. G.S. 7B-1105(f). However, the court of appeals has said that the trial court is never required to terminate parental rights and that default proceedings are not permitted. *See Bost v. Van Nortwick*, 117 N.C. App. 1 (1994); *In re Tyner*, 106 N.C. App. 480 (1992); *see also* G.S. 7B-1110(b) (stating that even if grounds exist, the court may determine that the best interests of the child require that rights not be terminated). See also sections 9.8, below (answers and responses), and 9.12 (best interests).

C. Preliminary Hearing under G.S. 7B-1105.1 for Parents of Safely Surrendered Infant

The statutes discussed in this section were enacted by S.L. 2023-14, sec. 6.2 and became effective October 1, 2023 for infants who are safely surrendered on or after October 1, 2023. For a discussion of safely surrendered infants, see Chapter 5.8.

1. When required. If a petition to terminate the parental rights of the surrendering or non-surrendering parent of a safely surrendered infant is filed, the court must conduct a preliminary hearing to ascertain the circumstances of the safe surrender and determine any efforts that should be made to identify and locate either parent and to establish appropriate notice for the TPR action. G.S. 7B-1105.1(a).

The procedures of G.S. 7B-1105.1 do not apply to a safely surrendered infant whose surrendering parent has sought to regain custody and whose identity is no longer confidential or whose non-surrendering parent is asserting their paramount constitutional rights to care, custody, and control of their child. If one of these circumstances exists, there may be an underlying abuse, neglect, or dependency case. *See* G.S. 7B-525(c), (d), (e); 7B-526(b)(4); 7B-527(a).

2. Timing. The preliminary hearing for the parents of a safely surrendered infant must be held within ten days after the petition is filed or if there is no court in the county during that ten-day period, at the next term of court in the county where the petition is filed. G.S. 7B-1105.1(a).

3. Notice. The statute does not address notice. However, the court must make an inquiry of DSS, which requires DSS receive notice so it can appear at the preliminary hearing. Because one of the purposes of the preliminary hearing is to determine what efforts should be made to identify and locate the parents and establish appropriate notice of the TPR action to them, the parents do not receive notice. However, the statute contemplates that a surrendering parent may be aware of the hearing. *See* G.S. 7B-1105.1(a); see also subsection 4, immediately below.

4. Hearing procedures. The preliminary hearing must be closed. If the surrendering parent appears and requests that the hearing be open, the court must hold an open hearing. The hearing must be recorded. G.S. 7B-1105.1(a).

5. Inquiry by court. The court must make an inquiry of DSS that addresses all five factors set forth in G.S. 7B-1105.1(b). Those factors include

- the circumstances of the infant's safe surrender;

- when the surrender occurred, whether the surrendering parent was provided information created by the Department of Health and Human Services about the surrendering parent's rights (*see* G.S. 7B-522; 7B-528);
- whether DSS completed the notice by publication of the infant's safe surrender as required by G.S. 7B-526 (an affidavit of the publisher for that notice must be filed with the court at the preliminary hearing);
- whether the surrendering or non-surrendering parent made any efforts to contact DSS, and if so, the nature of those contacts; and
- whether DSS knows the identity or location of either the surrendering or non-surrendering parent.

6. Order addressing service. The court order addresses service on the surrendering and non-surrendering parent.

(a) The surrendering parent. The order addresses whether DSS is required to make any diligent efforts to identify or locate the surrendering parent after considering the need to protect that parent's identity and due process rights. Absent certain statutory exceptions, the surrendering parent's identity is confidential. G.S. 7B-524; 7B-526(b)(4). If diligent efforts are required, the order may specify the types of diligent efforts DSS must take. The court orders either service by publication under G.S. 7B-1105.1(e), which protects the parent's identity, or service by Rule 4. G.S. 7B-1105.1(c).

(b) The non-surrendering parent. The court orders Rule 4 service on a known non-surrendering parent. When the non-surrendering parent's identity is unknown, the court orders service by publication under G.S. 7B-1105.1(e). G.S. 7B-1105.1(d).

(c) Place of publication. If service by publication under G.S. 7B-1105.1(e) is ordered, the order must specify

- the place(s) of publication, which must include the county where the infant was safely surrendered and may include the counties where the surrendering or non-surrendering parent resides (if known), and
- the contents of the notice the court concludes is most likely to identify the infant to the surrendering or non-surrendering parent, without naming the surrendering parent.

G.S. 7B-1105.1(e).

(d) Timing of order. Unless the court determines more time is required for investigation, the court "shall issue" the order within thirty days of the preliminary hearing. G.S. 7B-1105.1(f).

D. Service on Parents of Safely Surrendered Infant

The provisions discussed in this section were enacted by S.L. 2023-14, sec. 6.2 and became effective October 1, 2023 for infants who are safely surrendered on or after October 1, 2023. For a discussion of safely surrendered infants, see Chapter 5.8.

1. No summons required. No summons is required for a parent who is served by publication under G.S. 7B-1105.1(e). G.S. 7B-1105.1(g).

2. Publication. When the court orders service by publication under G.S. 7B-1105.1(e), notice must be published in a newspaper qualified for legal advertising under G.S. 1-597 and 1-598 and published weekly for three successive weeks, in locations specified by the court. After service, a publisher's affidavit must be filed with the court. G.S. 7B-1105.1(e).

The published notice must

- be directed to the mother, father, mother and father, of a (male) (female) child born on or about a specified date and if known a specified place;
- designate the court, docket number, and name of the case, which must be "In re Baby Doe";
- state the infant was surrendered on (date) by the person claiming to be the (mother) (father) who did not express an intent to return for their child and specify the profession of the person who accepted the safely surrendered infant and the facility where the infant was surrendered;
- describe the physical characteristics of the infant at the time of the safe surrender;
- state that a petition to terminate the parental rights of the respondent has been filed and the purpose of the termination hearing;
- notice the parent that if they are indigent, they are entitled to court-appointed counsel and may contact the clerk for the appointment;
- state the date and time of the pretrial hearing to the termination hearing (required by G.S. 7B-1108.1) and notice that the parent may attend that hearing;
- direct the respondent to answer the petition within thirty days of the specified date of first publication; (Note that this time period differs from N.C. R. CIV. P. 4(j1), which provides for forty days from the date of first publication of the notice for the defendant to respond.)
- state that parental rights will be terminated if no answer is filed within the time period, and the court determines a ground was proved and termination is in the child's best interests.

G.S. 7B-1105.1(e).

9.7 Summons and Notice

A. Introduction

Because a TPR may be initiated by a petition or by a motion in an existing abuse, neglect, or dependency proceeding, the Juvenile Code has two different provisions addressing the manner in which a respondent parent is informed of the TPR action. In proceedings initiated by petition, a summons to the parent is required. In proceedings initiated by motion, a specific form of notice is required. The requirements for the summons and the notice are similar but not identical.

AOC Forms:

- AOC-J-208, Summons in Proceeding for Termination of Parental Rights
- AOC-J-210, Notice of Motion Seeking Termination of Parental Rights

B. Summons for Proceeding Initiated by Petition

1. Those entitled to summons. When a petition is filed, a summons must be issued and directed to the following persons or agencies who must be named as respondents (note exceptions for cases involving an unknown parent or a parent of a safely surrendered infant):

(a) Parents. A summons must be directed to the child's parents, except any parent who has irrevocably relinquished the child to a county DSS or licensed child-placing agency for adoption or consented to adoption of the child by the petitioner. G.S. 7B-1106(a)(1).

A copy of all pleadings and other papers that are required to be served on the parent must also be served on a parent's attorney appointed in an underlying abuse, neglect, or dependency action when that attorney has not been relieved of responsibilities. Service on the attorney is pursuant to Rule 5 of the Rules of Civil Procedure. G.S. 7B-1106(a2). If provisional counsel is appointed to a respondent parent, the clerk must provide a copy of the summons and petition to that attorney. G.S. 7B-1101.1(a); *In re C.T.T.*, 288 N.C. App. 136 (2023).

(b) Custodian or guardian. A summons must be directed to any judicially-appointed custodian or guardian of the person of the child. G.S. 7B-1106(a)(2) and (3).

(c) DSS or child-placing agency. A summons must be directed to any county DSS or licensed child-placing agency to whom a parent has relinquished the child for adoption under G.S. Chapter 48 and to any county DSS to whom a court of competent jurisdiction has given placement responsibility for the child. G.S. 7B-1106(a)(4).

2. Child and GAL. No summons is directed to the child or the child's guardian ad litem (GAL). However, if the child has a GAL appointed under G.S. 7B-601 or the court appoints a GAL after the TPR petition is filed, a copy of all pleadings and other papers required to be served must be served on the GAL or the attorney advocate pursuant to Rule 5 of the Rules of Civil Procedure. G.S. 7B-1106(a1).

3. Contents of summons. The summons must include the following:

(a) Child's name. The child's name must be on the summons. G.S. 7B-1106(b)(1).

(b) Notice. The summons must give notice

- that a written answer must be filed within thirty days after service of the summons and petition or the parent's rights may be terminated;
- that any counsel appointed previously and still representing the parent in an abuse, neglect, or dependency proceeding will continue to represent the parent unless the court orders otherwise;
- that if the parent is indigent and not already represented by appointed counsel, the parent is entitled to appointed counsel, that provisional counsel has been appointed, and the court will review the appointment of provisional counsel at the first hearing after the parent is served (although provisional counsel is often identified on the summons or attachment, the statute does not require that the name of the provisional counsel be listed. *In re C.T.T.*, 288 N.C. App. 136 (2023));

- that after an answer is filed, or thirty days from the date of service if no answer is filed, the petitioner will mail a notice of the date, time, and place of any pretrial hearing and the hearing on the petition;
- that the purpose of the hearing is to determine whether the parent's rights in relation to the child will be terminated; and
- that the parent may attend the termination hearing (see Chapter 2.4.C.2 (discussing cases holding that parent does not have an absolute right to be present at a termination hearing)).

G.S. 7B-1106(b).

4. Service of summons. The summons must be served on the respondent parent pursuant to Rule 4 of the Rules of Civil Procedure. However, when service by publication is made, G.S. 7B-1106(a) requires an additional step to Rule 4(j1) that involves court action. Before service by publication, the court must make findings of fact that a respondent cannot otherwise be served despite diligent efforts made by petitioner for personal service, and the court must approve the form of the notice before it is published. G.S. 7B-1106(a). Service by publication must strictly comply with the statutory requirements in Rule 4(j1) and the requirements of G.S. 7B-1106(a) because "[a] defect in service of process by publication is jurisdictional, rendering any judgment or order obtained thereby void" for lack of personal jurisdiction. *In re S.E.T.*, 375 N.C. 665, 669 (2020).

A minor parent is not deemed to be under a disability regarding service. G.S. 7B-1106(a); *see* G.S. 7B-1102(b). However, G.S. 7B-1101.1(b) requires the appointment of a Rule 17 guardian ad litem for any respondent parent under age eighteen who is not married or otherwise emancipated (as discussed in section 9.4.B.1, above). The GAL appointment for the respondent parent is in addition to the appointment of an attorney. G.S. 7B-1101.1(b), (d).

Service of the summons by Rule 5 must also be made on the provisional counsel who is appointed to the respondent parent. *In re C.T.T.*, 288 N.C. App. 136 (2023). *See* G.S. 7B-1106(a2).

See Chapter 4.4.B for detailed discussion of service of a summons.

5. Problems with summons. Failure to issue a summons, or defects or irregularities in the summons or in service of process, relate to personal, not subject matter, jurisdiction and can be waived. *In re A.L.I.,* 380 N.C. 697 (2022); *In re W.I.M.*, 374 N.C. 922 (2020); *In re K.J.L.,* 363 N.C. 343 (2009); *In re M.L.C.*, 289 N.C. App. 313 (2023).

If not waived, however, these summons or service defects may be grounds for dismissal of the proceeding if the issue raised is a fatal jurisdictional defect as opposed to an irregularity that may be corrected or is not fatally defective. *See, e.g., Hazelwood v. Bailey*, 339 N.C. 578 (1995) (holding defect in summons of listing incorrect county was voidable rather than void and was a nonjurisdictional correctable defect; discussing other cases on the issue).

See Chapters 3.4 (discussing personal jurisdiction, including the manner in which it may be waived); 4.3.B (relating to expiration of the summons and subsequent summonses); and 4.4 (relating to service).

C. Notice for Proceeding Initiated by Motion in the Cause

1. Notice required. Upon filing a motion for termination of parental rights (TPR), the movant must prepare and serve a notice along with the motion. G.S. 7B-1106.1(a). This is not a mere notice of hearing but is a statutorily prescribed notice that resembles a summons. Issuance of a summons is neither necessary nor appropriate when the TPR is initiated by motion. *In re D.R.S.,* 181 N.C. App. 136 (2007).

2. Those entitled to notice. The notice must be directed to and served on each of the following who is not a movant:

(a) Parents. The child's parents must be given notice unless the parent has irrevocably relinquished the child to a county DSS or licensed child-placing agency for adoption or consented to adoption of the child by the movant. G.S. 7B-1106.1(a)(1).

A copy of all pleadings and other papers that are required to be served on the parent must also be served on a parent's attorney appointed in an underlying abuse, neglect, or dependency action when that attorney has not been relieved of responsibilities. Service on the attorney is pursuant to Rule 5 of the Rules of Civil Procedure. G.S. 7B-1102(b), (b1); *see* G.S. 7B-1106(a2).

(b) Custodian or guardian. Any judicially-appointed custodian or guardian of the person of the child must be given notice. G.S. 7B-1106.1(a)(2) and (3).

(c) DSS or child-placing agency. Any county DSS or licensed child-placing agency to whom the parent has relinquished the child for adoption under G.S. Chapter 48 and to any county DSS to whom a court of competent jurisdiction has given placement responsibility for the child must be given notice. G.S. 7B-1106.1(a)(4).

(d) GAL or attorney advocate. The child's GAL or attorney advocate, who has been appointed under G.S. 7B-601 and not relieved of responsibility, must be given notice. G.S. 7B-1106.1(a)(5).

3. Contents of notice. The notice must include the child's name and notice of the following:

- a written response must be filed within thirty days after service of the motion and notice or the parent's rights may be terminated;
- any counsel appointed previously and still representing the parent in an abuse, neglect, or dependency proceeding will continue to represent the parent unless the court orders otherwise;
- the parent, if indigent, is entitled to appointed counsel and, if not already represented by appointed counsel, may contact the clerk immediately to request counsel;
- when a response is filed, or thirty days from the date of service if no response is filed, the moving party will mail notice of the date, time, and place of any pretrial hearing and the hearing on the motion (note, this requirement contemplates that two separate notices are sent; *see In re M.R.B*., 297 N.C. App. 63 (2024));
- the purpose of the hearing is to determine whether the parent's rights in relation to the child will be terminated; and

- the parent may attend the termination hearing (see Chapter 2.4.C.2 (discussing cases holding that parent does not have an absolute right to be present at a termination hearing)).

G.S. 7B-1106.1(b).

4. Service of motion and notice. When a motion for termination of parental rights (TPR) is filed in a pending abuse, neglect, or dependency proceeding, service of the motion and notice generally is pursuant to Rule 5(b); however, G.S. 7B-1102(b) specifies four circumstances in which service must be pursuant to Rule 4.

(a) When Rule 4 service is required. The motion and notice must be served pursuant to Rule 4 of the Rules of Civil Procedure if

- the person or agency to be served was not served originally with a summons;
- the person to be served was served originally by publication that did not include notice substantially in conformity with G.S. 7B-406(b)(4)e. (that after proper notice and a hearing an order in the case may terminate respondent's parental rights);
- a period of two years has elapsed since the date of the original action; or
- the court orders that service be made pursuant to Rule 4.

G.S. 7B-1102(b); 7B-1106.1(a).

Practice Note: These factors do not affect whether a TPR can be initiated by motion. They relate only to the method by which a motion and notice must be served.

(b) When Rule 5(b) service is appropriate. The motion and notice may be served pursuant to Rule 5(b) of the Rules of Civil Procedure, except in the circumstances explained above where service pursuant to Rule 4 is required. G.S. 7B-1106.1(a) (service of the motion and notice shall be as provided in G.S. 7B-1102(b)); 7B-1102(b). Rule 5 requires that service be made on a party's attorney of record if there is one. Service directly on the party is required only if ordered by the court or if the party has no attorney of record. When a party has an attorney of record, service only on the party is not sufficient; the party's attorney must be served. N.C. R. CIV. P. 5(b). See Chapter 4.4.C for additional information related to service of motions and notice under Rule 5 of the Rules of Civil Procedure.

- Respondents' contention that more than two years had passed since initiation of the proceeding, thus triggering a requirement for service pursuant to Rule 4, was not supported by the record. Service of the motion and notice pursuant to Rule 5 was proper. *In re H.T.*, 180 N.C. App. 611 (2006).
- Service pursuant to Rule 5 was proper when the motion was filed within two years after filing of the most recent neglect petition. *In re P.L.P.*, 173 N.C. App. 1 (2005), *aff'd per curiam*, 360 N.C. 360 (2006).

(c) Minor parent not under disability. A minor parent is not deemed to be under a disability regarding service. G.S. 7B-1102(b); 7B-1106(a). However, G.S. 7B-1101.1(b) requires the appointment of a Rule 17 guardian ad litem for any respondent parent under age eighteen who is not married or otherwise emancipated in addition to the appointment of an attorney. *See* G.S. 7B-1106(a2) (Rule 5 service on attorney appointed to respondent parent in an underlying abuse, neglect, or dependency proceeding who has not been relieved).

5. Problems with notice. Problems with notice do not affect subject matter jurisdiction. *See In re C.S.B.*, 194 N.C. App. 195 (2008). Failure to comply with the notice requirement may constitute reversible error, however. *See In re D.A.*, 169 N.C. App. 245 (2005) (holding that where respondent objected to some aspects of the notice, the issue was preserved for appeal and failure to give proper notice was prejudicial error); *In re Alexander*, 158 N.C. App. 522 (2003) (holding that failure to give the respondent notice that complied with G.S. 7B-1106.1 was prejudicial error). The respondent waives any defect in the notice or service of the notice by failing to make a timely objection. *See In re C.S.B.*, 194 N.C. App. 195; *In re J.S.L.*, 177 N.C. App. 151 (2006); *In re Howell*, 161 N.C. App. 650 (2003).

In *In re M.R.B.*, 297 N.C. App. 63 (2024), the court of appeals examined the notice requirements in G.S. 7B-1106.1 when determining whether the trial court erred in denying a motion to continue the TPR hearing when respondent's attorney identified defects in the notice. Although DSS satisfied the requirements of G.S. 7B-1106.1 by sending notice and including the statutorily required contents, it conflated two notices into one. The notice was untimely served in that (i) it was not issued until weeks after the TPR motion was filed and (ii) instead of sending a second notice, the first (and only) notice included the notice of hearing by specifying the date, time, and place of the hearing, which was only twenty-seven days later despite respondent having thirty days to respond to the notice under G.S. 7B-1106.1. The court of appeals reiterated the holding of *In re Alexander*, 158 N.C. App. 522 (2003) that failing to send a notice is prejudicial error but also relied on *In re T.D.W.*, 203 N.C. App. 539 (2010), which held that failing to timely serve the notice of hearing is subject to a harmless error analysis. Mother was not prejudiced by the defects as she and her attorney were present for the hearing, and mother did not object to the notice deficiencies, did not seek to file a responsive pleading, could have contacted her attorney prior to the hearing, and on appeal did not challenge the TPR adjudication or disposition.

9.8 Answer or Response

A respondent may file an answer to a termination of parental rights (TPR) petition or written response to a motion. G.S. 7B-1108(a). The answer or response must be filed within thirty days after service of the summons and petition or motion (or within the time determined by Rule 4(j1) if service is by publication). *See* G.S. 7B-1106(b)(2); 7B-1106.1(b)(2); 7B-1107. Only a district court judge may grant an extension of time in which to file an answer or response. G.S. 7B-1108(a).

If a county DSS that is not the petitioner or movant is served with a TPR petition or motion, DSS must file a written answer or response and is deemed a party to the proceeding. G.S. 7B-1106(c); 7B-1106.1(c).

A respondent's answer to a petition or response to a motion must admit or deny the allegations and provide the name and address of the respondent or respondent's attorney. G.S. 7B-1108(a). Denial of any material allegation triggers the requirement that a guardian ad litem (GAL) be appointed for the child if one is not already in place. G.S. 7B-1108(b). See section 9.4.C, above (discussing appointment of a GAL in TPR proceedings), and Chapter 2.3.D (discussing the child's GAL).

Regardless of whether the respondent files an answer or response, and regardless of whether the respondent admits or denies allegations in the petition or motion, the court must hold a TPR hearing. When the respondent does not file an answer or response, the court at the hearing may examine the petitioner or movant or others on facts alleged in the petition or motion and may issue an order terminating the respondent's parental rights. *See* G.S. 7B-1107. Absence of an answer denying material allegations of the petition does not authorize a "default type" order terminating parental rights, since the statute requires a hearing on the petition. *In re Tyner*, 106 N.C. App. 480 (1992).

The parent's failure to file an answer or response or to ask for counsel before the hearing does not constitute waiver of the right to counsel (*Little v. Little*, 127 N.C. App. 191 (1997)), nor does it remove the court's responsibility under G.S. 7B-1109(b) to inquire at the adjudicatory hearing about and potentially appoint counsel for the parent. See section 9.4.A, above.

9.9 Pretrial and Adjudication Hearing Requirements

A. Pretrial Hearing

1. Timing. Unless all respondents have filed answers or responses, the pretrial hearing should be held only after the time for filing an answer or response has run.

2. May be combined with adjudication hearing. The court must conduct a pretrial hearing in every termination of parental rights case but may combine the pretrial and adjudicatory hearings. If the pretrial and adjudicatory hearings are combined, no separate order is required for the pretrial hearing. G.S. 7B-1108.1(a).

3. Notice. Written notice of the pretrial hearing is required. The notice must include the date, time, and place of the hearing and be mailed by the petitioner or movant to the respondent after an answer or written response has been filed or if there is no answer or response, thirty days after service of the summons or notice. *See* G.S. 7B-1106(b)(5); 7B-1106.1(b)(5); 7B-1108.1(b).

4. Required considerations. At a pretrial hearing the court must consider the following:

- retention or release of provisional counsel;
- whether a guardian ad litem for the juvenile should be appointed if not already appointed;
- sufficiency of the summons, service, and notice;
- any pretrial motions;
- issues, including any affirmative defense, raised by an answer or response;
- any other issue that can be addressed properly as a preliminary matter.

G.S. 7B-1108.1(a).

If a respondent parent has been served and has been appointed provisional counsel, that counsel may be released if the parent does not appear at the hearing, even when that hearing is combined with the TPR adjudication hearing. *See* G.S. 7B-1101.1(a); *In re R.A.F.*, 384 N.C. 505 (2023).

Paternity. The paternity of a named respondent father may be an issue that arises in a TPR proceeding and should be resolved at a pre-trial hearing. A TPR proceeding is a civil action where the issue of paternity may be raised as an element of the claim or defense. When paternity is at issue and paternity testing is sought, the court must order paternity testing. *See* G.S. 8-50.1(b1); *In re J.S.L.*, 218 N.C. App. 610 (2012) (private TPR action holding G.S. 8-50.1(b1), the evidence statute requiring paternity testing when requested at "the trial of any civil action in which the question of parentage arises," applies; reversing TPR, where the father had denied paternity and requested testing, and the trial court denied his request).

Even if paternity test results show a high likelihood that the respondent is not the child's father, the court may consider those results only if they are properly introduced into evidence. The results of testing ordered under G.S. 8-50.1(b1) create a rebuttable presumption and respondent must be allowed an opportunity to rebut the presumption. *In re L.D.B.*, 168 N.C. App. 206 (2005) (reversing order regarding paternity and TPR when court excluded named respondent from TPR action based on test results, which were not admitted into evidence, that showed a zero probability of parentage; concluding the respondent's right to offer evidence regarding the allegations in the TPR petition, including whether he is actually the child's parent, is inherent in due process protections that require an adequate opportunity to be heard).

If, after hearing the issue of paternity, the court determines the respondent is not the child's father, the district court should dismiss the action as there are no parental rights to terminate. *In re J.S.L.*, 218 N.C. App. 610. Additionally, a respondent father's non-paternity may have been determined in a different proceeding, such as an underlying abuse, neglect, or dependency proceeding. When a man has been judicially determined that he is not the child's father, that man has no parental rights to the child, as he is no longer a legal father or putative father. *See Lombroia v. Peek*, 107 N.C. App. 745, 751 (1992) ("Mr. Lombroia's rights and responsibilities with regard to the minor child were finally determined when the Florida court found that he was not the father of the child"). If a TPR motion or petition is filed naming a respondent who has been determined not to be the father in a prior action, there are no parental rights to terminate and the district court should dismiss the action. *In re J.S.L.,* 218 N.C. App. 610.

B. Adjudication Hearing

1. Timing. A hearing on a termination of parental rights (TPR) petition or motion must be held within ninety days after the petition or motion is filed unless the court orders that it be held at a later time. G.S. 7B-1109(a).

(a) Continuance. For good cause, the court may continue an adjudication hearing up to ninety days from the date of the initial petition (or motion) to receive additional evidence, allow parties to conduct expeditious discovery, or to receive any other information needed in the best interests of the child. The court may grant a continuance that extends beyond that ninety-day period only in extraordinary circumstances, when necessary for the proper administration of justice, and must issue a written order stating grounds for the continuance. G.S. 7B-1109(d); *In re A.L.S.,* 374 N.C. 515 (2020). Granting or denying a motion for a continuance is in the trial court's discretion and is reviewed for an abuse of discretion; however, motions to continue based on a constitutional right present a question of law and are reviewable de novo on appeal. *In re J.E.,* 377 N.C. 285 (2021); *In re A.L.S.,*

374 N.C. 515. The North Carolina Supreme Court has stated, "[r]egardless of whether the motion raises a constitutional issue or not, a denial of a motion to continue is only grounds for a new trial when defendant shows both that the denial was erroneous, and that he suffered prejudice as a result of the error." *In re A.L.S.*, 374 N.C. at 517 (citation omitted); *In re D.J.*, 378 N.C. 565, 569 (2021) (quoting *In re A.L.S.*) (cleaned up).

Continuances are generally disfavored, and the burden is on the party seeking the continuance to show the statutory criteria for the continuance is satisfied. *In re D.J.,* 378 N.C. 565; *In re J.E.,* 377 N.C. 285; *In re B.E.*, 381 N.C. 726 (2022); *In re A.J.P.,* 375 N.C. 516 (2020) and *In re S.M.*, 375 N.C. 673 (2020) (all holding respondent did not meet burden of showing extraordinary circumstances existed to continue hearing, which would have moved the hearing beyond the 90-day period established in G.S. 7B-1109(d)). The main consideration for a court when deciding whether to grant or deny a continuance is whether substantial justice will be furthered. *In re D.J.,* 378 N.C. 565; *In re J.E.,* 377 N.C. 285. See subsection 5(b), below, and Chapter 4.5.C (discussing continuances in TPR proceedings in greater detail).

(b) Delay and prejudice. After the supreme court's holding that mandamus is the appropriate means to address a trial court's failure to enter an order within the statutory thirty-day time period (*see In re T.H.T.*, 362 N.C. 446 (2008)), the appellate courts reached the same conclusion with respect to delay in holding a hearing. *In re C.R.L.,* 377 N.C. 24, 28 (2021) (delay of termination hearing; mandamus provides for swift enforcement of a party's legal rights and requires that the parties are actively involved in the district court proceeding, rather than " 'sit[ting] back' and rely[ing] on an appeal to cure" the violation) (quoting *In re T.H.T.*, 362 N.C. at 455, and quoted in *In re L.Q.*, 298 N.C. App. 540, 548 (2025)); *In re E.K.*, 202 N.C. App. 309 (2010) (refusing to find reversible error but acknowledging that delays in the case were "deplorable"). Note that prior to *In re T.H.T.,* numerous appellate cases had held that failure to comply with the statutory time requirements could be reversible error, but only if an appellant showed prejudice resulting from the delay. See Chapter 12.10.D for required elements for seeking mandamus.

2. General procedures. The Juvenile Code sets out most procedural aspects of the adjudicatory hearing, but where it does not, case law and the Rules of Civil Procedure provide additional requirements and/or guidance.

(a) Bench trial. The adjudicatory hearing is before a judge, without a jury. G.S. 7B-1109(a). There is no constitutional right to a jury trial in termination of parental rights (TPR) proceedings. *In re Clark*, 303 N.C. 592 (1981); *In re Ferguson*, 50 N.C. App. 681 (1981).

The fact that a judge acquires knowledge of evidentiary facts from an earlier proceeding does not require the judge to be disqualified from presiding over a TPR hearing. *In re J.A.M.*, 375 N.C. 325, 332 (2020) (affirming TPR; recusal not required; recognizing that "one judge, one family" practice "reflects a central policy of the state"); *In re Z.V.A.*, 373 N.C. 207 (2019) (judge's statement at an earlier proceeding did not disqualify the judge from hearing a later TPR proceeding; the statement, when viewed in the context of the child's permanent plan having been changed to adoption and DSS having been ordered to file a TPR petition at the earlier hearing, was an explanation of the steps previously taken after determining those actions were in the child's best interest at the time); *In re*

M.A.I.B.K., 184 N.C. App. 218 (2007) (holding that the judge who presided over action to terminate one parent's rights was not precluded from presiding over later hearing to terminate other parent's rights); *In re LaRue*, 113 N.C. App. 807 (1994) (holding that the fact that judge conducted review, found that children should remain with DSS, and recommended that TPR be pursued was not sufficient to show bias). See Chapter 2.1.B.1 (discussing recusal).

(b) Consolidation with underlying case. When a TPR proceeding is initiated by petition in the same judicial district in which there is pending an abuse, neglect, or dependency proceeding involving the same child, the court on its own motion or motion of a party may consolidate the actions pursuant to Rule 42 of the Rules of Civil Procedure. G.S. 7B-1102(c); *see In re A.W.*, 377 N.C. 238 (2021) (consolidating hearing for neglect and dependency adjudication with TPR when motion to TPR filed in neglect and dependency proceeding); *In re C.B.C.B.*, 379 N.C. 392 (2021) (trial court consolidated neglect action filed by DSS with TPR action filed by the juvenile's GAL). Court orders resulting from consolidated hearings should sufficiently separate the matters considered in the different proceedings. *See In re R.B.B.*, 187 N.C. App. 639 (2007).

(c) Combined adjudication and disposition. The TPR proceeding has two phases: the adjudication phase and the disposition phase. *In re B.J.H.*, 378 N.C. 524 (2021); *In re D.L.W.*, 368 N.C. 835 (2016). The trial court is not required to conduct bifurcated hearings, but it may hold two separate hearings. *In re B.J.H.*, 378 N.C. 524. Although different evidentiary standards apply at the adjudicatory phase, which determines whether a statutory ground for termination of parental rights exists and is governed by G.S. 7B-1109, and the dispositional phase, which determines whether termination of the parent's rights is in the child's best interest and is governed by G.S. 7B-1110, it is not necessary for the two phases to be conducted at two separate hearings. *In re S.M.M.,* 374 N.C. 911 (2020); *In re F.G.J.*, 200 N.C. App. 681 (2009); *In re Carr,* 116 N.C. App. 403 (1994). However, to ensure that a parent's constitutional rights to their child are not violated by an order to terminate parental rights based solely on the child's best interest, the court must conduct two separate inquiries, even though the two inquiries may be conducted in the same hearing. *In re S.Z.H.,* 247 N.C. App. 254 (2016).

(d) Parent's constitutional rights and best interests of the juvenile. The TPR proceeding consists of an adjudication stage and dispositional stage. At the adjudication stage, the paramount constitutional rights of the parent to care, custody, and control of their children prevails. It is not until the dispositional stage that the child's best interests are paramount (or the polar star). *In re D.C.*, 378 N.C. 556 (2021).

(e) Reporting. The hearing is reported as provided for in civil trials. G.S. 7B-1109(a); 7A-198. Current practice statewide is to use electronic recording.

If equipment fails to function, the record must be reconstructed. To show prejudicial error from an equipment failure, a party must show (1) prejudice from the loss of specific testimony and (2) what the content of any gaps or lost testimony was. *In re Caldwell*, 75 N.C. App. 299 (1985). *See also In re X.M.*, 293 N.C. App. 98 (2024) (affirming TPR; where portions of the transcript for the TPR proceeding were unavailable, appellant failed to show that the narration of the proceeding agreed upon by the parties was inaccurate or

inadequate or that the missing recorded evidence was prejudicial; appellate record also included orders and reports from previous permanency planning hearings); *In re Clark*, 159 N.C. App. 75 (2003). The fact that a recording is incomplete or unintelligible, by itself, is not a ground for reversal. There is a presumption of regularity in a trial, and the appellant must make a specific showing of probable error during the faulty or missing part of the recording. *In re Howell*, 161 N.C. App. 650 (2003); *In re Bradshaw*, 160 N.C. App. 677 (2003) (noting that the respondent took no steps to reconstruct the record and alleged only general prejudice). For a discussion of incomplete recordings and prejudicial error, see Chapter 12.7.

3. Counsel for parents. The court must inquire whether parents are present and, if so, whether they are represented by counsel or desire counsel. If a parent appears, is not represented, has not waived or forfeited court-appointed counsel, desires counsel, and is indigent, the court must appoint counsel for the parent, according to the rules of the Office of Indigent Defense Services, and grant an extension of time to permit counsel to prepare. *See* G.S. 7B-1109(b); 7B-1101.1(a), (a1). See section 9.4.A, above, and Chapter 2.4.E (providing additional details and cases related to appointment of counsel and waiver or forfeiture of counsel).

4. Examination of child or parent. The court, upon finding reasonable cause, may order that the child be examined by a psychiatrist, a licensed clinical psychologist, physician, a public or private agency, or other expert, to ascertain the child's psychological or physical condition or needs. The court may order a parent be similarly examined if the parent's ability to care for the child is an issue. G.S. 7B-1109(c).

5. Presence of parent. A parent has a right to attend all hearings in a proceeding to terminate that parent's rights. *See* G.S. 7B-1106(b)(6); 7B-1106.1(b)(6). The right to be present is not absolute. *See In re B.E.*, 381 N.C. 726 (2022) and *In re J.E.*, 377 N.C. 285 (2021) (both affirming TPR when respondent father was not present). The court of appeals has stated that "the magnitude of 'the private interests affected by the [termination] proceeding, clearly weighs in favor of a parent's presence at the hearing.'" *In re S.G.V.S.*, 258 N.C. App. 21, 25 (2018) (reversing and remanding for new hearing; holding denial of mother's continuance request and motion to reopen the evidence when mother was previously scheduled to appear in a criminal action in another county at the same time as the later scheduled TPR hearing involved a misapprehension of law and substantial miscarriage of justice).

In very limited circumstances the court can proceed in the absence of a parent who wants to be present. The most common circumstance involves parents who are incarcerated. The court must take steps to ensure that the absent respondent's due process rights are protected. *See In re Murphy*, 105 N.C. App. 651 (denial of respondent's motion to be brought to the hearing from a state correctional facility did not violate respondent's state statutory rights or his state or federal due process rights), *aff'd per curiam*, 332 N.C. 663 (1992). The North Carolina appellate courts have determined that the absence of a parent at the TPR hearing is not, by itself, a due process violation. *In re J.E.,* 377 N.C. 285 (and cases cited therein).

For more detailed information on this topic, see Chapter 2.4.C, discussing the parent's right to notice and opportunity to be heard, including the right to participate and limitations on that right.

(a) Modified setting for testimony by child. The trial court can modify the setting in which the child testifies. The court may allow the child to testify outside the presence of the parent, but the court must make appropriate findings as to the need for doing so and must utilize appropriate procedures. *See In re J.B.*, 172 N.C. App. 1 (2005) (holding that respondent's due process rights were not violated when the court excluded her from the courtroom during the child's testimony, where respondent was in a room with her guardian ad litem, could hear the proceedings, and had a video monitor and telephone contact with her attorney); *In re Williams*, 149 N.C. App. 951 (2002) (holding that the trial court did not err in allowing the child to testify in closed chambers without the father present because all attorneys were allowed to be present and the court made findings about this type of setting being in the child's best interest). For a more detailed discussion of modified settings for testimony, see Chapter 11.2.B.1.

(b) Continuance and failure of parent to appear. Note that the appellate courts have looked to both G.S. 7B-803 and 7B-1109(d) when determining whether a court acted properly in continuing (or denying a motion to continue) a termination of parental rights (TPR) hearing. *See, e.g., In re A.J.P.*, 375 N.C. 516 (2020).

Appellate cases have acknowledged the trial court's discretion to determine whether to hold a TPR hearing when the parent is not present or continue the hearing to secure the parent's presence. The court has discretion to proceed with the hearing, however, only if the respondent has been properly notified. *See In re K.N.*, 181 N.C. App. 736 (2007) (reversing a TPR order where the respondent entered courtroom shortly after the hearing and rebutted the presumption of proper service).

Whether to grant a continuance is in the trial court's discretion. When deciding a motion to continue, the court's main consideration is whether substantial justice will be furthered by granting or denying the motion. *In re J.E.,* 377 N.C. 285 (no abuse of discretion in denying motion to continue); *In re C.D.A.W.*, 175 N.C. App. 680 (2006) (denying the motion for a continuance was not error where the respondent chose to attend a drug treatment program rather than attend the hearing after repeatedly rejecting earlier opportunities to undergo drug rehabilitation), *aff'd per curiam*, 361 N.C. 232 (2007).

A case-by-case analysis has been found more appropriate than the application of rigid rules. *In re D.W.*, 202 N.C. App. 624 (2002) (denial of absent mother's motion to continue was an abuse of discretion).

- The court did not abuse its discretion in denying father's fourth motion to continue when father was not able to be present based on father's attorney being unable to reach father who was in federal prison, despite making multiple calls and emails to the prison which went unanswered. Although father's attorney made extensive efforts to contact the prison to obtain father's remote participation, the lack of progress in achieving father's remote participation was not indicated to change. Another continuance would further delay the hearing, which was already more than eight months after the petition had been filed. *In re B.E.*, 381 N.C. 726.
- The court did not abuse its discretion in denying a motion to continue when father was not present at the TPR hearing but his counsel was. There was no explanation for father's absence or lack of contact with his counsel, nor was there an assertion that

father did not receive notice of the hearing. Given counsel's advocacy on father's behalf at the hearing, it is unlikely father was prejudiced by the denial of the continuance. *In re J.E.,* 377 N.C. 285.

- When absent respondent's motion to continue was not based on a constitutional right and where the trial court conducted a full hearing on the petition, heard testimony, and allowed respondent's counsel to cross-examine each witness and to otherwise fully participate in the hearing, respondent was not prejudiced by denial of a motion to continue. *In re C.M.P*., 254 N.C. App. 647 (2017) (respondent had notice of the hearing and indicated to counsel that she would attend, failed to give counsel or the court notice of or a reason for her absence, and counsel did not argue that more time was needed to prepare).
- In a private TPR case in which the respondent father knew about the hearing but failed to appear, the trial court did not abuse its discretion in denying an oral motion to continue that was made by the father's attorney at the start of the hearing. Also, after learning in the middle of the hearing that the father could be present the next day, it was not an abuse of discretion for the trial court to allow direct examination of the petitioner's witness with the father's counsel present but continue the hearing until the next afternoon so that the respondent father could be present for cross examination of that witness and the remainder of the hearing. *In re C.J.H.*, 240 N.C. App 489 (2015).

The court of appeals has addressed a respondent parent's failure to appear for a TPR hearing in the context of a Rule 60(b) motion based on "excusable neglect." Excusable neglect is a question of law that is fully reviewable on appeal and depends on what may be reasonably expected of a party in paying proper attention to their case given all the surrounding circumstances. *Mitchell Cnty. Dep't of Soc. Servs. v. Carpenter,* 127 N.C. App. 353 (1997), *aff'd per curiam*, 347 N.C. 569 (1998). In two cases, the court of appeals held the respondents' failure to appear for the TPR hearing was not excusable neglect given the receipt of proper notice of the hearing and the failure to act prudently. *See In re Hall*, 89 N.C. App. 685 (1988) (holding no excusable neglect when respondent, after being served with the summons, failed to give her defense the attention a person of ordinary prudence would give important business; noting her poor financial situation does not account for her failure to call or write court authorities (including legal counsel) or DSS for assistance or to appear for the hearing because she was worrying about finding work; ignorance of the judicial process is not excusable neglect); *Mitchell Cnty. Dep't of Soc. Servs. v. Carpenter,* 127 N.C. App. 353 (holding trial court did not abuse its discretion in denying Rule 60(b) motion as respondent paying proper attention to her case would have made transportation arrangements sooner or would have contacted her attorney when she discovered her transportation was not available; noting the record did not show her husband assured her he would transport her, lulling her into missing her court date when he refused to transport her), *aff'd per curiam*, 347 N.C. 569.

9.10 Evidence and Proof

Evidentiary issues are discussed in greater detail in Chapter 11.

A. Evidentiary Requirements and Standards

At the adjudicatory hearing, the court must take evidence, find the facts, and adjudicate the existence or nonexistence of any alleged ground(s) for termination of parental rights (TPR). G.S. 7B-1109(e); *In re Z.G.J.*, 378 N.C. 500 (2021); *In re K.R.C.,* 374 N.C. 849 (2020). The rules of evidence in civil cases apply. G.S. 7B-1109(f); *In re R.D.*, 376 N.C. 244 (2020). The trial court may not rely on evidence introduced at the dispositional hearing to support an adjudicatory finding. *In re Z.J.W.*, 376 N.C. 760 (2021) (citing *In re Mashburn*, 162 N.C. App. 386 (2004)) (applying *Mashburn* to find error when trial court based adjudicatory findings on testimony at dispositional phase of proceeding).

The standard of proof is clear and convincing evidence, and the burden of proof is on the petitioner or movant. G.S. 7B-1109(f), as amended by S.L. 2025-16, sec. 1.14(b), effective October 1, 2025; 7B-1111(b). *See In re L.M.M.,* 375 N.C. 346, 360 (2020) (Earls, J., dissenting ("[b]ecause there are 'few forms of state action [that] are both so severe and so irreversible' as terminating parental rights, the United States Supreme Court has long held that petitioners must carry the 'elevated burden of proof' that termination is warranted by clear and convincing evidence. *Santosky v. Kramer*, 455 U.S. 745, 759 (1982)"); *In re K.L.T.,* 374 N.C. 826 (2020); *In re N.D.A.,* 373 N.C. 71 (2019), *abrogated in part by In re G.C.*, 384 N.C. 62 (2023); *In re Pierce*, 356 N.C. 68 (2002); *In re Young*, 346 N.C. 244 (1997). There is no distinction between "clear, cogent and convincing" and "clear and convincing" evidence. *In re Belk*, 364 N.C. 114, 122 (2010); *In re Montgomery*, 311 N.C. 101, 109 (1984) ("clear and convincing" and "clear, cogent and convincing" describe the same evidentiary standard).

Clear and convincing evidence "should fully convince . . . [and] is more exacting than the preponderance of the evidence standard generally applied in civil cases, but less than beyond a reasonable doubt standard applied in criminal matters . . . such that a factfinder applying that evidentiary standard could reasonably find the fact in question." *In re J.C.-B.*, 276 N.C. App. 180, 184 (2021) (quoting *In re A.C.*, 247 N.C. App. 528, 533 (2016)). *See In re H.N.D.*, 265 N.C. App. 10, 13 (2019) (quoting *In re Mills*, 152 N.C. App. 1, 13 (2002)).

At disposition, on the other hand, there is no burden of proof on any party, and the court exercises its discretion, based on findings supported by the evidence, to determine whether TPR is in the child's best interest. *See* G.S. 7B-1110(a); *In re R.D.*, 376 N.C. 244 (2020) (comparing adjudicatory and dispositional hearings). See also section 9.12.B, below (discussing the evidentiary standard at disposition).

In both the adjudicatory and dispositional hearings, there must be competent evidence. The court cannot consider or rely on incompetent evidence to make findings of fact. *See In re M.L.B.*, 377 N.C. 335 (2021) (reversing and remanding TPR order; trial court relied on an inadmissible timeline document in making its findings; the substance of witness testimony by itself was insufficient to support any of the alleged grounds).

A court's TPR order cannot be based solely on documentary evidence. There must be some oral testimony; however, that testimony need not be extensive. In *In re Z.G.J.*, 378 N.C. 500

(2021), the supreme court looked to G.S. 7B-1109(e), requiring the trial court to "take evidence" and determined that the trial court did not err in conducting an adjudicatory hearing that consisted of DSS social worker testimony. The social worker reaffirmed under oath the allegations in the TPR petition, and mother declined to conduct any cross-examination. The trial court concluded the grounds to TPR existed after relying on the allegations in the petition. (Note that the supreme court determined that the hearing was proper but reversed the adjudications for insufficient evidence to support the findings and conclusions). The supreme court distinguished *In re Z.G.J.* from opinions by the court of appeals that reversed juvenile orders when the petitioner did not present oral testimony at the hearing. For example, in *In re A.M.*, 192 N.C. App. 538 (2008), the court of appeals looked to G.S. 7B-1109(e), requiring the trial court to "take evidence" in conjunction with the purpose of the Juvenile Code (G.S. 7B-100(1), (2)), to determine that Rule 43(a) of the Rules of Civil Procedure was applicable to TPR proceedings. Rule 43(a) requires that "[i]n all trials the testimony of witnesses shall be taken orally in open court." Therefore, the petitioner was required to present some live testimony (even if minimal), and the court could not terminate parental rights based solely on documentary evidence (prior court orders and DSS and GAL reports). *See also In re N.B.*, 195 N.C. App. 113 (2009) (holding that DSS's case in chief consisting solely of the DSS social worker's report and statements by counsel and the testimony by only the respondent mother, which refuted DSS's allegations, was insufficient since DSS, as petitioner, carried the burden to prove the grounds of neglect or dependency; there was no testimony to support its assertion that parental rights should be terminated). The court of appeals has also held that summary judgment is not available in a TPR because of the requirement in G.S. 7B-1109(e) that the court "take evidence." *In re J.N.S.*, 165 N.C. App. 536 (2004).

While a party may stipulate to facts from which the court can make conclusions, parties may not stipulate to a conclusion of law such as the conclusion that grounds for termination exist. *See In re A.K.D.*, 227 N.C. App. 58 (2013) (holding in a private TPR case that the father's stipulation to the abandonment ground was invalid). See Chapters 6.3.D.1 (relating to stipulations for an adjudication in abuse, neglect, or dependency proceeding) and 11.7.D.5 (relating to stipulations made in prior proceedings).

The court may not rely on a consent order (or agreement between the parties) that a TPR will not be opposed as proof of an adjudicatory ground and the child's best interests determination. Such an agreement is both void as against public policy and avoids the judicial process that requires a determination of whether a ground to TPR exists and whether the TPR is in the child's best interests. *In re C.K.C.,* 263 N.C. App. 158, 163 (2018) (reversing TPR; holding consent order in G.S. Chapter 50 civil custody action between father and grandparents that included a provision that grandmother would file a petition to terminate father's rights, which no other party, including father, would oppose is void as against public policy and is neither a properly executed consent or relinquishment under the adoption statutes (quoting *Foy v. Foy*, 57 N.C. App. 128, 131 (1982), which stated,"[i]n essence, the parental rights of a parent in his child are not to be bartered away at the parent's whim.")).

B. Events between Filing of Petition or Motion and Hearing

An evidentiary issue that arises in termination of parental rights (TPR) proceedings is the significance of events that occur between the time the TPR petition or motion is filed and the time of the TPR hearing. The supreme court has held that the TPR hearing refers to the

adjudicatory hearing in those situations where the TPR adjudicatory and dispositional hearings are bifurcated. *In re B.J.H.*, 378 N.C. 524, 535 (2021) (emphasis in original) (applying to TPR on the ground of G.S. 7B-1111(a)(2)). Several TPR grounds refer to a specified period of time immediately preceding the filing of the TPR petition or motion, and when adjudicating those grounds, the court is limited to considering that specific time period. *See* G.S. 7B-1111(a)(3), (4), (5), (7). Note, however, that relevant evidence of events occurring after the filing of the petition or motion is admissible at the disposition stage when determining whether TPR is in the child's best interests. *In re Pierce*, 356 N.C. 68 (2002).

In cases involving the abuse and neglect ground in G.S. 7B-1111(a)(1), the appellate courts have regularly referred to the determination of "whether [abuse or] neglect authorizing the termination of parental rights existed at the time of the hearing." *In re J.W.,* 173 N.C. App. 450, 455 (2005), *aff'd per curiam*, 360 N.C. 361 (2006). *See also In re D.L.W.*, 368 N.C. 835, 843 (2016) (termination of rights on this ground "requires a showing of neglect at the time of termination hearing"); *In re M.P.M.,* 243 N.C. App. 41, 48 (2015) (finding of neglect for purpose of terminating parental rights "must be based on evidence showing neglect at the time of the termination proceeding"), *aff'd per curiam,* 368 N.C. 704 (2016); See also section 9.11.A, below (discussing abuse and neglect grounds for TPR). When current neglect or abuse cannot be shown because the parent and child have been separated for a long period of time, the court must determine whether there is past neglect or abuse and a probability of a repetition of abuse or neglect in light of the fitness of the parent to care for the child at the time of the TPR proceeding. *See In re Z.V.A.,* 373 N.C. 207 (2019) and *In re Ballard*, 311 N.C. 708 (1984) (both relating to neglect); *Alleghany Cnty. Dep't of Soc. Servs. v. Reber*, 75 N.C. App. 467 (1985) (relating to abuse), *aff'd per curiam*, 315 N.C. 382 (1986). See section 9.11.A.4 and 5, below (discussing time periods).

When TPR is sought for willfully leaving the child in foster care or placement outside the home for more than twelve months without making reasonable progress to correct conditions that led to the child's removal pursuant to G.S. 7B-1111(a)(2), the court may consider evidence relating to the parent's progress up to the time of the *adjudicatory hearing*. *In re B.J.H.*, 378 N.C. at 535 (emphasis in original); *In re Z.G.J.,* 378 N.C. 500 (2021). *See In re Pierce*, 356 N.C. at 75 n.1 (decided on an earlier wording of the statute that included a second twelve-month period where the parent must make progress, but noting that under a 2001 amendment that removed that second twelve-month time period, "there is no specified time frame that limits the admission of relevant evidence pertaining to a parent's 'reasonable progress' or lack thereof"). However, the evidence must show that the *child's placement* for more than twelve months resulted from a court order and that the twelve months expired before the filing of the TPR petition or motion. *In re M.R.F.,* 378 N.C. 638 (2021) (reversing TPR; no evidence or finding of when order removing child was entered to start the twelve-month period). See section 9.11.B.2 and 4, below (discussing time periods).

C. Events after a TPR Is Denied or Reversed

As explained throughout this Manual, there are multiple court proceedings and hearings that may arise from a family's involvement with DSS. Some cases will involve a termination of parental rights (TPR) action naming one or more respondent parents. The district court must deny a TPR motion or dismiss a TPR petition if it determines that none of the alleged grounds were proved or that the TPR is not in the child's best interests. G.S. 7B-1110(b), (c). In those

cases where the TPR is granted, the parent has a right to appeal. G.S. 7B-1001(a)(7); 7B-1002(4). One possible result of an appeal is a reversal of the TPR decision. A denial of a TPR motion, dismissal of a TPR petition, or reversal on appeal of a TPR order does not automatically preclude the filing of a second TPR action based on the same or other ground. *See, e.g., In re C.J.B.*, 290 N.C. App. 303, 311 (2023) (reversing TPR order; stating "our holding today does not abridge Petitioner's right to bring a new petition in the future").

The law of the case doctrine applies when "a question before an appellate court has previously been answered in an earlier appeal in the same case[.]" *In re S.R.G.*, 200 N.C. App. 594, 597 (2009). The appellate court's answer to the question on appeal becomes the law of the case in subsequent proceedings in the trial court and in a subsequent appeal. *See In re J.A.M.*, 375 N.C. 325 (2020) (respondent's arguments regarding the 2016 adjudication of J.A.M. as neglected were foreclosed by the supreme court's 2018 decision affirming the underlying adjudication and disposition order); *In re S.R.G.*, 200 N.C. App. 594. However, "the law of the case doctrine does not apply when the evidence presented at a subsequent proceeding is different from that presented on a former appeal." *In re K.C.*, 258 N.C. App. 273, 274 (2018) (citations omitted) (affirming second TPR based on abandonment, after reversal of first TPR based on neglect by abandonment; the operative facts supporting the ground in the second TPR were based on new events – the six-month period immediately preceding the filing of the second TPR). In *In re K.C.*, the court of appeals recognized that time does not stand still and stated, "the prior opinion of this Court does not mean that respondent is immune from termination of her parental rights based upon abandonment for the rest of the child's minority . . . ." *In re K.C.*, 258 N.C. App. at 275.

The court of appeals also discussed the law of the case as well as res judicata in *In re S.R.G.*, 200 N.C. App. 594. The court of appeals reversed a second TPR order based on neglect that was entered by the trial court after the first TPR based on abandonment was reversed. The second TPR was entered on remand and was based on the same (first) petition. The court of appeals held that the relitigation of a ground alleged but not previously determined in the first proceeding was barred and stated, "[a] new [TPR] petition, based on circumstances arising subsequent to the original termination hearing, would have constituted a new action, and would not have been barred by the doctrine of res judicata." *In re S.R.G.*, 200 N.C. App. at 599. *See also In re F.S.*, 268 N.C. App. 34, 43 (2019) (stating in a neglect, not a TPR action that "[t]he doctrine of collateral estoppel does not preclude the trial court's adjudication of facts from new allegations and events which transpired after the [previous] adjudication" of neglect that was reversed).

D. Specific Types of Evidentiary Issues

Chapter 11 discusses in detail the following types of evidentiary issues commonly arising in TPR proceedings:

- judicial notice of earlier proceedings, see Chapter 11.7;
- collateral estoppel and res judicata, see Chapter 11.7.D.2;
- medical, mental health, substance use, and other records, see Chapter 11.6.C.4 and 5 (see also Chapter 14.2−4);
- opinions and expert testimony, see Chapter 11.9−10;
- testimony by children, see Chapter 11.2;

- character and prior acts, see Chapter 11.8;
- privileges, see Chapter 11.11;
- hearsay and hearsay exceptions, including out-of-court statements by children, see Chapter 11.5−6.

9.11 Adjudication: Grounds for Termination of Parental Rights

A termination of parental rights (TPR) proceeding consists of two phases: the adjudication phase and the disposition phase. At the first phase – adjudication – the court determines, based on clear and convincing evidence, whether a statutory ground to terminate a parent's rights exists. *See, e.g., In re A.R.A.,* 373 N.C. 190 (2019); *In re D.L.W*., 368 N.C. 835 (2016). Clear and convincing evidence "should fully convince . . . [and] is more exacting than the preponderance of the evidence standard generally applied in civil cases, but less than beyond a reasonable doubt standard applied in criminal matters . . . such that a factfinder applying that evidentiary standard could reasonably find the fact in question." *In re J.C.-B*., 276 N.C. App. 180, 184 (2021) (quoting *In re A.C*., 247 N.C. App. 528, 533 (2016)). *See In re H.N.D*., 265 N.C. App. 10, 13 (2019) (quoting *In re Mills*, 152 N.C. App. 1, 13 (2002)).

The court must expressly announce the standard it applied – clear, cogent, and convincing evidence – when making its findings of fact either in open court at the hearing or in the TPR order. *In re B.L.H*, 376 N.C. 118 (2020); *In re A.H.D*., 287 N.C. App. 548 (2023). The North Carolina Supreme Court has noted that the better practice is for the court to make the announcement both in open court at the hearing and in the TPR order. *In re B.L.H*, 376 N.C. 118. The standard of clear and convincing evidence at a TPR adjudication protects a parent's constitutional due process rights as recognized by the U.S. Supreme Court and the North Carolina appellate courts. *In re J.C*., 380 N.C. 738 (2022); *see Santosky v. Kramer*, 455 U.S. 745 (1982).

The Juvenile Code, at G.S. 7B-1111(a), sets out eleven statutory grounds for terminating parental rights. A conclusion that any one of the alleged eleven grounds has been proved is sufficient to support a TPR order. *In re K.R.C.,* 374 N.C. 849 (2020); *In re B.O.A*., 372 N.C. 372 (2019); *In re T.N.H*., 372 N.C. 403 (2019). In *In re E.Q.B.*, 290 N.C. App. 51 (2023), the court of appeals discussed the jurisprudence that the affirmation of a single ground does not require the appellate court to review the remaining grounds, if any. In its opinion, the court of appeals raised the issue but did not answer whether this single ground line of jurisprudence should continue because of the potential impact on a parent's rights to later seek reinstatement of their parental rights under G.S. 7B-1114. See Chapter 10.4 for a discussion of reinstatement of parental rights.

When the appellate court reviews and affirms one ground, it does not "imply that the evidence and supported findings were not also sufficient to establish the other . . . grounds for termination found by the trial court". *In re J.M*., 373 N.C. 352, 356 (2020). In the order, it is not fatal to use the word "grounds" instead of "ground;" and the reference to "grounds" does not imply, by itself, that the court had a mistaken belief that multiple grounds are required to be proved. *In re K.R.C*., 374 N.C. 849 (holding "ground" and "grounds" are often used interchangeably in legal authorities).

The grounds for TPR require the court to focus on the parent's individual conduct and make a determination, based on the evidence presented, about the parent's actions as those actions relate to the alleged statutory ground(s) to terminate that parent's rights. *See In re D.T.N.A.*, 250 N.C. App. 582 (2016). The focus on the parent's culpability at the TPR adjudication differs from the focus on the child's status, rather than the parent's culpability, at the abuse, neglect, or dependency adjudication. The North Carolina appellate courts have stated that " '[TPR] proceedings are not meant to be punitive against the parent,' – which might lead to an increased focused on individual culpability – 'but to ensure the safety and wellbeing of the child.' " *In re M.T.*, 285 N.C. App. 305, 350 (2022) (quoting *In re D.W.P.*, 373 N.C. 327, 340 (2020)); *In re M.K.*, 381 N.C. 418, 439 (2022) (stating "termination of parental rights proceedings are not meant to be punitive against the parent, but to ensure the safety and wellbeing of the child") (quoting *In re D.W.P.*, 373 N.C. at 340).

A. Abuse or Neglect

A parent's abuse or neglect of a child within the meaning of G.S. 7B-101 is grounds for termination of that parent's parental rights. G.S. 7B-1111(a)(1).

1. Definition of abuse or neglect. Abuse or neglect of the child that is the subject of a TPR proceeding must meet the same statutory definition that would apply in an underlying abuse or neglect proceeding. *See* G.S. 7B-101(1) (definition of "abused juveniles" as amended by S.L. 2025-16, sec. 1.1, effective October 1, 2025); 7B-101(15) (definition of "neglected juvenile"); *see also, e.g., In re A.S.T.*, 375 N.C. 547 (2020) (examining definition of neglect at G.S. 7B-101(15) in TPR based on neglect). See Chapter 2.3.B.1 and 2 for details on the definitions of abuse and neglect.

The North Carolina Supreme Court has interpreted the ground that a parent has abused or neglected the child to require a showing of neglect at the time of the termination hearing, or "if the child has been separated from the parent for a long period of time, there must be a showing of past neglect and a likelihood of future neglect by the parent." *In re J.M.J.-J.*, 374 N.C. 553, 556 (2020) (citing *In re D.L.W.,* 368 N.C. 835, 843 (2016)). A TPR on the ground of neglect cannot "be based solely on past conditions which no longer exist." *In re K.L.T.*, 374 N.C. 826, 845 (2020) (quoting *In re Young*, 346 N.C. 244, 248 (1997)).

2. Constitutional challenge. This ground is not unconstitutionally vague. *In re Moore*, 306 N.C. 394 (1982) (decided under an earlier version of the Juvenile Code). The statute does not apply only to the poor and thus violate equal protection. *In re Wright*, 64 N.C. App. 135 (1983) (decided under an earlier version of the Juvenile Code).

3. Parental culpability. In an underlying abuse or neglect proceeding the issue is whether the child is an abused or neglected juvenile, and the court is not adjudicating parental culpability. In a TPR proceeding, however, the issue is whether a particular parent abused or neglected the child.

A parent's culpability may be found even when the court cannot determine which parent was the perpetrator of the child's abuse or neglect when the court finds that both parents were jointly and individually responsible as the child's sole care providers. *See In re M.T.,* 285 N.C. App. 305 (2022) (affirming TPR of mother on ground of abuse and neglect when non-accidental serious injury to child occurred while in the sole care of both parents and no

medically plausible explanation was provided); *In re Y.Y.E.T.,* 205 N.C. App. 120 (2010) (affirming TPR on ground of abuse and neglect, based on finding that both parents were responsible for their 4-month-old infant's non-accidental serious injury as one or both parents inflicted the injury and protected each other by refusing to identify the perpetrator, or one caused the injury and the other failed to prevent it; rejecting respondents' argument that an individual must be identified as the perpetrator as against public policy as it would encourage individuals to deny responsibility for and knowledge of harm to a child and interfere with the court's ability to serve the child's best interests). Similarly, a parent's culpability may be found when the cause of the child's non-accidental injuries occurred while in the exclusive care of the parent(s). *See In re D.W.P.*, 373 N.C. 327 (2020) (affirming TPR on ground of neglect; court found mother gave different explanations for child's injuries while in the exclusive care of mother and her fiancé, medical evidence did not support her changing explanations, and mother concealed the truth).

4. Past neglect and likelihood of repetition of neglect. When a child has been separated from their parent for a long period of time such that it cannot be shown that a parent is neglecting the child at the time of the termination hearing, the petitioner (or movant) must prove (1) prior neglect of the child by the parent and (2) a likelihood of future neglect of the child by the parent. *In re D.W.P.*, 373 N.C. 327 (2020); *In re M.A.W.,* 370 N.C. 149 (2017). This two-part test has been referred to by the supreme court as the "*Ballard* test*." See, e.g., In re D.T.H.*, 378 N.C. 576, 588 (2021) (citation omitted) (stating that a TPR on neglect can be supported "without use of the two-part *Ballard* test if a parent is presently neglecting their child by abandonment").

(a) Past neglect: prior adjudication admissible but not required. A prior adjudication of abuse or neglect is not a precondition to a TPR proceeding based on those grounds. *See, e.g., In re D.L.A.D.*, 375 N.C. 565 (2020) (affirming TPR based on neglect that was initiated by father against mother; child had not been in mother's custody for a long period of time; there was no DSS involvement with the family); *In re Z.D.,* 258 N.C. App. 441 (2018) (there was no prior adjudication of neglect but the court's finding that respondent mother left son with a woman she had just met earlier that day and did not return to the woman's home to get him supported the trial court's ultimate finding that respondent had previously neglected her son; note the TPR was reversed for insufficient findings to support grounds).

When there is a prior adjudication, evidence of that prior adjudication of abuse or neglect is admissible in a TPR proceeding, but the adjudication order alone is insufficient to support a TPR when the parents have been deprived of custody for a significant period of time before the TPR proceeding. *See In re A.E.*, 379 N.C. 177 (2021); *In re M.S.E.,* 378 N.C. 40 (2021); *In re M.A.W.,* 370 N.C. 149; *In re Ballard*, 311 N.C. 708 (1984). The North Carolina Supreme Court has recognized that a TPR for neglect cannot be based solely on past conditions that no longer exist but also cannot be based on evidence of current neglect when, after a child's adjudication as neglected, the child has been removed from that parent's custody. Instead, the trial court must consider (1) evidence of neglect prior to removal, including a prior adjudication of neglect, (2) evidence of changed circumstances since the prior adjudication, and (3) whether there is a likelihood of future neglect if the child is returned to the parent. *In re A.E.*, 379 N.C. 177; *In re M.S.E.,* 378 N.C. 40; *In re M.A.W.,* 370 N.C. 149; *In re D.L.W.*, 368 N.C. 835 (2016); *In re Ballard*,

311 N.C. 708. The trial court considers the parent's circumstances and fitness to care for the child at the time of the termination hearing. *In re Z.V.A.,* 373 N.C. 207 (2019); *In re Ballard*, 311 N.C. 708.

The supreme court's reasoning also applies to prior abuse. *See Alleghany Cnty. Dep't of Soc. Servs. v. Reber*, 75 N.C. App. 467 (1985) (applying reasoning in *In re Ballard* to prior abuse), *aff'd per curiam*, 315 N.C. 382 (1986); *In re Beck*, 109 N.C. App. 539 (1993) (holding that the court did not err in admitting the prior order finding the child to be abused, since the court did not rely solely on that order in finding the child neglected for TPR purposes).

A parent will be collaterally estopped from relitigating an issue of prior abuse or neglect when there is an adjudication order of abuse or neglect that was not appealed. *See In re J.D.O.,* 381 N.C. 799 (2022) (affirming TPR; mother did not appeal court's neglect adjudication and is collaterally estopped at TPR hearing from arguing the findings in that order were insufficient); *In re A.E.*, 379 N.C. 177 (affirming TPR; parents stipulated to conditions of neglect in prior adjudication order and did not appeal that order, which trial court considered at TPR hearing); *In re O.W.D.A.*, 375 N.C. 645 (2020) (affirming TPR; father was collaterally estopped at TPR hearing from arguing the findings of fact in juvenile neglect adjudication order did not lead to the juvenile's adjudication; findings included father's illegal substance use, unstable housing and income, and criminal history); *In re J.M.J.-J.*, 374 N.C. 553 (2020) (affirming TPR; juvenile neglect adjudication order made findings that mother did not have placement options for the juvenile and order was not appealed by father who was a party to the proceeding; father was collaterally estopped at the TPR hearing from raising the fact that he was available and appropriate but not considered by DSS in the underlying neglect action).

The supreme court has restated that a determination of whether a child is neglected involves the child's circumstances and conditions and "not the fault or culpability of the parent." *In re M.S.L.*, 380 N.C. 778, 784–85 (2022) (quoting *In re M.Y.P.*, 378 N.C. 667, 676 (2021)); *In re J.M.J.-J.*, 374 N.C. at 564 (quoting *In re M.A.W.*, 370 N.C. at 154). Because of that, "[i]t is therefore not necessary that the parent whose rights are subject to termination be responsible for the prior adjudication of neglect." *In re J.M.J.-J.*, 374 N.C. at 565, *quoted in In re C.S.*, 380 N.C. 709, 713 (2022); *see In re J.D.O.,* 381 N.C. at 817 (affirming TPR; rejecting mother's "creative depiction" that an adjudication of neglected juvenile does not mean the mother herself neglected her children in the past; TPR under this ground does not require respondent be responsible for the prior neglect adjudication); *In re M.S.L.*, 380 N.C. 778 (affirming TPR of father when circumstances of neglect adjudication created by mother; rejecting father's argument he was not responsible for prior neglect).

(b) Likelihood of repetition of neglect. Without evidence of the parent's fitness at the time of the TPR adjudicatory hearing, the court cannot determine that there is a likelihood of repetition of neglect. *In re Z.G.J.*, 378 N.C. 500 (2021) (reversing TPR; evidence consisted of DSS social worker's testimony reaffirming under oath the allegations in the TPR petition; hearing was held thirteen months after TPR petition was filed; there was no evidence of current circumstances).

To predict the probability of a repetition of neglect, the court looks to the historical facts of the case to assess whether there is a substantial risk of future abuse or neglect. *In re M.C.,* 374 N.C. 882 (2020); *In re M.P.M.,* 243 N.C. App. 41 (2015), *aff'd per curiam,* 368 N.C. 704 (2016); *see In re O.W.D.A*., 375 N.C. at 648 ("evidence of changed conditions must be considered in light of the history of the neglect by the parents and the probability of a repetition of neglect"). The court must also look to evidence of changed conditions and "the fitness of the parent to care for the child *at the time of the termination proceeding*." *In re D.W.P.,* 373 N.C. at 339 and *In re Z.V.A.*, 373 N.C. at 212 (emphasis in original). Whether a parent is in a position to actually regain custody of the child at the time of the TPR hearing is not relevant. *In re D.I.L*., 380 N.C. 723 (2022) (affirming TPR; father's inability to regain custody from petitioners with G.S. Chapter 50 custody order is not a factor in determining likelihood of future neglect).

The order must set out the process by which the court reasoned and adjudicated the facts in support of the conclusion that the respondent was likely to neglect the child upon return to respondent's custody. *In re L.L.O*., 252 N.C. App. 447 (2017). Failure to include the required finding of fact about the probability of the repetition of neglect is not harmless error. *See In re M.B.*, 382 N.C. 82 (2022) (vacating and remanding TPR; required finding of the likelihood of future neglect was missing despite findings of factors that would support that ultimate determination); *In re L.L.O*., 252 N.C. App. 447 (vacating and remanding portion of an order without the required finding when evidence in the record supported, but did not compel, a finding of neglect); *In re E.L.E*., 243 N.C. App. 301 (2015) (reversal was required when necessary finding as to probability of repetition of neglect was not made even though there was evidence in the record to support a finding).

When there is an underlying abuse, neglect, or dependency case, a parent's failure to make progress in completing a case plan is indicative of a likelihood of future neglect. *In re M.S.E.,* 378 N.C. 40 (affirming TPR; juveniles were adjudicated neglected based on homelessness and mother's untreated mental health and substance use issues; although mother obtained safe and appropriate housing, she failed to make adequate progress on the components of her case plan addressing mental health and substance use treatment, drug screens, compliance with prescribed medication, and improving her parenting skills); *In re S.R.F*., 376 N.C. 647 (2021) (affirming TPR; findings of fact supported likelihood of future neglect; mother did not comply with case plan for an extended period of time and when she started to comply, she did not meaningfully engage in services directly related to domestic violence and substance use or in visiting with her child); *In re J.C.L*., 374 N.C. 772 (2020) (affirming TPR; findings demonstrate father's extremely limited progress on his case plan for over two years and support conclusion of a reasonable likelihood of future neglect if juvenile was returned to his father's care). The North Carolina Supreme Court has also recognized "a parent's 'pattern of inconsistent contact and lack of interest' in a child as indicative of a likelihood of future neglect…." *In re T.B*., 380 N.C. 807, 818 (2022) (affirming TPR).

A parent's substantial compliance with a case plan may constitute evidence of changed conditions at the time of the TPR hearing that could support a determination of a low probability of future neglect. *See In re K.L.T.,* 374 N.C. 826 (2020) (reversing TPR; respondent mother progressed on her case plan addressing domestic violence issues and concerns about her ability to safely and effectively parent); *In re J.K.C*., 218 N.C. App. 22

(2012), *superseded in part by statute as stated in In re A.L.S.*, 375 N.C. 708 (2020) (affirming denial of TPR on ground of neglect; holding that in spite of a prior adjudication of neglect and the father's incarceration, there was not a substantial probability of a repetition of neglect and he had not willfully left the children in foster care without making progress, given his substantial compliance with the DSS case plan, keeping in contact with DSS, completing courses available to him in prison, and sending gifts to the children through his mother).

However, completion of a case plan does not preclude a court's conclusion that the ground of neglect exists. *See In re L.G.G.,* 379 N.C. 258 (2021) (affirming TPR; mother complied with case plan requirements but did not have insight as to why the children came into care; finding supports conclusion of neglect and likelihood of future neglect); *In re M.A.,* 378 N.C. 462 (2021) (affirming TPR; mother made some progress on her case plan but did not address the issues regarding housing instability and domestic violence – the main issues underlying the adjudication of neglect; although mother had had stable housing for three years, at the time of the TPR hearing she had moved to a studio with an undisclosed male roommate and was not on the lease; even though mother had been previously approved for unsupervised visits, trial court was not precluded from finding a likelihood of future neglect when mother's circumstances had changed, which in this case occurred when mother moved from an approved and stable home to the studio apartment and did not notify DSS until months after moving there); *In re M.P.M.*, 243 N.C. App. 41 (affirming TPR based on neglect; despite complying with his case plan by attending ten therapy sessions and interacting appropriately during supervised visits with his daughter, father had not demonstrated at the time of the TPR hearing that he had learned how to keep daughter safe in the future; conclusion of a likelihood of repetition of neglect was supported by findings about the severity of respondent's and mother's abuse of the child's siblings, respondent's dishonesty about his role in the abuse, and respondent's dishonesty as to his continued contact with child's abusive mother and his continued belief that mother did not pose to a risk to daughter), *aff'd per curiam*, 368 N.C. 704. A trial court can look at whether the parent has demonstrated "sustained behavioral change of the type necessary to ensure the [minor child's] safety and welfare" when determining if there is a likelihood of future neglect. *In re B.A.J.,* 295 N.C. App. 593, 604 (2024), *quoting In re R.L.R*, 381 N.C. 863, 875 (2022).

The court does not take an inventory of a parent's case plan and what components have been achieved as there is no requirement that the court make findings of every aspect of a case plan. Findings that show favorable progress on a component of the parent's case plan does not undermine an adjudication of neglect based on other findings that support a likelihood of future neglect. *In re J.D.O.*, 381 N.C. 799 (affirming TPR; findings that mother did not resolve substance use issues to a degree that would allow her to provide proper care and supervision were sufficient to demonstrate likelihood of future neglect even when court found mother completed parenting classes and obtained housing); *In re T.B*., 380 N.C. 807 (TPR affirmed; mother made progress regarding her substance use but continued to deny and minimize domestic violence and did not make efforts to remain in contact with or updated about her child).

Regarding unexplained non-accidental injuries, "the lack of an explanation relates to neglect or abuse because it speaks to the likelihood of future neglect[,]" and the trial court

may consider the lack of explanation as a factor. *In re M.T.*, 285 N.C. App. 305, 340 (2022) (affirming TPR; although mother completed case plan components, safety risk did not change; mother's services did not address the reasons for the child's removal; there was no credible explanation for how the child was severely injured and failure to understand how child was injured supports conclusion that neglect is likely to recur).

(c) Criminal justice involvement. A TPR on the ground of neglect may involve a parent who has involvement with the criminal justice system.

North Carolina appellate courts have consistently held that "[i]ncarceration, standing alone, is neither a sword nor a shield in a termination of parental rights decision." *See, e.g., In re B.E.,* 381 N.C. 726, 737 (2022) (quoting *In re K.N.*, 373 N.C. 274, 282 (2020)); *In re W.K.,* 379 N.C. 331, 344 (2021) (quoting *In re M.A.W.*, 370 N.C. 149, 153). The North Carolina Supreme Court has acknowledged that "constructive and positive parenting can occur, and parent/child bonds can be meaningful, while a parent is incarcerated." *In re J.S.*, 377 N.C. 73, 80 (2021). Similarly, the Fifth Amendment privilege against self-incrimination when used in the juvenile proceeding is neither a sword nor a shield for a respondent, as an adverse inference may be drawn in the juvenile proceeding. *In re B.A.J.*, 295 N.C. App. 593.

Additionally, a lengthy probation period cannot be the sole basis for determining whether there is a likelihood of future neglect. *In re J.B.*, 379 N.C. 233 (2021). The length of a parent's incarceration or probation is a relevant factor, however, as the parent cannot provide proper care, supervision, or discipline when they are incarcerated or have a probation condition that prohibits contact with their child. *In re J.B.*, 379 N.C. 233; *In re J.S.*, 377 N.C. 73; *In re K.D.C.*, 375 N.C. 784 (2020).

The court must look to other factors that implicate a likelihood of future neglect beside the parent's incarceration. For example, in *In re J.B.*, the father was both prohibited from having contact with his son until his son reached the age of majority and failed to inquire or show any interest in learning about his son's health and well-being from the time of father's arrest to the date of the TPR hearing. *In re J.B.*, 379 N.C. 233 (TPR affirmed). In *In re J.S.*, 377 N.C. 73, the TPR was affirmed when father's incarceration extended past the time the children would reach the age of majority; father did not make progress on his case plan, did not call the children for months after his sentencing, and made inappropriate promises to the children resulting in the children's regression; also father had a history of substance use and domestic violence.

A conviction based on an Alford plea is the same guilty plea as a plea of *nolo contendere* or no contest and involves the defendant being treated as guilty. *In re A.S.T.*, 375 N.C. 547 (2020). In contesting a TPR where a parent's criminal activity is part of the alleged ground of neglect, a parent cannot maintain their innocence of that crime when they have entered an Alford plea because an "*Alford* plea is not the saving grace for defendants who wish to maintain their complete innocence. Rather, it is a device that defendants may call upon to avoid the expense, stress and embarrassment of trial and to limit one's exposure to punishment . . . ." *In re A.S.T.*, 375 N.C. at 553–54 (quoting *State v. Alston*, 139 N.C. App. 787, 792 (2000) (affirming TPR; finding that father voluntarily made himself unavailable to care for his child for a substantial portion of the child's life due to his criminal charge, Alford plea, and resulting incarceration was supported by the evidence).

(d) Prior neglected juvenile adjudication and likelihood of future neglect.

Cases involving prior neglect adjudications in which parental rights were terminated and affirmed on appeal include

- *In re I.M.S.*, 298 N.C. App. 689 (2025) (where child was removed and adjudicated neglected and dependent based on concerns for mother's ability to care for the child and concerns for mother's mental health and substance use, findings that mother failed to engage in services throughout the case, failed to visit with the child, was acting inconsistent with her parental rights, and had moved out of state showed that the neglect experienced by the child would repeat or continue if returned to mother; mother failed to present any credible evidence of her participation in treatment or parenting classes, that she had suitable housing, or that she had gainful employment to demonstrate any change in circumstances between the child's past neglect and the TPR hearing).
- *In re B.A.J.*, 295 N.C. App. 593 (despite mother completing components of her case plan, findings support a likelihood of future neglect where mother failed to admit or recognize her role in the child's underlying neglect adjudication that was based on mother and father's abuse and torture of the child's sibling; mother continued to engage in a violent relationship with father, chose not to file a DVPO after a severe domestic violence incident with father, and expressed her intent to reunify the family with father despite the court finding father committed acts of physical and emotional abuse, including torture, on the children).
- *In re R.H.*, 295 N.C. App. 494 (2024) (where domestic violence between mother and father was the basis for the newborn's underlying neglect and dependency adjudication, the trial court weighed mother's progress on her case plan, including completing parenting classes and domestic violence education and continuing therapy, against findings of mother's inability to end her violent relationship with father, continued incidents of domestic violence, and mother bringing the child to meet with father up until the TPR hearing to properly determine there was a likelihood of future neglect if the child were returned to mother's care).
- *In re V.S.*, 380 N.C. 819 (2022) (unchallenged findings of mother's significant cognitive limitations and how they negatively impact her ability to care for herself, to parent, and to protect her children were sufficient to show likelihood of future neglect; determinative factors for this ground is the fitness of the parent, not others who may assist the parent, since a parent retains the ultimate authority over their child).
- *In re B.E.*, 381 N.C. 726 (regarding mother, despite making some progress, findings that she was unable to manage all four of her children together as well as her angry outbursts supported likelihood of future neglect; regarding father, findings of father's minimal progress on his case plan both when he was in and out of prison, his continued drug trafficking resulting in a new longer imprisonment, and his violent relationship with mother and likelihood of that relationship continuing were sufficient to show a likelihood of future neglect).
- *In re O.W.D.A.*, 375 N.C. 645 (trial court acted within its authority to determine weight to give evidence; father's eleventh-hour efforts, which showed minimal progress on his plan while he was incarcerated, did not outweigh evidence of his

persistent failure to make progress when he was not incarcerated; trial court did not err in concluding that there was a likelihood of future neglect).

- *In re D.W.P.,* 373 N.C. 327 (although mother attended parenting classes and therapy and followed most of the court's recommendations to improve her parenting, she did not acknowledge the harm resulting from her failure to identify the cause of the child's injuries; without recognizing the cause of the injuries, she cannot prevent them from recurring).
- *In re M.A*., 374 N.C. 865 (although reunification with father was eliminated as a permanent plan, father's rights were not terminated and father's mistaken belief to the contrary does not justify his failure, after a TPR petition was filed, to take steps to remedy the circumstances that led to the juvenile's adjudication as neglected, which involved domestic violence; a strong likelihood of repetition of neglect was supported by findings of the extensive history of domestic violence and father's failure to make reasonable progress).
- *In re Z.V.A.*, 373 N.C. 207 (clear, cogent, and convincing evidence supported the district court's findings that father was willing to leave the child alone with mother who was unfit to parent the child by herself, that respondents displayed constant marital discord during supervised visits with the child, and respondents intended to remain together; these findings supported the conclusion that father's rights were subject to termination under G.S. 7B-1111(a)(1)).
- *In re M.A.W.*, 370 N.C. 149 (respondent father's incarceration during the prior neglect adjudication is neither a sword nor a shield in the TPR action; prior neglect supported by findings of respondent's long history of substance use and criminal activity and awareness of mother's substance use issues that he knew would result in DSS involvement; likelihood of repetition of neglect supported by respondent's inconsistent visitation with and failure to provide any care, discipline, or supervision to child, denial of social worker's access to his home, and failure to complete clinical assessment after his release from prison despite his successfully participating in substance use treatment and parenting courses while incarcerated). *See also In re C.L.S.,* 245 N.C. App. 75, 78 (citations omitted) (stating that "[i]ncarceration alone ... does not negate a father's neglect of his child"), *aff'd per curiam*, 369 N.C. 58 (2016).
- *In re D.L.W*., 368 N.C. 835 (likelihood of neglect existed based on injurious environment where in underlying abuse and neglect case, mother was ordered to participate in domestic violence counseling based on findings that parental domestic violence placed the children at risk and that one child had intervened when the parents were arguing, and findings in the order terminating mother's parental rights included findings from the underlying neglect adjudication order and new findings of domestic violence incidents between the parents after the children's removal and mother not articulating an understanding of what she learned in domestic violence counseling).

Cases involving prior neglect adjudications in which parental rights were not terminated include

- *In re T.R.W.,* 294 N.C. App. 57 (2024) (reversing TPR; several challenged findings were not supported by clear and convincing evidence; supported findings showed that father worked his case plan before and after permanent guardianship was ordered, which included father working, being in therapy, calling the children as permitted and

being appropriate during those calls, paying child support, and consistently sending the children gifts; these findings and the guardianship order do not support a likelihood of future neglect).

- *In re K.L.T.*, 374 N.C. 826 (reversing TPR; when addressing likelihood of repetition of neglect, trial court did not make reasonable inferences from the evidence but relied on speculation; mother resolved domestic violence issues by divorcing father, obtaining a DVPO, not engaging in further violent relationships, completing required therapy, and creating a safety plan for her child which recognized her role in failing to protect him; demonstrated to her providers that she addressed the concerns about her ability to safely and effectively parent; showed appropriate parenting at visits; and obtained appropriate housing).
- *In re K.N.*, 373 N.C. 274 (2020) (vacating TPR order based on neglect and remanding for further proceedings after finding that DSS failed to provide clear and convincing evidence that father did not make reasonable progress on his case plan; father had made progress with the requirements addressing housing, income, a psychological assessment, parenting education, substance use treatment, and anger management classes; although father was incarcerated at the time of the TPR hearing, his incarceration, by itself, is not clear and convincing evidence of neglect; there was no analysis of the facts and circumstances about his incarceration, including the length of his incarceration (which was expected to be short-term) or his diluted drug screens; additional findings were insufficient to support the ground due to a lack of analysis, although court could have made additional findings that might have been sufficient to support a finding of future likelihood of neglect).
- *In re K.D.C.*, 375 N.C. at 793 (reversing TPR; findings about mother's failure to complete the mental health and substance use requirements of her case plan were not supported by clear and convincing evidence; mother attempted to comply with case plan component on parenting when she took mothering, anger management, and grief recovery classes while incarcerated; mother's failure to secure stable housing and employment fifteen months before her release date "is difficult to consider justly as a failure to comply with her case plan").
- *In re C.N.*, 271 N.C. App. 20 (2020) (reversing a conclusion of neglect when mother had made some progress on her case plan by completing parenting classes and substance use assessment, re-engaging in services, recently submitting to drug testing, being employed, and obtaining stable housing and transportation; opinion also noted that there was no evidence or findings to indicate that the reason for child's removal, which was the child spilling Mr. Clean on herself causing chemical burns, was likely to be repeated).
- *In re G.B.R.*, 220 N.C. App. 309 (2012) (reversing termination of father's rights where petition alleged neglect as grounds; father had been incarcerated and evidence at the hearing focused primarily on his incarceration but failed to address either circumstances since his release or a likelihood of a repetition of neglect, showing instead that while incarcerated, father wrote many letters to the children and took a number of courses, including a "father accountability" class; since release, he had employment, his own apartment and insurance, and did not drink alcohol or use any medication).
- *In re J.G.B.*, 177 N.C. App. 375 (2006) (holding that the neglect ground was not

established where DSS took custody soon after the child's birth and the child was adjudicated only dependent; there must be evidence of prior neglect while in respondent's custody and a likelihood of repetition of neglect).

(e) Absence of neglected juvenile adjudication for prior neglect.

Cases addressing the neglect ground to TPR when there was not a prior adjudication of neglect and the TPR was affirmed include

- *In re R.L.D.*, 375 N.C. 838 (2020) (affirming private TPR; substantial risk of harm and likelihood of future neglect supported by unchallenged findings of mother's drug use and concerns for the child when in mother's care previously; lack of contact with the child; failure to provide financial support; inappropriate housing; and child's own mental health issues mother had not created a support system for).
- *In re C.G.R.*, 216 N.C. App. 351 (2011) (affirming TPR; holding that evidence of neglect of child who was removed at birth while mother was incarcerated was sufficient: prior to the child's birth the mother had been living in a home used for drug dealing with her other child who was adjudicated neglected; since release from prison mother chose to live with co-defendants in the drug raid that was the source of her arrest; she had numerous short-term jobs and residences resulting in an unstable living and employment situation, all of which resulted in a substantial risk of impairment to the child).

Cases without prior neglect adjudications in which parental rights were not terminated include

- *In re C.L.H.*, 376 N.C. 614 (2021) (reversing TPR in part and vacating and remanding in part; evidence did not support finding in order entered in 2020 of past neglect as there was no evidence the juvenile was without care during visit in 2018 when father overdosed; findings do not address how alleged absence of care impacted the juvenile regarding harm or substantial risk of harm; assuming that father's medical issue constituted prior neglect, no findings were made of likelihood of future neglect).
- *In re E.B.,* 375 N.C. 310 (2020) (reversing TPR; evidence did not support (1) finding of any past neglect or any basis to infer that father would have neglected the child given that father was successfully caring for his other three minor children and (2) a likelihood of future neglect).
- *In re Z.D.,* 258 N.C. App. at 450 (reversing TPR; evidence in a private TPR did not support ultimate finding that there was a reasonable probability that child would be neglected if returned to respondent's care when (1) "ambiguous" findings did not address respondent's mental health at the time of the termination hearing or the impact her mental health issues had on the child and (2) a finding used the subjective terms "concerning" and "disturbing" to describe mother's behavior during visitation, without further explanation of the behavior and how it impacted mother's ability to care for her son at the time of the termination hearing).
- *In re C.W.*, 182 N.C. App. 214 (2007) (reversing TPR; holding that there was not sufficient evidence of neglect at the time of the hearing where the incarcerated father sent cards, letters, and money to the children and tried to stay in contact with them during incarceration, and DSS had never developed a case plan with the father).

- *In re Young*, 346 N.C. 244 (1997) (reversing and remanding TPR; child had been in custody of others for over a year at time of termination proceeding but there was no prior adjudication of neglect; evidence of mother's prior neglect was not sufficient evidence of neglect at the time of the termination proceeding as the probability of repetition of neglect was not shown from evidence that mother made considerable positive changes to her lifestyle).

5. Current neglect. The ground of neglect may also be proved by showing the parent has neglected the child at the time of the filing of the TPR petition or motion. When there is current neglect, there is no requirement for a showing of past neglect. *In re W.K.*, 376 N.C. 269, 274 n.5 (2020) and *In re R.L.D.*, 375 N.C. 838, 841 n.3 (2020) (both disavowing any interpretation of *In re D.L.W.*, 368 N.C. 835 (2016) as creating a requirement for a showing of past neglect when the basis of the TPR is current neglect). When determining whether neglect exists, the court "may consider . . . a parent's complete failure to provide the personal contact, love, and affection that [exists] in the parental relationship." *In re A.J.M.P.*, 205 N.C. App. 144, 149 (2010) (quoting *In re Apa*, 59 N.C. App. 322, 324 (1982)). Note that a number of reported cases addressing current neglect involve incarcerated parents.

- *In re N.D.A.,* 373 N.C. 71 (2019), *abrogated in part by In re G.C.*, 384 N.C. 62 (2023) (vacating and remanding TPR; noting that the absence of findings that applied the two-prong test of past neglect and likelihood of future neglect in the TPR order suggests the trial court considered whether respondent father was currently neglecting the child for purposes of the TPR).
- *In re C.L.S.,* 245 N.C. App. 75 (affirming TPR; child was adjudicated neglected and dependent based on mother's stipulations to allegations in DSS petition and while father's identity was still unknown; father's paternity was later established, father was incarcerated, and father's rights were terminated; TPR of father upheld based on evidence at the time of the TPR hearing that father had neglected the child by failing to provide love, support, affection, and personal contact to the child between the time paternity was established and the TPR hearing; evidence that before incarceration father did not want to pursue reunification and missed appointments with the social worker and post-incarceration that father would not sign a case plan, meet the child, or provide financial support was sufficient to support termination), *aff'd per curiam,* 369 N.C. 58 (2016).
- *In re A.J.M.P.*, 205 N.C. App. 144 (affirming TPR; incarcerated parent had never written to child, sent child anything, paid support despite having some ability to do so, or challenged a court order that ceased his visitation rights; court of appeals reiterated that incarceration alone is not sufficient to establish a ground for TPR).
- *In re R.B.B.*, 187 N.C. App. 639 (2007) (affirming TPR on ground of abuse and neglect; TPR hearing was consolidated with adjudicatory hearing on an abuse and neglect petition).
- *In re Bradshaw*, 160 N.C. App. 677 (2003) (affirming private TPR; holding that, although the incarcerated parent's lack of contact with the child was beyond his control, other evidence and findings of respondent father's infrequent correspondence with mother (petitioner) regarding child and failure to pay any support despite having small income supported the conclusion that the neglect ground existed).

6. Factors related to abuse and neglect. The following appellate cases have discussed factors that relate to neglect or abuse in the context of termination of parental rights (TPR). See also

Chapters 6.3.E and F (discussing evidence for neglect and abuse, outside the context of TPR) and 2.3.B.1 and 2 (discussing the definitions of abuse and neglect).

(a) Not limited to physical necessities. For a finding of neglect, it is not necessary to find a failure to provide the child with physical necessities. *In re Black*, 76 N.C. App. 106 (1985); *In re Apa*, 59 N.C. App. 322 (1982).

(b) Parent's love and concern not determinative. Determinative factors are the child's circumstances and conditions; the fact that the parent loves or is concerned about the child will not necessarily preclude adjudication of the neglect ground. *In re Montgomery*, 311 N.C. 101 (1984). *See also In re T.J.C.*, 225 N.C. App. 556 (2013) (holding that despite findings that the parents loved their children and the children loved their parents, the parents' ongoing domestic violence was sufficient to support a finding of neglect).

(c) Nonfeasance as neglect. Parent's nonfeasance, as well as malfeasance, can constitute neglect. *In re Adcock*, 69 N.C. App. 222 (1984) (holding that mother's failure to intervene or protect child from another person's physical abuse was neglect). *See also In re D.A.H.–C.*, 227 N.C. App. 489 (2013) (finding sufficient evidence of neglect where despite mother's participation in classes, she continued to cohabit and associate with people violent toward her and her children, failing to protect them from abuse and neglect and creating a substantial risk of future neglect).

(d) Willfulness not required. Willfulness is not relevant when determining whether the ground of neglect exists. *In re N.K.*, 375 N.C. 805 (2020) (mother's argument that her mental health problems caused her inability to provide proper care, and her inability was not willful such that her parental rights cannot be terminated on the ground of neglect is a misapprehension of North Carolina law).

(e) Responsibility for conditions creating prior neglect. There is no requirement that the respondent parent in the TPR be responsible for the conditions that led to the child's out-of-home placement or prior adjudication of neglect. *In re S.D.*, 374 N.C. 67 (2020) (affirming TPR; stating father's argument that he did not cause child's neglect adjudication is without merit; adjudication of a neglected juvenile is about the circumstances surrounding the child, not the culpability of the parent); *see In re M.Y.P.*, 378 N.C. 667 (2021); *In re J.M.J.-J.*, 374 N.C. 553 (2020).

(f) Poverty. In *In re N.K.*, 375 N.C. at 816, the supreme court stated mother is "correct in arguing that 'her parental rights are not subject to termination in the event that her inability to care for her children rested solely upon poverty-related considerations.' " The supreme court cited G.S. 7B-1111(a)(2), although mother's rights were terminated on the ground of neglect in G.S. 7B-1111(a)(1). The supreme court concluded that although mother had financial difficulties, the TPR was not based solely on her poverty as mother had not adequately addressed substance use, domestic violence, and mental health problems or obtained appropriate housing.

In a different opinion, *In re J.C.L.,* 374 N.C. 772, 784 n.4 (2020), the North Carolina Supreme Court compared the grounds to TPR based on neglect under G.S. 7B-1111(a)(1) and the failure to make reasonable progress under G.S. 7B-1111(a)(2). The prohibition against a TPR based on the sole reason of poverty that exists in G.S. 7B-1111(a)(2) is not

found in the neglect ground under G.S. 7B-1111(a)(1). A prior court of appeals opinion addressing G.S. 7B-1111(a)(2) cited by respondent was inapposite to this appeal of a TPR for neglect. However, the supreme court examined the trial court's findings about father's tenuous financial situation and reasoned that finding was one of several factors that supported the conclusion of a likelihood of repetition of neglect.

(g) Participation in previous action. It was error to admit evidence of father's failure to participate in the underlying neglect proceeding when there was no evidence that he was served in that action. *In re Mills*, 152 N.C. App. 1 (2002).

(h) Relinquishment of another child. The trial court did not err in admitting evidence of mother's surrender of her rights to another child, since the way another child in the same home was treated and that child's status clearly were relevant to whether there could be an adjudication of the neglect ground. *In re Johnston*, 151 N.C. App. 728 (2002); *see also In re Allred*, 122 N.C. App. 561 (1996).

7. Neglect includes abandonment. The definition of "neglected juvenile" includes a juvenile "who has been abandoned" but excludes an infant who was safely surrendered on or after October 1, 2023. G.S. 7B-101(15)(ii)b. The ground of neglect by abandonment under G.S. 7B-1111(a)(1) is separate from the ground of abandonment set forth at G.S. 7B-1111(a)(7) (discussed in section 9.11.G, below). Although "abandonment" has the same meaning under both statutory grounds, the determinative time period the trial court examines when adjudicating the existence or nonexistence of each ground differs. Neglect by abandonment is based on evidence and findings about the parent's conduct "*at the time of the termination hearing*[;]" whereas, abandonment under G.S. 7B-1111(a)(7) is based on evidence and findings about the parent's conduct in the six-month period immediately preceding the filing of the TPR petition (or motion). *In re X.I.F.*, 297 N.C. App. 799, 807 (2025) (emphasis in original).

Termination of parental rights for neglect by abandonment requires a determination that the conduct of the parent demonstrates a "wil[l]ful neglect and refusal to perform the natural and legal obligations of parental care and support." *In re Z.J.W.*, 376 N.C. 760, 779 (2021), *In re K.C.T.*, 375 N.C. 592, 600 (2020), and *In re N.D.A.,* 373 N.C. 71, 81 (2019), *abrogated in part by In re G.C.*, 384 N.C. 62 (2023) (all quoting *Pratt v. Bishop*, 257 N.C. 486, 501 (1962)). The North Carolina Supreme Court recognizes that "willful" does not appear in G.S. 7B-101(15), but abandonment by neglect "is inherently a willful act." *In re N.D.A.,* 373 N.C. at 81 n.2. Willfulness is a question of fact. *See In re N.D.A.,* 373 N.C. 71.

To terminate a parent's rights pursuant to G.S. 7B-1111(a)(1) for neglect by abandonment, the trial court must find that a "parent has engaged in conduct 'which manifests a willful determination to forego all parental duties and relinquish all parental claims to the child' as of the time of the termination hearing." *In re D.T.H.*, 378 N.C. 576, 588 (2021); *In re N.D.A.,* 373 N.C. at 81 (agreeing with the application by the court of appeals in *In re C.K.C.,* 263 N.C. App. 158 (2018) of this standard to neglect by abandonment). When the trial court's order does not include findings addressing the willfulness of the parental conduct, the order will be vacated. *See In re N.D.A.,* 373 N.C. 71 (findings did not address whether father, who was incarcerated when DSS first became involved up to the adjudication hearing, had the ability to contact petitioner or the child, to exercise visitation, or pay child support).

The determinative time period is not specified by G.S. 7B-1111(a)(1); however, the appellate courts have held that there must be evidence of neglect at the time of the TPR hearing. *In re K.C.T.*, 375 N.C. 592; *In re C.K.C.*, 263 N.C. App. at164 (quoting *In re Young*, 346 N.C. 244, 248 (1997)). When the court fails "to make any findings regarding [the parent's] conduct demonstrating neglect by abandonment 'at the time of the termination hearing,' . . . its conclusion that grounds existed to terminate [the parent's] parental rights under N.C.G.S.§ 7B-1111(a)(1) is unsupported." *In re X.I.F.*, 297 N.C. App. at 807.

The supreme court has stated that neglect by abandonment can be determined without applying the two-part *Ballard* test, which involves evidence and findings of prior neglect and the likelihood of repetition of neglect, when the parent is presently neglecting their child by abandonment. *In re D.T.H.*, 378 N.C. 576; *In re K.C.T.*, 375 N.C. 592.

When considering neglect by abandonment, the court may examine the parent's conduct over an extended period of time. *In re N.D.A.,* 373 N.C. 71 (considering whether father had the ability to contact the petitioner in a private TPR during a period from 2014 through December 2016, during most of which father was incarcerated); *see In re K.C.T.*, 375 N.C. 592 (referring to *In re N.D.A.*, 373 N.C. 71). Unlike the ground of abandonment under G.S. 7B-1111(a)(7), neglect by abandonment pursuant to G.S. 7B-1111(a)(1) does not require findings regarding the six-month period immediately preceding the filing of the petition. *In re D.T.H.*, 378 N.C. 576. In some cases, however, these time periods may overlap. For example, the determination that respondent father had not willfully abandoned his daughter pursuant to G.S 7B-1111(a)(7) because he sought custody of her during the determinative six-month period under that ground was relevant to the determination in the same TPR proceeding that considered whether he neglected his daughter by abandonment under G.S. 7B-1111(a)(1). *In re Z.J.W.*, 376 N.C. 760 (TPR reversed in part on willful abandonment and neglect by abandonment; father paid child support, emailed the child's placement provider, attended child and family team meetings, and completed his case plan during the six months immediately before the TPR motion was filed); *In re C.K.C.,* 263 N.C. App. 168 (reversing TPR; father's attempt to regain custody of his children precluded a determination that father neglected the children by abandonment pursuant to G.S. 7B-1111(a)(1) as his attempt to obtain custody of the children did not show he intended to forego all parental duties and relinquish all parental claims to his children).

B. Willfully Leaving Child in Foster Care for More than Twelve Months without Reasonable Progress

Willfully leaving the child in foster care or placement outside the home for more than twelve months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting the conditions that led to the child's removal is grounds for termination of parental rights (TPR). Parental rights may not be terminated for the sole reason that a parent is unable to care for their child because of poverty. G.S. 7B-1111(a)(2).

This statutory ground, G.S. 7B-1111(a)(2), requires a two-part analysis: (1) that the child has willfully been left by the parent in foster care or placement outside the home for over twelve months and (2) that as of the time of the TPR adjudicatory hearing, the parent has not made reasonable progress under the circumstances to correct the conditions that led to the child's

removal. *In re B.J.H.*, 378 N.C. 524 (2021); *In re D.A.A.R.*, 377 N.C. 258 (2021); *In re K.H.*, 375 N.C. 610 (2020).

1. Constitutional challenge. This ground is not unconstitutionally vague. *In re Moore*, 306 N.C. 394 (1982) (decided under an earlier version of the Juvenile Code).

2. Time period in foster care or placement outside the home. G.S. 7B-1111(a)(2) requires that a parent has willfully left the child in foster care or placement outside the home for more than twelve months. The language "for more than twelve months" has been interpreted to require that the twelve-month period expire by the date a motion or petition to terminate parental rights is filed. *In re K.H.*, 375 N.C. 610 (2020) (twelve-month period is calculated from the date the child is left in foster care or placement outside the home pursuant to a court order until the date that a TPR motion or petition is filed). This interpretation provides parents "with at least twelve months' notice" to correct the conditions that led to their child(ren)'s removal before having to respond to a pleading seeking to terminate their parental rights and fulfills the purpose of the Juvenile Code to preserve families while maintaining a legislatively-imposed time frame to seek a TPR when a child cannot return home safely. *In re K.H.*, 375 N.C. at 614. This ground cannot be adjudicated when the twelve-month threshold has not been satisfied. *In re K.H.*, 375 N.C. 610 (reversing TPR).

A placement in foster care, by definition, requires that the parent and juvenile have been physically separated and are not living together in the same home. *In re K.H.*, 375 N.C. 610 (examining G.S. 131D-10.2(9) defining "foster care"). In *In re K.H.,* the North Carolina Supreme Court reversed a TPR on this ground when the juvenile and mother, who was a minor parent, were both in DSS custody and were placed in the same home for a period of time. The supreme court held the time the minor parent and juvenile were placed together could not count toward the twelve-month period in G.S. 7B-1111(a)(2).

The period of one year in foster care or other placement must be pursuant to a court order. *In re M.R.F.*, 378 N.C. 638 (2021) (reversing TPR; no evidence or findings of date of the court order removing the child); *In re K.C.T.,* 375 N.C. 592 (2020) (reversing TPR); *In re J.S.,* 374 N.C. 811 (2020) (affirming TPR). The appellate courts have held that a removal contemplated by G.S. 7B-1111(a)(2) does not result from a voluntary out-of-home service agreement and that time does not count as part of the twelve-month period during which the juvenile has been removed. *In re E.B.*, 375 N.C. 310 (2020) (reversing TPR; agreeing with *In re A.C.F.,* 176 N.C. App. 520 (2006) that a voluntary plan does not remove a juvenile for purposes of this ground; no valid court order removed child). A child has not been "removed" when a parent can withdraw their consent at any time, such that time a child spent in a placement pursuant only to a voluntary protection plan (e.g., a temporary safety placement) cannot be counted as part of the twelve-month period. *In re A.C.F.,* 176 N.C. App. 520 (reversing TPR; although child was out of the home for more than twelve months, removal did not occur until a nonsecure custody order was entered after the parent and child were initially separated by a voluntary protection plan; the child was removed pursuant to the nonsecure custody order for ten months before the TPR motion was filed, which does not meet the twelve month threshold for removal).

According to the court of appeals, time spent outside the home pursuant to a civil custody order that resulted from an abuse, neglect, or dependency proceeding pursuant to G.S. 7B-911

can be counted, as can time spent with guardians appointed pursuant to G.S. 7B-600. *See In re H.R.P.*, 297 N.C. App. 339 (2024) (TPR affirmed where the child lived with the guardian appointed in the underlying neglect proceeding for eighteen months preceding the private TPR action; the guardianship constituted an out of home placement under G.S. 7B-1111(a)(2)); *In re L.C.R.*, 226 N.C. App. 249 (2013) (where a neglect matter had been transferred to a G.S. Chapter 50 civil custody action pursuant to G.S. 7B-911); *In re D.H.H.*, 208 N.C. App. 549 (2010) (rejecting the father's argument to count only the time prior to guardianship, stating that the ground in G.S. 7B-1111(a)(2) and G.S. 7B-600 are independent and noting that G.S. 7B-1111(a)(2) does not require the child to be in DSS custody). However, the supreme court has determined that if the only order is a civil custody order, that civil custody order is not a removal. *See In re K.C.T.*, 375 N.C. at 596 (reversing TPR; petitioners had child placed with them through a voluntary kinship placement and obtained custody through a G.S. Chapter 50 action; "[a] Chapter 50 civil custody order does not provide sufficient notice to a parent that their parental rights would be imperiled by their loss of custody or inform the parent what steps would be necessary to make reasonable progress and avoid termination"). It appears the difference in the court of appeals opinion in *In re L.C.R.* and the supreme court opinion in *In re K.C.T.* is the involvement by the juvenile court in an underlying abuse, neglect, or dependency proceeding – the civil custody order in *In re L.C.R.* resulted from a transfer of a neglect proceeding to G.S. Chapter 50 as the permanent plan for the juvenile and the order in *In re K.C.T.* was based on a private G.S. Chapter 50 action without the involvement of the juvenile court.

The court order requiring that a child be removed from the home and which starts the clock on the twelve-month period can be a nonsecure custody order. *In re J.A.K.*, 258 N.C. App. 262 (2018). The twelve-month time period in foster care placement applies when the respondent in the TPR was the "non-removal parent" and did not appear in the underlying abuse, neglect, or dependency action until after the child's adjudication and almost one year after the nonsecure custody order was issued. *In re J.A.K.*, 258 N.C. App. 262 (rejecting argument of respondent father that the statutory period began when father first appeared at a hearing with counsel).

It is not necessary that the period of time in foster care be continuous. *In re Taylor*, 97 N.C. App. 57 (1990) (holding that trial period during which children were placed with parents did not defeat this ground). It is unclear whether the holding of *In re K.H.*, 375 N.C. 610, that the parent and juvenile must have been physically separated and not living together in the same foster home placement, applies to a trial home placement with the parent while the child remains in DSS custody. If *In re K.H.* does apply to trial home placements, *In re Taylor* would be overturned by implication.

3. Willfulness. Appellate cases have emphasized and shaped the meaning of the term "willful" in this ground. Willfulness is a finding of fact, not a conclusion of law. *In re A.M.L.*, 377 N.C. 1, 14 (2021) (quoting *In re J.S.*, 374 N.C. 811, 818 (2020)). The TPR order must include a finding of the parent's willfulness. *In re M.B.*, 382 N.C. 82 (2022) (vacating and remanding TPR). For this ground, "willfulness means something less than willful abandonment, which involves purpose and deliberation" and may consist of "[v]oluntarily leaving a child in foster

care for more than twelve months or a failure to be responsive to the efforts of DSS . . .” *In re K.J.D.*, 297 N.C. App. 49, 53 (2024) (citations omitted).

(a) Fault not required. Willfulness, for purposes of this ground, does not require a showing of parental fault. *In re D.A.A.R.*, 377 N.C. 258 (2021); *In re A.M.L.*, 377 N.C. 1; *In re J.S.,* 374 N.C. 811 (agreeing with the court of appeals in *In re Oghenekevebe*, 123 N.C. App. 434 (1996) that fault not required). It is not a prerequisite for a TPR that the parent whose rights are at issue caused the conditions that resulted in the child’s placement. *In re A.W.*, 237 N.C. App. 209 (2014) (affirming termination of father’s rights pursuant to G.S. 7B-1111(a)(2) where the child was placed in DSS custody and removed from his mother’s care before paternity was established, but father made almost no efforts to obtain custody despite repeated attempts by DSS to help him do so).

(b) Parent’s ability. For willfulness to attach, evidence must show a parent’s ability (or capacity to acquire the ability) to overcome the factors that resulted in the child’s placement and that the parent was unwilling to make the effort. *In re K.D.C.*, 375 N.C. 784, 793 (2020) and *In re L.E.W.,* 375 N.C. 124, 136 (2020) (both stating willfulness “is established when the [parent] had the ability to show reasonable progress, but was unwilling to make the effort”). Willfulness may also involve a parent’s “prolonged inability to improve her situation, despite some efforts in that direction.” *In re A.M.L.*, 377 N.C. at 14 (affirming TPR; mother’s ability to complete the case plan for her infant, resulting in DSS not seeking custody of the infant, shows mother’s willfulness in not making reasonable progress on the case plan for her other children).

(c) Minor parent. In the case of a minor parent, the court must make specific findings showing that the parent’s age-related limitations have been adequately considered in relation to willfulness. *In re J.G.B.*, 177 N.C. App. 375 (2006); *In re Matherly*, 149 N.C. App. 452 (2002). *See In re Q.P.W.*, 376 N.C. 738 (2021) (affirming TPR; although mother was the age of majority during determinative twelve month period her child was in foster care and at time of TPR hearing, mother was a minor parent in DSS custody for years prior to turning 18; specific findings about mother’s minor status were not included; mother’s argument that her case plan did not have a sufficient nexus to address her status as a minor parent were rejected; case plan was reviewed repeatedly to adjust for mother’s changing circumstances; mother did not attend parenting classes, cooperate with drug screens, visit with her child, or maintain stable housing; dissent discusses adolescent development, young parents, willfulness, and poverty).

(d) Incarcerated parent. The trial court must consider a parent’s incarceration when determining whether that parent has made reasonable progress to correct the conditions that led to the child’s removal. *In re G.B.*, 377 N.C. 106 (2021); *In re K.D.C.*, 375 N.C. 784. A parent’s “incarceration, standing alone, neither precludes nor requires finding the respondent willfully left a child in foster care.” *In re G.B.*, 377 N.C. at 113 (quoting *In re Harris*, 87 N.C. App. 179, 184 (1987)). The parent’s failure to contact DSS or the child is evidence of willfulness. *In re Harris*, 87 N.C. App. 179 (decided under prior version of statute); *see also In re Shermer*, 156 N.C. App. 281 (2003) (holding that evidence was insufficient to find willfulness where the incarcerated father wrote to his sons while in prison and informed DSS that he did not want his rights terminated); *Whittington v. Hendren*, 156 N.C. App. 364, 369–70 (2003) (affirming TPR where the court found that

"[e]ven though the respondent was incarcerated, he could have made more of an effort to maintain contact with his child," and respondent had foregone the opportunity to attend the TPR hearing).

In determining whether a parent satisfied elements of a case plan while incarcerated, the trial court was overly rigid when it equated a mother's inability to obtain housing and employment with a failure to comply with her case plan when mother had another fifteen months of her sentence to serve – "fifteen months in the future . . . is too remote in time to be fairly evaluated as a case plan violation." *In re K.D.C.*, 375 N.C. at 795 (reversing TPR).

(e) Some effort does not preclude a finding of willfulness. The fact that a parent makes some effort does not preclude a finding of willfulness. *See, e.g.*, *In re B.J.H.*, 378 N.C. 524 (2021) (affirming TPR; mother completed parenting classes but did not make reasonable progress on other issues related to substance use and housing); *In re J.S.*, 374 N.C. at 819 (affirming TPR; mother completed parenting classes, had regular contact with DSS, visited with the children, passed drug screens, and did not engage in criminal activity but did not make reasonable progress to correct the conditions in her home; children were adjudicated based on circumstances involving "the filthy and unsafe condition" of mother's home; mother refused to work with home aide).

(f) Delay in case plan. The supreme court has held that "a parent's delay in signing a case plan or attempting to address the conditions leading to a child's removal from the home has indisputable relevance to an evaluation of the willfulness of a parent's conduct and the reasonableness of that parent's progress in correcting the conditions that had led to a child's removal from the family home . . . ." *In re D.A.A.R.,* 377 N.C. at 274. When a parent argued she was delayed in starting her case plan because she did not receive a physical copy of the plan from DSS for two months, the supreme court determined that mother had sufficient time from receipt of the physical copy of her case plan and the TPR hearing a year later to make progress, yet she failed to do so. *In re A.M.L.*, 377 N.C. 1.

4. Reasonable progress to correct conditions that led to child's removal. Appellate courts have considered several issues related to conditions that precipitated a child's removal and a parent's progress in correcting those conditions.

(a) Conditions that led to the child's removal. In *In re B.O.A.*, 372 N.C. 372 (2019), the North Carolina Supreme Court interpreted the phrase "those conditions that led to the removal of the juvenile" appearing in G.S. 7B-1111(a)(2). As part of its analysis, the supreme court looked to other relevant statutory provisions, including the trial court's authority over parents at disposition in an abuse, neglect, or dependency action under G.S. 7B-904(d1)(3). At disposition, the trial court may order a parent to take appropriate steps to remedy the conditions that led to the child's adjudication or removal from the parent's custody. A parent's compliance with a judicially adopted case plan is relevant when determining if grounds to terminate that parent's rights exist pursuant to G.S.7B–1111(a)(2). *See, e.g., In re K.J.D.,* 297 N.C. App. 49 (2024); *In re T.M.L.*, 377 N.C. 369 (2021); *In re A.M.,* 377 N.C. 220 (2021). See Chapter 7.7.A and B (discussing the court's authority over parents and others at disposition).

In looking at the language of "conditions of removal," the supreme court held that an expansive reading is appropriate and reversed the court of appeals, which limited its interpretation of conditions of removal to that which was alleged in the abuse, neglect, or dependency petition. The supreme court reasoned that a child's removal "is rarely the result of a single, specific incident and is, instead, typically caused by the confluence of multiple factors, some of which are immediately apparent and some of which only become apparent in light of further investigation," and a trial court gains a better understanding of the family dynamic as the case progresses. *In re B.O.A.,* 372 N.C. at 384–85. The supreme court held that "conditions of removal" encompasses all factors directly or indirectly contributing to the child's removal, which allows the courts to recognize the complexity of issues that must be resolved in abuse, neglect, or dependency cases. In applying the more expansive interpretation of conditions of removal, the supreme court affirmed the TPR after determining there was a nexus between the court-ordered case plan and the complex series of interrelated factors causing the child's removal and that respondent mother failed to make reasonable progress on her case plan. The supreme court noted that its holding did not mean a trial judge has unlimited authority or that "conditions of removal" has no meaning.

The North Carolina appellate courts have applied the holding of *In re B.O.A*. to subsequent opinions that challenged the nexus between the trial court's case plan in the abuse, neglect, or dependency action and the parent's progress on remedying the conditions that led to the child's removal from their parent's home. *See, e.g., In re K.J.D.,* 297 N.C. App. 49 (affirming TPR; underlying dependency adjudication was based on domestic violence but substance use issues were identified while children were initially placed with both parents on a split schedule; substance use was part of reason for removal; court was authorized to impose conditions regarding mother's substance use); *In re A.M.L*., 377 N.C. 1 (2021) (affirming TPR; nexus existed between court-approved case plan addressing mother's substance use, mental health issues, and parenting skills with a focus on the primary reason for the children's removal, mother's substance use); *In re A.M*., 377 N.C. 220 (affirming TPR; reviewing record and noting there is a nexus between the case plan and bases for children's removal); *In re C.J*., 373 N.C. 260 (2020) (affirming TPR; determining the required nexus with the case plan was satisfied when looking at the overall conditions that led to the child's removal from her mother).

(b) What constitutes reasonable progress by a parent. When a parent's progress is at issue, the court determines whether that progress is reasonable. The court may look to the parent's progress on a case plan since a case plan memorializes the remedies that a parent may implement to correct the conditions that led to the child's removal. *In re A.M*., 377 N.C. 220; *see In re J.S*., 374 N.C. 811 (2020) (a parent's compliance with the court-ordered case plan is relevant when determining whether the parent made reasonable progress). However, the supreme court has stated, "compliance or noncompliance with a case plan is not, in and of itself, determinative of a parent's reasonable progress in correcting the conditions that led to a child's removal from the home." *In re B.J.H*., 378 N.C. 524, 554 (2021).

The supreme court determined that a challenge to a TPR based on the trial court not providing the parent with formal guidance on what the parent was required to do to correct the conditions that led to removal was without merit as the child was adjudicated

dependent and the case plan, which was designed to address the parent's ability to care for the child, provided notice of the conditions that needed to be addressed. *In re Z.O.G.-I.*, 375 N.C. 858 (2020). However, the supreme court has also determined that a parent's refusal to sign a case plan or a court not ordering a parent to comply with a case plan does not preclude a TPR for failing to make reasonable progress to correct the conditions that led to the juvenile's removal. *In re B.J.H.*, 378 N.C. 524 (affirming TPR for father who refused to sign a case plan; plan was not adopted and ordered by the trial court).

The supreme court has observed that "a trial court has ample authority to determine that a parent's 'extremely limited progress' in correcting the conditions leading to removal adequately supports a determination that a parent's parental rights in a particular child are subject to termination." *In re B.O.A.*, 372 N.C. at 385 (affirming TPR), *quoted in In re A.B.C.,* 374 N.C. 752, 760 (2020) and *In re L.E.W.*, 375 N.C. 124, 136 (2020). Although extremely limited progress is not reasonable, perfection is not required for a parent to reach the reasonable progress standard. *See In re A.D.*, 285 N.C. App. 88, 113 (2022) ("a parent's failure to fully satisfy all elements of the case plan goals is not the equivalent of a lack of reasonable progress") (citation omitted); *In re L.E.W.,* 375 N.C. at 136 (failure to make reasonable progress is not found ". . . simply because of [a parent's] 'failure to fully satisfy all elements of the case plan goals' "), *quoting In re B.O.A.*, 372 N.C. at 385.

The supreme court also has found that a parent's limited progress in correcting conditions that led to removal will support a termination of rights under G.S. 7B-1111(a)(2) when findings showed, among other things, that respondent "mother waited too long to begin working on her case plan." *See In re I.G.C.*, 373 N.C. 201, 206 (2019) (affirming TPR); *see also In re D.A.A.R.*, 377 N.C. 258 (2021) (holding that a parent's delay in signing a case plan or attempting to address the conditions that led to removal are relevant to evaluating the parent's willfulness and reasonableness of their progress). See subsection (d), below, for a discussion on the impact of a parent's delay.

Whether a parent is in a position to actually regain custody of the child at the time of the TPR hearing is not relevant in determining whether the parent has made reasonable progress to correct the conditions that led to removal. *In re D.A.A.R.*, 377 N.C. at 267 (quoting *In re J.S.,* 374 N.C. at 819); *In re J.S.,* 374 N.C. at 819 (quoting *In re L.C.R.*, 226 N.C. App. 249, 252 (2013)); *In re L.C.R.*, 226 N.C. App. 249 (transfer of neglect order to a civil custody order was immaterial to showing of reasonable progress; holding respondent is not required to regain custody to defeat TPR on this ground, and conditions resulting in removal do not need to be completely corrected; trial court looks to whether reasonable progress under the circumstances was made).

The trial court may consider a parent's decisions and actions toward one child who was removed when determining whether the parent has made reasonable progress to correct the conditions for another child who was removed. *See In re D.A.A.R.*, 377 N.C. 258 (conditions that led to both children's removal and requirements in the case plan were not child-specific; mother's interactions with one child show the nature and extent of her parenting skills and are relevant to an evaluation of mother's progress in correcting conditions that led to other child's removal).

(c) Time period for a parent's reasonable progress. The period for evaluating the nature and extent of a parent's reasonable progress extends up to the adjudicatory hearing on the TPR

motion or petition. *See In re B.J.H.*, 378 N.C. 524 (affirming TPR; clarifying the time is up to the date of the adjudicatory hearing, not the dispositional hearing or entry of the TPR order); *In re Z.G.J.*, 378 N.C. 500 (2021) (reversing TPR; evidence consisted of DSS social worker's testimony reaffirming under oath the allegations in the TPR petition; hearing was conducted thirteen months after the TPR petition was filed; there was no evidence of mother's progress made up to date of TPR hearing); *In re T.M.L.,* 377 N.C. 369 (affirming TPR; noting trial court applied the incorrect time period for determining father's progress by focusing on the year prior to the filing of the TPR petition; recognizing, however, that the findings of fact addressed father's progress up to the date of the TPR hearing and sufficiently addressed the totality of father's progress up to the date of the TPR hearing); *In re I.G.C.,* 373 N.C. 201 (affirming TPR; considering respondent mother's progress up to time of termination hearing); *In re D.L.W.*, 368 N.C. 835 (2016) (affirming TPR; one finding addressed mother's lack of housing at the time of the termination hearing); *see also In re Pierce*, 356 N.C. 68, 75 n.1 (2002) (decided on an earlier wording of the statute that included a second twelve-month period during which the parent must make progress, but noting that under a 2001 amendment that removed that second twelve-month time period, "there is no specified time frame that limits the admission of relevant evidence pertaining to a parent's 'reasonable progress' or lack thereof").

(d) Last-minute attempts. A parent's last-minute attempts to comply with the case plan will not defeat a trial court's determination that the parent failed to make reasonable progress to correct the conditions that led to the child's removal from the home. When considering "reasonableness," the trial court may consider the amount of time a parent has to correct the conditions. *See In re T.M.L.*, 377 N.C. 369 (affirming TPR; partial steps by respondent father to comply with his case plan after the TPR was filed were insufficient to show reasonable progress when he had over twenty-seven months to comply); *In re D.A.A.R.*, 377 N.C. 258.

Cases where the findings support the conclusion that a lack of reasonable progress was made due to the parent's delay in working their case plan include

- Although mother made some progress on her case plan and found some stability after the TPR petition was filed, the court acted within its authority to determine the improvements mother made were insufficient given the historical facts of the case. *In re A.S.D.*, 378 N.C. 425 (2021).
- Although mother obtained housing one month before the TPR hearing, she did not comply with the case plan requirements addressing her parenting and mental health. Her limited and delayed progress was not reasonable given that the children were in DSS custody for three years. *In re E.C.*, 375 N.C. 581 (2020).
- Respondent mother's limited achievements in correcting conditions were "well-documented" by findings that "showed that respondent-mother waited too long to begin working on her case plan." *In re I.G.C.,* 373 N.C. at 206. Findings that related to mother's conduct after she agreed to the case plan included that mother did not complete the recommended substance use or domestic violence programs and that she missed multiple drug screens, tested positive on two occasions, and committed two DWI offenses. Findings relating to mother's conduct after reunification efforts ceased up to the date of the TPR hearing included that mother did not maintain stable

employment or stable housing for six months and moved frequently, signaling instability. Mother's progress at the TPR hearing "was not the level of progress required by her case plan." *In re I.G.C.,* 373 N.C. at 205.

(e) Incarceration. The trial court must consider a parent's incarceration when determining whether that parent has made reasonable progress to correct the conditions that led to the child's removal. *In re G.B*., 377 N.C. 106 (2021); *In re A.J.P*., 375 N.C. 516 (2020). A parent's ability to comply with their case plan may be limited by the services available at the penal institution where that parent is serving their sentence. *See, e.g., In re K.D.C.,* 375 N.C. 784 (2020) (TPR reversed; finding that mother had ability to complete substance use assessment and treatment while incarcerated was not supported by the evidence; social worker testified she did not contact prison to verify whether substance use services were available); *In re A.J.P.*, 375 N.C. 516 (TPR affirmed; discusses in part father's minimal efforts to complete the case plan components that he could have completed while incarcerated). A parent's behaviors while incarcerated that result in barriers to that parent accessing services at the facility or being transferred to a more restrictive facility with fewer available services may be considered by the trial court when determining whether the parent's progress was reasonable. *In re G.B*., 377 N.C. 106 (affirming TPR; father's behaviors while incarcerated caused the barriers to his accessing services that would have enabled him to achieve his case plan goals).

(f) Findings must support court's conclusion as to a parent's reasonable progress. The ultimate finding as to a parent's reasonable progress must be the result of a process of logical reasoning based on the evidentiary facts found by the court. *In re A.B*., 253 N.C. App. 29 (2017).

A conclusion that a parent has not made reasonable progress to correct conditions is not supported by findings when the order contains inconsistent findings and conflicting evidence that were not resolved by the trial court. *See In re L.L.O*., 252 N.C. App. 447 (2017) (vacating and remanding a TPR order based on G.S. 7B-1111(a)(2) that did not resolve conflicting evidence); *In re A.B*., 253 N.C. App. 29 (vacating and remanding a TPR order based on G.S. 7B-1111(a)(2) when respondent mother and DSS social worker presented conflicting material evidence on willfulness and reasonable progress that was not resolved in the court's order). When there is conflicting evidence, the trial court is responsible for determining witness credibility and the weight to give the testimony and draw reasonable inferences from the testimony. *In re B.J.H*., 378 N.C. 524 (affirming TPR; court made reasonable inferences from the evidence; court determined witness credibility resolving conflict between DSS social worker's and father's testimony and was not bound by prior finding in a permanency planning order that the court took judicial notice of).

Cases where the findings support the conclusion that a parent failed to make reasonable progress to correct conditions that led to the child's removal include

- Where child's removal was principally based on parents' inability to provide adequate housing for the child, findings show respondent father failed to obtain suitable housing despite having financial resources and being given several housing resources and over two years to do so. The court rejected father's argument that his undocumented

immigration status was the primary barrier to obtaining housing when the record showed father stopped applying for housing when he received one rejection based on his criminal record. Although respondent father made progress in other areas of his case plan, his limited progress in obtaining adequate housing was not reasonable. *In re R.A.X.*, 298 N.C. App. 341 (2025).

- Findings show respondent father failed to comply with the court-ordered components of his case plan addressing domestic violence, substance use, and suitable housing. Father was required to complete a domestic violence program and was not absolved from that requirement after he and mother were no longer in a relationship due to her death or by a lack of evidence showing acts of domestic violence between father and his current girlfriend. *In re T.M.L.*, 377 N.C. 369.
- Although respondent mother obtained a structurally safe and appropriate residence and inconsistently engaged in some court-ordered services, she failed to make reasonable progress in correcting the domestic violence and substance use issues that led to the children's removal from her care. *In re A.M.*, 377 N.C. 220.
- Mother, who had been diagnosed with a mild intellectual disability and unspecified personality disorder, was capable of improving the conditions in her home, which was the principal reason for the children's removal. Although medical provider's conclusion was that mother lacked the ability to keep a clean home while rearing children, mother did not maintain a clean home when she had no child-caring responsibilities. Mother showed she was capable of complying with some aspects of her case plan, yet she refused to work with her in-home aide regarding the housing conditions. Mother's lack of reasonable progress was willful. *In re J.S.*, 374 N.C. 811.
- Findings that respondent mother lacked an understanding of, or did not accept responsibility for, the circumstances leading to children's removal was supported by evidence that mother continued to live with father during the juvenile proceeding and placed more importance on their relationship than the safety of the children. Father did not comply with his case plan and denied responsibility for domestic violence and other conditions that led to children's removal. Mother blamed the children and others for the father's return to the home, and she continued to defend father. While mother made some progress on her case plan, she did not comply with the requirement that she provide a safe and stable home environment for the children. *In re A.R.A.,* 373 N.C. 190 (2019).

Case where findings do not support the parent's lack of reasonable progress in correcting conditions that led to child's removal include

- The findings that were supported by clear and convincing evidence do not support the conclusion that father failed to make reasonable progress. On de novo review, father made reasonable progress under the circumstances of the children being placed in a permanent guardianship. Father and mother had custody of their youngest child; father worked his case plan before the guardianship was ordered. Father had a stroke and moved to South Carolina, where SC DSS determined father's home was clean and without safety hazards, addressing concerns for why the children came into care. After the guardianship was ordered, father visited with and spoke with his children as ordered, had employment, paid child support, and sent gifts to the children. *In re T.R.W.*, 294 N.C. App. 57 (2024).

- The findings that were supported by clear and convincing evidence do not support the conclusion that father failed to make reasonable progress. Father did make sufficient progress on his case plan, including completing parenting classes and continuing on his own to improve his parenting skills; moved across the state to be closer to his daughter; was consistent with and appropriate in his visits; obtained full-time employment and safe housing; obtained his driver's license and a vehicle; and completed substance use and mental health assessments. Although father did not participate in recommended mental health therapy, he took steps to find therapy that would work with his job schedule. He did not participate in substance use treatment via the DSS case plan, but he did submit to drug screens and services through his probation, which he successfully completed. Father's progress does not show "a prolonged inability to improve [his] situation." *In re A.D.*, 285 N.C. App. at 114.
- The record and findings show mother made consistent, significant, and reasonable progress to correct the conditions that directly and indirectly led to the children's removal. She successfully completed residential substance use treatment and maintained her sobriety for over one year, relocated to another state to avoid the abusive relationship with children's father, obtained and maintained appropriate housing, and addressed her parenting and mental health issues. Mother's inappropriate actions during one incident involving her daughter running away from the placement "must be viewed in context of her overall success in addressing the principal causes for the children's removal from her home . . . ." *In re D.A.A.R.*, 377 N.C. at 280.
- Primary condition that led to child's removal was respondent mother's mental health, but other conditions were mother's drug use and DSS's concern for the child's care and well-being. The trial court made no findings at the time of the termination hearing as to mother's progress or lack of progress in correcting her drug use or the conditions of her home. The following findings were insufficient to support the ultimate finding of lack of reasonable progress: findings as to mother's mental health lacked detail in describing what a mental illness "episode" was, how frequently mother had such episodes, and how the episodes "left her incapable of properly caring for [her son]"; and findings describing mother's behavior during visits with her child as "consistently concerning" and "disturbing" lacked any particularity in what behavior it was referring to and how that behavior impacted mother's ability to care for her son. Moreover, testimony of mother's psychiatrist tended to show that mother had made significant progress in addressing her mental health issues, and other evidence showed she had stable housing and income and was not using drugs. *In re Z.D.,* 258 N.C. App. 441, 447 (2018).

5. Poverty cannot be basis for TPR. The Juvenile Code explicitly prohibits the termination of a parent's rights pursuant to the ground in G.S. 7B-1111(a)(2) for the sole reason that the parent is unable to care for their child because of poverty. G.S. 7B-1111(a)(2). The supreme court examined poverty as a factor in *In re T.M.L.*, 377 N.C. 369 (2021) (TPR affirmed; noting there was no evidence to support any findings that would have addressed father's financial circumstances). In that opinion, the supreme court held that a parent's poverty is not an affirmative defense to this TPR ground, and the issue is not waived by a parent's failure to file an answer or raise the issue of poverty at the TPR hearing**.** Similarly, the trial court is not required to make an affirmative finding that poverty is not the sole reason for a parent's inability to care for their child. Poverty goes to a parent's lack of willfulness in failing to make

reasonable progress under the circumstances for purposes of G.S. 7B-1111(a)(2). *In re T.M.L.*, 377 N.C. 369.

North Carolina appellate courts have examined this issue in a limited number of cases.

- When examining the mother's housing, which was stable, clean, and tidy, the trial court did not terminate mother's parental rights solely due to poverty when finding the two-bedroom home was inadequate for the three children given that two children had been sexually inappropriate with one another. The TPR was based on mother's failure to make reasonable progress on appropriate discipline, understanding the children's sexualized behaviors, and her inconsistent participation in therapy. *In re A.H.G.*, 284 N.C. App. 297 (2022).
- The trial court did not terminate mother's rights because of poverty but rather because she failed to make reasonable efforts to complete her case plan. Mother refused DSS offers to assist with transportation to her son's medical appointments and visits and to participate in virtual visits if in-person became infeasible. Mother quit one job and left another. "On balance, the trial court's findings demonstrate that respondent-mother could have sought to comply with the requirements of her case plan even while experiencing otherwise insufficient monetary resources." *In re D.D.M.*, 380 N.C. 716, 722 (2022).
- Findings in the underlying neglect adjudication order indicated that a lack of consistent and adequate housing and an inability to meet the children's minimal needs led in part to their removal. Findings in the TPR order that mother refused to comply with a case plan requirement that she create a budgeting plan, her inability to account for where her earnings went, multiple evictions for nonpayment of rent despite being employed, her loss of employment after being incarcerated because of a domestic violence incident, and her driving without a valid driver's license resulting in charges, demonstrated mother's failure to correct the conditions that led to the children's removal and that her failure "was not simply the result of poverty." *In re D.L.W.*, 368 N.C. 835, 846 (2016).
- Father's argument that his inability to obtain housing due to poverty was directly rebutted by the court's finding that his actions were not solely the result of poverty. *In re J.A.K.*, 258 N.C. App. 262 (2018).
- The trial court found that mother met five of the requirements for reunification but concluded that she had failed to make reasonable progress when she had not complied with three other requirements: resolve pending criminal charges, obtain a psychological evaluation and follow recommendations, and maintain employment sufficient to meet both her and her child's needs. The order terminating mother's rights was reversed when evidence as to those three requirements indicated that (1) at the time of the hearing mother's criminal charges could have been resolved in a week's time by plea for time served, (2) mother had submitted to a psychological evaluation and attended therapy as recommended by her therapist, which was for "individual counseling services" and not "intensive individual counseling" as found by the trial court, and (3) while mother's monthly income from a part-time job was insufficient to meet her and her child's needs, G.S. 7B-1111(a)(2) does not allow parental rights to be terminated on the sole basis of poverty. *In re S.D.,* 243 N.C. App. 65 (2015).
- When reviewing a TPR based on failure to make reasonable progress under G.S. 7B-1111(a)(2), the court of appeals examined whether the father's rights were terminated solely because of poverty even though the father did not present this issue on appeal. The

court of appeals affirmed the TPR, noting the father's failure to obtain custody of his daughter had nothing to do with poverty but was instead due to his own inaction. *In re A.W.*, 237 N.C. App. 209 (2014).

C. Failure to Pay a Reasonable Portion of the Child's Cost of Care

When a child has been placed in the custody of DSS, a licensed child-placing agency, a child-caring institution, or foster home, and the parent has willfully failed to pay a reasonable portion of the cost of the child's care for a continuous period of six months immediately preceding the filing of the petition or motion, although physically and financially able to do so, a ground for terminating parental rights (TPR) exists. G.S. 7B-1111(a)(3). The cost of care is the amount DSS pays to care for the child, *i.e.*, foster care. *In re J.C.J.*, 381 N.C. 783 (2022); *In re J.E.E.R.*, 378 N.C. 23 (2021); *In re S.E.*, 373 N.C. 360 (2020).

Legislative Note: Effective October 1, 2025, a child support payment is not past due and no arrearage accrues for foster care assistance owed to the State by an obligor during any period the child is placed in DSS custody. G.S. 50-13.10(d)(5), enacted by S.L. 2025-16, sec.1.21(a). It is unclear how this newly enacted statutory provision affects this ground. This ground does not require a child support order and appears to consider the cost of care as the actual expenditures paid by DSS versus the monthly amount of foster care assistance. *See* G.S. 108A-48 through 108A-49.1 (foster care and adoption assistance payments and rates).

Federal Guidance: The Administration for Children and Families (ACF) Children's Bureau and the Office of Child Support Enforcement issued guidance on July 29, 2022 that encourages child welfare agencies to not automatically refer parents who are in the reunification process to the IV-D agency for child support. One rationale for this guidance is that many of the parents live in poverty, and a child support obligation used to offset the cost of foster care negatively impacts families who are trying to maintain economic stability and reunify with their children. This guidance does not supersede G.S. 7B-1111(a)(3) but may be a factor for DSS when deciding what grounds to allege in a TPR petition or motion.

Resource: Federal guidance from ACF and the Office of Child Support Enforcement is in the "Joint Letter Regarding the Assignment of Rights to Child Support for Children in Foster Care" (July 29, 2022).

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1. Constitutional challenge. The ground in G.S. 7B-1111(a)(3) is not unconstitutionally vague. *In re Moore*, 306 N.C. 394 (1982) (decided under an earlier version of the Juvenile Code); *In re Clark*, 303 N.C. 592 (1981) (decided under an earlier version of the Juvenile Code).

2. Ability to pay. A finding that the parent is able to pay a reasonable portion of the cost of the child's care or support is essential to termination on this ground. *In re S.C.C.*, 379 N.C. 303 (2021) (quoting *In re Ballard*, 311 N.C. 708 (1984)); *In re Ballard*, 311 N.C. 708 (deeming it essential that the court find that a parent has the ability to pay support before terminating for nonsupport on this ground); *In re Clark,* 303 N.C. 592 (1981) (a parent's ability to pay is the controlling characteristic in determining what constitutes a reasonable portion of the cost of the child's care). The findings must address the determinative six-month period, which is the

six months immediately preceding the filing of the TPR petition or motion. *See In re J.C.J.,* 381 N.C. 783 (2022) (affirming TPR; unchallenged finding that father was consistently employed throughout the neglect case up to the TPR hearing includes the determinative six-month period; distinguishing from *In re Faircloth*, 161 N.C. App. 523 (2003) where finding was that parent was employed at various times without addressing whether she was employed during the relevant time period); *In re Z.G.J.,* 378 N.C. 500 (2021) and *In re K.H*., 375 N.C. 610 (2020) (both reversing TPR; findings regarding each mother's ability to pay based on her employment did not address the relevant time period and were, therefore, insufficient).

The North Carolina Supreme Court has stated, "[a] parent is required to pay that portion of the cost of foster care for the child that is fair, just and equitable based upon the parent's ability or means to pay . . . . The requirement applies irrespective of the parent's wealth or poverty." *In re J.E.E.R.*, 378 N.C. 23, 27 (2021) (quoting *In re Clark*, 303 N.C. at 604). The court must make specific findings that the parent was able to pay some amount greater than what they paid (including more than zero if nothing was paid) during the relevant time period but is not required to find a specific amount of support that would have constituted a reasonable portion under the circumstances. *See In re J.E.E.R.*, 378 N.C. 23 (affirming TPR; findings were that father was continuously employed making $200–$700/week during the relevant time period yet contributed nothing toward the cost of his child's care); *In re N.X.A*., 254 N.C. App. 670 (2017) (holding no error in ordering TPR; mother paid no support, had annual income of $10,000 to $13,000, claimed her children as dependents for tax purposes resulting in a significant tax refund, and had the ability to pay some amount greater than zero).

An order terminating a parent's rights on this ground will be reversed if the required finding as to the parent's ability to pay is not included. *In re D.R.J*., 381 N.C. 381 (2022) (reversing TPR; court finding consisted of a recitation of the statutory language of G.S. 7B-1111(a)(3); no findings about the parent's ability to pay were made and no evidence of parent's ability to pay was introduced); *In re Clark,* 151 N.C. App. 286 (2002), *superseded in part by statute as stated in In re A.L.S.*, 375 N.C. 708 (2020) (incarcerated father paid no child support and was not ordered to do so; when there was no finding that father had the ability to pay an amount greater than zero, conclusion that respondent father failed to pay a reasonable portion of his child's care was error). Findings addressing the parent's own living expenses are not always required when the parent has paid nothing toward the child's care and has some employment income. *See In re J.A.E.W*., 375 N.C. 112 (2020) (TPR affirmed; court did not need to make findings as to parent's living expenses).

When a court orders child support, it has determined the reasonable portion of the cost of the child's care based on the parent's ability to pay and the child's needs. *In re S.C.C*., 379 N.C. 303 (relying on *In re J.M*., 373 N.C. 352 (2020) (discussing the doctrine of stare decisis); *In re J.M*., 373 N.C. 352 (mother was subject to a valid child support order during the relevant six-month period, which established that she had the financial ability to pay; mother had not moved to modify or set aside that court order). Under G.S. 110-132(a3), a voluntary support agreement (VSA) has "the same force and effect as an order of support entered by [a] court" and was treated as a court order in a TPR proceeding where mother was obligated by a VSA to pay $112/month in child support and paid nothing toward the cost of her child's care. *In re A.P.W*., 378 N.C. 405, 424 (2021) (affirming TPR under G.S. 7B-1111(a)(3), "order" established her ability to support the children and mother had not moved to modify or nullify

the VSA); *see In re J.K.F.*, 379 N.C. 247 (2021) (relying on *In re A.P.W.*, 378 N.C. 405) (affirming TPR when mother had a VSA).

When a TPR is based on a parent's willful failure to pay a reasonable portion of the cost of the child's care, and there is an order for child support or a VSA, the TPR petitioner (or movant) is not required to independently prove the respondent parent's ability to pay, and the court is not required to make findings of a parent's income, assets, or expenses. *In re S.C.C.*, 379 N.C. 303 (affirming TPR; findings that each parent was subject to a child support order, each parent was employed and was not disabled, father did not make one payment during relevant time period, and mother did not make one voluntary payment during relevant time period, supported ground); *In re J.K.F.*, 379 N.C. 247 (affirming TPR; mother entered into valid VSA during determinative time period; findings were supported by evidence that mother had some employment during that time).

A parent cannot assert lack of ability or means to contribute to support when the opportunity to do so is lost due to the parent's own conduct. *In re J.M.*, 373 N.C. 352 (mother quit her job in the beginning of the determinative six-month period and chose not to find an alternative health-care provider to manage her anxiety and depression medication when her medical provider was unavailable due to his military deployment; the lack of medication resulted in mother's two-day hospitalization); *In re Tate*, 67 N.C. App. 89 (1984) (parent was not excused from contributing support after she voluntarily quit her various jobs and made no payments, explaining to social worker that she did not feel she had to pay the ordered amount of $10/month because another mother with a child in foster care was not paying support); *In re Bradley,* 57 N.C. App. 475 (1982) (father was removed from prison work-release program after violating program rules by returning from the program intoxicated).

3. Willfulness. As used in G.S. 7B-1111(a)(3), the term " 'willfully'. . . imports knowledge and a stubborn resistance . . . one does not willfully fail to do something which is not in his power to do." *In re Matherly*, 149 N.C. App. 452, 455 (2002) (quoting *In re Moore,* 306 N.C. 394, 411 (1982)). *See In re J.K.C.*, 218 N.C. App. 22 (2012), *superseded in part by statute as stated in In re A.L.S.*, 375 N.C. 708 (2020) (finding that the father could not be found to have willfully failed to pay child support because he had attempted to do so but was told by child support enforcement agency that it could not be arranged because he did not make enough income). In the case of a minor parent, the findings must show adequate consideration of respondent's age-related limitations. *In re Matherly*, 149 N.C. App. 452.

4. Reasonable portion of cost of care. A finding as to the cost of foster care can establish the child's reasonable needs. *In re Montgomery*, 311 N.C. 101 (1984). Determination of a reasonable portion of the cost of the child's care depends on the parent's ability to pay. *See In re S.C.C.*, 379 N.C. 303 (2021) (quoting *In re J.M.*, 373 N.C. 352 (2020); *In re A.L.*, 245 N.C. App. 55 (2016); *In re Manus*, 82 N.C. App. 340 (1986). Appellate cases have held that this ground can be adjudicated only if there is clear and convincing evidence that respondent is able to pay some amount greater than zero. *See In re J.M.,* 373 N.C. 352 (TPR affirmed; finding showed mother had been ordered to pay child support, was capable of working, had some employment at the beginning of the six-month period, and paid zero support); *In re J.E.M.*, 221 N.C. App. 361 (2012) (finding that zero support was not a reasonable portion of the cost of care when respondent father was gainfully employed from time to time and was physically and financially able to make some payments); *see also In re T.D.P.*, 164 N.C. App.

287 (2004), and cases cited therein (finding this ground was met even though respondent's prison wages ranged from forty cents to one dollar per day), *aff'd per curiam*, 359 N.C. 405 (2005).

In a case where a parent had income but paid no support, the North Carolina Supreme Court mentioned that a parent's living expenses may be relevant in determining whether the cost of care was reasonable in situations where a parent makes some payments. *In re J.A.E.W.*, 375 N.C. 112 (2020). Where a mother was earning approximately $300 per weekend, occasional small sums she gave to the foster parents and children (such as $1, $10, or $20) could not be deemed to be active financial support. Total expenditures by social services in caring for the mother's five children exceeded $315,000. *In re B.S.O.*, 234 N.C. App. 706, 720 n.6 (2014).

5. Notice of support obligation irrelevant. Parents have an inherent duty to support their children and may not use "[t]he absence of a court order, notice, or knowledge of a requirement to pay support" as a defense to a TPR on this ground. *In re J.C.J.*, 381 N.C. 783, 791 (2022) and *In re D.C.*, 378 N.C. 556, 561 (2021) (both TPRs affirmed, relying on and quoting *In re S.E.*, 373 N.C. 360, 366 (2020)); *In re S.E.*, 373 N.C. 360 (TPR affirmed; ignorance is not a defense to mother willfully not paying support; noting mother was on notice through repeated findings in permanency planning orders that she paid zero child support); *In re T.D.P.*, 164 N.C. App. 287 (2004) (child support order is not required for this ground, relying on *In re Wright,* 64 N.C. App. 135 (1983)), *aff'd per curiam*, 359 N.C. 405 (2005).

6. Child's placement. Parental rights may be terminated pursuant to G.S. 7B-1111(a)(3) only if the child has been placed in the custody of a DSS, a licensed-child placing agency, a child-caring institution, or a foster home.

In the case *In re E.L.E.*, 243 N.C. App. 301 (2015), the court of appeals examined what qualifies as a "foster home" for purposes of this TPR ground. It looked to the definition of "foster home" in G.S. 131D-10.2(8) (now, "family foster home"), which requires that a child be placed in the home by a child-placing agency or that foster care is being provided full-time for two or more children who are unrelated to the adult members of the household by blood, marriage, guardianship, or adoption. In this case, the child was placed with her great aunt and uncle, who were the TPR petitioners. Although initially placed with petitioners by DSS in a neglect action, the trial court ultimately awarded custody of the child to petitioners and transferred the juvenile action to a civil custody action. Because petitioners had custody pursuant to a civil custody order and were related to the child, neither criteria of "foster home" was met, thus, mother's rights could not be terminated pursuant to G.S. 7B-1111(a)(3).

A child may be placed in the custody of a DSS by court order or by operation of law through the execution of a relinquishment pursuant to G.S. Chapter 48. *See In re A.L.*, 245 N.C. App. 55 (2016) (holding child was in custody of county DSS when mother relinquished her parental rights and surrendered the child to DSS for adoption as authorized by G.S. 48-3-701 and 48-3-703); *see also* G.S. 48-3-705(b), (c) (consequences of relinquishment related to custody of child).

7. In-kind contributions. A trial court is not required to consider a parent's in-kind contributions as a form of support. The supreme court has stated the " 'cost of care' . . . contemplates the monetary cost of foster care that DSS is required to pay for the care of the children." *In re M.C.*, 381 N.C. 832, 837 (2022); *see In re J.C.J.*, 381 N.C. 783 (2022). In *In*

re M.C., the supreme court affirmed the TPR stating that the "sporadic provision of gifts, food, and clothing does not preclude a finding by the trial court that respondent-father failed to provide a reasonable portion of the cost of care for the children when he made no payments to DSS or the foster parents during the relevant six-month period." 381 N.C. at 837. Similarly, in *In re L.M.B.*, 284 N.C. App. 41 (2022), the court of appeals rejected the parents' arguments that *In re J.A.E.W.*, 375 N.C. 112 (2020) imposed the requirement that the trial court consider in-kind contributions as a form of support. Although a trial court may acknowledge that gifts and other items, such as clothing, toys, or diapers, were provided, the trial court may also determine those items are not financial support payments. *In re L.M.B.*, 284 N.C. App. 41 (affirming TPR; items provided at visitation did not offset financial obligation parents were ordered to provide).

D. Failure to Pay Child Support to Other Parent

Where one parent has custody of the child pursuant to a court order or custody agreement of the parents, and the other parent (respondent), for one year or more immediately preceding the filing of the petition or motion, has willfully failed without justification to pay for the child's care, support, and education as required by the court order or custody agreement, failure to pay support is grounds for termination of parental rights (TPR). G.S. 7B-1111(a)(4). This ground applies to parents, not guardians or custodians. *See In re M.R.F.,* 378 N.C. 638 (2021) (reversing termination of father's parental rights; petitioner was grandmother, who is not a parent; statutory criteria were not met as there was no evidence that mother had a court order or agreement for custody and that father was obligated to pay child support pursuant to an order or agreement).

1. Agreement or order and failure to pay must be proven. The existence of a child support agreement or order as well as the parent's failure to pay the amount must be established by clear and convincing evidence. *See In re A.H.D.,* 287 N.C. App. 548 (2023) (mother's testimony that there was a child support order from 2018, with the amount ordered, and the court it was entered in was clear and convincing evidence a child support order existed even though the order itself was not introduced in evidence; father also acknowledged in his testimony there was a child support order; finding that mother testified to the order is a recitation of testimony and is not a finding of fact; case reversed and remanded for other reasons but issue with defective finding reciting mother's testimony raised by appellate court for trial court to consider in making findings of fact on remand); *In re M.R.F.,* 378 N.C. 638 (2021) (reversing a private termination of father's rights; although petition filed by the grandmother guardian, there was no evidence that mother had a custody order or agreement and that father was obligated to pay child support pursuant to an order or agreement); *In re C.L.H.,* 376 N.C. 614, 620 (2021) (quoting *In re I.R.L.*, 263 N.C. App. 481, 485 (2019)) (reversing in part and vacating and remanding in part private TPR; agreeing with the court of appeals in *In re I.R.L.* that "petitioner must prove the existence of a support order that was enforceable during the year before the termination petition was filed[;]" no findings of the existence of a child support order were made although evidence of such an order was admitted); *In re I.R.L.*, 263 N.C. App. 481 (although both parents testified in a private TPR proceeding about a support order entered the year the child was born for $50/month, findings were insufficient to support termination for failure to pay child support when the termination order contained no findings indicating that a child support order existed or that respondent

father had failed to pay support "as required by" a child support order); *In re J.M.K.*, 261 N.C. App. 163 (2018) (in a private TPR proceeding, conclusion that ground in G.S. 7B-1111(a)(4) existed was reversed when there was no evidence of a child support order); *In re D.T.L.*, 219 N.C. App. 219 (2012) (holding that this ground could not be proven where the petition did not allege that there was a decree or custody agreement requiring respondent to pay and no such evidence was introduced at trial); *In re Roberson*, 97 N.C. App. 277, 281 (1990) (stating "[i]n a termination action pursuant to this ground, petitioner must prove the existence of a support order that was enforceable during the year before the termination petition was filed").

2. Agreement or order establishes ability to pay. The order or support agreement may be used to establish what the parent should have reasonably paid. However, there is no requirement that petitioner independently prove or that the court find as a fact respondent's ability to pay support during the relevant time period since the existence of the agreement or order must be established, and it is based on the parent's ability to pay. *See In re A.H.D.,* 287 N.C. App. 548 (2023); *In re J.D.S.,* 170 N.C. App. 244 (2005); *In re Roberson,* 97 N.C. App. 277 (1990); *see also In re C.L.H.*, 376 N.C. 614 (2021) (citing *In re J.D.S.*, 170 N.C. App. 244) (noting if existence at the relevant time of a child support order was in the findings of fact, conclusion of respondent's ability to pay some portion of the cost of care would have been supported).

3. Willfulness: parent may rebut ability to pay. Even though the existence of an agreement or order creates a presumption that the parent has the ability to pay support, the parent may present evidence to prove they were unable to pay child support to rebut a finding of willful failure to pay. *See In re A.H.D.,* 287 N.C. App. 548 (2023) (although father testified he was unable to pay, he also testified he was self-employed for some of the determinative time period; mother's testimony about existence of child support order and receiving no support payments from father during the determinative period was sufficient evidence on which the court could find father willfully failed to pay); *Bost v. Van Nortwick*, 117 N.C. App. 1 (1994) (reversing TPR; overwhelming evidence showed inability to pay due to alcoholism and financial status); *In re Roberson,* 97 N.C. App. 277 (1990) (affirming TPR; father's evidence of emotional difficulties was insufficient to rebut evidence that his failure to pay was willful); *see also In re J.D.S.*, 170 N.C. App. 244 (2005) (affirming TPR; findings support conclusion that respondent willfully failed to pay support as required by an order entered by a Nevada court in that he only made one partial payment and had significant arrears at time of the TPR hearing).

E. Father's Actions regarding Child Born Out of Wedlock

Grounds for termination of parental rights (TPR) exist where the father of a child born out of wedlock has not, before the filing of the TPR petition or motion,

- filed an affidavit of paternity in a central registry maintained by the North Carolina Department of Health and Human Services (DHHS),
- legitimated the child pursuant to G.S. 49-10 or 49-12.1 (special proceedings before the clerk of superior court) or filed a petition to do so,
- legitimated the child by marriage to the mother (*see* G.S. 49-12),
- provided substantial financial support or consistent care with respect to the child and mother, or

- established paternity through G.S. 49-14 (civil action to establish paternity), G.S. 110-132 (affidavits of parentage executed by putative father and mother for purposes of child support), G.S. 130A-101 (affidavits of parentage for purposes of registration of child's birth signed by the mother and putative father or by the mother, her husband, and the putative father when there is genetic marker testing of paternity), G.S. 130A-118 (amendment of child's birth certificate based on parents' marriage after the child's birth or a court order relating to parentage), or other judicial proceeding.

G.S. 7B-1111(a)(5).

A parent is expected to know their inherent duty to their child; their absence of knowledge of the law requiring them to legitimate or acknowledge and/or establish paternity for their child will not prevent a TPR under this ground. *In re B.S.*, 378 N.C. 1 (2021) (affirming TPR; concluding claim of ineffective assistance of counsel based on attorney not advising father to legally establish paternity or execute an affidavit of parentage to prevent a TPR for failure to legitimate or acknowledge paternity was not prejudicial and was without merit).

1. Findings as to child born out of wedlock; all prongs of ground required. Petitioner must prove that the child was born out of wedlock and respondent failed to take any of the listed actions in G.S. 7B-1111(a)(5). *In re M.R.F.*, 378 N.C. 638 (2021). The court must make findings of fact based on clear and convincing evidence (i) addressing each of the statutorily required elements in G.S. 7B-1111(a)(5)a.–e. and (ii) that the child was born out of wedlock. G.S. 7B-1109(f), as amended by S.L. 2025-16, sec. 1.14(b), effective October 1, 2025 (identifying standard of proof for findings of fact); *In re M.R.F.*, 378 N.C. 638 (citing *In re L.S.*, 262 N.C. App. 565 (2018)) (reversing TPR; no evidence or findings that child was born out of wedlock; father was on birth certificate; no evidence regarding legitimation, paternity through judicial proceeding, or affidavit with central registry); *In re L.S.*, 262 N.C. App. 565 (DSS offered no evidence that the children were born out of wedlock or that respondent father had failed, before the filing of the TPR petition, to act as required by G.S. 7B-1111(a)(5)a., b., c., or e.; a minimal proffer of evidence as to G.S. 7B-1111(a)(5)d. had been made at trial but was not sufficient to support an adjudication); *In re J.M.K.*, 261 N.C. App. 163 (2018) (reversing TPR when only three of the five sub-subsections were addressed in the order).

2. Affidavit of paternity filed with DHHS. The petitioner or movant must inquire of DHHS to determine whether an affidavit of paternity has been filed. The affidavit of paternity is different from the Affidavit of Parentage in that it only requires the signature of the father and is for the purpose of filing the document with DHHS. Although DHHS maintains a registry of fathers filing Affidavits of Paternity, North Carolina does not have a putative father registry.

DHHS's certified reply must be presented to and considered by the court. G.S. 7B-1111(a)(5)a. The inquiry is made to

> North Carolina Division of Social Services
> Adoption Review and Indexing Team
> 820 S. Boylan Ave.
> 2425 Mail Service Center
> Raleigh, NC 27699-2425
> Telephone: 919-527-6370

NCDHHS DSS Form:
DSS-6246, Affidavit of Paternity

3. Substantial financial support or consistent care. The Juvenile Code does not define "substantial financial support" or "consistent care;" however, these terms have been discussed by the North Carolina Court of Appeals. Looking to the dictionary definition of "consistent," the court of appeals stated " 'consistent' means with 'regularity, or steady continuity throughout: showing no significant change, unevenness, or contradiction.' " *In re A.C.V.*, 203 N.C. App. 473, 478 (2010) (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY UNABRIDGED 484 (1976)). In applying the definition, the court of appeals determined the father failed to provide consistent care to the mother, when during her pregnancy, he only made a few phone calls and attended some parenting classes and an ultrasound appointment. *In re A.C.V.*, 203 N.C. App. 473.

Regarding "substantial support," the court of appeals held that in a TPR action, the father must have provided the support directly to the mother and child, and at a minimum he should have provided support that was requested of him: gas money, medical co-pays, and general financial support during the pregnancy. *See In re A.C.V.*, 203 N.C. App. 473 (distinguishing the TPR statute from a similar consent to adoption statute (G.S. 48-3-601(2)b.4.II) that uses the word "for" rather than "to"). The court of appeals has also held that a finding regarding the respondent father's ability to pay is not required. *See In re J.D.S.*, 170 N.C. App. 244 (2005); *In re Hunt*, 127 N.C. App. 370 (1997). Cases have not addressed whether the respondent could defeat that prong of the ground by proving that he lacked the ability to provide substantial support or consistent care.

4. Knowledge of child's existence. The fact that the father of a child born out of wedlock does not know of the child's existence is not an automatic defense to a TPR under this ground. North Carolina appellate courts have analyzed this issue in the context of this TPR ground and a similarly worded adoption statute, G.S. 48-3-601 (persons whose consent is required for adoption). Interpreting these statutes, the appellate courts have held that a father's lack of knowledge that he has a child is not a bar to termination of his rights and does not prevent an adoption from proceeding without his consent. *See A Child's Hope, LLC v. Doe*, 178 N.C. App. 96 (2006) (affirming TPR where mother deceived father, claiming that she had miscarried, and father knew of child's existence only when served with TPR petition); *In re T.L.B.*, 167 N.C. App. 298 (2004) (affirming TPR where father claimed not to have known of child's existence).

The issue of whether and how a father's lack of knowledge of the child's existence impacts his parental rights has also been analyzed in the constitutional context. The North Carolina Supreme Court analyzed the particular facts surrounding a putative father's attempt to protect his parental rights when he learned of his child's existence, of which the mother intentionally had not informed him, six months after the child's birth. The court concluded that the father's constitutional rights would not be violated by allowing a pending adoption to proceed without his consent. *In re Adoption of S.D.W.*, 367 N.C. 386 (2014). In doing so, the supreme court did not address the analysis undertaken by the court of appeals, which had reversed the trial court and remanded out of concern that the statute regarding who must consent to adoption may be

unconstitutional. The supreme court also did not examine prior North Carolina cases addressing the issue (such as *In re Baby Girl Dockery*, discussed below).

Instead, the court focused on "the extent to which a natural father's biological relationship with his child received protection under the Due Process Clause," the question articulated by the U.S. Supreme Court in *Lehr v. Robertson*, 463 U.S. 248, 258 (1983). *In re Adoption of S.D.W.*, 367 N.C. at 391. Using *Lehr* as the "backdrop" for analysis, the supreme court stated that North Carolina's statutory framework recognized that a concern for a biological father's interest exists only in those men who have "grasp[ed] the opportunity [to develop a relationship with their offspring] and accept[ed] some measure of responsibility for the child's future." *In re Adoption of S.D.W.*, 367 N.C. at 394 (quoting *Lehr,* 463 U.S. at 262). According to *Lehr*, however, statutes designating the class of biological fathers entitled to notice may be unconstitutional (1) if they omit too many responsible fathers, or (2) if the qualifications for notice are beyond the control of an interested putative father. Pursuant to this second prong, the North Carolina Supreme Court then examined whether obtaining notice of the child's birth was beyond the putative father's control, concluding that it was not, and emphasizing the facts in the case:

> [The biological father] . . . demonstrated only incuriosity and disinterest. He knew that [the mother] was fertile because she already had a child when they met. He knew that, despite [the mother's] purported use of birth control, he had impregnated her once, leading to an abortion. He assumed that her subsequent birth control methods would be effective without making detailed inquiry. He and [the mother] continued an active sex life, even after they broke up. From [the father's] perspective, the sex was unprotected and contraception was wholly [the mother's] responsibility. The burden on him to find out whether he had sired a child was minimal, for he knew how to contact [the mother]. All the while, [the child] continued to live and bond with his adoptive parents.

In re Adoption of S.D.W., 367 N.C. at 395.

The supreme court held that the father was not deprived of due process: the father "had the opportunity to be on notice of the pregnancy and . . . he failed to grasp that opportunity by taking any of the steps that would establish him as a responsible father," therefore falling outside "the class of protected fathers who may claim a liberty interest in developing a relationship with a child." *In re Adoption of S.D.W.*, 367 N.C. at 396.

In a subsequent adoption case, *In re Adoption of B.J.R.*, 238 N.C. App. 308 (2014), the court of appeals examined this same adoption statute, G.S. 48-3-601, in the context of a father's claim that his consent should have been required for his child's adoption and that his due process rights were violated by the determination under the adoption statutes that his consent was not required. Although in this case the father knew of the child's existence and filed a G.S. Chapter 50 custody action with a request for genetic testing prior to the filing of the adoption petition, the court of appeals cited both *Lehr* and *In re Adoption of S.D.W.* in reasoning that the 17-year-old father's actions, many of which were consistent with his desire to develop a relationship with the child, were not sufficient to meet the statutory criteria in

G.S. 48-3-601, nor sufficient to demonstrate that he had "grasped the opportunity" to develop a relationship with his child such that he had a constitutionally protected right of parentage.

In both the *In re Adoption of S.D.W*. and *In re Adoption of B.J.R*. opinions, the appellate courts' holdings were very fact-specific. It is likely that the outcome of future cases addressing similar issues will likewise depend to a great extent on the facts surrounding a putative father's circumstances. For example, the court of appeals in *In re R.D.H., III*, 256 N.C. App. 467, 473 (2017) (originally unpublished Nov. 21, 2017, but subsequently published), a TPR based on neglect, stated, "[w]hile there may be certain situations where a man should 'know' he is likely the father of a child, this is not one of them." The evidence in this case showed the mother and respondent did not have a relationship but instead had meetings that were sexual in nature, and the child was named after a different man that the mother identified as the potential father.

In a TPR opinion, the court of appeals affirmed a denial of a TPR when this ground was proved, but the evidence showed father was unable to do so due to circumstances that were largely out of his control; the denial was based on the child's best interests determination. *In re B.B.A*., 299 N.C. App. 179 (2025) (facts show mother and adoption agency mother was working with refused to communicate with father or his attorney despite their numerous efforts to learn about the child's birth both before and after the adoption so father could assert his constitutional rights and prevent the adoption; mother executed relinquishment immediately after child's birth). The court of appeals looked to *Lehr* and stated if the father "grasps the opportunity and accepts some measure of responsibility for the child's future, he may enjoy the blessings of the parent-child relationship and *make uniquely valuable contributions to the child's development*." *In re B.B.A*., 299 N.C. App. at 187 (emphasis in original).

In an earlier case, *In re Baby Girl Dockery*, 128 N.C. App. 631 (1998), the court of appeals rejected a putative father's constitutional challenge to an order refusing to allow him to intervene in an adoption proceeding, even though his failure to act sooner was due in part to his lack of knowledge of the child's existence. The court held that the statutory scheme making his consent unnecessary violated neither due process nor equal protection and was "a reasonable means of addressing the legitimate state concern that only those persons who have, in addition to a biological link, a parental relationship of care and provision for a minor child be afforded the right to the requirement of consent before his or her parental rights are severed by such child's adoption." *In re Baby Girl Dockery*, 128 N.C. App. at 635.

5. Judicial paternity determinations and name on birth certificate. For purposes of the ground to terminate parental rights under G.S. 7B-1111(a)(5), the petitioner must prove the respondent father has not "established paternity through G.S. 49-14, 110-132, 130A-101, 130A-118, or other judicial proceeding." This means the father has not

- judicially established his paternity in a civil action to establish paternity (G.S. 49-10), a declaratory judgment (G.S. 1-253), or other civil or criminal action where paternity is an element of the claim (e.g., criminal nonsupport (G.S. 49-2; 14-322) or custody (G.S. 50-

13.1)), which may include an abuse, neglect, or dependency action (*see Estate of Chambers*, 280 N.C. App. 299 (2021) (unpublished));
- executed an affidavit of parentage along with the child's mother within ten days of the child's birth (G.S. 130A-101) or as part of a child support case (G.S. 110-132); or
- sought an amendment of the child's birth certificate as provided for in G.S. 130A-118.

This prong of the TPR ground, G.S. 7B-1111(a)(5)e., was enacted by S.L. 2013-129, sec. 35, effective for all actions pending or filed on or after October 1, 2013. Prior to its enactment, the court of appeals held in a TPR action based on G.S. 7B-1111(a)(5) that there is a rebuttable presumption that respondent father took the required legal steps necessary to establish paternity if he is named on the child's amended birth certificate. *In re J.K.C.*, 218 N.C. App. 22 (2012), *superseded in part by statute as stated in In re A.L.S.*, 375 N.C. 708 (2020). *Cf. Gunter v. Gunter,* 228 N.C. App. 138 (2013) (unpublished) (mother could not rely on holding in *In re J.K.C.* to support her argument that husband's name on child's birth certificate judicially established his paternity of the child).

See Chapter 5.4.B.7 for further discussion of paternity, putative fathers, and birth certificates.

Practice Note: Although the statutory language in G.S. 7B-1111(a)(5)e. refers to the establishment of paternity, some of the identified statutes have the legal effect of acknowledging paternity but do not establish paternity. For example, G.S. 130A-101 provides for the execution of an affidavit of parentage for the purposes of registering the child's birth, to be executed within ten days of the child's birth. As a result of a properly executed affidavit, the father's name will be listed on the child's birth certificate. However, G.S. 130A-101(f) does not include a presumption or adjudication of paternity but instead provides that "a certified copy of the affidavit shall be admissible in any action to establish paternity." *See In re E.Y.B.*, 277 N.C. App. 385, ¶ 49 (2021) (unpublished) (reviewing G.S. 130A-101(f) and 2005 amendments and stating, "no presumption of parenthood attaches from simply placing a person's name on a child's birth certificate").

Resources:
Issues related to paternity are complicated. For a detailed discussion of relevant topics, see SARA DEPASQUALE, FATHERS AND PATERNITY: APPLYING THE LAW IN NORTH CAROLINA CHILD WELFARE CASES (UNC School of Government, 2016).

For a shorter discussion, see

- Sara DePasquale, *New Book! Fathers and Paternity: Applying the Law in North Carolina Child Welfare Cases,* UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (June 17, 2016).
- Sara DePasquale, *Legitimation versus Paternity: What's the Difference?,* UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (March 23, 2016).

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6. Constitutionality. The court of appeals, in *In re A.C.V.,* 203 N.C. App. 473 (2010), affirmed an order terminating a teenage father's rights to his newborn child based on G.S. 7B-1111(a)(5). The court expressed concerns about the constitutionality of applying this ground to the facts of the case. Noting that none of the trial court's 123 findings indicated that the father was unfit to parent the child or that his home was unsuitable, the court said, "It is difficult, under the circumstances of this case, to conclude that [the father's] constitutional rights were assured through the application of section 7B-1111(a)(5)." *In re A.C.V.,* 203 N.C.

App. at 482. The court affirmed the TPR order on the basis that it was bound by cases such as *Owenby v. Young*, 357 N.C. 142 (2003) (stating that a finding of any ground for termination under G.S. 7B-1111 will result in forfeiture of a parent's constitutionally protected status) and *A Child's Hope, LLC v. Doe*, 178 N.C. App. 96 (2006). See also the discussion of constitutional issues related to this ground in subsection 4, above.

F. Dependency

Where the parent is incapable of providing for the proper care and supervision of the child, such that the child is dependent as defined by G.S. 7B-101(9), there is a reasonable probability that the parent's incapability will continue for the foreseeable future, and the parent lacks an appropriate alternative child care arrangement, a ground for termination of parental rights (TPR) exists. The parent's incapability may be the result of substance use, intellectual disability, mental illness, organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the child. G.S. 7B-1111(a)(6).

To adjudicate the ground in G.S. 7B-1111(a)(6), there must be a showing that the parent (1) does not have an ability to provide care or supervision to the child and there is a reasonable probability that the parent's incapability will continue for the foreseeable future and (2) lacks an appropriate alternative child care arrangement for the child. *In re K.R.C.,* 374 N.C. 849 (2020). Both of these prongs of dependency must be proved by clear and convincing evidence, and the court must make findings of each prong. *In re C.L.H.*, 376 N.C. 614 (2021); *In re K.R.C.*, 374 N.C. 849. Failure to make both findings will result in a reversal. *In re K.D.C.*, 375 N.C. 784 (reversing TPR; agreeing with *In re B.M.*, 183 N.C. App. 84 (2007)).

1. Constitutional challenge. This ground does not violate the equal protection clause or deny due process. *In re Montgomery*, 311 N.C. 101 (1984) (decided under an earlier version of the Juvenile Code).

2. Dependent juvenile. The ground in G.S. 7B-1111(a)(6) explicitly references the definition of "dependent juvenile" in G.S. 7B-101(9). A juvenile is dependent when they are "in need of assistance or placement" because either there is no parent, guardian, or custodian responsible for the juvenile's care or supervision or the parent, guardian, or custodian is unable to provide care or supervision to the juvenile and lacks an appropriate alternative child care arrangement for the juvenile. G.S. 7B-101(9). A juvenile who is residing with a parent is not a juvenile "in need of assistance or placement." *In re X.I.F.*, 297 N.C. App. 799, 808 (2025) and *In re K.R.C.*, 374 N.C. 849, 860 (2020) (in both cases, mother with whom the juvenile resided initiated the TPR; juveniles were not dependent when they were in their mother's legal and physical custody).

3. Lack of alternative child care required. The ground of dependency cannot be established without findings supporting a conclusion that the parent lacks an appropriate alternative child care arrangement. *In re A.L.L.*, 376 N.C. 99 (2020) (vacating TPR). The finding cannot be made without evidence that there is a lack of a suitable alternative child care arrangement, and the burden is on the petitioner to show there was not an available child care alternative. *See In re K.C.T.*, 375 N.C. 592 (2020) (reversing TPR; petitioners did not present evidence that mother lacked an appropriate alternative child care arrangement either through cross-examination of mother or other witnesses); *In re K.D.C.*, 375 N.C. 784 (2020) (reversing TPR;

no evidence presented as to whether mother had or suggested an alternative child care arrangement); *In re D.T.N.A.*, 250 N.C. App. 582 (2016) (reversing TPR; the finding that respondent father had never offered another child care placement was contradicted by evidence in the case file; father had recommended a cousin for placement in the underlying dependency case; that cousin was approved by the court but not utilized by DSS because father believed the child remaining in his foster care placement was better for the child).

The North Carolina Supreme Court has addressed whether an appropriate alternative child care arrangement requires the parent to have taken some action to identify viable alternatives, rather than merely going along with a plan created by DSS. In *In re A.L.L.*, 376 N.C. 99, the supreme court examined the statutory language and legislative intent of the Juvenile Code and held that the language of G.S. 7B-1111(a)(6) does not require a parent, on their own, to locate and secure an appropriate alternative child care arrangement. The determination of this prong of the dependency ground focuses on the objective (un)availability to the parent of an appropriate alternative child care arrangement, not the parent's success or failure in identifying and securing the placement. This holding differs from previous court of appeals opinions addressing the dependency ground to TPR.

When, as was the case in *In re A.L.L.*, the juvenile has a permanent guardian, the dependency ground does not apply. The parent does not have the legal authority to remove the child from the guardians and requiring a parent to jump through procedural hoops to identify and secure a different appropriate child care arrangement is unnecessary. When examining this issue, the supreme court distinguished a permanent guardian, who provides the child with stability, and a temporary custodial arrangement that leaves a child in a state of uncertainty.

Alternative child care arrangements suggested by the parent are not "appropriate" if they cannot be approved by DSS. In the case of *In re N.T.U.*, 234 N.C. App. 722 (2014), three alternative placements were provided to DSS by an incarcerated respondent mother, but none could be approved by DSS: one was incarcerated, one physically disciplined another child in front of DSS, and another demonstrated a lack of interest in the child. *See also In re K.B.C.*, 295 N.C. App. 619 (2024) (father's different proposed placements were either unwilling to provide long-term care for the children, could not be approved, or could not be located by DSS); *In re L.R.S.*, 237 N.C. App. 16 (2014) (child care arrangement suggested by mother was not shown to be viable).

The level of care a juvenile needs may be considered by the court when determining whether a proposed alternative child care arrangement is appropriate. In the case of *In re N.N.B.*, 271 N.C. App. 199 (2020), the juvenile had significant mental health needs, including suicidal ideation, fire-setting, and harming animals. At the time of the TPR hearing, the juvenile was placed in a level III group home in compliance with the discharge plan from a level IV psychiatric residential treatment facility. Although father proposed his sister (juvenile's aunt) as an alternative child care arrangement and she was willing and available to be a placement, the trial court found placement with her was not a viable option because of the juvenile's needs. In the past, the aunt had been the juvenile's primary caregiver, had weekly phone contact with the juvenile up to the date of the TPR hearing, and agreed to an ICPC home study, which could not be done while the juvenile required residential treatment. The court of appeals affirmed the TPR order, which found the aunt was not an appropriate placement for a juvenile requiring a high level of care and concluded dependency existed.

4. Evidence of incapability to provide proper care or supervision of the child. This ground cannot be established without findings supporting a conclusion that the parent does not have the ability to provide care or supervision to the child. The evidence must address the parent's inability to provide the child with care or supervision at the time of the TPR adjudicatory hearing. *See In re Z.G.J.*, 378 N.C. 500 (2021) (reversing TPR; evidence consisted of DSS social worker's testimony reaffirming under oath the allegations in the TPR petition; hearing was conducted thirteen months after the TPR petition was filed; no evidence of parent's ability at the time of TPR hearing); *In re C.L.H.*, 376 N.C. 614 (2021) (reversing in part and vacating and remanding in part private TPR; evidence showing possibility that parent was incapable of parenting his child was from an incident that occurred eighteen months prior to the TPR hearing).

The cause of the parent's incapability to provide proper care and supervision may be based on any cause or condition and is not limited to certain types of conditions. *See In re C.L.H.,* 376 N.C. 614 (quoting language of G.S. 7B-1111(a)(6)); *In re L.R.S.*, 237 N.C. App. 16 (2014) (affirming TPR where respondent's incapability was based on her incarceration; explaining 2003 amendment to G.S. 7B-1111(a)(6) that removed limiting conditions for basis of parent's incapability). Note that before statutory amendments in 2003, this ground required that the parent's incapacity be due to substance use, "mental retardation" (now diagnosed as "intellectual disability"), mental illness, organic brain syndrome, or any other similar cause or condition. In *In re A.L.S.*, 375 N.C. 708 (2020), the supreme court explained that two previous opinions from the court of appeals, *In re J.K.C*. 218 N.C. App. 22 (2012) and *In re Clark*, 151 N.C. App. 286 (2002), both of which reversed TPR orders on the dependency ground due to the parent's incarceration, were based on a prior version of G.S. 7B-1111(a)(6), which required the parent's inability to result from a limiting condition specified in the statute or any other similar cause or condition. *See also In re L.R.S.*, 237 N.C. App. 16 (discussing significance of the change in the statutory language related to the *In re Clark* and *In re J.K.C.* opinions).

Termination under this ground does not require that the parent's incapability be permanent or that its precise duration be known, only that there is a reasonable probability that such incapability will continue for the foreseeable future. *In re K.B.C.*, 295 N.C. App. 619(2024) (affirming TPR where father was expected to be incarcerated for nine years; the court properly considered the substantial length of father's sentence and its effects on the children and their physical and emotional well-being in determining father's inability to provide care and supervision was likely to last for the foreseeable future); *In re A.L.S.*, 375 N.C. 708 (affirming TPR; mother's extended period of incarceration (twenty-two months), regardless of the exact date of release, supports court's determination that mother's inability to provide proper care and supervision would continue for the foreseeable future); *In re H.N.D.,* 265 N.C. App. 10, 18 (2019) (affirming TPR; determination of a reasonable probability that mother's incapability to provide proper care and supervision would continue for the foreseeable future was based on mother's stated intent to keep father in her and the children's lives "in spite of the enduring pattern of violence [m]other has suffered" during their troubled history together); *In re N.T.U.*, 234 N.C. App. 722 (2014) (affirming TPR order where the respondent mother had been incarcerated for three years on charges relating to homicide and bank robbery and had not received a trial date, the child had been in DSS custody for two-thirds of his life, and none of the alternative child care arrangements suggested by respondent could be approved

for placement); *see also In re L.R.S.*, 237 N.C. App. 16 (where child had been in DSS custody since the age of two months due to mother's pretrial incarceration and subsequent conviction on federal charges resulting in a sentence of thirty-eight months, the trial court properly found there was a reasonable probability that the incapability would continue for the foreseeable future; statute no longer requires that incapability continue throughout child's minority).

A mental health evaluation conducted a year before a termination hearing can support a TPR based on dependency when "the persistence of [the] personality problems" are characterized as "not easily amendable to change" and there is a lack of mental health treatment. *In re A.L.L.,* 254 N.C. App. 252, 267 (2017) (citations omitted) (affirming TPR based on two prior mental health assessments that showed mother's longstanding mental health conditions and her repeated failures to follow treatment recommendations necessary to care for her children). *Cf. In re Z.D.,* 258 N.C. App. 441 (2018) (reversing TPR; evidentiary findings in a private TPR proceeding were insufficient to support the ultimate finding that respondent mother had a current incapability that would continue for the foreseeable future; findings as to mother's mental health and parenting ability related to mother's history rather than her progress (or lack of progress) over the fifteen months prior to the termination hearing and included no specific findings regarding her condition, mental health, and alleged incapability at the time of the hearing; mother's psychiatrist testified that mother was participating and committed to her treatment and had been symptom free for over a year).

In the case of a minor parent, the court must adequately address the parent's capacity (or lack thereof) and whether their transition to adulthood would cure the basis of the incapacity. *In re Matherly*, 149 N.C. App. 452 (2002) (reversing and remanding TPR; noting respondent was 15 years old when her child was first placed in DSS custody, 17 years old when the TPR petition was filed, and as an unemancipated minor was legally unable to establish her own residence as required by the case plan).

5. Diligent efforts by DSS not a prerequisite. The court will not read into G.S. 7B-1111(a)(6) a requirement that DSS make "diligent efforts" to provide services to parents before proceeding to seek termination of parental rights; any such requirement must come from the legislature. *In re Guynn*, 113 N.C. App. 114 (1993).

6. GAL for respondent not required. Before a 2005 amendment, the trial court was required to appoint a guardian ad litem (GAL) for the parent when the ground for termination in G.S. 7B-1111(a)(6) was alleged, and a number of cases were reversed because the court failed to appoint a GAL. Under current law, appointment of a GAL for the parent is discretionary and based upon a determination that the parent is incompetent. Note that appointment of a GAL for a minor respondent parent is mandatory. G.S. 7B-1101.1(b)−(f). See section 9.4.B, above, and Chapter 2.4.G (relating to GAL appointments for parents).

G. Abandonment

Where the parent has willfully abandoned the child for at least six consecutive months immediately preceding the filing of the petition or motion, a ground for termination of parental rights (TPR) exists. G.S. 7B-1111(a)(7). Additionally, a parent's rights may be terminated on this ground where the parent voluntarily abandoned an infant under North Carolina's "safe surrender" law and at least sixty consecutive days have passed immediately

preceding the filing of a TPR petition or motion. See Chapter 5.8 for a discussion of safely surrendered infants.

Abandonment is also included in the definition of "neglected juvenile" when the abandonment does not involve an infant who has been safely surrendered on or after October 1, 2023 and may also be the basis to TPR on the ground of neglect pursuant to G.S. 7B-1111(a)(1). *See* G.S. 7B-101(15) (definition of "neglected juvenile"). See also section 9.11.A, above, and specifically subsection 7.

1. Six-month time period. The critical period for a finding of abandonment of a juvenile (unrelated to the safe surrender of an infant) is at least six consecutive months immediately preceding the filing of a TPR petition or motion. G.S. 7B-1111(a)(7); *In re G.G.M*., 377 N.C. 29 (2021); *In re B.C.B.,* 374 N.C. 32 (2020); *see In re Young,* 346 N.C. 244, 252 (1997) (reversing TPR order on the basis that the mother's conduct during the relevant six-month period did not manifest "a willful determination to forego all parental duties and relinquish all parental claims to the child"). The order must include findings that address the parent's conduct (acts or omissions) during the relevant six-month time period. *In re K.J.E*., 378 N.C. 620 (2021) (vacating and remanding TPR; adjudicatory findings did not address relevant six-month period; dispositional findings addressed that time period but are not considered by the appellate court when reviewing the adjudication of a TPR ground).

A trial court may consider the respondent's conduct outside this six-month window for the purpose of evaluating the respondent's credibility and intentions. *See, e.g., In re G.G.M*., 377 N.C. 29, 36 (2021) ("trial court was entitled to consider respondent's years-long absence from the children's lives when determining respondent's credibility and intent to abandon his children during the six months preceding the filing of the petition"); *In re K.N.K.,* 374 N.C. 50 (2020) (findings addressed father's lack of involvement going back years, not just during the six-month determinative time period, when determining father's willful intent). When determining a parent's credibility and intentions, the court can look not just to actions before the determinative six-month period but to actions after that period, meaning after the TPR petition or motion is filed. *See In re J.D.C.H*., 375 N.C. 335 (2020) (TPR affirmed).

While a trial court may consider a parent's conduct outside the determinative six-month period to evaluate the parent's credibility and intentions, actions of the parent outside the determinative period will not preclude the trial court from finding willful abandonment pursuant to G.S. 7B-1111(a)(7). *In re I.J.W.,* 378 N.C. 17 (2021) (trial court found father's engagement in services after TPR motion was filed showed he had the ability to act but chose not to do so, making his action during the relevant time period willful); *In re K.N.K.,* 374 N.C. 50 (father's actions after the TPR petition was filed had no bearing on the court's adjudication of the ground since they were outside of the six-month time period); *In re C.B.C.,* 373 N.C. 16 (2019).

That a prior petition to terminate a parent's rights on the ground of willful abandonment was denied does not preclude a trial court in a second termination proceeding on the same ground from finding that the same parent has willfully withheld love, care and affection from the

child during the relevant six-month period. *In re C.B.C.,* 373 N.C. 16 (2016 TPR petition on ground of willful abandonment denied; 2018 petition on same ground allowed).

2. Defining abandonment. The supreme court has defined abandonment as a parent's willful or intentional conduct evincing a settled purpose to forego all parental duties and relinquish all parental claims. *Pratt v. Bishop,* 257 N.C. 486 (1962) (adoption case); *In re Young*, 346 N.C. 244, 251 (1997) (in private TPR case, abandonment may be implied from parental conduct which "manifests a willful determination to forego all parental duties and relinquish all parental claims to the child") (citation omitted). *See also In re M.S.A.,* 377 N.C. 343 (2021), *In re K.N.K.,* 374 N.C. 50 (2020), *In re C.B.C.,* 373 N.C. 16 (2019), and *In re E.H.P.*, 372 N.C. 388 (2019) (all private TPR cases adopting definition set out in *In re Young*). Abandonment also has been defined as willful neglect and refusal to perform natural and legal parental obligations of care and support. If a parent withholds their presence, love, care, and opportunity to display filial affection, and willfully neglects to lend support and maintenance, the parent relinquishes all parental claims and abandons the child. *Pratt,* 257 N.C. 486; *In re K.N.K.,* 374 N.C. at 53, *In re N.D.A.,* 373 N.C. 71, 77 (2019), *abrogated in part by In re G.C.*, 384 N.C. 62 (2023) and *In re E.H.P.*, 372 N.C. at 393 (all quoting *Pratt*). Willful abandonment requires more "than inconsistent attention to parental duties or less than ideal parenting practices." *In re E.B.*, 375 N.C. 310, 318 (2020).

The supreme court has stated, "[a]bandonment is not an ambulatory thing the legal effects of which a delinquent parent may dissipate at will by the expression of a desire for the return of the discarded child." *In re S.C.L.R.*, 378 N.C. 484, 493 (2021) (quoting *Pratt*, 257 N.C. at 502) (affirming TPR as to mother). A parent is not absolved of their parental responsibilities when third parties make efforts to maintain a relationship with the child, but the parent does not do so themselves despite having a means to take such efforts. *In re J.T.C.,* 273 N.C. App. 66 (2020) (TPR affirmed; efforts by father's wife and relatives did not preclude finding of willful abandonment), *aff'd per curiam*, 376 N.C. 642 (2021).

3. Willfulness. An integral part of abandonment is willful intent, which is a question of fact. *In re G.G.M.,* 377 N.C. 29 (2021); *In re A.L.L.,* 376 N.C. 99 (2020); *In re E.B.*, 375 N.C. 310 (2020); *In re N.D.A.,* 373 N.C. 71 (2019), *abrogated in part by In re G.C.*, 384 N.C. 62 (2023); *In re C.B.C.,* 373 N.C. 16 (2019). Because willfulness and intent are emotions and attitudes, they are rarely proved by direct evidence but instead are ordinarily based on circumstances from which they can be inferred. *In re K.N.K.*, 374 N.C. 50 (2020). For purposes of abandonment, willfulness requires "more than an intention to do a thing, there must also be purpose and deliberation." *In re D.M.O.*, 250 N.C. App. 570, 572–73 (2016) (quoting *In re S.R.G.*, 195 N.C. App. 79, 84 (2009)). Willful intent for abandonment under G.S. 7B-1111(a)(7) is "something greater" than the willful intent necessary for leaving a child in foster care without making reasonable progress under G.S. 7B-1111(a)(2). *In re D.M.O.*, 250 N.C. App. at 576. A parent must have "deliberately eschewed his or her parental responsibilities in their entirety." *In re A.L.L.*, 376 N.C. at 110 (quoting *In re E.B.*, 375 N.C. at 318). Because willful intent is integral to a determination of abandonment and is a question of fact, there must be evidentiary findings to support an ultimate finding of willful intent. *In re K.C.T.,* 375 N.C. 592 (2020); *In re D.M.O.*, 250 N.C. App. 570. However, in *In re N.M.H.*, 375 N.C. 637 (2020), the supreme court determined that the absence of the word "willful" in the TPR order was not a fatal error because when read in context, the findings in the TPR

order made clear that the trial court applied the proper willfulness standard when considering the parent's conduct.

Single act. The trial court considers the totality of the parent's actions, and a finding of willfulness will not be defeated by a parent's single action during the determinative six-month time period. *See, e.g., In re J.D.C.H.*, 375 N.C. 335 (2020) (TPR affirmed; father's one unsuccessful attempt to seek visitation during relevant six-month time period was not a sincere effort to reestablish a relationship with his children, from whom he had withheld his love and affection for more than two years); *In re B.S.O.*, 234 N.C. App. 706 (2014) (TPR affirmed; conclusion of willful abandonment supported by findings showing that during the six-month determinative period, father made no effort to remain in contact with his children or their caretakers and neither provided nor offered anything toward their support; father's single phone call during the six-month period was not material enough to potentially change the outcome of the proceeding).

4. Limitations on parent. When determining willfulness, the court must consider the circumstances that limit a parent's ability to show love, affection, guidance, and parental concern and to pay support. *See, e.g., In re A.G.D.*, 374 N.C. 317 (2020) (TPR affirmed; discussing incarceration and order prohibiting contact between father and children). The court of appeals identified a two-question analysis when determining whether a parent acted willfully when there are limitations on that parent: (i) "what options did the respondent-parent have to display parental affection during the six-month period, and [(ii)] did the respondent-parent exercise those options." *In re X.I.F.*, 297 N.C. App. 799, 781 (2025).

(a) Incarceration. Limitations imposed on an incarcerated parent have been examined by the appellate courts, which have held that "[i]ncarceration, standing alone, is neither a sword nor a shield in a termination of parental rights decision." *In re M.S.A.*, 377 N.C. 343, 348 (2021) (quoting *In re C.B.C.*, 373 N.C. 16, 19–20 (2019)); *In re A.G.D.*, 374 N.C. at 320 (quoting *In re M.A.W.*, 370 N.C. 149, 153 (2017)). The appellate courts have further stated, "[a]lthough a parent's options for showing affection while incarcerated are greatly limited, a parent will not be excused from showing interest in the child's welfare by whatever means available." *In re M.S.A.*, 377 N.C. at 348 (quoting *In re C.B.C.*, 373 N.C. at 19–20).

Whether a parent has the ability to contact a child, parent, or social worker through phone calls or cards or has an ability to file a court action or consult with their attorney are all factors to be considered. *See, e.g., In re X.I.F.,* 297 N.C. App. 799 (affirming TPR; incarcerated father did not send letters as he had done previously; mother's address had not changed; mother's wanting father to not have a relationship with their children was irrelevant to father's actions as mother did not interfere with father's ability to write letters and her no longer funding his prison account to make phone calls to the children did not actively thwart father's ability to have a relationship with the children); *In re M.S.A.*, 377 N.C. 343 (affirming TPR; incarcerated father never sent letters or attempted to communicate with child or petitioner despite having ability to do so; father had contact with family members and attorneys but never inquired about child or petitioner's contact information); *In re L.M.M.*, 375 N.C. 346 (2020) (affirming TPR; finding that mother had not taken any action that was available to her when she was incarcerated to demonstrate her concern or love toward her child); *In re D.M.O.*, 250 N.C. App. 570 (2016) (reversing

TPR; findings that mother failed to visit child, attend his sports games, or contact petitioner father during the relevant six-month period were not sufficient to establish that mother's actions were willful when mother was incarcerated all but thirty-three of the 180 relevant days and struggled with addiction issues for which she received treatment during the same relevant period; findings did not address how mother's incarceration, addiction issues, or participation in a drug treatment program while in custody might have affected her opportunities to exercise visitation, communicate with her child, or attend games, or whether mother had made the effort or had the ability to exercise any of those rights but failed to do so during the relevant period).

(b) Mental illness. Like incarceration, a parent's mental health condition "standing alone, is neither a sword nor a shield in a termination of parental rights decision." *In re A.L.L.*, 376 N.C. 99, 112 (2020). The court's findings must demonstrate that the parent's behavior was a result of their willful intent to abandon their child and not just a symptom of their diagnosed severe mental illness. In *In re A.L.L.*, the court found that the mother intended to be a parent, but her efforts were deficient due to her mental illness. Additionally, her refusal to take prescribed medication may have been the result of her condition and was not necessarily rational and voluntary conduct on her part. The trial court must analyze the relevant facts and circumstances, and in this case, the evidence and findings did not support the conclusion that the mother willfully abandoned her child. *See also In re K.C.T.*, 375 N.C. 592 (2020) (TPR reversed and remanded for further proceedings; court's findings identify possible impediments to mother's ability to contact child, including finding regarding mother's multiple mental health diagnoses and intellectual disability).

The appointment of a Rule 17 guardian ad litem (GAL) for a parent does not mean a parent is legally incompetent or a parent has a mental illness. Instead, the Rule 17 GAL appointment is based on the court's determination that the parent is incompetent because the parent is unable to understand the nature of the juvenile proceeding and aid their attorney in the presentation of their case. *In re K.J.P.W.*, 297 N.C. App. 786 (2025). A parent may still act willfully when a Rule 17 GAL has been appointed. The court is not required to make specific findings about a parent's conduct when that conduct is not argued to be a manifestation of a severe mental illness. *In re K.J.P.W.*, 297 N.C. App. 786 (affirming TPR; distinguishing the facts from those in *In re A.L.L.*, 376 N.C. 99).

(c) Deportation. The court of appeals has examined limitations imposed by a parent's deportation and have likened them to a parent's incarceration. In *In re B.S.O.* the father had been jailed and then deported during the relevant time period in G.S. 7B-1111(a)(7), and the court of appeals stated that like incarceration, deportation should serve as "neither a sword nor a shield in a termination of parental rights decision." *In re B.S.O.*, 234 N.C. App. 706, 711 (2014) (quoting *In re P.L.P.*, 173 N.C. App. 1, 10 (2005)). In comparing deportation and incarceration, the court of appeals recognized that a deported parent has more opportunities than an incarcerated parent to support a child. A deported parent can communicate with a child, earn money that is sent to support a child, and even pursue legal action to attempt to have the child returned to the parent's custody in the deportation country. *In re B.S.O.*, 234 N.C. App. 706. In another opinion, the court of appeals notes

that an incarcerated parent has fewer opportunities to show affection and have contact with a child than a deported parent. *In re D.M.O.*, 250 N.C. App. 570.

(d) Domestic Violence Protection Order (DVPO) and other orders prohibiting contact. When examining a parent's willfulness, the appellate courts have considered the impact of a DVPO on that parent's actions toward their child. In *In re B.C.B*., 374 N.C. 32 (2020), the mother had a DVPO against father and later successfully brought a TPR against father alleging willful abandonment as one of the grounds. On appeal, although father argued that the DVPO prevented him from contacting mother during the determinative six-month period, the supreme court affirmed the TPR. The supreme court noted that father was not prohibited from contacting the child (who was 3 or 4 years old) or mother's parents (grandparents) who he had contact information for, and father never inquired about his child or sent cards or gifts. Father also never contacted the supervised visitation center to exercise his court-ordered visits. *See In re I.R.L*., 263 N.C. App. 481, 484 (2019) (reversing TPR; no finding of willfulness, which was "especially important" when father was subject to DVPO that prohibited contact with mother, who had custody of the 3-year-old child, during the relevant six-month time period – even though the order included findings that father knew the child's location but had not seen, visited, or inquired about the child, or provided any substantial financial support for the child during the relevant time period).

The appellate courts have also examined the impact of a court order that limits or prohibits a parent's contact with their child. The analysis focuses on whether the parent can show love, affection, guidance, and parental concern in other ways, such as indirect communication through others. *See In re A.G.D*., 374 N.C. 317 (affirming TPR; civil custody order prohibiting contact between father and children did not limit father's ability to contact mother or others to inquire about children's well-being or express his parental concern); *In re A.L.S*., 374 N.C. 515 (2020) (affirming TPR; civil custody order did not grant mother visitation but did not prohibit mother from contacting the child). In one case, the appellate court examined the absolute prohibition of a father having contact with his or any child due to parole conditions when conducting a de novo review and reversing a TPR for willful abandonment. *In re C.J.B.*, 290 N.C. App. 303 (2023).

When there is a custody order that limits or prohibits contact between a parent and child, the appellate courts have considered whether that parent sought to modify the order. *See, e.g., In re A.N.B.,* 290 N.C. App. 151 (2023), *In re A.G.D*., 374 N.C. 317 and *In re A.L.S*., 374 N.C. 515 (all affirming the TPR orders; stating in each case, respondent parent did not seek to modify the civil custody order). However, the respondent's filing of a motion to modify (e.g., increase visitation), standing alone, does not necessarily defeat the ground of abandonment but is instead evidence for a trial court to consider in its willful abandonment analysis. *In re B.R.L*., 379 N.C. 15, 20 n.5 (2021) (TPR reversed and remanded; during determinative time period, mother filed a motion to review visitation, requested to visit child three times, and visited with her child twice).

5. Evidence of abandonment. Evidence of abandonment was sufficient in the following cases:

- Findings show father did not provide support, attend medical appointments, see the child, or provide letters, cards or gifts since the child was months old. Although father was aware he could file for custody, after stating he would do so he failed to seek custody or visitation. Father's grandmother (child's paternal great-grandmother) did see the child and sent cards and gifts, and father did not seek information about his child through her. It was not until after father was served with the TPR that he began to contact mother. *In re C.K.I.*, 379 N.C. 207 (2021).
- Findings demonstrated that during the determinative six-month period, father refused to engage in any services or cooperate with DSS, did not visit with his child because he refused to take the required anger management classes that were a condition to his visits, and did not move to modify the visitation order. Father's post-TPR-motion behavior of engaging in services did not bar the TPR on ground of willful abandonment. *In re I.J.W.*, 378 N.C. 17 (2021).
- Findings demonstrated that during the determinative six-month period (the last three months of which father was incarcerated), respondent father did not pursue a relationship with the child as he sent no cards or letters other than a birthday card sent from prison after service of the petition to terminate his rights, did not contact the child's custodians to inquire about the child's well-being despite having their contact information and not being prohibited from doing so by the custody order, did not seek to modify the custody order, and had not paid support from pre-incarceration earnings. The supreme court went on to note that other findings demonstrated that father had had no contact with the child or her custodians for nearly a year before the filing of the petition despite having "the ability to make at least some contact," all of which supported the conclusion of willful abandonment. *In re C.B.C.,* 373 N.C. 16, 22 (2019).
- In a private TPR proceeding, respondent father's argument that he was forbidden by a temporary custody judgment from contacting his children was rejected as there was sufficient evidence that supported the trial court's determination of abandonment. Father admitted having had no contact with his children during the determinative six-month period and for several years after entry of the temporary custody judgment. Although father was incarcerated for most of the determinative six-month period, he filed a motion to suspend his obligation to pay child support during his incarceration but made no effort to modify the custody judgment to allow contact with his children. *In re E.H.P.*, 372 N.C. 388 (2019).

Evidence of abandonment was not sufficient in the following cases:

- Father was subject to parole conditions prohibiting contact with his or any child, was denied his three separate requests made outside the determinative six months to modify his parole conditions, and paid child support during the determinative six-month period. *In re C.J.B.*, 290 N.C. App. 303 (2023).
- Unchallenged findings showed that all parties believed visitation between father and child would not occur until the child's therapist made such a recommendation and no such recommendation was made. During the relevant six-month period, although having no court-ordered visits, father paid child support, sent emails to the placement provider,

attended child and family team meetings, and completed his case plan. *In re Z.J.W.*, 376 N.C. 760 (2021).

- Unchallenged findings showed that during the determinative six-month period, mother made three requests to visit child, saw her child twice, and filed a pro se motion to increase visitation. *In re B.R.L*, 379 N.C. 15 (2021).
- In a private TPR, testimony of petitioner was that he had spoken with father about the child during the determinative six-month period. Father also testified that he spoke with his child and had occasional visits when his mother (child's grandmother) had the child. The petitioner's testimony alone does not support the court's finding of abandonment. *In re S.C.L.R.*, 378 N.C. 484 (2021).
- In a private TPR, the order did not include findings of father's conduct during the determinative six-month period. Findings that were made did not resolve factual disputes in the evidence to determine whether father was acting willfully. Evidence exists that might support conclusion; case remanded. *In re D.T.H.*, 378 N.C. 576 (2021).
- Agreeing with an earlier decision of the court of appeals, "conduct that is 'subject to other explanations . . . do[es] not inherently suggest a willful intent to abandon.' " *In re E.B.*, 375 N.C. 310, 319–20 (2020) (quoting *In re S.R.G.*, 195 N.C. App. 79, 86 (2009)). In this case, father relocated to California after he had long planned to move there with his daughter, believing that she would be placed with his sister in California after an ICPC review process. Additionally, father's actions before and during the determinative six-month period were inconsistent with a finding that he willfully intended to forego all his parental duties.
- In a private TPR case, father's unchallenged testimony showed that he unsuccessfully attempted to make arrangements to visit the child. The trial court made no determination regarding father's credibility or findings about whether father, who was incarcerated, had the ability to contact the child or petitioner, or pay financial support during the relevant period. The lack of findings addressing father's ability, which went to father's intent/willfulness, did not support a determination of willful abandonment under G.S. 7B-1111(a)(7). *In re N.D.A.,* 373 N.C. 71 (2019), *abrogated in part by In re G.C.*, 384 N.C. 62 (2023).
- During the relevant six-month period, father filed a motion to modify a G.S. Chapter 50 custody order and requested sole custody of his children who were in the custody of their maternal grandmother. Father's act in seeking sole custody demonstrated that he did not intend to forego all parental duties and relinquish all parental rights to the children. The trial court erred in concluding that father's rights should be terminated pursuant to G.S. 7B-1111(a)(7). Additionally, the trial court's reliance on a consent order entered in a G.S. Chapter 50 custody action between father and grandparents that included a provision that grandmother would file a petition to terminate father's rights that no other party, including father, would oppose was error because that order is void as against public policy and is neither a properly executed consent or relinquishment under the adoption statutes. *In re C.K.C.,* 263 N.C. App. 158 (2018).
- Although the father had not visited or asked for visits during the relevant six months and had not regularly sent cards or gifts, the appellate court held that findings did not support willful abandonment because the father had been instructed by his attorney in the criminal case not to contact the child or mother, the DSS protection plan provided for no contact,

and he had been making support payments during the relevant six-month period. *In re T.C.B.,* 166 N.C. App. 482 (2004).

Evidence of the following circumstances is insufficient, standing alone, to determine abandonment:

- Filing a motion to increase visitation, standing alone, does not necessarily defeat the ground of abandonment. Instead, the motion is evidence for a trial court to consider in its willful abandonment analysis. *In re B.R.L.*, 379 N.C. at 20 n.5.
- Neither a parent's history of alcohol use nor a parent's incarceration, standing alone, necessarily negates a finding of willfulness for purposes of abandonment. *In re McLemore*, 139 N.C. App. 426 (2000); *In re C.B.C.,* 373 N.C. 16 (speaking to incarceration); *In re D.M.O.*, 250 N.C. App. 570, 575 (2016) (quoting *In re McLemore,* 139 N.C. App. at 431) ("[I]ncarceration, standing alone, neither precludes nor requires a finding of willfulness" in the context of abandonment).
- Failure to pay support, in itself, does not constitute abandonment. *Bost v. Van Nortwick*, 117 N.C. App. 1 (1994). However, the fact that a parent paid some support during the relevant six-month period may not preclude a finding of willful abandonment. *In re Adoption of Searle*, 82 N.C. App. 273 (1986).

H. Murder, Voluntary Manslaughter, and Felony Assault of Child or Parent

Grounds for termination of parental rights exist where the parent has

- committed murder or voluntary manslaughter of another child of the parent or other child residing in the home;
- aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home;
- committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home; or
- committed murder or voluntary manslaughter of the child's other parent; provided, the court must consider whether the killing was committed in self-defense or in defense of others, or whether there was substantial evidence of other justification.

G.S. 7B-1111(a)(8).

1. Manner of proof. Petitioner has the burden of proving the criminal offense by either (1) proving the elements of the offense or (2) proving that a court of competent jurisdiction has convicted the parent of the offense, whether by jury verdict or any kind of plea. G.S. 7B-1111(a)(8); *see In re C.B.C.B.*, 379 N.C. 392 (2021).

2. Standard of proof. The ground of a parent's commission of voluntary manslaughter of another child requires proof of the elements of the offense by clear and convincing evidence, not beyond a reasonable doubt. *In re J.S.B.*, 183 N.C. App. 192 (2007).

3. Serious bodily injury. To prove that respondent committed a felony assault resulting in serious bodily injury by proving that respondent was convicted of the offense, a petitioner would have to show a conviction under G.S. 14-32.4(a) (assault inflicting serious bodily injury) or perhaps G.S. 14-318.4(a3) (felony child abuse inflicting serious *bodily* injury). A conviction under G.S. 14-318.4(a) (felony child abuse inflicting serious *physical* injury)

would not be sufficient. As defined in G.S. 14-318.4(d)(1), "serious bodily injury" (1) creates a substantial risk of death; (2) causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ; or (3) results in prolonged hospitalization. *See In re T.J.D.W.*, 182 N.C. App. 394, *aff'd per curiam*, 362 N.C. 84 (2007); *State v. Downs*, 179 N.C. App. 860 (2006); *State v. Hannah*, 149 N.C. App. 713 (2002).

To prove felony child abuse inflicting serious bodily injury under G.S. 14-318.4(a3), the state must show that defendant is the parent of the child, the child was not yet 16 years old, and defendant intentionally and without justification or excuse inflicted serious bodily injury. *State v. Bohannon,* 247 N.C. App. 756 (2016). In *Bohannon,* all elements were undisputed except whether the child's injury, a subarachnoid hemorrhage, constituted a serious bodily injury as defined in G.S. 14-318.4(d)(1). Based on the definition set out above, the trial court properly denied defendant's motion to dismiss based on testimony of three experts who treated the child as to the impact of bleeding on an infant's developing brain, which could be life-threatening and would require further monitoring.

Resource: For a discussion of assault offenses explaining level of injuries, see Brittany Williams (now Bromell), *Defining "Injury" for North Carolina Assault and Other Offenses*, UNC SCH. OF GOV'T: NORTH CAROLINA CRIMINAL LAW BLOG (March 1, 2022).

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4. Aiding and abetting murder or voluntary manslaughter. In *In re C.B.C.B.*, 379 N.C. 392 (2021), the supreme court affirmed the termination of mother's parental rights on the ground that she aided and abetted the murder of her minor child who died years before the juvenile in this TPR action was born. The supreme court reviewed the elements of aiding and abetting: "(1) 'the crime was committed by some other person;' (2) 'the defendant knowingly advised, instigated, encouraged, procured, or aided the other person to commit that crime[,]' [which may be inferred from actions of the defendant and the relationship of the defendant to the actual perpetrator as express words by the defendant are not required;] and (3) 'the defendant's actions or statements caused or contributed to the commission of the crime by that other person.' " *In re C.B.C.B.,* 379 N.C. at 402–03 (citation omitted). Although generally, a failure to intervene is not aiding and abetting, "parents… 'have an affirmative legal duty to protect and provide for their minor children' ", and "must 'take every step reasonably possible under the circumstances of a given situation to prevent harm to their children.' " *In re C.B.C.B.*, 379 N.C. at 403. A parent knowingly aids the perpetrator when the parent has actual knowledge of the harm and reasonably fails to protect their child from harm. The court must determine the reasonableness of the parent's response on a case-by-case basis.

In *In re C.B.C.B.*, all three elements of the crime of aiding and abetting were satisfied: (1) mother's child was murdered by her boyfriend, who was convicted of second-degree murder; (2) although mother was not present when her child died, she knew of the harm posed by her boyfriend to her children based on the severe abuse of her children by her boyfriend that she witnessed and intentionally tried to hide, thus failing to protect her children; and (3) mother's conduct in frequently leaving the children in her boyfriend's exclusive care, intentionally concealing her children's injuries, and participating in some of the abuse of her children created the opportunity for her boyfriend to murder her child and was tantamount to her

consent of that act. Mother did not reasonably protect her children, one of whom was murdered.

I. TPR to Another Child and Lack of Safe Home

Grounds for termination of parental rights (TPR) exist where a court of competent jurisdiction has involuntarily terminated the parent's rights with respect to another child of the parent, so long as that child was not an infant who was safely surrendered on or after October 1, 2023, and the parent lacks the ability or willingness to establish a safe home. G.S. 7B-1111(a)(9); *In re T.M.B.,* 378 N.C. 683 (2021); *In re J.D.A.D.*, 253 N.C. App. 53 (2017) (interpreting G.S. 7B-1111(a)(9) to require a two-part analysis before terminating parental rights: (1) that there was an involuntary termination of parental rights to another child of the respondent parent and (2) that the respondent parent has an inability or unwillingness to establish a safe home). A "safe home" is defined in G.S. 7B-101(19) as "[a] home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect*." See In re T.M.B.,* 378 N.C. 683; *In re N.G.,* 374 N.C. 891 (2020); *In re T.N.H.*, 372 N.C. 403 (2019).

Whether parental rights to another child have been involuntarily terminated by a court is often undisputed, leaving the appellate court to determine whether the evidence established that respondent lacked the ability or willingness to establish a safe home. *See, e.g., In re T.M.B.,* 378 N.C. 683 (mother's prior TPR as to another child was proved and was not challenged); *In re N.G.*, 374 N.C. 891 (father stipulated at the adjudicatory hearing in the neglect and dependency action that his parental rights to another child had been involuntarily terminated).

The following cases found sufficient evidence to support termination for lack of a safe home:

- *In re A.W.*, 288 N.C. App. 123 (2023) (evidence of father's failure to recognize his role in domestic violence, continued contact with mother despite a DVPO, emotional dysregulation, and continued use of substances supports trial court's ultimate finding that father lacked an ability or willingness to establish a safe home, even though father engaged in a domestic violence program and therapeutic services).
- *In re T.M.B.,* 378 N.C. 683 (evidence supported findings that mother did not have the ability to establish a safe home given her lack of insight into how to protect her child from being sexually abused or how to care for her child's trauma, which was demonstrated by his significant mental health diagnoses; mother's failure to find appropriate housing at the time of the TPR hearing; and mother's nonparticipation in mental health treatment, which was not a result of COVID-19 restrictions but was based on her history of missing appointments).
- *In re N.G.,* 374 N.C. 891 (evidence supported findings that respondent father's rights to another child were involuntarily terminated by a court order and that father, who suffered from antisocial personality disorder, was unlikely to change his behaviors, which consisted of deceitful portrayals of himself in a favorable light and his lack of interest in change or treatment).
- *In re T.N.H.,* 372 N.C. 403 (the record in the case supported findings that respondent's parental rights to another child were terminated by court order, that respondent was incarcerated at the time of the termination hearing with an unknown release date, respondent had a history of unstable housing and had failed to complete her case plan, that child was sexually abused while in respondent's care, respondent did not believe child was

sexually abused and failed to report the abuse, and respondent did not understand the resulting trauma suffered by the child or his mental health needs).
- *In re D.J.E.L.*, 208 N.C. App. 154 (2010) (evidence of respondent mother's history with domestic violence with multiple individuals was sufficient to establish that she lacked the ability or willingness to establish a safe home).
- *In re L.A.B.*, 178 N.C. App. 295 (2006) (evidence that, among other things, mother's housing at all times since child's birth was transient was sufficient).
- *In re V.L.B.*, 168 N.C. App. 679 (2005) (evidence of mother's chronic mental health problems, her failure to pursue treatment, and her intention to personally care for respondent father whose mental and physical problems required round-the-clock care demonstrated that respondents could not provide a safe home).

Respondent father's incarceration, while relevant, was not sufficient by itself to support a conclusion to terminate parental rights based on his inability to establish a safe home. *In re J.D.A.D.*, 253 N.C. App. 53 (father's incarceration was the only rationale in the adjudicatory findings supporting termination; evidence was presented that father had not been approved for visitation, provided minimal financial support, continued to use illegal substances, and failed to obtain treatment, but there were no adjudicatory findings as to those issues, warranting reversal of the TPR order).

J. Relinquishment for Adoption

One ground for termination of parental rights addresses situations in which a child is being adopted in another state, the relinquishment or consent to adoption occurred in North Carolina, and the consent or relinquishment is not sufficient under the law of the state in which the adoption is taking place. This ground exists when the child has been relinquished to DSS or a licensed child-placing agency or placed for adoption with a prospective adoptive parent, and

- the parent's consent to or relinquishment for adoption is irrevocable (except for fraud, duress, or other circumstances set out in G.S. 48-3-609 and 48-3-707);
- termination of the parent's rights is required for the adoption to occur in another jurisdiction where an adoption proceeding has been or will be filed; and
- the parent does not contest the termination of parental rights.

G.S. 7B-1111(a)(10).

K. Conception Resulting from Sexually Related Criminal Offense

A ground for termination exists when the parent has been convicted of a sexually related offense under G.S. Chapter 14 that resulted in the conception of the child. G.S. 7B-1111(a)(11). This ground became effective October 1, 2012. *See* S.L. 2012-40. The effective date did not specify the offenses to which the law applies, but it would appear at a minimum to cover offenses committed on or after that date.

The law does not define "sexually related offense." Given the context, it clearly covers offenses where vaginal intercourse is an element of the crime, such as rape or incest. Most of North Carolina's rape statutes explicitly state that a person convicted of the crime has no rights to custody of or inheritance from or any rights related to the child under G.S. Chapter

48 (adoptions) and Chapter 7B (juvenile proceedings). G.S. 14-27.21(c) (first-degree forcible rape); 14-27.22(c) (second-degree forcible rape); 14-27.23(d) (statutory rape of a child by an adult); 14-27.24(c) (first-degree statutory rape). *But see* G.S. 14-27.25 (statutory rape of a person who is 15 years of age or younger, which does not include such a provision). *See also* G.S. 7B-401.1(b); 7B-1103(c); 7B-1104(3). See section 9.5.A.4, above, discussing naming parents in a TPR petition or motion.

The court of appeals addressed a sexually related offense for purposes of this ground in *In re N.J.R.C.*, 291 N.C. App. 174 (2023). In that case, the father was 21 years old and the mother was 15 years old when they had sexual relations that resulted in the child's conception. The father was subsequently convicted of taking indecent liberties with a child, which was the basis for the termination of his parental rights under G.S. 7B-1111(a)(11). The father appealed the TPR order arguing that indecent liberties of a child did not require a sexual act, and therefore, was not applicable under G.S. 7B-1111(a)(11). *See* G.S. 14-202.1 (taking indecent liberties with children). The court of appeals rejected father's argument and affirmed the TPR. In examining G.S. 7B-1111(a)(11), the court of appeals stated that the statute "does not require a respondent be convicted of a sexual act or offense, but only of a sexually *related* offense" and that this ground was "intentionally drafted in a manner broad enough to encompass not only acts and offenses which may explicitly involve sex, but also offenses associated with sex or that have some sexual component." *In re N.J.R.C.*, 291 N.C. App. at 177 (emphasis in original). To determine whether taking indecent liberties with a child was a sexually related offense, the court of appeals looked to both the definition of "sexually violent offense" in G.S. 14-208.6(5), which includes taking indecent liberties with children, and the definition of "related" in Black's Law Dictionary. Based on these definitions and the element of the crime of taking indecent liberties with children that involves a sexual component – an act to arouse or gratify sexual desire – the court of appeals held that taking indecent liberties with a child is a sexually related offense within the meaning of G.S. 7B-1111(a)(11).

9.12 Disposition and Best Interest Determination

A. Overview

Termination of parental rights (TPR) proceedings involve two stages: the adjudication stage and dispositional stage. *In re D.C.*, 378 N.C. 556 (2021); *In re D.L.W.*, 368 N.C. 835 (2016). The dispositional stage only occurs if the court concludes a TPR ground has been proved by clear and convincing evidence; otherwise, the court dismisses the petition or denies the motion after making appropriate findings of fact and conclusions of law. *See* G.S. 7B-1110(c); 7B-1111(b).

The purpose of the dispositional stage is to focus on whether the TPR is in the child's best interests. The authority of the court at disposition is limited to making the best interests of the child determination. *See In re E.Q.B.*, 290 N.C. App. 51 (2023) (holding court lacked authority to issue a no-contact order). After an adjudication that one or more TPR grounds exist, the court is never required to order the termination of parental rights. Rather, the court

must determine whether TPR is in the child's best interest. G.S. 7B-1110(a). The dispositional hearing is not adversarial. *In re R.D.*, 376 N.C. 244 (2020).

If the court concludes that TPR is not in the child's best interests, the court must dismiss the petition or deny the motion after making findings of fact and conclusions of law supporting its determination. G.S. 7B-1110(b). *See In re B.B.A.*, 299 N.C. App. 179 (2025) (facts show that despite the existence of a ground for termination of father's rights, TPR was determined not to be in the child's best interests as child would benefit from opportunity to form a relationship with father and denial of TPR fulfills the purpose of not unnecessarily severing relationship between father and child); *In re K.J.D.,* 297 N.C. App. 49 (2024) (facts show court determined termination of mother's parental rights was in the child's best interests but termination of father's parental rights was not in the child's best interests); *In re B.E.,* 381 N.C. 726 (2022) (facts show termination of mother's parental rights was determined by trial court to be in the best interests of three of the four juveniles resulting in termination of mother's rights for those three juveniles only); *In re B.E.,* 375 N.C. 730 (2020) (facts show TPR was determined to be in the best interests of two of the three juveniles, resulting in TPR for those two juveniles and a dismissal of the TPR motion for the third juvenile); *In re I.N.C.*, 374 N.C. 542 (2020) (facts show first TPR petition in 2017 was dismissed; trial court determined that despite the existence of two grounds for termination, TPR was not in the children's best interests). The TPR petition or motion will be granted when the court determines both a ground has been proved and TPR is in the child's best interests.

B. Evidentiary Issues

1. Standard of review is abuse of discretion. While G.S. 7B-1109(f) requires that findings in an adjudication order be based on clear and convincing evidence, there is no like requirement for findings in dispositional orders. *See* G.S. 7B-1109(f), as amended by S.L. 2025-16, sec. 1.14(b), effective October 1, 2025; *In re M.Y.P.*, 378 N.C. 667 (2021); *In re Z.L.W.,* 372 N.C. 432 (2019). The North Carolina Supreme Court has held that the standard of review for the trial court's best interests determination is an abuse of discretion. This standard was established decades ago in *In re Montgomery*, 311 N.C. 101 (1984) and has been repeatedly reaffirmed recently as challenges to this standard were raised before the North Carolina Supreme Court in various appeals from 2019 through 2021. *See, e.g., In re G.B*., 377 N.C. 106 (2021); *In re A.M.O*., 375 N.C. 717 (2020); *In re K.S.D-F*., 375 N.C. 626 (2020); *In re C.V.D.C*., 374 N.C. 525 (2020); *In re Z.L.W*., 372 N.C. 432. The abuse of discretion standard applies even though appellate courts refer to the best interest determination as a conclusion of law. *See, e.g., In re A.H.F.S.,* 375 N.C. 503 (2020) (holding trial court's conclusion that TPR was in the child's best interests was not an abuse of discretion); *In re J.R.S.*, 258 N.C. App. 612 (2018) (in dispositional orders, determinations of best interests are conclusions of law because they require an exercise of judgment); *In re M.N.C.*, 176 N.C. App. 114 (2006).

An "[a]buse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *In re A.U.D.*, 373 N.C. 3, 6–7 (2019) (quoting *In re T.L.H.*, 368 N.C. 101, 107 (2015)). The appellate court's inquiry is "whether the ruling is unreachable by a reasoned decision, *see White v. White*, 312 N.C. 770, 777 (1985), which necessarily requires appellate courts to consider broadly the circumstances which may render the ruling justifiable[.]" *In re T.A.M*., 378 N.C. 64, 71 (2021) (cleaned up). An abuse of discretion also occurs when the court "misapprehends

the applicable law. . . or fails to comply with a statutory mandate." *In re B.E.*, 375 N.C. 730, 745 (2020) (citations omitted).

The trial court exercises its discretion when weighing the relevant factors in its best interests determination. *In re S.D.H.*, 296 N.C. App. 392 (2024) (citing *In re J.C.L.*, 374 N.C. 772 (2020)).

2. No burden or standard of proof. At disposition, no party has a burden of proof. *In re M.Y.P.*, 378 N.C. 667 (2021) (affirming TPR; discussing different standards of proof and burdens at adjudicatory and dispositional hearings; TPR order referring to clear, cogent, and convincing evidence in the adjudication and disposition stages did not prejudice father as it is a higher standard for DSS to overcome); *In re R.D.*, 376 N.C. 244 (2020) (comparing adjudicatory and dispositional hearings). All parties may present evidence, and the court makes findings of fact and a discretionary determination as to whether it is in the child's best interest to terminate parental rights. *See In re E.H.P.*, 372 N.C. 388, 396 (2019) (trial court's findings, demonstrating that it duly considered the G.S. 7B-1110(a) factors, were a "valid exercise of its discretion" to determine that TPR of father was in children's best interest).

3. Separate hearings not required. Although the court applies different evidentiary standards at the adjudicatory stage, which determines whether a statutory ground for termination exists, and the dispositional stage, which determines whether termination of the parent's rights is in the child's best interest, there is no requirement that the two stages be conducted at two separate hearings. *In re S.M.M.*, 374 N.C. 911 (2020); *see In re M.Y.P.*, 378 N.C. 667 (2021) (trial court consolidated the adjudicatory and dispositional hearings). However, to ensure that a parent's constitutional rights to their child are not violated by an order to terminate parental rights based solely on the child's best interest, the court must conduct two separate inquiries, even though the two inquiries may be conducted in the same hearing. *In re S.Z.H.,* 247 N.C. App. 254 (2016).

4. Relevant, reliable, and necessary evidence. At disposition, the court may consider any evidence, including hearsay evidence, that the court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile. G.S. 7B-1110(a); *In re S.M.*, 380 N.C. 788 (2022) (DSS report was competent evidence under G.S. 7B-1110(a); sources for information in report are not required to be identified; no objection made to report's admission; social worker was subject to cross-examination); *In re G.G.M.*, 377 N.C. 29 (2021). The trial court has more discretion to receive evidence at a dispositional hearing as compared to the adjudicatory hearing. *In re M.Y.P.*, 378 N.C. 667 (2021); *In re R.D.*, 376 N.C. 244 (2020) (no abuse of discretion when court admitted the report of the child's GAL at disposition; noting that GAL reports are frequently introduced at disposition to aid the court in determining the best interests of the child). The Juvenile Code does not require the court to make explicit findings as to why it found the evidence it admitted to be relevant, reliable, and necessary. *In re R.D.*, 376 N.C. 244. Although the court has discretion to admit evidence that is not admissible under the Rules of Evidence, that discretion is not limitless. *In re R.D.*, 376 N.C. 244. An abuse of discretion standard is applied on appellate review regarding the trial court's decision to admit or deny evidence at a dispositional hearing. *In re M.T.*, 285 N.C. App. 305 (2022) (no abuse of discretion when court excluded expert witness testimony for mother who would testify to the parent-child bond, importance of maintaining familial relationships in African-American families, and child welfare policy and practice; court

determined after voir dire that evidence was irrelevant as expert did not review all the documentation from the case and did not know about North Carolina child welfare practices).

As the trier of fact, the court determines the weight and credibility to give to evidence. *See, e.g., In re G.G.M.,* 377 N.C. 29; *In re R.D.*, 376 N.C. 244; *In re K.G.W.*, 250 N.C. App. 62 (2016) (affirming trial court's decision that respondent's expert witness not testify, after an offer of proof resulted in court determining witness did not have any evidence to offer it, as trier of fact, that would be credible and persuasive).

Dispositional findings must be supported by competent evidence. *In re T.A.M.*, 378 N.C. 64 (2021) (findings were supported by social worker testimony and the admitted GAL report and visitation logs); *In re S.M.*, 375 N.C. 673 (2020) (disregarding as unsupported by competent evidence findings based on GAL report that was distributed to the parties but not admitted into evidence; nothing showed GAL testified at the dispositional hearing). The standard of review that applies to findings of fact in TPR disposition orders is whether the findings are supported by "competent" or "credible" evidence. *See In re A.J.T.*, 374 N.C. 504 (2020) (dispositional findings reviewed under a "competent evidence" standard). More recently, the North Carolina Supreme Court has noted that it has used the term "competent evidence" to describe the standard of review related to dispositional findings but that for clarity it is starting to use the term from the statute, "evidence" to avoid confusion since "competent evidence" is defined as evidence that is admissible under the rules of evidence. *See, e.g., In re K.N.L.P.*, 380 N.C. 756, 759 n.3 (2022).

5. Evidence from adjudication. The North Carolina Supreme Court has recognized that "the trial court may–and should–consider evidence introduced during the adjudicatory stage of a termination hearing in determining the children's best interests during the disposition stage." *In re E.F.*, 375 N.C. 88, 93–94 (2020). Note that dispositional evidence cannot be relied upon by the trial court to support adjudicatory findings of fact. *In re Z.J.W.*, 376 N.C. 760 (2021).

6. No absolute right to cross-examination. In *In re R.D.*, 376 N.C. 244 (2020), the supreme court determined that there is not an absolute right to cross-examine witnesses at the dispositional hearing. The supreme court looked to G.S. 7B-1110(a), which explicitly allows for hearsay evidence to be considered by the court and reasoned that hearsay evidence is not subject to cross-examination. The supreme court also determined that its holding was consistent with an earlier opinion, *In re J.H.K.*, 365 N.C. 171 (2011), which concluded that the attendance of the GAL volunteer who is not the attorney, but is the team member that conducts the out-of-court responsibilities, is not required at the TPR hearing. In *In re R.D.*, the court reasoned that since there is no requirement that a GAL volunteer be present in the courtroom during the TPR proceeding, then there is no absolute right to cross-examine the GAL in cases where the GAL is present but does not testify. The supreme court did not address the due process argument raised on appeal as this issue was not preserved at the trial level and was, therefore, waived.

7. On remand. In *In re K.J.E.*, 288 N.C. App. 325, 327 (2023), the court of appeals determined "the trial court was required on remand during the disposition stage . . . to determine the best interests of the child at or near the time of the [remanded] hearing." However, it is not *per se* error for a best interests determination made on remand to be based on the record of the earlier hearing, when for example, no party attempts to offer new

evidence. *In re K.J.E.*, 288 N.C. App. 325. Mere speculation of changed circumstances is not sufficient; a forecast of relevant evidence should be made. *In re S.M.M.*, 374 N.C. 911 (2020) (holding no abuse of discretion when court denied respondent's motion to reopen the evidence). In *In re K.J.E.*, the trial court's denial of allowing respondent father to make an offer of proof was an abuse of discretion. The trial court has broad but not unlimited discretion on whether to hear new evidence on remand. The trial court also has broad discretion to determine what evidence to admit or deny at disposition based on whether the evidence is relevant, reliable, and necessary. However, "a trial court *mus*t generally hear any evidence relevant to a best interest determination if the evidence is not cumulative." *In re K.J.E.,* 288 N.C. App. at 329 (emphasis in original).

8. Evidence from child's GAL required. When a GAL is appointed to represent the child, the duties of G.S. 7B-601 apply. G.S. 7B-1108(b), (d). In *In re S.D.H.*, 296 N.C. App. 392 (2024), the court of appeals discussed the GAL's representation of the juvenile and explained that the representation is based on the duties specified in G.S. 7B-601. Those duties include interviewing the child, parents, and other relevant persons and making recommendations as to the child's best interests. As a result, the GAL must provide evidence, either through testimony, written reports, or both to the court of its recommendations as to what course of action is in the child's best interests. The court cannot make a best interests determination without that evidence and to do so is an abuse of discretion because the court is not equipped to make an informed decision on the child's best interests. Additionally, prejudice is presumed as the child lacks representation during a critical stage in the proceeding. In *In re S.D.H.*, the child's GAL did not provide evidence as to child's best interests, and it was unclear whether the GAL completed an investigation. Rather than make a best interests determination, the trial court should have stopped the TPR hearing, instructed the GAL to perform their statutory duties, and set a later hearing date where the GAL had sufficient time to investigate and make their recommendations. Ultimately, a trial court has "an implicit duty to receive information or evidence from the Guardian ad Litem at the hearing . . ." *In re S.D.H.*, 296 N.C. App. at 404 (vacating and remanding for a new dispositional hearing).

C. Considerations for Best Interest Determination

1. Required criteria. In making a determination regarding the child's best interest, the court is required to consider the following criteria and make written findings regarding those that are relevant:

- the child's age;
- the likelihood that the child will be adopted;
- whether termination will help achieve the permanent plan for the child;
- the bond between the child and the parent;
- the quality of the relationship between the child and the proposed adoptive parent, guardian, custodian, or other permanent placement;
- any other relevant consideration.

G.S. 7B-1110(a); *In re A.U.D.*, 373 N.C. 3, 10 (2019) (emphasis in original) (stating that "[i]t is clear that a trial court must *consider* all of the factors in section 7B-1110(a)"); *In re A.R.A.*, 373 N.C. 190, 199 (2019) (quoting *In re A.U.D*).

The five factors enumerated in G.S. 7B-1110(a)(1)–(5) are not exclusive when making a best interests of the child determination, as subsection (a)(6) specifically authorizes the court to consider and rely on "any other relevant consideration." *In re R.D.*, 376 N.C. 244, 257 (2020).

The trial court must consider and make findings about any of the factors that are relevant and is not required to make written findings on all six factors. *See In re A.M.*, 377 N.C. 220 (2021); *In re A.R.A.*, 373 N.C. 190; *In re A.U.D.*, 373 N.C. 3. The North Carolina Supreme Court has stated that "[a] factor is relevant if there is conflicting evidence concerning the factor, such that it is placed in issue by virtue of the evidence presented before the district court." *In re E.S.,* 378 N.C. 8, 12 (2021) (quoting *In re C.J.C.,* 374 N.C. 42, 48 (2020)); *In re A.R.A.*, 373 N.C. at 199 (agreeing with court of appeals and quoting *In re H.D*, 239 N.C. App. 318, 327 (2015)). The court of appeals has also stated that a relevant factor is one that has "an impact on the trial court's decision[.]" *In re S.Z.H.,* 247 N.C. App. 254, 265 (2016) (citations omitted). When there is no conflicting evidence as to a factor, the trial court's failure to make a written finding is not reversible error. *In re E.S.,* 378 N.C. 8 (evidence of child's bond with mother was uncontested; no finding was required); *In re J.S.*, 374 N.C. 811 (2020) (there was no conflicting evidence about the likelihood of each child's adoption or whether a TPR would help achieve the permanent plans; findings as to those G.S. 7B-1110(a) factors were not required); *In re A.U.D.,* 373 N.C. 3 (when there was no conflict in the evidence as to the likelihood of adoption, that no bond existed between respondent and the children, and that there was no permanent plan in the private termination proceeding, to remand for findings on uncontested issues would elevate form over substance and delay permanence for the children).

Practice Note: The North Carolina Supreme Court considers it the better practice to make written findings as to statutory factors identified by a petitioner and encourages trial courts to make written findings as to all G.S. 7B-1110(a) factors in the dispositional portion of a TPR order to preclude an argument that a written finding was not made on a relevant factor. *In re C.V.D.C.,* 374 N.C. 525 (2020); *In re A.U.D.*, 373 N.C. at 10 n.4 (encouraging written findings).

Resource: For a discussion on the factors considered by the district court, see Sara DePasquale, *The TPR Dispositional Stage, the Juvenile's Best Interests, and the N.C. Supreme Court*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (May 7, 2021).

Cases determining challenged G.S. 7B-1110(a) factors were not relevant include

- *In re A.K.O.*, 375 N.C. 698 (2020) (evidence of bond between juvenile and his parents and juvenile's unwillingness to consent to his adoption was uncontested; written findings were not required).
- *In re C.J.C.*, 374 N.C. 42 (in private TPR brought by mother, there was no conflicting evidence about either the juvenile's or mother's relationship with mother's boyfriend, who was like a father-figure to the juvenile; findings were not required as to G.S. 7B-1110(a)(2) (likelihood of child's adoption) or (a)(3) (whether TPR would aid in accomplishment of juvenile's permanent plan) in a private TPR in which mother had full custody and there was no indication at the TPR hearing of child's adoption by boyfriend; mother's relationship with boyfriend was not in this case sufficiently relevant to require

findings as to the impact of that relationship on the termination of father's parental rights or the juvenile's adoption).

- *In re C.V.D.C.*, 374 N.C. 525 (uncontested evidence addressed the children's likelihood of adoption, whether TPR would aid in achieving the permanent plan, and the quality of the relationship between the child and prospective adoptive parent; no reversible error when findings on those uncontested issues were not made).
- *In re S.D.C.*, 373 N.C. 285 (2020) (when there was no evidence addressing the availability of a possible relative placement, the trial court was not required to consider or make findings on that issue).
- *In re A.R.A.*, 373 N.C. 190 (there was no conflicting evidence regarding the likelihood of the child's adoption; with no potential adoptive parent at the time of the TPR hearing, the district court was not required to make a finding about the quality of the relationship between child and proposed adoptive parent).

Practice Note: Some appellate cases addressing whether the trial court handled the criteria in G.S. 7B-1110(a) appropriately were decided under a previous version of that statute which required the court to consider the criteria but did not require written findings. In *In re J.L.H.,* 224 N.C. App. 52, 59 (2012), the court of appeals specifically stated that such cases (*e.g., In re S.R.*, 207 N.C. App. 102 (2010); *In re S.C.H.*, 199 N.C. App. 658 (2009)) are superseded by the new version of G.S. 7B-1110 requiring written findings.

Although written findings on the relevant statutory criteria are required, recitation of the statutory language is not required where findings indicate the criteria were considered. *In re A.K.O.*, 375 N.C. 698 (affirming TPR; dispositional findings demonstrated the court considered G.S. 7B-1110(a)(2) (likelihood of adoption) and 7B-1110(a)(4) (bond with parent) when it addressed the juvenile's preference to not be adopted and his wish to maintain a relationship with his parents); *In re D.C.,* 236 N.C. App. 287 (2014) (although the trial court did not use the word "bond" that is contained in G.S. 7B-1110(a)(4), it did find that the child was over 5 years old and had been in foster care for over two years, which indicated that he did not have a strong bond with his mother since he would barely, if at all, have remembered her; findings related to the child's positive relationship with his prospective adoptive family and their desire to adopt him satisfied criteria in G.S. 7B-1110(a)(3) and (a)(5)). *See also In re L.M.T.*, 367 N.C. 165 (2013), *superseded in part by statute as stated in In re J.M.*, 384 N.C. 584, 594 n.5 (2023) (findings need not recite the exact statutory language but must address the substance of the statutory requirements).

2. Purpose of Juvenile Code. When making dispositional findings of fact, it is not improper for the trial court to look to the purpose of the Juvenile Code. *In re R.D.*, 376 N.C. 244 (2020). The child's best interests, not the rights of the parents, are paramount. *See In re A.A.*, 381 N.C. 325, 341 (2022) (emphasis in original) (stating "[t]he proper focus of the trial court at the dispositional phase of the case was on the best interests of [*the juvenile*], not the equities between *the parents*"). When the child's and parents' interests conflict, the child's best interests control. *See* G.S. 7B-1100(3). *See also In re J.C.J.,* 381 N.C. 783 (2022); *In re S.D.C.,* 381 N.C. 152 (2022); *In re K.N.K.*, 374 N.C. 50 (2020); *In re Montgomery*, 311 N.C. 101 (1984).

A purpose of the Juvenile Code is to provide standards to ensure that the best interests of a child are of paramount consideration and when it is not in the child's best interest to be returned home, that the child will be placed in a safe, permanent home within a reasonable time. G.S. 7B-100(5). Another purpose is to provide standards for the removal and return of a child in a manner that prevents the unnecessary or inappropriate separation of children from their parents. G.S. 7B-100(4).

Recent cases have considered these purposes when making a best interest determination.

- In affirming the trial court's conclusion that terminating respondent-father's parental rights was not in the best interests of the child, the court of appeals looked to the dual purposes of ensuring the child's best interest are paramount and protecting the child from the unnecessary severance of the parent and child relationship. Despite the child having no bond with respondent-father at the time of the hearing, no evidence was presented that the child's and father's interests were in conflict or that allowing a relationship with father was not in the child's best interests given the efforts father took to try to assert his constitutional rights and prevent the child's adoption before and after the child's birth. *In re B.B.A*., 299 N.C. App. 179 (2025).
- In affirming a TPR, court of appeals referred to the "purposes and policies" set forth in G.S. 7B-100, which applies to TPR proceedings and stated "[e]ach of the 'purposes and polices' seeks to strike a balance, based on the facts of each case, between 'the right to family autonomy' and the needs of the children for both protection and a 'safe, permanent home. . . .' " *In re M.T*., 285 N.C. App. 305, 362 (2022).
- Termination of mother's parental rights was in the juveniles' best interests as supreme court noted that leaving the juveniles in their current foster placements with visitation by mother denied them the "prospect of 'a safe, permanent home within a reasonable amount of time' as contemplated by the Juvenile Code" under G.S. 7B-100(5). *In re J.S*., 374 N.C. 811, 825 (2020); *see In re N.K*., 375 N.C. 805 (2020) (also looking to G.S. 7B-100(5) and holding there was no abuse of discretion in trial court's conclusion that TPR of mother was in child's best interests).
- The trial court did not abuse its discretion when determining that TPR was in the child's best interests. In reviewing the purposes identified in G.S. 7B-100(4) and (5), the supreme court stated the juvenile's best interests were paramount and that preserving the family's integrity was not in the juvenile's best interests when she was no closer to returning home and was living with a family who was meeting her needs and wanted to adopt her. *In re N.G*., 374 N.C. 891 (2020).
- Trial court's finding addressing purpose of preventing the unnecessary severance of the relationship between child and parent, when supplemented with finding that children who are adopted face harm, could be interpreted as having an inappropriate bias against adoption and was prejudicial, resulting in remand. Adoption is not contrary to public policy as the legislature has set out in G.S. 48-1-100 the purposes of adoption and the supreme court previously recognized the worth of adoption. *In re R.D*., 376 N.C. 244.
- After considering the purposes in G.S. 7B-100, an order determining that termination of respondent father's rights was not in the child's best interest was affirmed. The supreme court reviewed the fundamental principles that the child's best interest is the polar star and of paramount consideration and the process of the trial court, which included weighing the competing purposes, considering the dispositional factors in G.S. 7B-1110(a)(1)–(5), and

other relevant circumstances as allowed by G.S. 7B-1110(a)(6). Even though evidence would have supported a contrary decision, the trial court's decision was not arbitrary nor manifestly unsupported by reason. *In re A.U.D.*, 373 N.C. 3 (2019).

- The trial court's conclusion that termination of respondent father's rights was in the children's best interest was affirmed, even though the trial court had found a strong bond between respondent and the children. The supreme court considered the stated policies in G.S. 7B-100(4) and (5) when rejecting father's argument that the trial court should have considered other dispositional alternatives that would have allowed a relationship with father. *In re Z.L.W.*, 372 N.C. 432 (2019) (affirming TPR despite strong bond between parents and the children), *cited in In re J.J.B.*, 374 N.C. 787 (2020).

3. Age of the juvenile and the juvenile's preference. A juvenile may express a preference for a dispositional alternative, but that preference, regardless of the child's age, is not controlling on the trial court. *See, e.g., In re A.J.T.,* 374 N.C. 504, 510 (2020) (TPR affirmed involving a 14-year-old who according to respondent had an " 'obvious' preference to live with her[;]" distinguishing *Mintz v. Mintz*, 64 N.C. App. 338 (1983), which considered child's preference as to visitation in a civil custody action, from a TPR disposition; noting *Mintz* was not binding on the supreme court). However, in a case involving a 17-year-old who did not wish to be adopted but preferred guardianship as his permanent plan, the supreme court stated "[a]s a juvenile ages, the trial court should afford more weight to his wishes." *In re A.K.O.*, 375 N.C. 698, 706 (2020) (vacating and remanding TPR in part based on misapprehension of the law regarding guardianship and noting proper weight should be given to juvenile's preference; distinguishing the same considerations as not applying to 9-year-old sibling).

4. Likelihood that the child will be adopted. While G.S. 7B-1110(a)(2) requires the court to consider the child's adoptability, the court is not required to find that the child is likely to be adopted before terminating parental rights. *In re H.A.J.*, 377 N.C. 43, 61 (2021) (quoting *In re C.B.*, 375 N.C. 556, 562 (2020)) (affirming TPR; "the trial court need not find a likelihood of adoption in order to terminate parental rights"); *In re C.B.*, 375 N.C. 556 (affirming TPR when likelihood of adoption was unknown); *In re S.M.M.*, 374 N.C. 911 (2020) (affirming TPR when court recognized that the juvenile may never achieve the stability and closure needed for her to be adopted).

The supreme court has recognized that a child's likelihood of adoption is more relevant in a TPR proceeding when the juvenile is in DSS custody, as TPR renders the child a state ward, when compared to a private TPR when the petitioner has full custody of the child. *See In re C.J.C.*, 374 N.C. 42 (2020) (petitioner was mother with full custody; child's likelihood of adoption was not a sufficient factor when determining whether termination of father's parental rights was in the child's best interests); *In re J.B.*, 379 N.C. 233, 244 (2021) (affirming TPR initiated by mother against father; stating that "the lack of a potential adoptive second parent for [the juvenile] was irrelevant").

(a) Lack of adoptive placement. A lack of an adoptive placement for the child does not bar termination of the parent's rights. *In re L.G.G.*, 379 N.C. 258 (2021); *In re C.B.*, 375 N.C. 556; *In re M.A.*, 374 N.C. 865 (2020); *In re A.J.T.*, 374 N.C. 504 (2020). The supreme court has stated that a "potential pre-adoptive home" and a "pre-adoptive home" are "a distinction without a difference, as all pre-adoptive homes are by their nature inherently potential." *In re J.C.L.*, 374 N.C. 772, 786 (2020) (affirming TPR; evidence supports

court's finding that child was placed in a pre-adoptive home). The possibility of a lengthy adoption process does not preclude a finding that there is a high likelihood of adoption. *In re L.G.G.*, 379 N.C. 258 (competent evidence supports finding that child's behaviors were improving such that there was a possibility of long-term foster care or adoption placement being found in next year or two); *In re M.A.*, 374 N.C. 865 (competent evidence through testimony of adoption recruiter supports findings of likelihood of adoption). When an adoptive placement has not been identified for the child, the factor related to the quality of the bond between the juvenile and proposed adoptive parent set forth at G.S. 7B-1110(a)(5) is irrelevant. *In re J.S.*, 374 N.C. 811 (2020).

(b) Standing to file adoption petition. A child's likelihood of adoption is not affected by the prospective adoptive parents' failure to meet a procedural requirement in the adoption statute regarding standing when the procedural requirement may be waived by the court hearing the adoption proceeding. *In re D.E.M.,* 254 N.C. App. 401 (2017), *aff'd per curiam*, 370 N.C. 463 (2018). In that case, the TPR petitioners had custody of their grandchild pursuant to a civil custody order. Before filing a petition to adopt, G.S. 48-2-301(a) requires that a child be "placed" with the prospective adoptive parent by direct placement or by placement by an agency. Respondent argued that petitioners did not have the ability to adopt because the child had not been placed with them in accordance with G.S. 48-2-301(a). This argument was rejected as G.S. 48-2-301(a) expressly authorizes waiver of the placement requirement for cause. Moreover, petitioners had raised the child since he was eighteen months old, he was thriving in their home, and the GAL supported the adoption, making adoption likely.

(c) Juvenile's ability to form a bond. Consideration of the child's adjustment in a foster or preadoptive home is appropriate. *See, e.g., In re M.A.*, 374 N.C. 865 (findings that children had ability to bond with current caregivers supported conclusion that children had a likelihood of being adopted); *In re T.M.*, 182 N.C. App. 566, *aff'd per curiam*, 361 N.C. 683 (2007).

(d) Behavioral challenges and mental health issues. There are some appellate opinions that specifically address children with behavioral challenges and the likelihood of their adoption. The North Carolina Supreme Court has stated that "general truths" as argued by the mother – that children with behavioral challenges, developmental delays, and/or in foster care placement are difficult to place with adoptive families – "cannot overcome the particularized evidence . . . supporting the trial court's factual findings that each of these [four] children had a high probability of being adopted." *In re J.H.*, 373 N.C. 264, 274 (2020) (affirming TPR involving four siblings, each with special needs; holding trial court did not abuse its discretion when concluding TPR was in each child's best interests).

In an earlier opinion, *In re J.A.O.*, 166 N.C. App. 222 (2004), the court of appeals reversed the TPR after determining that the trial court abused its discretion in determining TPR was in the child's best interests and granted the TPR. The court of appeals reviewed the evidence presented about the juvenile. J.A.O. was 14 years old at the time of the TPR (and 16 at the time of the opinion), had multiple diagnoses, and had been in nineteen different treatment centers over fourteen years because of his aggressive and threatening behavior. His adoption was highly unlikely, and his GAL recommended against the TPR of mother.

Additionally, the mother had made reasonable progress and there was a possible benefit to the teen of having a continuing relationship with his mother and relatives.

In *In re A.J.T.*, 374 N.C. 504, the North Carolina Supreme Court stated that it is not bound by *In re J.A.O*. Further, the supreme court has factually distinguished *In re J.A.O.* from subsequent appeals that have considered whether the trial court abused its discretion in determining that the best interests of the child supported the TPR when the child experienced significant behavioral and mental health issues. Distinguishing factors include the severity of the juvenile's needs, the age of the juvenile, the recommendations of the juvenile's GAL; and the lack of reasonable progress by the parent. *See, e.g., In re S.M.,* 380 N.C. 788 (2022) (affirming TPR; 11-year-old juvenile showed progress in current stable foster home; parents made no progress on alleviating the conditions that led to the juvenile's removal; adoption resources would improve once child was free to be adopted); *In re H.A.J.,* 377 N.C. 43 (affirming TPR; juveniles were in foster care for thirteen months; GAL advocated for TPR and stated there was potential for both children to be adopted; and the children's issues were not as severe as those of J.A.O.); *In re C.B*., 375 N.C. 556 (affirming TPR; 11-year-old child's behaviors were improving in his therapeutic foster home; social worker testified about the possibility of him stepping down to a traditional foster home and her belief an adoptive family could be identified; GAL recommended TPR; mother had not made reasonable progress); *In re J.S*., 374 N.C. at 824 n.4 (affirming TPR; juveniles were 11 and 10 years old; social worker was optimistic about prospects for adoption; and GAL recommended mother's rights be terminated); *In re I.N.C*., 374 N.C. 542 (2020) (affirming TPR; juveniles were 9 and 10 years old when TPR order entered and had less severe issues than J.A.O; GAL testified adoption was in the children's best interests and children were adoptable; parents had not made reasonable progress in the five years the children were in DSS custody); *In re A.J.T.,* 374 N.C. 504 (affirming TPR; juvenile was 14 years old at time of the TPR hearing; GAL recommended TPR and informed court of a likelihood of adoption; parents did not make reasonable progress).

(e) Juvenile's consent to adoption. When a child who is 12 or older is being adopted, their consent to the adoption is required unless the court hearing the adoption proceeding waives that requirement after finding it is not in the child's best interest. G.S. 48-3-601(1); 48-3-603(b)(2); *see* G.S. 7B-1101 (the clerk of superior court has jurisdiction over adoptions); *In re M.A*., 374 N.C. at 880 (G.S. 48-3-601 "governs adoption, rather than termination of parental rights, proceedings."). The child's desire to be adopted, especially when the child is 12 or older, may be relevant to whether the child is likely to be adopted. Although evidence may show a juvenile is opposed to being adopted, that preference is not determinative on the trial court and does not preclude the court from determining that TPR is in the child's best interests. *See In re S.M.,* 380 N.C. 788; *In re M.A*., 374 N.C. 865; *In re A.J.T.*, 374 N.C. 504. The trial court is not expressly required to consider and make a finding as to the juvenile's interest in being adopted or their willingness to consent to their adoption. *In re E.S*., 378 N.C. 8 (2021); *In re C.B*., 375 N.C. 556.

Practice Note: The consent to adoption of a juvenile who is 12 or older may be raised at the TPR hearing. Although the juvenile's consent to adoption may be waived upon a determination that it is in the child's best interests, the district court should refrain from

waiving the juvenile's consent as part of the TPR order. As stated by the North Carolina Supreme Court, the requirement for a juvenile's consent to their adoption is in G.S. 48-3-601(1), which "is found in an entirely separate chapter of the General Statutes of North Carolina. . . ." *In re E.S.*, 378 N.C. at 13. *Cf. In re B.E.*, 375 N.C. 730 (2020) (trial court in TPR proceeding dispensed with the minor's consent to adoption). There is no authority in the Juvenile Code that authorizes the district court to waive a child's consent to adoption.

Resource: For a discussion of waiving a minor's consent to adoption and which court and proceeding has jurisdiction to waive that consent, see Sara DePasquale, *A Minor's Consent to Adoption: Where and In What Proceeding Is It Waived?*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (March 5, 2021).

(f) One parent's rights remain in place. A finding that the child has a likelihood of being adopted is not error when the other parent's rights remain in place because the trial court is considering the child's likelihood, not the certainty, of the child's adoption. *In re E.F.*, 375 N.C. 88 (2020) (affirming TPR of mother when DSS did not proceed with TPR regarding father). *See In re K.J.D.*, 297 N.C. App. 49 (2024) (affirmed TPR of mother's rights when court denied TPR of father's rights as it not being in the child's best interests; relying on *In re E.F.*)

See Chapter 10.3 (discussing selected adoption provisions).

5. Whether the TPR will aid in the accomplishment of the permanent plan for the child. In challenges to a trial court's finding that the TPR will aid in achieving a permanent plan of adoption (G.S. 7B-1110(a)(3)), the North Carolina Supreme Court has stated that TPR is a prerequisite to accomplishing that plan. *See In re A.J.T.*, 374 N.C. 504 (2020); *In re E.F.*, 375 N.C. 88 (2020). A TPR "makes a child available for adoption . . . ." *In re Z.O.G.-I.*, 375 N.C. 858, 869 (2020). There is no requirement that the court address the secondary plan and whether a TPR is required to achieve that plan. *In re S.M.*, 380 N.C. 788 (2022).

An order that finds a TPR is needed to achieve a permanent plan of guardianship or which decrees that the parent be allowed to continue to co-parent the child is a misapprehension of law, given that a TPR permanently and legally severs the parent-child relationship. *See In re Z.O.G.-I.*, 375 N.C. 858 (remanding best interests determination when court granted adoption but ordered father continue to co-parent child); *In re A.K.O.*, 375 N.C. 698 (2020) (although TPR would aid in achieving a permanent plan of adoption, it is not legally necessary to achieve a permanent plan of guardianship).

A finding that termination of one parent's rights will aid in accomplishing the permanent plan of adoption was not error even though DSS did not proceed with a TPR against the other parent. *In re E.F.*, 375 N.C. 88 (affirming TPR of mother; TPR was a necessary precondition for the adoption of the children). A finding that termination of respondent parents' parental rights was necessary to accomplish the best permanent plan for the juveniles, which was adoption, satisfied G.S. 7B-1110(a)(3). *In re C.B.*, 375 N.C. 556 (2020).

The North Carolina Supreme Court determined this factor is not relevant in a private TPR because there is no permanent plan within the meaning of G.S. 7B-1110(a)(3). *In re A.U.D.*,

373 N.C. 3 (2019); *see In re G.G.M.*, 377 N.C. 29 (2021) (respondent concedes G.S. 1110(a)(3) is inapplicable since there was no DSS involvement).

6. Bond between child and parent. The bond between parent and child set out in G.S. 7B-1110(a)(4) is just one factor to be considered under G.S. 7B-1110(a) and a trial court may give greater weight to other G.S. 7B-1110(a) factors. *See, e.g., In re A.M.*, 377 N.C. 220 (2021) (affirming TPR; trial court considered and recognized bond between mother and her children but appropriately exercised its discretion to give greater weight to other factors when determining TPR was in the children's best interests); *In re E.S.,* 378 N.C. 8 (2021); *In re A.J.T.*, 374 N.C. 504 (2020); *In re Z.L.W.*, 372 N.C. 432 (2019). There is no requirement that the court find that the bond between the parent and child is detrimental to the child before terminating parental rights. *In re C.B.*, 375 N.C. 556 (2020). The parent-child bond is adequately addressed when the court finds "that any previous bond or relationship with the [respondent-parent i]s outweighed by [the child's] need for permanence." *In re C.S.*, 380 N.C. 709, 715 (2022) (quoting *In re A.R.A.*, 373 N.C. 190, 200 (2019) (affirming TPR, finding showed father loved his child but was not in a place to provide a stable, nurturing, and caring environment and child has a very strong bond with his foster parents).

7. Other relevant considerations. Other considerations for best interests determinations include the following.

(a) Court's obligation as to findings. A trial court is not required to make findings of fact on all the evidence that is presented or to state every option that it considered when determining a disposition under G.S. 7B-1110. *In re E.S.,* 378 N.C. 8 (2021); *see In re M.S.E.*, 378 N.C. 40 (2021) (applying to TPR adjudication).

(b) Availability of relatives. The court may, but is not required to, consider the availability of placement with a relative. The Juvenile Code defines "relative" as "an individual directly related to the juvenile by blood, marriage, or adoption, including, but not limited to, a grandparent, sibling, aunt, or uncle." G.S. 7B-101(18a).

The North Carolina Supreme Court has stated that the trial court is not "expressly directed to consider the availability of a relative placement in the course of deciding a termination of parental rights proceeding." *In re S.D.C.*, 373 N.C. 285, 290 (2020), *quoted in In re E.S.,* 378 N.C. at 15; *see In re B.A.J.*, 295 N.C. App. 593 (2024). Unlike the dispositional statutes for an abuse, neglect, or dependency proceeding, which give relative placement priority, the dispositional statute for TPR, G.S. 7B-1110(a), does not. *In re N.C.E.*, 379 N.C. 283 (2021); *see In re H.R.S.*, 380 N.C. 728 (2022) (TPR affirmed). In considering the availability of a relative placement, "[t]he extent to which it is appropriate to do so in any particular proceeding [is] dependent upon the extent to which the record contains evidence tending to show whether such a relative placement is, in fact, available." *In re N.C.E.*, 379 N.C. at 288 (quoting *In re S.D.C.*, 373 N.C. at 290).

If conflicting evidence about the availability of a relative placement exists, "the trial court should make findings of fact addressing 'the competing goals of (1) preserving the ties between the children and their biological relatives; and (2) achieving permanence for the children as offered by their prospective adoptive family.' " *In re S.D.C.*, 373 N.C. at 290 (quoting *In re A.U.D.*, 373 N.C. 3, 12 (2019)), *quoted in In re H.R.S.*, 380 N.C. at 736; *see In re S.J.B.*, 375 N.C. 362 (2020) (affirming TPR; court weighed the competing goals of

achieving the permanent plan of adoption and preserving the juvenile's biological ties to her maternal grandmother and half-sibling). When considering a relative placement, the court has discretion to determine that it is in the child's best interests to terminate the rights of the parent. *See In re E.S.,* 378 N.C. 8 (affirming TPR; trial court made findings that a proposed relative placement would not be appropriate given the juvenile's bond with the family she was currently placed with who wished to adopt her and the possible interference with the proposed relative placement by father). The best interests of the child is the sole consideration at the TPR disposition. *See In re N.C.E.*, 379 N.C. 283 (TPR affirmed).

(c) Dispositional alternatives. In an underlying abuse, neglect, or dependency action, the court may order any dispositional alternatives under G.S. 7B-903, which includes custody or guardianship with a suitable person. The North Carolina Supreme Court has stated that it "has rejected arguments that the trial court commits error at the dispositional stage of a termination of parental rights proceeding by failing to explicitly consider non-termination-related dispositional alternatives, such as awarding custody of or guardianship over the child . . . ." *In re N.K.*, 375 N.C. 805, 820 (2020). At TPR, the court is not required under G.S. 7B-1110(a) to make written findings about any dispositional alternatives that it considered when determining the child's best interests. *In re M.S.E.*, 378 N.C. 40; *see In re T.A.M.*, 378 N.C. 64 (2021).

In *In re J.C.J.,* 381 N.C. 783, 798 (2022), the North Carolina Supreme Court held "that there is no basis for the use of a 'least restrictive disposition' test in this Court's termination of parental rights jurisprudence." Respondent parents urged the supreme court to follow other jurisdictions that adopted a dispositional standard that encouraged contact between children and their parents, even when parents cannot regain custody of their children. The supreme court examined those other states' statutes and determined those statutes were not directly relevant to a TPR as they applied at disposition after an adjudication of abuse, neglect, or dependency or when a juvenile is placed in a qualified residential treatment program.

(d) GAL information and opinion. A primary function of the child's guardian ad litem (GAL) is to provide the court with information relevant to the child's best interest. In carrying out their duties under G.S. 7B-601, the GAL must offer evidence and/or a report at the disposition stage of a TPR proceeding. *In re S.D.H.*, 296 N.C. App. 392 (2024) (vacating and remanding for new disposition hearing; trial court abused its discretion by determining child's best interests without evidence from the GAL). The GAL's opinion about the child's best interest, however, may not be a proper consideration for the court. In the case of *In re Wheeler,* 87 N.C. App. 189 (1987), respondent asserted as error the admission of a GAL's lay opinion that termination was in the children's best interest. The appellate court stated that the proper analysis of the admissibility of an opinion by a lay or expert witness is whether it is helpful to the trier of fact and found that the helpfulness of the GAL's lay opinion was questionable. Although the court found error in the admission of the lay opinion, in view of the abundance of other evidence supporting the trial court's decision and remarks of the judge indicating that he did not rely on this testimony, the admission was not prejudicial.

The trial court is not bound by a GAL's recommendation. *In re A.A.,* 381 N.C. 325, 339 (2022) (affirming TPR; GAL recommended against TPR; stating "[w]hile the role of the guardian ad litem is critical in every juvenile case . . . a guardian ad litem's recommendation regarding the best interests of a juvenile at the dispositional stage of a termination of parental rights case is not controlling"); *In re A.U.D.,* 373 N.C. 3 (rejecting petitioner's argument that the trial court erred by not giving proper consideration to a report and recommendation of the child's GAL that respondent's parental rights be terminated; the trial court considered the GAL's report and recommendation but elected not to follow the recommendation).

(e) Parents' religion. Questions and testimony about the parents' religious beliefs and practices are not necessarily constitutional error. *In re Huff,* 140 N.C. App. 288 (2000) (finding no error where the inquiry was brief, related primarily to practices that might affect the child and not to the parents' beliefs, was directed to the father rather than to an expert or minister, and did not result in any findings by the court).

(f) Efforts of DSS. A finding that DSS made diligent efforts to provide services to a parent is not a condition precedent to terminating a parent's rights. *In re J.W.J.*, 165 N.C. App. 696 (2004); *In re Frasher*, 147 N.C. App. 513 (2001) (discussing statutory amendment that removed "diligent efforts" language). Findings under G.S. 7B-906.2(b), which address reasonable efforts, apply to permanency planning hearings and are not required at a TPR hearing. *In re T.H.*, 266 N.C. App. 41 (2019).

(g) Compliance with case plan not relevant. The court of appeals has stated that "compliance with the case plan is not one of the factors the trial court is to consider in making the best interest determination." *In re Y.Y.E.T.*, 205 N.C. App. 120, 131 (2010). In recognizing a parent's progress on their case plan, the court is not precluded from weighing all the G.S. 7B-1110(a) factors and determining the TPR is in the child's best interests. *In re S.D.C.*, 381 N.C. 152 (2022).

(h) Financial benefits. The possibility of the juvenile obtaining financial benefits as a result of an adoption after a TPR is granted is not an abuse of discretion when the majority of the findings regarding the child's best interests relate to other factors, such as the parent's failure to satisfy parental obligations. *In re T.J.F.,* 230 N.C. App. 531 (2013) (rejecting respondent's argument that the court erred in considering the possibility of the child being eligible for military benefits as a dependent child should she be adopted by her grandparents; noting the argument may have some merit if the financial benefits for the child were the sole basis for terminating parental rights).

In the case *In re A.B.*, 239 N.C. App. 157, 169–70 (2015), the court of appeals interpreted the trial court's order in part as having improperly "tipped the 'best interest' scales" in favor of TPR instead of guardianship or custody based on the availability of financial benefits conferred on the potential adoptive parents. The court of appeals noted that while the financial circumstances of potential adoptive parents could be relevant in determining the likelihood of adoption, therefore making it a relevant factor in analyzing best interest, in this particular case the factor of financial assistance to the potential adoptive parents

was used to outweigh the close emotional bonds between the children and their mother and her efforts to regain custody, raising questions about the inconsistencies of the order.

(i) Specific relinquishment. The trial court did not misapprehend the law or abuse its discretion in determining that TPR of mother was in the child's best interests when mother had executed a specific relinquishment for her sister and brother-in-law to adopt the child. Mother contended that the specific relinquishment made termination of her parental rights unnecessary. Under G.S. 48-3-704 and -707, a parent has the right to revoke the relinquishment if the adoption with those specified relatives does not occur. A parent also has the right under G.S. 48-3-707(a)(1) to challenge the relinquishment based on fraud or duress at any time before entry of a final decree of adoption. If the mother in this case exercised either right, permanency for the child would be delayed. A TPR facilitates the child's adoption by a prospective adoptive parent that DSS determines is appropriate. TPR of mother was affirmed. *In re M.R.J.*, 378 N.C. 648 (2021).

(j) Use of Data. The trial court did not abuse its discretion when it excluded mother's expert from testifying on data regarding child welfare policy and practices and the importance of maintaining familial relationships, especially in African-American families. The trial court determined the evidence was irrelevant after a voir dire showed the expert was unfamiliar with NC child welfare practice; had research from other states; and did not have all the documentation in mother's case to review and form her opinion. The court of appeals stated, "the trial court's responsibility was to find the facts based upon the evidence presented as to these specific children and parents to determine the best interests of these specific children based upon those facts and the law." *In re M.T.*, 285 N.C. App. 305, 364 (2022). There was no showing that data about the "disproportionate and negative impact of the child welfare system on marginalized racial groups" and "outcomes for children in 'non-kinship homes' " was directly relevant to this child, family, or case. *In re M.T.*, 285 N.C. App. at 364. The court of appeals further stated that the data "may be of great assistance to the policy-making branches of government when establishing the laws and procedures in child welfare cases generally. . . ." *In re M.T.*, 285 N.C. App. at 364.

8. Weighing the factors. The trial court is responsible for weighing the relevant statutory criteria. *See, e.g., In re S.M.,* 380 N.C. 788 (2022); *In re I.N.C.*, 374 N.C. 542 (2020); *In re B.E.*, 375 N.C. 730 (2020). The appellate courts have stated that the trial court may give greater weight to some factors over others. *In re Z.L.W.*, 372 N.C. 432 (2019) (affirming TPR; trial court's determination that other factors outweighed children's bond with respondent was not an abuse of discretion); *In re T.H.*, 266 N.C. App. 41, 47 (2019) (stating that the "court is entitled to give greater weight to certain factors over others in making its determination concerning the best interest of a child"). An appellate court will not reweigh the evidence to make an independent dispositional determination. *See, e.g., In re I.N.C.*, 374 N.C. 542 (affirming TPR; to do so would not be consistent with the applicable standard of review at disposition, which is abuse of discretion).

9.13 Highlighted Federal Laws: ICWA and the ADA

A. Compliance with ICWA

The Indian Child Welfare Act (ICWA) is a federal law that sets forth minimum federal standards that must be complied with in certain child custody proceedings and is governed by 25 U.S.C. 1901 *et seq.* and binding federal regulations, effective December 12, 2016, codified at 25 C.F.R. Part 23. A termination of parental rights (TPR) is considered a child custody proceeding for purposes of ICWA. 25 U.S.C. 1903(1). Under ICWA, the court must make an inquiry of all participants at the commencement of every TPR action (including private TPRs) as to whether any participant knows or has reason to know the child is an "Indian child" as defined by ICWA. 25 C.F.R. 23.107(a); *see* 25 U.S.C. 1903(4) (definition of "Indian child"); *In re C.C.G.*, 380 N.C. 23 (2022) (analyzing when a court has reason to know the child is an Indian child, which is not based on ancestry but rather on membership or eligibility for membership with a tribe). *In re M.L.B.,* 377 N.C. 335 (2021) (TPR reversed and case remanded for compliance with mandatory inquiry).

When there is reason to know but insufficient evidence for the court to determine that the child is an Indian child, the court must treat the child as an Indian child and comply with ICWA requirements until and unless it is determined on the record that the child does not meet the definition of "Indian child." 25 C.F.R. 23.107(b)(2). The court must also confirm on the record through a report, declaration, or testimony that DSS or another party in the proceeding has used due diligence to identify, work with, and obtain verification from the tribes of which there is reason to know the child (1) may be (or is) a member or (2) is eligible for membership and a biological parent is a member. 25 C.F.R. 23.107(b)(1). *See In re E.J.B.,* 375 N.C. 95 (2020); *In re N.K.,* 375 N.C. 805 (2020); *In re L.W.S.*, 255 N.C. App. 296, 298 n.4 (2017) (in appeal of TPR order entered before application of federal regulation, noting under new federal regulations "it seems to be the case that the burden has shifted to state courts to inquire at the start of a proceeding whether the child at issue is an Indian child, and, if so, the state court must confirm that the agency used due diligence to identify and work with the Tribe and treat the child as an Indian child unless and until it is determined otherwise"). Due diligence requires that the petitioner or movant in the TPR send a legally sufficient notice to the applicable tribe(s) and director of the regional office of the Bureau of Indian Affairs. 25 U.S.C. 1912(a); 25 C.F.R. 23.111; *In re N.K.*, 375 N.C. 805 and *In re E.J.B.*, 375 N.C. 95 (both remanding case for compliance with the notice provisions of ICWA).

When ICWA provisions apply, the following issues are implicated: the court's subject matter jurisdiction if the child resides or is domiciled within an Indian reservation or is a ward of a tribal court; a proper ICWA notice to the parent, Indian custodian (if applicable), child's Indian tribe, and regional office of the Bureau of Indian Affairs; the right to intervene; the provision of "active efforts;" required findings based on a beyond a reasonable doubt standard and qualified expert testimony; and placement preferences.

See Chapter 13.2 (discussing ICWA and its requirements in detail).

B. ADA Not a Defense to TPR

The Americans with Disabilities Act (ADA) prohibits discrimination on the basis of a physical or mental disability. In a case of first impression, the North Carolina Court of Appeals held in *In re C.M.S.*, 184 N.C. App. 488 (2007), that the ADA did not preclude termination of the respondent's (who had an intellectual disability) rights. The court of appeals reviewed other state courts' treatment of the issue and adopted the rule followed by other states that termination of parental rights (TPR) proceedings are not services, programs, or activities within the meaning of Title II of the ADA, and the ADA is not a defense to a TPR. At the same time, the court of appeals found that the requirements for and the trial court's findings about reasonable efforts constituted compliance with the ADA.

See Chapter 13.5 (discussing the ADA).

9.14 Orders in Termination of Parental Rights Cases

See also Chapter 4.9 (discussing orders in juvenile cases).

A. Requirements for Order

1. Address grounds. The court must find facts and adjudicate the existence or nonexistence of the grounds alleged in the petition or motion. G.S. 7B-1109(e); 7B-1110(c); *In re O.D.S.,* 247 N.C. App. 711 (2016) (G.S. 7B-1109(e) requires that a trial court address every ground brought forth in a TPR petition or motion and make a determination in its order for every ground alleged, whether petitioner proved that ground or failed to prove it).

When granting a TPR brought on more than one ground, the trial court's failure to address an alleged ground at all constitutes a conclusion that it does not exist. *In re S.R.G.*, 200 N.C. App. 594 (2009). However, the supreme court addressed a denial of a TPR and held that when a trial court denies a TPR at the adjudicatory stage of the proceeding, the trial court must make findings and conclusions as to *each* ground alleged. *In re K.R.C.,* 374 N.C. 849 (2020) (vacating and remanding dismissal of TPR order; order contained inadequate findings of fact and conclusions of law contrary to requirement in G.S. 7B-1110(c), hindering appellate review).

2. Standard of proof for adjudication. With respect to the adjudication, the court must announce the standard of proof—clear and convincing evidence—that it is using to make its findings of fact. G.S. 7B-1109(f), as amended by S.L. 2025-16, sec. 1.14(d), effective October 1, 2025 (all findings of fact shall be based on "clear and convincing" evidence); 7B-1111(b) (petitioner or movant has the burden to prove the facts justifying termination by "clear and convincing" evidence); *In re B.L.H.,* 376 N.C. 118 (2020). Failing to identify the standard or applying a lower standard is reversible error. *See In re J.C.,* 380 N.C. 738 (2022) (reversing and remanding TPR when court failed to announce standard in open court and order contained a preponderance of the evidence standard, which is the incorrect statutory standard and is constitutionally insufficient under *Santosky v. Kramer*, 455 U.S. 745 (1982)); *In re A.H.D.*,

287 N.C. App. 548 (2023) (reversing and remanding TPR; court did not announce standard in open court and order refers to the findings of fact without identifying the standard used).

Prior to the statutory amendment effective October 1, 2025, the standard in G.S. 7B-1109(f) was clear, cogent, and convincing evidence. The two standards – "clear and convincing" and "clear, cogent, and convincing" are used interchangeably and are synonymous. *In re Belk*, 364 N.C. 114 (2010); *In re Faircloth*, 153 N.C. App. 565 (2002); *In re Montgomery*, 311 N.C. 101, 109 (1984) ("clear and convincing" and "clear, cogent and convincing" describe the same evidentiary standard). Clear and convincing evidence "should fully convince . . . [and] is more exacting than the preponderance of the evidence standard generally applied in civil cases, but less than beyond a reasonable doubt standard applied in criminal matters . . . such that a factfinder applying that evidentiary standard could reasonably find the fact in question." *In re J.C.-B.*, 276 N.C. App. 180, 184 (2021) (quoting *In re A.C.*, 247 N.C. App. 528, 533 (2016)); *see In re H.N.D.*, 265 N.C. App. 10, 13 (2019) (quoting *In re Mills*, 152 N.C. App. 1, 13 (2002)).

The North Carolina Supreme Court interpreted the language of G.S. 7B-1109(f) in *In re B.L.H.*, 376 N.C. 118. The supreme court held that the court must affirmatively announce in *either* open court or the TPR order the standard it is applying – clear, cogent, and convincing evidence – to the findings of fact that support the conclusions of law regarding an alleged ground. *In re B.L.H.*, 376 N.C. at 126 (emphasis in original; decided under prior statutory language of "clear, cogent, and convincing" evidence). This statutory interpretation allows for proper appellate review and furthers the purposes of the TPR statutes set forth in G.S. 7B-1100. In *In re B.L.H.*, the supreme court affirmed the TPR order after holding that it was not reversible error when the TPR order did not explicitly state the required standard of proof, but the trial court explicitly stated the standard in open court at the TPR hearing. Although not reversible error, the supreme court noted that it was "better practice for the trial court to state the correct standard of proof in the written termination order as well as in making oral factual findings." *In re B.L.H.*, 376 N.C. at 127–28. The trial court, when rendering its decision that grounds to TPR existed, stated the findings of fact were supported by clear and convincing evidence, and the written order did not show a different standard was used by the court. The supreme court recognized that its holding in *In re B.L.H.* is consistent with court of appeals opinions that interpreted G.S. 7B-1109(f) and held that a failure to announce the standard of proof in the order or in court at the TPR hearing is error. However, there is no error when the standard is announced at the hearing and is, therefore, in the record on appeal, even though the standard is not included in the TPR order. *See In re M.R.F.*, 378 N.C. 638 (2021) (reversing TPR when court failed to announce standard in open court or in TPR order; option to vacate and remand not appropriate since no evidence was introduced that could support alleged grounds).

When the standard of proof is included in the TPR order, there is no requirement as to where or how the standard is recited in that order. *In re J.T.W.*, 178 N.C. App. 678 (2006), *rev'd per curiam on other grounds*, 361 N.C. 341 (2007); *see In re A.B.,* 245 N.C. App. 35 (2016) (emphasis in original) (order that did not state that *all* findings were based on clear, cogent, and convincing evidence as required by G.S. 7B-1109(f) was affirmed; trial court used the correct standard when it orally indicated the standard it was applying, one of the seventy

findings stated the appropriate standard, and there was no other contradictory standard in the order; decided under prior statutory language).

3. Findings and conclusions. The order must include findings of fact and conclusions of law. *See* G.S. 7B-1109(e); 7B-1110(b), (c). The requirement to include findings of fact and conclusions of law "applies equally to instances in which the trial court 'adjudicate[s] the existence *or nonexistence* of any of the circumstances set forth in G.S. 7B-1111[.]' " *In re K.R.C.*, 374 N.C. 849, 857 (2020) (emphasis in original) (vacating and remanding dismissal of TPR order); *see In re B.F.N.*, 381 N.C. 372 (2022) (vacating and remanding denial of TPR on grounds of willful abandonment and neglect by abandonment; findings were insufficient to support denial and a meaningful appellate review). The adjudication of a TPR ground is a conclusion of law that must be supported by findings of fact. With respect to the child's best interests determination at disposition, the court is required to consider specific criteria pursuant to G.S. 7B-1110(a) and make specific findings regarding those criteria that are relevant. See section 9.12.C, above. The court's determination that terminating the parent's rights is or is not in the child's best interest is a conclusion of law that must be supported by the findings. *See In re M.N.C.*, 176 N.C. App. 114 (2006).

Although findings are required, the "trial court need not make a finding as to every fact which arises from the evidence; rather, the court need only find those facts which are material to the resolution of the dispute." *In re M.S.E.*, 378 N.C. 40, 54 (2021) (quoting *Witherow v. Witherow*, 99 N.C. App. 61, 63 (1990), *aff'd per curiam*, 328 N.C. 324 (1991)). *See In re E.S.*, 378 N.C. 8 (2021).

Findings of fact are determinations from the evidence concerning facts averred by one party and denied by another. Conclusions of law are findings by a court as determined through the application of rules of law. *In re Johnston*, 151 N.C. App. 728 (2002). The court's classification of findings or conclusions "does not alter the fact that the trial court's determination concerning the extent to which a parent's parental rights in a child are subject to termination on the basis of a particular ground must have sufficient support in the trial court's factual findings." *In re W.K.*, 379 N.C. 331, 334 (quoting *In re N.D.A.* 373 N.C. 71, 77 (2019), *abrogated in part by In re G.C.*, 384 N.C. 62 (2023)) (affirming TPR; inclusion of ground of neglect in fact 88 and not in the conclusions of law section of the order was not prejudicial error; unchallenged finding of prior neglect and determination of a likelihood of future neglect support conclusion to terminate father's parental rights on ground of neglect).

Rule 52(a)(1) of the Rules of Civil Procedure also requires the court, in any action tried without a jury, to "find the facts specially and state separately its conclusions of law thereon." *See In re K.R.C.,* 374 N.C. 849 (vacating and remanding dismissal of TPR; discussing Rule 52 and G.S. 7B-1109(e) in an appellate review of an order); *In re Anderson*, 151 N.C. App. 94 (2002) (discussing application of Rule 52 to adjudicatory facts; note this case has been distinguished by *In re J.W.*, 241 N.C. App. 44 (2015) regarding facts that recite the allegations in petition). "[W]hile Rule 52(a) does not require a recitation of the evidentiary and subsidiary facts required to prove the ultimate facts, it does require *specific findings* of the ultimate facts established by the evidence, admissions, and stipulations which are determinative of the questions involved in the action and essential to support the conclusions of law reached." *In re*

T.N.H., 372 N.C. 403, 407–08 (2019) (quoting *Quick v. Quick,* 305 N.C. 446, 451–52 (1982)) (emphasis in original).

The court must resolve disputed factual issues; any findings that do not resolve a material conflict are disregarded by an appellate court. *In re D.T.H.*, 378 N.C. 576 (2021) (reversing and remanding TPR for insufficient findings).

See Chapters 4.9.B (discussing findings of fact and conclusions of law) and 12.8.B (discussing the difference between findings and conclusions, including the different standard of review on appeal).

(a) Findings for adjudication based on clear and convincing evidence. Findings in the adjudication order must be based on clear and convincing evidence. G.S. 7B-1109(f), as amended by S.L. 2025-16, sec. 1.14(d), effective October 1, 2026; *see* G.S. 7B-1111(b) (burden of proof). *See also In re Young*, 346 N.C. 244 (1997) (reversing TPR based on neglect and abandonment grounds on the basis that there was not clear, cogent, and convincing evidence to support trial court's findings); *In re Montgomery*, 311 N.C. 101 (1984). See subsection 2, above.

(b) Sufficiently specific findings. Findings must be sufficiently specific. *See In re T.P.,* 197 N.C. App. 723 (2009) (holding that insufficient findings of fact required reversal where the findings mainly quoted statutory language and were not adequate for meaningful appellate review); *In re Locklear,* 151 N.C. App. 573 (2002) (holding that where findings did little more than restate the statutory grounds and discuss DSS's efforts to reunify, the order was not sufficient to establish a ground for termination). It is not necessarily reversible error for a trial court's finding of fact to mirror the language of the petition. *In re A.B.,* 245 N.C. App. 35 (2016) (affirming TPR that found DSS substantially proved facts alleged in paragraphs a-k of the TPR petition and an additional finding mirrored language in the petition when other findings of fact demonstrated the trial court made an independent determination of the facts, rather than merely reciting allegations in the petition). It is also not error for the findings to reference an exhibit that it finds to be "credible and reliable;" however, this practice is not endorsed by the supreme court; instead, the better practice is to make express, specific findings of fact. *In re H.B.*, 384 N.C. 484, 486 (2023) (affirming TPR that was based on DSS Timeline, an exhibit not objected to for admission in evidence, when Timeline was found to be "credible and reliable").

(c) Conclusions. The court's adjudication of the existence or nonexistence of grounds alleged in the petition or motion is a conclusion of law and must be based on the findings of fact. *See, e.g., In re K.R.C.,* 374 N.C. 849 (holding a denial of a TPR requires sufficient findings on each alleged ground the court concludes does not exist); *In re S.R.G.*, 200 N.C. App. 594 (2009) (holding that failure to address an alleged ground constitutes a conclusion that it does not exist); *In re L.C.,* 181 N.C. App. 278 (2007); *In re T.M.H.*, 186 N.C. App. 451 (2007); *see also In re D.L.W.*, 368 N.C. 835 (2016) (upholding the trial court's TPR order as to mother on the basis of neglect because the findings in the order supported the conclusion that there would be a repetition of neglect based on the juveniles living in an environment injurious to their welfare); *In re O.J.R.*, 239 N.C. App. 329 (2015) (TPR

order in private case was reversed and remanded in part due to lack of adequate conclusions and findings).

The court must consider the dispositional factors set out in G.S. 7B-1110(a) and make written findings about those that are relevant. *See In re A.R.A.,* 373 N.C. 190 (2019); *In re A.U.D.,* 373 N.C. 3 (2019). The court's determination that terminating the parent's rights is or is not in the child's best interest is a conclusion of law that must be supported by the findings. *See In re M.N.C.*, 176 N.C. App. 114.

(d) UCCJEA. Explicit findings demonstrating that the court has jurisdiction under the UCCJEA are not required when the record shows that the jurisdictional requirements of the UCCJEA are satisfied. *In re K.N.*, 378 N.C. 450 (2021) (rejecting father's argument that G.S. 7B-1101 requires such a finding; relying on previous holdings that the UCCJEA does not require such findings). See Chapter 3.3 (discussing the UCCJEA).

4. Timing. The order must be entered within thirty days following completion of the TPR hearing. G.S. 7B-1109(e); *In re B.J.H.*, 378 N.C. 524 (2021) (court has thirty days after the TPR hearing to enter the TPR order). If the order is not entered within thirty days, the juvenile clerk is required to schedule a hearing at the first session of juvenile court after the thirty-day period, for an explanation of the reason for the delay and to obtain any needed clarification about the contents of the order. The court must enter the order within ten days after this hearing. G.S. 7B-1109(e).

Where the court fails to enter a timely order, the appropriate remedy is a petition to the court of appeals for a writ of mandamus to require the trial court to proceed to judgment, not a new hearing. *In re T.H.T.*, 362 N.C. 446 (2008); *In re S.Z.H.,* 247 N.C. App. 254 (2016) (setting out the remedy of mandamus when a TPR order was entered nearly six months after the adjudicatory and dispositional hearing in violation of G.S. 7B-1109(e) and 7B-1110(a)); see also Chapter 4.9.D.3 (discussing mandamus as the remedy). Failure to comply with statutory timelines does not deprive the trial court of jurisdiction. *See In re C.L.C.*, 171 N.C. App. 438 (2005), *aff'd per curiam*, 360 N.C. 475 (2006).

5. Service of order on juvenile who is 12 or older. The juvenile is a party to the TPR proceeding. G.S. 7B-1104; 7B-601(a). Although the juvenile may be represented by a guardian ad litem (GAL), the juvenile, if 12 or older, must be served with a copy of the TPR order. G.S. 7B-1110(d); *see* G.S. 7B-1108 (GAL appointment). Service on the juvenile is in addition to service on the juvenile's GAL when a GAL is appointed. The juvenile has a right to appeal any order that grants or denies the TPR. G.S. 7B-1001(a)(7) (appealable orders); 7B-1002(1), (2) (standing to appeal). See Chapter 12 (discussing appeals).

B. Entry of Order

An order is entered when it is reduced to writing, signed by the judge, and filed with the clerk pursuant to Rule 5. N.C. R. CIV. P. 58. An order that fails to indicate it was filed with the clerk (e.g., a file-stamp or other mark to indicate a filing date) is not entered. *McKinney v. Duncan*, 256 N.C. App. 717 (2017) (dismissing appeal for lack of subject matter jurisdiction in the appellate court when the underlying orders were never entered as they were devoid of any proof of filing with the clerk). *Cf.* N.C. R. CIV. P. 5(e)(3) (addressing failure to affix a date or

file stamp on an order by authorizing the clerk to enter the order or judgment nunc pro tunc to the date of filing).

Specific provisions of the Juvenile Code require that orders in TPR proceedings be reduced to writing, signed by the judge, and entered, and G.S. 7B-1001(b) explicitly refers to Rule 58 of the Rules of Civil Procedure for entry and service of orders. *See* G.S. 7B-1109(e); 7B-1110(a). The judge who presides over the TPR hearing is the judge who must sign the order; otherwise, the order does not comply with Rule 58 and is not entered. *In re C.M.C.*, 373 N.C. 24 (2019) (holding TPR order signed by a judge who did not preside over the TPR hearing was a nullity).

There is no requirement in G.S. 7B-1109 that the trial court render a decision in open court. *In re O.D.S.,* 247 N.C. App. 711 (2016). But, when the judge makes an oral announcement (or rendition) of their order in open court, the order does not become enforceable until it is reduced to writing, signed by the judge, and filed with the clerk of court pursuant to Rule 5. *See McKinney*, 256 N.C. App. 717; *Carland v. Branch,* 164 N.C. App. 403 (2004); *see also In re O.D.S.,* 247 N.C. App. at 722 (stating "[n]o order or judgment had been entered at that time, and therefore, no party was bound by the judgment").

Because an oral rendition is not an entry of a judgment, it is subject to change, meaning the trial court is not required to adhere to the rendition when making and entering its written order. *In re A.U.D.,* 373 N.C. 3 (2019) (oral findings made by a trial court are subject to change prior to the entry of the final written order); *In re O.D.S.,* 247 N.C. App. 711 (holding the court was not bound by the oral rendition to TPR based on neglect and could include both neglect and dependency as grounds to TPR in the written entered order). When there is a discrepancy between the oral rendition and written order, the written order controls. *In re M.R.F.*, 378 N.C. 638, 640 n.2 (2021) (citing *In re A.U.D.*, 373 N.C. at 9–10).

A court may also consider evidence presented after its oral rendition but before it enters a written judgment. *In re O.D.S.,* 247 N.C. App. 711, and cases cited therein. A trial court's misapprehension of when an order terminating parental rights was entered led to a reversal in the case *In re B.S.O.*, 225 N.C. App. 541 (2013). The trial court has broad discretion to re-open a case and admit additional testimony after the conclusion of the evidence, after argument of counsel, even weeks after the original hearing, or when the "ends of justice require." *In re B.S.O.*, 225 N.C. App. 541, 543 n.3. In *In re B.S.O.,* which cites cases on this principle, the trial court refused to exercise its discretion as to whether to take additional evidence, because it thought a valid order terminating parental rights had been entered, when in fact the order was not final because it had not been reduced to writing.

See Chapter 4.9.A and C, discussing the following:

- what constitutes entry of order;
- requirement that the presiding judge sign the order;
- judge's authority to direct a party to draft the order, and fact that draft orders should be circulated and are the court's responsibility even if drafted by a party; and
- service of signed orders on parties.

For a discussion of appeals of TPR orders, see Chapter 12.4.A.

Resource: Janet Mason, *Drafting Good Court Orders in Juvenile Cases*, JUVENILE LAW BULLETIN No. 2013/02 (UNC School of Government, Sept. 2013).

C. Appeals

An order granting or denying a TPR may be appealed. G.S. 7B-1001(a)(7). See Chapter 12, discussing appeals of juvenile orders, including a TPR order.

9.15 Effect of Order and Placement after Termination of Parental Rights

A. Severance of Rights and Obligations

An order terminating parental rights (TPR) completely and permanently severs all rights and obligations of the parent to the child and the child to the parent. G.S. 7B-1112; *see In re J.J.B.*, 374 N.C. 787 (2020); *In re Z.O.G.-I.*, 375 N.C. 858 (2020). A TPR renders "the child a legal stranger to the biological parent." *In re Z.O.G.-I.*, 375 N.C at 869. However, the child's right of inheritance does not terminate until a final order of adoption is entered. G.S. 7B-1112. In addition, any child support arrears remain after termination of parental rights, even though the parent is no longer liable for ongoing support obligations. *See* G.S. 48-1-107; 7B-1112; *see also Michigan v. Pruitt*, 94 N.C. App. 713 (1989) (holding that even though support obligation ceased when adoption became final, support arrears owed prior to adoption were still owed). *But see* G.S. 50-13.10(d)(5), enacted by S.L. 2025-16, sec. 1.21(a), effective October 1, 2025 (no arrearage for foster care assistance owed to the State accrues during any period when the child is in DSS custody).

When parental rights have been terminated, parents no longer have any constitutionally protected interest in their children. *In re Montgomery,* 77 N.C. App. 709 (1985). After a TPR, the parent is not entitled to notice of adoption proceedings and may not object to or participate in them. G.S. 7B-1112; *see* G.S. 48-2-401. A parent whose rights have been terminated does not have standing to seek custody of the child as an "other person" under G.S. 50-13.1(a) when DSS has custody of the child both before and after the TPR petition was filed. *Krauss v. Wayne Cnty. Dep't of Soc. Servs.*, 347 N.C. 371 (1997) (examining language of former TPR statute and holding it is a narrow statute that provides an exception to the broad language regarding standing of G.S. 50-13.1(a); note that the language of the former statute is substantially the same as the current G.S. 7B-1112(1)).

A termination of parental rights does not necessarily terminate a grandparent's rights to visitation. While mother had no constitutionally protected interest in the child after termination of her rights in a private TPR proceeding, termination of mother's rights did not extinguish a grandmother's court-ordered visitation rights. Grandmother was a party after intervening in an earlier custody proceeding between the child's parents and was awarded visitation rights. Grandmother/intervenor's visitation rights existed independently of mother's parental and custodial rights such that grandmother/intervenor could seek to enforce those rights through contempt proceedings after mother's rights were terminated. *Adams v. Langdon*, 264 N.C. App. 251 (2019).

Resource: See Cheryl Howell, *Grandparent visitation: termination of parent's rights does not terminate grandparent's court ordered visitation*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (Apr. 10, 2019).

In very limited circumstances, a parent's rights may be reinstated. See Chapter 10.4 (discussing the criteria and procedure for reinstatement of parental rights).

B. Collateral Legal Consequences

A TPR order may have an effect on an individual's parental rights as to any other children the individual has or may have. For example, if the parent has another child that has been adjudicated abused, neglected, or dependent and is in DSS custody, the order terminating the parent's rights to a different child may be a basis for relieving DSS from making reasonable efforts to reunify the parent with the child who is the subject of the abuse, neglect, or dependency action at initial disposition. *See* G.S. 7B-901(c)(2). See also Chapter 7.8.A.2 (discussing G.S. 7B-901(c) factors and reasonable efforts) and 7.9 (discussing reasonable efforts). A TPR order is also one part of a two-prong ground to terminate parental rights to another child of the parent. *See* G.S. 7B-1111(a)(9), discussed in section 9.11.I, above.

These collateral legal consequences have been held to satisfy the exception to the mootness doctrine in an appeal. *In re Baby Boy*, 238 N.C. App. 316 (2014) (because of the potential collateral consequences, appeal of an order terminating respondent mother's rights was not moot even though the child's adoption had been finalized by the time the appellate court considered mother's appeal of the TPR order).

For more on collateral consequences arising from a TPR order, see Chapter 12.4.B.2.

C. Placement and Post-TPR Review Hearings

1. When child is in DSS/agency custody. If the child had been placed in the custody of (or relinquished for adoption by one parent to) a county DSS or licensed child-placing agency and is in the custody of that agency (which includes a DSS) when the TPR petition or motion is filed, upon entry of a TPR order that agency acquires all rights for placement of the child that the agency would have acquired, including the right to consent to adoption, had the parent relinquished the child to the agency pursuant to G.S. Chapter 48, except as otherwise provided in G.S. 7B-908(d). G.S. 7B-1112(1). *See also In re I.T.P-L.,* 194 N.C. App. 453 (2008) (holding that the trial court did not have subject matter jurisdiction to order the child placed with a relative following termination because the statute gives DSS exclusive placement authority when the child was in DSS custody when TPR petition or motion was filed); *In re Asbury*, 125 N.C. App. 143 (1997). Statutory changes made after these cases were decided create narrow exceptions. Until the child is placed with prospective adoptive parents as selected in G.S. 7B-1112.1, the court at a post-TPR review hearing may order a placement different from the one proposed as long as the court considers DSS's recommendations and finds that the placement is in the juvenile's best interest. G.S. 7B-908(d1). See Chapter 10.3.B (discussing selection of prospective adoptive parents).

2. When child is not in DSS/agency custody. When the child is not in DSS or another agency's custody when the TPR petition or motion is filed, the court may place the child in

the custody of the petitioner or movant, some other suitable person, a county DSS, or a licensed child-placing agency, as may appear to be in the child's best interests . G.S. 7B-1112(2).

3. Post-TPR review hearings. After termination of parental rights, the court must conduct review hearings under G.S. 7B-908(b) at least every six months until the child is the subject of a final order of adoption, if

- the child is in the custody of DSS or another licensed child-placing agency and both parents' parental rights have been terminated pursuant to a petition or motion by one of the persons or agencies with proper standing under G.S. 7B-1103(a)(2) through (6); or
- one parent's parental rights have been terminated by court order and the other parent's parental rights have been relinquished under G.S. Chapter 48, and DSS or a licensed child-placing agency has custody of the child.

A parent whose rights have been terminated continues to be a party for purposes of post-TPR review hearings only if

- an appeal of the TPR order is pending and
- a court has stayed the TPR order pending the appeal.

G.S. 7B-908(b)(1).

See Chapter 10.1 (discussing post-TPR review hearings).