

Fathers and Paternity

Applying the Law
in North Carolina
Child Welfare Cases

Sara DePasquale

2016



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Printed in the United States of America

20 19 18 17 16 1 2 3 4 5

ISBN 978-1-56011-857-2

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Introduction

A father is a member of a child's family and an integral part of a child's life. But, unlike a birth mother, whose identity is known,¹ a man's paternity is not so obvious. A father's identity may be unknown. Even when a father's identity is known, not every father is automatically identified at his child's birth and named on the child's birth certificate. A man who is named as the father on a child's birth certificate may still have his paternity challenged, either by his own initiative or by a person or agency with standing to raise paternity as an issue.

There are various statutes in North Carolina that address paternity and fatherhood. Rather than exist as one chapter in the North Carolina General Statutes, laws addressing fatherhood are scattered throughout various chapters of the General Statutes and have also resulted from a body of common law. Because of the various sources of authority, it is difficult to easily find and know the relevant laws addressing paternity and parentage in North Carolina. One of several purposes of this book is to identify the various North Carolina laws about fatherhood for judicial officials and practitioners who handle child welfare proceedings. Throughout this book, the term "child welfare" is used to encompass abuse, neglect, or dependency proceedings and related termination of parental rights and adoption actions for those children who have been adjudicated by the court as being abused, neglected, or dependent and who have a primary permanent plan of adoption.

Knowing who a child's father is or is not impacts a child welfare proceeding when a county child welfare agency² (hereinafter "county department") intervenes in a family to protect a child from abuse, neglect, or dependency. When a county department becomes involved with a family as a result of a substantiated report of a child's abuse,

1. A child's mother may not be known if an infant has been abandoned through the safe surrender statute and the mother's identity is not disclosed. Chapter 7B, Sections 500(b), (c) of the North Carolina General Statutes (hereinafter G.S.). *See also* G.S. 14-322.3.

2. G.S. 7B-101(8a) ("department" is defined as "[e]ach county's child welfare agency," which may be the county department of social services, a consolidated human services agency, or an agency referred to by another name).

neglect, or dependency, the county department must determine who the child's parents and relatives are. A child's parents and relatives should be notified of the county department's involvement with the child and, if appropriate, included in developing and participating in the child's case plan. In providing protective services to a child, a county department works with the child's parents and provides services that assist them in improving their parenting such that the child is safe and the family is stabilized and preserved.³

Courts presiding over child welfare proceedings must determine whether necessary parties have been identified and included in the actions before them. The role of the child's father is something the court must address in each child welfare proceeding. The North Carolina statutes governing abuse, neglect, or dependency actions require the court to inquire about the identity and location of any missing parents.⁴ Addressing fathers specifically, the court must determine if paternity is an issue and may order that certain efforts to establish paternity be made.⁵ The termination of parental rights statutes also focus on fathers. The court must hold a preliminary hearing to try to determine an unknown respondent father's identity and include him in the proceeding and, when unable to do so, to order service by publication on him.⁶ In addition, the expectations of what a father of a child who is born out of wedlock must do to assert his rights as a parent are addressed in the grounds to terminate parental rights and the consent to adoption statutes.⁷ The adoption statutes also contain a provision that requires the adoption petitioner to serve a notice that the adoption petition for the child was filed with the court on any biological or possible biological father who has not consented to the adoption, relinquished his parental rights, had his parental rights terminated by court order, or been judicially determined not to be the child's father.⁸ A child's adoption may not proceed without all the necessary parental consents, relinquishments, or termination of parental rights orders. The court must determine whether such consent, relinquishment, or termination of parental rights applies to the child's father and, if so, ensure that it was obtained before granting the adoption.⁹

3. G.S. 7B-300.

4. G.S. 7B-506(h)(1), (2); *id.* §§ 7B-800.1(a)(2) through (4); 7B-901(b).

5. G.S. 7B-506(h)(1), (2); 7B-800.1(a)(3); 7B-901(b).

6. G.S. 7B-1105. Note that this preliminary hearing applies to an unknown parent, which may include an unknown mother.

7. G.S. 7B-1111(a)(5); 48-3-601(2)b.

8. G.S. 48-2-401(c)(3) (other exceptions to the notice requirement include a man who executes a notarized statement denying paternity or disclaiming interest in the child, who was convicted of certain specified sexual offenses where the criminal act resulted in the child's conception, or who the court determined is not required to consent to the child's adoption).

9. G.S. 48-2-603(a)(4).

In 2013 in North Carolina, 41 percent of births were to unwed mothers.¹⁰ In 2014, more than one in four children lived in a single mother household;¹¹ and more than one in three children lived in a single parent household.¹² These statistics suggest that identifying and locating a parent and addressing paternity is often an issue that must be addressed in child welfare proceedings. Efforts must be made to find and include the child's noncustodial parent in an abuse, neglect, or dependency proceeding. The efforts to locate a parent apply to those parents whose identities are known or unknown. The early identification of, inclusion of, and involvement by a father enables a county department (1) to develop a case plan that works toward reunifying the child with each parent and (2) to also consider a child's paternal relatives as resources for placement and support. A child's permanency may be achieved sooner when the child's father is identified and involved early on in the action.

Despite the need to include both parents in a child's case plan, the 2007 federal Child and Family Service Review (CFSR) of North Carolina's child welfare system found that county departments lacked consistency with regard to efforts to support the relationship between children and fathers, to ensure sufficient visitation or contact between children and their fathers, to involve fathers in case planning, and to assess and meet the needs of fathers.¹³ The 2015 CFSR report found that "families are not consistently engaged in [a child's] case planning, especially non-custodial parents" and that "stakeholders expressed concern . . . that diligent efforts to locate and serve notice

10. ANNIE E. CASEY FOUND., KIDS COUNT DATA CTR., *Births to Unmarried Women*, <http://datacenter.kidscount.org/data/tables/7-births-to-unmarried-women?loc=1&loct=2#detailed/2/2-52/false/36,868,867,133,38/any/257,258> (last visited Feb. 8, 2016).

11. ANNIE E. CASEY FOUND., KIDS COUNT DATA CTR., *Child Population by Household Type*, <http://datacenter.kidscount.org/data/tables/105-child-population-by-household-type?loc=1&loct=2#detailed/2/35/false/869,36,868,867,133/4290,4291,4292/427,428> (last visited Feb. 8, 2016).

12. Single parent household includes unmarried but cohabitating partners. ANNIE E. CASEY FOUND., KIDS COUNT DATA CTR., *Children in Single-Parent Families*, <http://datacenter.kidscount.org/data/tables/106-children-in-single-parent-families?loc=1&loct=2#detailed/2/35/false/869,36,868,867,133/any/429,430> (last visited Feb. 8, 2016).

13. U.S. DEP'T OF HEALTH & HUMAN SERVS., FINAL REPORT: NORTH CAROLINA CHILD AND FAMILY SERVICES REVIEW 8–9 (2007), <http://fosteringcourtimprovement.org/CFSR/CFSR2Reports/NC/CFSRFinalReport2ndRoundCFSR.pdf>. Note that the 2007 review is referred to as "Round Two." The CFSR is a federal review of a state's substantial conformity with certain safety and permanency outcomes that are required for federal funding under Titles IV-B and IV-E of the Social Security Act. The CFSR is conducted by the Children's Bureau of the U.S. Department of Health and Human Services. To date, there have been three rounds conducted in North Carolina: Round One in 2001, Round Two in 2010, and Round 3 in 2015. See CHILDREN'S BUREAU, CHILD & FAMILY SERVICES REVIEWS (CFSRS), www.acf.hhs.gov/programs/cb/monitoring/child-family-services-reviews.

of the proceedings to non-custodial parents were not made.”¹⁴ A second purpose of this book is to assist the courts and county departments in determining how to identify, locate, and include a child’s father at the outset of an abuse, neglect, or dependency case.

A court may determine that paternity is an issue in a child welfare proceeding. If the court determines that paternity is an issue, it may adjudicate a man’s paternity or non-paternity in the abuse, neglect, dependency, or termination of parental rights proceeding. A third purpose of this book is to assist the court in making its determination of whether paternity is an issue and, if so, to assist the parties and court in ensuring that the required steps to establish paternity are taken.

An adjudication determining that a man is or is not a child’s father has a significant impact in a child welfare proceeding. The adjudication of paternity or non-paternity affects

- constitutional rights,
- a child’s adjudication,
- a child’s placement options,
- required reunification services,
- visitation rights, and
- a child’s permanent plan of reunification, custody, guardianship, or adoption.

These issues are discussed throughout this book.

This book is organized into seven chapters that follow the stages of a child welfare case, starting with the commencement of an abuse, neglect, or dependency action and ending with the child’s permanency. Throughout the chapters, the following questions that arise in child welfare proceedings but are not answered by the Juvenile Code are discussed:

- Which man is named as a party and why?
- What do efforts to locate a known father look like?
- When is paternity an issue?
- What efforts are required to establish paternity?
- How does the court establish paternity?
- Why does establishing paternity or non-paternity matter?

Note that the statutes discussed in this book reflect legislative changes made through the 2015 session of the North Carolina General Assembly.

14. U.S. DEP’T OF HEALTH & HUMAN SERVS., FINAL REPORT: NORTH CAROLINA CHILD AND FAMILY SERVICES REVIEW (2015) 15–16 (Dec. 2015). Note that the 2015 report is referred to as “Round Three” and is available on the North Carolina Division of Social Services website at www2.ncdhhs.gov/dss/stats/docs/child%20welfare%20docs/NC_ACF-CB_FinalReport_020216.pdf.