

## Issues in Juvenile Court

- I. Introduction and Context
- II. Recent Issues and Holdings
  - A. Issuance of defective summons or failure to issue a summons
    1. In June, 2009, the state supreme court overruled a series of lower court decisions that had related subject matter jurisdiction to issuance of a valid summons. The supreme court held that failure to issue a valid summons in a juvenile action does not affect the trial court's subject matter jurisdiction, but instead relates only to personal jurisdiction. *In re K.J.L.*, 363 N.C. 343, 677 S.E.2d 835 (2009).
    2. Just four months earlier, in *In re J.T.*, 363 N.C. 1, 672 S.E.2d 17 (2009), the supreme court had held that failure to issue a summons to the child in a termination of parental rights case did not deprive the trial court of subject matter jurisdiction. The court appeared to say, though, that subject matter jurisdiction required the issuance of *some* valid summons. In *K.J.L.* the court explicitly disavowed that interpretation of *J.T.*
    3. Failure to issue a valid summons, failure to issue any summons at all, or expiration of a summons may lead to reversible error. However, because these failures implicate personal jurisdiction and not subject matter jurisdiction, they can be waived. *K.J.L.*; *In re J.D.L.*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (8/18/09).
  - B. Other jurisdictional issues
    1. Verification
      - a. Failure to verify a petition or motion to terminate parental rights deprives the trial court of subject matter jurisdiction. *In re T.R.P.*, 360 N.C. 588, 636 S.E.2d 787 (2006).
      - b. Court did not have jurisdiction and its orders were void when verifications were signed by a DSS employ who signed the director's name "per [the employee's initials or name]." *In re S.E.P.*, 184 N.C. App. 481, 646 S.E.2d 617 (2007); *In re A.J.H-R.*, 184 N.C. App. 177, 645 S.E.2d 791 (2007).
      - c. Verification was sufficient when it was signed by an identified employee of DSS and there was no assertion that the employee was not the authorized representative of the DSS director. *In re Dj.L.*, 184 N.C. App. 76, 646 S.E.2d 134 (2007). *See also In re D.D.F.*, 187 N.C. App. 388, 654 S.E.2d 1 (2007) (jurisdiction was not affected by fact that petition did not state specifically that social worker who signed it was director's authorized representative.)

2. Uniform Child Custody Jurisdiction and Enforcement Act [G.S. Ch. 50A]
  - a. A proceeding to terminate parental rights is a child custody proceeding for purposes of the UCCJEA. G.S. 50A-102(4). *In re N.R.M.*, 165 N.C. App. 294, 598 S.E.2d 147 (2004).
  - b. Court must have
    - jurisdiction to enter an initial custody order,
    - exclusive continuing jurisdiction, or
    - jurisdiction to modify another state’s custody order.
  - c. Evidence in the record can be sufficient, without specific findings of fact, to support trial court’s conclusion of law that it has subject matter jurisdiction, although it is better practice for the order to include findings. *In re T.J.D.W.*, 182 N.C. App. 394, 642 S.E.2d 471, *aff’d per curiam*, 362 N.C. 84, 653 S.E.2d 143 (2007); *In re E.X.J.*, 191 N.C. App. 34, 662 S.E.2d 24 (2008), *aff’d per curiam*, 363 N.C. 9, 672 S.E.2d 19 (2009).
  - d. Information about the child’s status, required by G.S. 50A-209, must be set out in the petition or motion or an attached affidavit. Failure to attach the affidavit does not divest the court of jurisdiction and can be cured by the court’s requiring that the affidavit be filed within a specified time. *In re Clark*, 159 N.C. App. 75, 582 S.E.2d 657 (2003).
3. Child’s presence in the district
  - a. The child must reside or be found in the district or be in the legal or actual custody of a county department of social services (hereinafter, DSS) or licensed child-placing agency in the district when the petition or motion is filed. G.S. 7B-1101.
  - b. This requirement does not apply when the court has exclusive continuing jurisdiction under the UCCJEA. *In re H.L.A.D.*, 184 N.C. App. 381, 646 S.E.2d 425 (2007), *aff’d per curiam*, 362 N.C. 170, 655 S.E.2d 712 (2008).

Note: When there has been no prior custody determination (thus no exclusive continuing jurisdiction) and the court has jurisdiction under the UCCJEA to make an initial custody determination, the requirement of G.S. 7B-1101 may be at odds with the UCCJEA provision that physical presence of the child is neither necessary nor sufficient to establish jurisdiction. *See* G.S. 50A-201(c).
  - c. Where petitioner in a private termination action filed the petition in the county where respondent was incarcerated, not the county in which she and the child resided, the issue was one of venue, not jurisdiction. There was no error because respondent made no objection to venue. Also, the child was “present” in the county, at the courthouse with her mother, when the petition was filed. *In re J.L.K.*, 165 N.C. App. 311, 598 S.E.2d 387, *disc. review denied*, 359 N.C. 68, 604 S.E.2d 314 (2004).

4. Proper initiation

- a. Parties cannot consent to or waive subject matter jurisdiction. *In re K.J.L.*, 363 N.C. 343, 677 S.E.2d 835 (2009); *In re T.R.P.*, 360 N.C. 588, 636 S.E.2d 787 (2006).
- b. Trial court does not have subject matter jurisdiction when a claim for termination of parental rights is asserted as a counterclaim in a civil district court action for child custody or visitation. *In re S.D.W.*, 187 N.C. App. 416, 653 S.E.2d 429 (2007).
- c. Court does not have subject matter jurisdiction when the petition or motion does not include a prayer for relief or request entry of any order. *In re McKinney*, 158 N.C. App. 441, 581 S.E.2d 793 (2003). *Cf. In re Scearce*, 81 N.C. App. 531, 345 S.E.2d 404, *disc. review denied*, 318 N.C. 415, 349 S.E.2d 589 (1986).

5. Standing

The court does not have subject matter jurisdiction if a petition or motion is filed by someone who without standing. In termination cases, the following have standing:

- a. A county department of social services (or licensed child-placing agency) that has legal custody of the child.
  - DSS did not have standing to file a petition after the court awarded custody to someone else. *In re Miller*, 162 N.C. App. 355, 590 S.E.2d 864 (2004).
  - Custody pursuant to a nonsecure custody order issued on the basis of UCCJEA temporary emergency jurisdiction was sufficient to give DSS standing to petition for termination of parental rights, when no custody action had been filed in another state and North Carolina had become the child's home state. *In re E.X.J.*, 191 N.C. App. 34, 662 S.E.2d 24 (2008), *aff'd per curiam*, 363 N.C. 9, 672 S.E.2d 19 (2009).
  - If trial court lacked subject matter jurisdiction in the underlying action in which custody was awarded to DSS, the order giving DSS custody is void and DSS does not have standing to file a termination action.
- b. A parent seeking to terminate the other parent's rights.
- c. A court-appointed guardian of the child's person.
- d. The child's guardian ad litem in an abuse, neglect, or dependency case.
- e. Anyone with whom the child has lived for two years immediately before the filing of the petition or motion.
- f. Anyone who has filed a petition to adopt the child.

6. No pending appeal

The trial court may not proceed in a termination of parental rights case when an appeal from an underlying abuse, neglect, or dependency case is pending. G.S. 7B-1003(b)(1). *In re P.P.*, 183 N.C. App. 423, 645 S.E.2d 398 (2007).

7. The Indian Child Welfare Act (ICWA) [25 U.S.C. §§ 1901, *et seq.*].
  - a. Parent who seeks to invoke the Indian Child Welfare Act has the burden of showing that the act applies. *In re Williams*, 149 N.C. App. 951, 563 S.E.2d 202 (2002) (trial court properly denied motion to dismiss for lack of subject matter jurisdiction where respondent merely made mention of his Indian heritage and provided no supporting evidence).
  - b. The act applies only to federally-recognized tribes, not tribes recognized only by the state. *In re A.D.L.*, 169 N.C. App. 701, 612 S.E.2d 639, *disc. review denied*, 359 N.C. 852, 619 S.E.2d 402 (2005).

C. Errors not affecting subject matter jurisdiction

In addition to failure to issue a summons or defects in the summons, the following have been held not to affect subject matter jurisdiction, although they could lead to reversal on some other basis.

1. Failure to meet statutory timelines
  - a. The timeline for initiating a termination proceeding is not jurisdictional. *In re B.M.*, 168 N.C. App. 350, 607 S.E.2d 698 (2005).
  - b. The appropriate remedy for a court's failure to enter an order within the statutory 30-day time period is mandamus. *In re T.H.T.*, 362 N.C. 446, 665 S.E.2d 54 (2008).
2. Failure to attach custody order
  - a. When custody is clear from the record, failure to attach a copy of the custody order to the petition or motion does not deprive the trial court of subject matter jurisdiction. *See, e.g., In re H.L.A.D.*, 184 N.C. App. 381, 646 S.E.2d 425 (2007), *aff'd per curiam*, 362 N.C. 170, 655 S.E.2d 712 (2008) (respondent showed no prejudice and clearly was aware of child's custody with petitioners).
  - b. If no custody order is attached to the pleading and the record does not make clear that DSS has custody, the court may lack jurisdiction on the basis that DSS has not established its standing to initiate the action. *In re T.B.*, 177 N.C. App. 790, 629 S.E.2d 895 (2006).
3. Pending custody action
  - a. Fact that a court in another district has continuing jurisdiction in a custody action under G.S. Chapter 50 does not affect jurisdiction of the court in the district in which the child resides to proceed in a termination action. *In re Humphrey*, 156 N.C. App. 533, 577 S.E.2d 421 (2003).
  - b. For a case in which a grandmother's civil action for custody and DSS's action to terminate parental rights were consolidated, *see Smith v. Alleghany County DSS*, 114 N.C. App. 727, 443 S.E.2d 101, *disc. rev. denied*, 337 N.C. 696, 448 S.E.2d 533 (1994).

4. GAL representation in underlying action

Trial court's jurisdiction was not affected by failure to appoint guardians ad litem for the children when initial neglect and dependency petitions were filed or to ensure consistent representation of children by guardians ad litem throughout those proceedings, when children were represented by a guardian ad litem and attorney advocate throughout the termination proceeding. *In re J.E.*, 362 N.C. 168, 655 S.E.2d 831 (2008), *reversing per curiam*, *In re J.E.*, 183 N.C. App. 217, 644 S.E.2d 28 (2007), for reasons stated in the dissenting opinion in the court of appeals.

5. Imperfect contents of petition

Where contents of petition complied substantially with the statute and respondent had access to all of the required information, the trial court did not lack subject matter jurisdiction. *In re T.M.H.*, 186 N.C. App. 451, 652 S.E.2d 1, *review denied*, 362 N.C. 87, 657 S.E.2d 31 (2007).

D. Rules of Civil Procedure

1. The Rules apply to fill procedural gaps where Chapter 7B requires a procedure but does not specify one; however, the Rules will not confer on parties

procedural rights that are not granted explicitly by the Juvenile Code. *In re B.L.H.*, 190 N.C. App. 142, 660 S.E.2d 255, *aff'd per curiam*, 362 N.C. 674, 669 S.E.2d 320 (2008). *See also In re L.O.K.*, 174 N.C. App. 426, 621 S.E.2d 236 (2005) (the Rules apply when they do not conflict with the Juvenile Code and to the extent they advance the purposes of the Code).

2. Examples of cases holding that particular Rules apply

- a. Rule 52 (in TPR, court must find the facts specially and state separately its conclusions). *In re T.P.*, \_\_\_ N.C. App., \_\_\_, 678 S.E.2d 781 (2009).
- b. Rule 60 (rule did not permit trial court to make substantive modifications to a judgment after notice of appeal was given). *In re C.N.C.B.*, \_\_\_ N.C. App. \_\_\_, 678 S.E.2d 240 (2009).
- c. Rule 5(a) (rule required that all papers and notices be served on father even though he waived his right to counsel and did not attend all hearings). *In re H.D.F.*, \_\_\_ N.C. App. \_\_\_, 677 S.E.2d 877 (2009).
- d. Rule 12 (defenses relating to insufficiency of process or insufficiency of service of process are waived if not properly raised and party makes general appearance).
- e. Rule 43 (the rule applies to require at least some live testimony at a termination hearing). *In re A.M.*, \_\_\_ N.C. App. \_\_\_, 665 S.E.2d 534 (2008).

3. Cases holding that particular rules do not apply.

- a. Rule 15 did not apply to allow DSS to amend its pleading to conform to the evidence. *In re B.L.H.*, 190 N.C. App. 142, 660 S.E.2d 255, *aff'd per curiam*, 362 N.C. 674, 669 S.E.2d 320 (2008).

- b. Rule 13 does not apply to allow a claim for termination to be asserted as a counterclaim in a civil action for custody or visitation. *In re S.D.W.*, 187 N.C. App. 416, 653 S.E.2d 429 (2007).
- c. Rule 41(a)(1) did not apply to require trial court to dismiss termination petition because DSS previously had taken voluntary dismissal after resting its case. *In re L.O.K.*, 174 N.C. App. 426, 621 S.E.2d 236 (2005).
- d. Parent does not have a right to file a counterclaim in a termination action. *In re Peirce*, 53 N.C. App. 373, 281 S.E.2d 198 (1981).
- e. Summary judgment procedures are not available in termination proceedings. *Curtis v. Curtis*, 104 N.C. App. 625, 410 S.E.2d 917 (1991); *In re J.N.S.*, 165 N.C. App. 536, 598 S.E.2d 649 (2004) (summary judgment as to a ground for termination is contrary to the procedural mandate of the Juvenile Code, which requires court to hear evidence and make findings).

### III. Other Issues

#### A. Personal jurisdiction over out-of-state parent

- 1. The UCCJEA, at G.S. 50A-201(c), states that personal jurisdiction is neither necessary nor sufficient for a court to make a child custody determination.
- 2. G.S. 7B-1101 says the court has jurisdiction to terminate a parent's rights, without regard to the parent's state of residence, if
  - a. the court finds it would have non-emergency jurisdiction under the UCCJEA to make or modify a child custody determination, and
  - b. the non-resident parent was served with process pursuant to G.S. 7B-1106, which requires the issuance and service of a summons upon the filing of a petition to terminate parental rights.
- 3. Appellate court decisions have held that a court in this state may terminate the rights of an out-of-state parent of a legitimate child (or of an illegitimate child if that parent is involved with the child) only if the parent (i) has minimum contacts with N.C., (ii) submits to the court's jurisdiction, or (iii) is served while physically present in the state. Because these holdings are based on the due process clause of the Fourteenth Amendment, the effect of the legislation described in 1. and 2., immediately above, is unclear.
  - a. Although termination proceedings are *in rem*, to satisfy due process a non-resident parent must have minimum contacts with the state before a court here may terminate the parent's rights. *In re Trueman*, 99 N.C. App. 579, 393 S.E.2d 569 (1990); *In re Finnican*, 104 N.C. App. 157, 408 S.E.2d 742 (1991), *cert. denied*, 330 N.C. 612, 413 S.E.2d 800, *overruled in part on other grounds*, *Bryson v. Sullivan*, 330 N.C. 644, 412 S.E.2d 327 (1992).

- b. Minimum contacts are not required in the case of a non-resident father of a child born out of wedlock if the father has failed to establish paternity, legitimate the child, or provide substantial financial support or care to the child and mother. *In re Dixon*, 112 N.C. App. 248, 435 S.E.2d 352 (1993); *In re Williams*, 149 N.C. App. 951, 563 S.E.2d 202 (2002).
  - c. Courts in some states have held that minimum contacts are never required, on the basis that termination of parental rights proceedings fall within the “status” exception recognized by the U.S. Supreme Court in *Shaffer v. Heitner*, 433 U.S. 186, 97 S.Ct. 2569, 53 L.E.2d 683 (1977). *See, e.g., S.B. v. State of Alaska*, 61 P.3d 6 (Alaska Sup. Ct., 2002); *In re Thomas J.R.*, 262 Wis.2d 217, 663 N.W.2d 734 (WI Sup. Ct., 2003).
  - d. Personal service of process while respondent is temporarily in the state will confer personal jurisdiction without regard to any other contacts with the state. *Burnham v. California Superior Court*, 495 U.S. 604, 110 S.Ct. 2105, 109 L.E.2d 631 (1990) (due process does not bar exercise of personal jurisdiction over nonresident defendant based on personal service while temporarily in the state).
- B. Appointment and role of a guardian ad litem appointed for a parent
- 1. G.S. 7B-1101.1(c) was amended effective 10/1/09 to add a reference to G.S. 1A-1, Rule 17.
  - 2. *In re L.B.*, 187 N.C. App. 326, 653 S.E.2d 240 (2007), *aff’d per curiam*, 362 N.C. 507, 666 S.E.2d 751 (2008) (absence of reference to Rule 17 significant).
- C. Evidence issues
- 1. Can social worker testify
    - a. that DSS substantiated that the respondent parent was the person responsible for the child’s being abused or neglected? *See State v. Giddens*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (8/18/09) (in criminal case, social worker’s testimony improperly expressed opinion of defendant’s guilt).
    - b. that DSS substantiated earlier report(s) that the child was abused or neglected? *See In re Mashburn*, 162 N.C. App. 386, 591 S.E.2d 584 (2004) (finding no error because evidence was not offered for truth of an assertion, but to show history and context of DSS’s involvement); *In re S.D.A.*, 170 N.C. App. 354, 612 S.E.2d 362 (2005) (substantiation or lack thereof was relevant to whether DSS had standing to file petition).
  - 2. What does it mean for the trial court to take “judicial notice” of the underlying abuse, neglect, or dependency file or of prior orders?
- D. Judicial authority after termination
- 1. Interpreting G.S. 48-3-705(b) and 7B-1112(1), the court has held that when child is in DSS custody following termination of parental rights, the trial court does not have authority to interfere with DSS’s decision about the child’s placement or to

grant relief to child's guardian ad litem who objects to the placement. *In re Asbury*, 125 N.C. App. 143, 479 S.E.2d 229 (1997); *In re I.T.P-L.*, \_\_\_ N.C. App. \_\_\_, 670 S.E.2d 282 (2008).

2. G.S. 7B-908 requires the court to conduct review hearings for a child in DSS custody following termination. The court can consider a wide range of evidence "to determine the needs of the juvenile and the most appropriate disposition," and must consider the adequacy of the permanent plan developed by DSS.
  3. After making findings, the court "shall affirm the county department's . . . plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the juvenile."
  4. The statute also provides, though, that the "process of selection of specific adoptive parents shall be the responsibility of and within the discretion of" DSS. The guardian ad litem must raise any issue of abuse of discretion by DSS in the selection process within 10 days after DSS notifies the guardian ad litem in writing of the filing of the adoption petition.
- E. Procedures and rights in adoption proceeding compared to termination action
1. In an adoption, under G.S. 48-3-601 a putative father's consent is required only if, before the petition was filed,
    - a. he has acknowledged his paternity of the child and
      - is obligated to support the child under written a agreement or court order; or
      - has provided reasonable, consistent support payments for the mother, child, or both, and has regularly visited or communicated, or attempted to visit or communicate with the mother during or after the term of pregnancy, or with the minor, or with both; or
      - after the child's birth but before the child's placement for adoption or the mother's relinquishment, has married or attempted to marry the mother by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid; or
    - b. he has received the child into his home and openly held out the child as his biological child.
  2. Under G.S. 7B-1111(a)(5), a ground for terminating a putative father's rights is the father's failure, before the filing of the termination petition or motion, to
    - a. establish paternity judicially or by affidavit filed with DHHS; or
    - b. legitimate the child or file a petition for legitimation; or
    - c. legitimate the child by marriage to the child's mother; or
    - d. provide substantial financial support or consistent care with respect to the child and mother.



Termination of Parental Rights	Adoption Proceeding
Respondent must be served with summons containing specified notices and a copy of the petition or motion	Respondent must be served with notice of filing of the petition and notice that he must file a response within 30 days
Respondent has statutory right to appointed counsel if indigent	Court may appoint attorney to represent parent or alleged parent who is unknown or whose whereabouts are unknown and who has not responded to notice
Court must appoint GAL for child if respondent files answer or response denying material allegations; may appoint in any case; GAL from underlying case continues	Court must appoint GAL for child if parent adjudicated incompetent  Court may appoint attorney or GAL to represent child's interests in contested proceeding

F. Other possible issues

1. Stumbo issues:
  - a. Does the investigation (now, assessment) mandated by G.S. 7B-302 constitute a “search” for constitutional purposes?
  - b. Is a separation of a parent and child for purpose of unrestricted personal interrogation of the child a “seizure” for constitutional purposes?
2. Expunction from “Responsible Individuals List”
3. Petition filed when “protection plan” is in place
4. Appointment of counsel for non-parents



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**§ 7B-1111. Grounds for terminating parental rights.**

- (a) The court may terminate the parental rights upon a finding of one or more of the following:
- (1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.
  - (2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.
  - (3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition or motion, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.
  - (4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition or motion willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.
  - (5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition or motion to terminate parental rights:
    - a. Established paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or
    - b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or filed a petition for this specific purpose; or
    - c. Legitimated the juvenile by marriage to the mother of the juvenile; or
    - d. Provided substantial financial support or consistent care with respect to the juvenile and mother.
  - (6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the juvenile and the parent lacks an appropriate alternative child care arrangement.

- (7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion, or the parent has voluntarily abandoned an infant pursuant to G.S. 7B-500 for at least 60 consecutive days immediately preceding the filing of the petition or motion.
- (8) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has 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; has 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 has committed murder or voluntary manslaughter of the other parent of the child. The petitioner has the burden of proving any of these offenses in the termination of parental rights hearing by (i) proving the elements of the offense or (ii) offering proof that a court of competent jurisdiction has convicted the parent of the offense, whether or not the conviction was by way of a jury verdict or any kind of plea. If the parent has committed the murder or voluntary manslaughter of the other parent of the child, the court shall consider whether the murder or voluntary manslaughter was committed in self-defense or in the defense of others, or whether there was substantial evidence of other justification.
- (9) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home.
- (10) Where the juvenile has been relinquished to a county department of social services or a licensed child-placing agency for the purpose of adoption or placed with a prospective adoptive parent for adoption; the consent or relinquishment to adoption by the parent has become irrevocable except upon a showing of fraud, duress, or other circumstance as set forth in G.S. 48-3-609 or G.S. 48-3-707; termination of parental rights is a condition precedent to adoption in the jurisdiction where the adoption proceeding is to be filed; and the parent does not contest the termination of parental rights.

(b) The burden in such proceedings shall be upon the petitioner or movant to prove the facts justifying such termination by clear and convincing evidence.

**§ 7B-1110. Determination of best interests of the juvenile.**

(a) After an adjudication that one or more grounds for terminating a parent's rights exist, the court shall determine whether terminating the parent's rights is in the juvenile's best interest. In making this determination, the court shall consider the following:

- (1) The age of the juvenile.
- (2) The likelihood of adoption of the juvenile.
- (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
- (4) The bond between the juvenile and the parent.
- (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
- (6) Any relevant consideration.

Any order shall be reduced to writing, signed, and entered no later than 30 days following the completion of the termination of parental rights hearing. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection.

(b) Should the court conclude that, irrespective of the existence of one or more circumstances authorizing termination of parental rights, the best interests of the juvenile require that rights should not be terminated, the court shall dismiss the petition or deny the motion, but only after setting forth the facts and conclusions upon which the dismissal or denial is based.

(c) Should the court determine that circumstances authorizing termination of parental rights do not exist, the court shall dismiss the petition or deny the motion, making appropriate findings of fact and conclusions.

(d) Counsel for the petitioner or movant shall serve a copy of the termination of parental rights order upon the guardian ad litem for the juvenile, if any, and upon the juvenile if the juvenile is 12 years of age or older.

(e) The court may tax the cost of the proceeding to any party.