

In re Poole, 151 N.C. App. 472 (2002) (Timmons-Goodson, J., dissenting),
adopted per curiam, 357 N.C. 151 (2003).

Because I disagree with the majority's conclusion that the trial court lacked jurisdiction to enter the order adjudicating Raven to be a dependent juvenile, I respectfully dissent.

....

The true issue and nature of respondent's argument, which the majority fails to address, is that of due process. *See In re Arends*, 88 N.C. App. 550 (1988) (noting that the failure to serve the father with notice of neglect and dependency proceedings raises the question of due process and not jurisdiction). Under section 7B-406 of the North Carolina Juvenile Code,

[i]mmediately after a petition has been filed alleging that a juvenile is abused, neglected, or dependent, the clerk shall issue a summons to the parent, guardian, custodian, or caretaker requiring them to appear for a hearing at the time and place stated in the summons.... Service of the summons shall be completed as provided in G.S. 7B-407....

N.C. Gen. Stat. § 7B-406(a) (2001). As the biological father of the juvenile in the instant case, respondent was entitled to notice of the dependency and neglect proceedings concerning his daughter. Although the petition correctly identified respondent as the father, no summons was ever issued or served on him. “[T]he giving of notice in cases involving child custody is subject to due process requirements.” *In re Yow*, 40 N.C. 688, 253 S.E.2d 647 (1979).

To determine whether the lack of notice unreasonably deprived respondent of his due process rights requires a balancing of respondent's right to custody of his child with the State's interest in the welfare of children, as well as Raven's right to be protected by the State from abuse or neglect. *See Arends*, 88 N.C. App. at 555, 364 S.E.2d at 172. At the adjudicatory hearing, Raven's mother stipulated to the court that she had a history of substance abuse, that she had frequently left Raven with her aunt and uncle, and that she had exposed Raven to domestic violence. Finding these matters to be true by clear and convincing evidence, the trial court concluded that Raven was a dependent juvenile and placed her in the custody of her maternal aunt and uncle, with whom she had been living since June 1995. Such a custody determination is reviewable upon the filing of a motion in the matter by any party. *See* N.C. Gen. Stat. § 7B-906(b) (2001). The court may, upon reviewing the matter, return custody to a parent if the court finds that it is in the best interests of the juvenile to do so. *See* N.C. Gen. Stat. § 7B 906(d) (2001). Three years after the court entered its order, respondent filed his motion to dismiss the order of adjudication.

Balancing the interest of the State in Raven's welfare with that of the respondent's right that he not be arbitrarily deprived of custody of his child, and considering Raven's right of protection from neglect, in conjunction with the potential for placement of Raven to be returned to her father after appropriate review by the court, I would hold that petitioner's due process rights were adequately protected. *See Arends*, 88 N.C. App. at 555-56, 364 S.E.2d at 172; *Yow*, 40 N.C. App. at 692, 253 S.E.2d at 650. I would therefore affirm the order of the trial court.