Paternity Issues

ABUSE, NEGLECT, DEPENDENCY AND
TERMINATION OF PARENTAL RIGHTS:
A COURSE FOR DISTRICT COURT JUDGES

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Objectives

1. A Father's Role in an A/N/D Proceeding
2. A/N/D Statutory References to Fathers
3. Determining Whether Paternity Is an Issue
4. Adjudicating Paternity in the 7B Action
5. Why Adjudicating (Non)Paternity Matters

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Q1: What is a father's role in a child welfare action?

• It takes two

• **7B-401.1(b) Parents.** "The juvenile's parent shall be a party" (unless exception)

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Q2: What does GS 7B say about fathers?

References to Fathers
"parent"
"paternity"

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Nonsecure Custody

- 7B-503(a) Criteria
  o court shall first consider release to juvenile's <u>parent</u>...

- 7B-506(h)(1) The court shall
  o inquire into the identity and location of any missing parent and whether <u>paternity</u> is an issue

  o include findings of efforts to locate and serve and establish <u>paternity</u> when paternity is an issue

  o court may specify efforts

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Pre-adjudication Hearing, 7B-800.1(a)

- **The Court shall consider**
  o **(2)**: identification of parties

  o **(3):** whether <u>paternity</u> has been established or efforts made to establish... including identity and location of missing parent

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Initial Dispositional Hearing: 7B-901(b)

- **The Court shall**
  - inquire into the identity and location of any <u>missing parent</u> and whether <u>paternity</u> is an issue

  - include findings of efforts to locate and serve and establish <u>paternity</u> when paternity is an issue

  - Court may specify efforts

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What do efforts look like?

- Birth certificate
- Marriage certificates
- Paternity orders
- Child support orders
- DNA testing
- Family Tree
- IV-D Agency
- What are diligent efforts re: publication?

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Purpose of the Juvenile Code

- Protect constitutional rights of juveniles & <u>parents</u>
- Respect <u>family autonomy</u> and juvenile's needs for safety, continuity, & permanence
- Prevent unnecessary or inappropriate separation of juveniles from their <u>parents</u>
- Provide standards for removal (when nec) and <u>return</u> of juveniles to their <u>homes</u>

- <u>Reunification/Return Home</u>
  - Placement of the juvenile in the home of <u>either parent</u>....

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Q3. Is Paternity an Issue?

○

• Who is the Father?

Presumptions & Operation of Law

○

• Husband of mother at time of conception – birth
  ○ Rebuttable by clear, cogent, and convincing evidence

• Reputed father who married mother
  ○ GS 49-12

• Man who has adopted a child
  ○ GS 48-1-106(b)

• Husband of women who gave birth to child through heterologous artificial insemination
  ○ GS 49A-1

Affidavit of Parentage/Birth Certificates

○

• "Hospital affidavits" (GS 130A-101(f))

  ○ 1993- 2005: presumption of paternity

  ○ Certified copy admissible in action to establish paternity

Affidavit of Parentage: GS 110-132

- "Constitutes an admission of paternity"

- "Shall have the same legal effect as a judgment of paternity for the purpose of establishing a child support obligation."

Judicial Adjudications of Paternity

- GS 49-14
  - District court action to establish (or dis-establish) paternity

- GS 49-10; 49-12.1
  - Special proceeding before the clerk to legitimate a child born out of wedlock

- Declaratory Judgment
  - GS 1-256, et. seq.

Other Judicial Determinations

- When paternity is an element or issue that was litigated
  - Criminal nonsupport (GS 14-322; 49-2)
  - Custody orders
  - Child support orders
  - Divorce orders
  - Juvenile court orders

Now what?

- COLLATERAL ESTOPPEL!!!!!

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Q4: How do you adjudicate paternity?

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Hearing Required

- Testimony
- AOP
- Birth Certificate
- Marriage Certificate
- DNA Testing
- Child's appearance

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DNA Testing

- **8-50.1(b1)**: In the trial of any civil action in which the question of parentage arises, the court shall...
  - Admissibility/Foundation
  - Rebuttable presumptions, 85% – 97%

  - Does Not Apply To:
    Testing not via 8-50.1(b1)

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Order

- Paternity
- Non-Paternity

Amended

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Q5: Why Does It Matter?

- Parties
- Nonsecure Custody
- Adjudication
- Disposition
- Reunification
- Termination of Parental Rights
- Adoption
- Timing/Outcome of Court Action

Party Status and Rights

- Not a parent
  - Remain a party?
  - Visitation?
  - Reunification services?
- Caretaker?
- Appointed Counsel?
- Right to appeal?

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Placement and Services

Dad = Parent → **Reunification**

No reasonable efforts required

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Services

- Protective Services, 7B-300
- Reasonable Efforts
- Visitation
- 7B-904

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Adjudication: Status of Child

- **Dependency, -101(9)**
  - In need of assistance because parent, guardian, custodian
    - Unable to provide care or supervision <u>and</u>
    - Lacks an appropriate alternative child care arrangement

  - Applies to Both Parents!
    - In re V.B., 768 S.E. 2d 867 (Feb. 17, 2015)
    - In re H.H., 767 S.E. 2d 347 (Dec. 2, 2014)

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Consideration of Relatives

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Relative Involvement: Notice

- -505(b) order to make diligent efforts to notify relatives and persons with custody of sibling unless contrary to BIC

- 800.1(a)(4) whether relatives have been identified and notified

- -901(b) inquire about efforts made to identify and notify

- Side note: 42 USC 671(a)(29)

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Relative Involvement: Placement

- **Nonsecure Custody, -505**
  - Consider if relative willing and able to provide proper care and supervision in a safe home
  - Shall order unless contrary to BIC

- **Disposition, -903(a1)**
  - Out of home placement, same as above…
  - In re E.R., ___ N.C. App. ____ (July 29, 2016)

Concurrent Permanent Plans: -906.2

- **Reunification = Priority**
  - -101(18b): reunification/return home
  - -101(18): reasonable efforts
  - -906.1(d), each review/PP hearing
    - Services offered to reunite
    - Whether efforts would be futile
    - When and if TPR should be considered
  - -906.1(e), each PP hearing
    - If possible to place with parent w/in 6 months
    - If unlikely, consider guardianship/custody with other and what rights and responsibilities remain with parents
    - Consider adoption/need for TPR

Ongoing Case Action

- **Waive reviews**
  - 906.1(k), automatic if custody with parent

- **Terminate jurisdiction**
  - Dismiss case at adjudication/disposition
  - -911 custody order

Termination of Parental Rights

- Unknown Parent, 7B-1105
- Adjudication of Non-Paternity = Dismiss
- Issue of paternity raised = Determine
- Grounds, -1111(a)(5)

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Legally Clear for Adoption

- Relinquish, Consent, TPR
- -906.1(f)(3), no TPR to be filed by DSS if DSS did not provide family with services when reasonable efforts required
  ○ In re A.E.C., 768 S.E. 2d 166 (January 20, 2015)

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Adoption: Notice

Man who TPR, consent Relinquish, notarized Statement denying paternity

Any possible bio dad

Known or unknown

Man determined not to be the father

GS 48-2-401(c)(3)

Consent required?

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Adoption: Consent Not Required

- GS 48-3-603
  - Not timely respond to notice
  - TPR
  - Relinquishment
  - Man determined not to be father or another determined to be father

Integral Part of Proceeding!