

**District Court Judges Conference**  
**October 12, 2006**

# **Juvenile Case Update**

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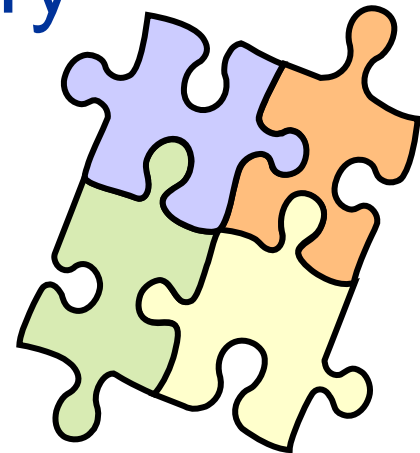
# **Abuse, Neglect, Dependency**

# The UCCJEA in Juvenile Cases

## *In re M.B.*

When the petition is filed, if there is a custody action in another state:

- Does N.C. have jurisdiction to modify that state's order? G.S. 50A-203
- If not, does N.C. have temporary emergency jurisdiction?  
G.S. 50A-204



# The UCCJEA in Juvenile Cases

## *In re M.B.*

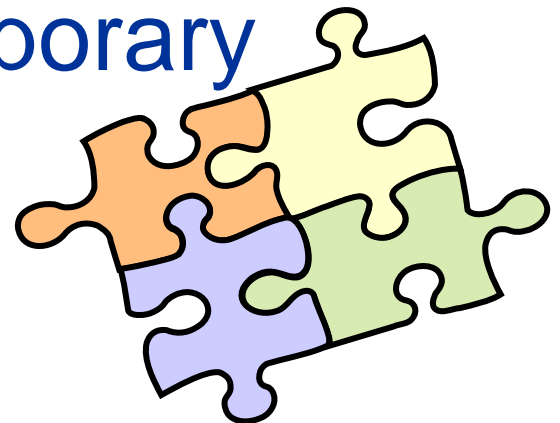
When the petition is filed, if there is not a custody action elsewhere:

- Does N.C. have jurisdiction to make an initial custody determination?

G.S. 50A-201

- If not, does N.C. have temporary emergency jurisdiction?

G.S. 50A-204



# Evidence and Findings

*In re K.D.*

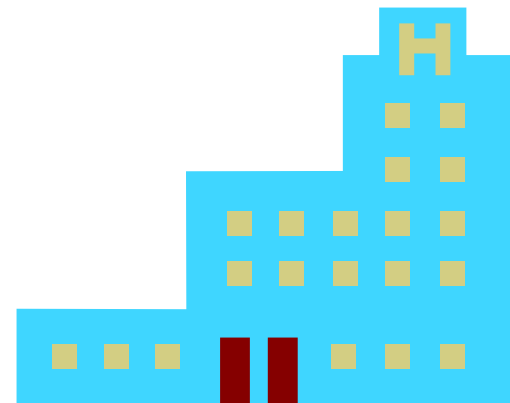
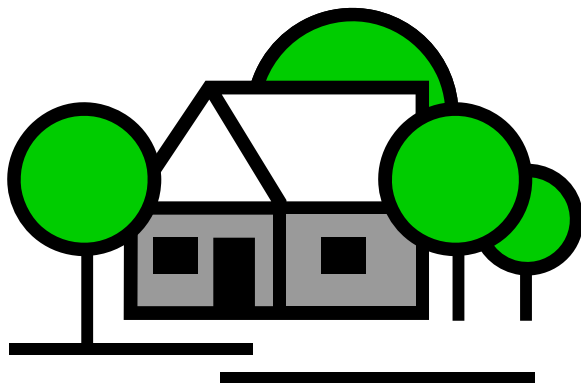


- Dependency adjudication requires evidence & finding that respondent lacks suitable alternative arrangement
- On appeal, party may not
  - argue violation of privilege if did not object at trial
  - argue insufficiency of evidence without assigning error to particular findings

# Neglect/Abuse of Other Children

In re A.B. (N.C. App. 10/3/06)

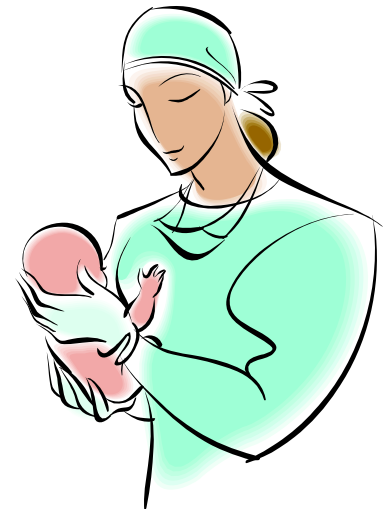
- Abuse/neglect of another child “in the home” is relevant to neglect of newborn, even if child has not left hospital.
- Time period for adjudicatory evidence is up to time petition was filed.



# Evidence and Findings

*In re A.K.*

- At adjudication, can the court consider orders entered in an older sibling's case?
- What does it mean to take “judicial notice”?



# Evidence and Findings

*In re A.K.*

- At adjudication hearing court may rely on findings of fact only in prior adjudication orders.
  - Is that *judicial notice*, or is it *res judicata* or *collateral estoppel*?
  - Should the order be introduced into evidence?



# Judicial Notice

**Doyle v. Doyle**, \_\_\_ N.C. App. \_\_\_, 626 S.E.2d 845 (2006)

- Trial court said it was taking judicial notice of pleadings and court orders in DV case
- COA held: doctrine of collateral estoppel barred wife from relitigating issue of who committed domestic violence

# Judicial Notice Run Rampant?

- Judicial notice is taken of “adjudicative facts”
- The noticed fact must be
  1. generally known in the jurisdiction or
  2. capable of accurate and ready determination by sources whose accuracy cannot reasonably be questioned

**[Rule 201]**



# Examples

- Prominent geographical features
- Historical facts
- Weather
- General economic and social conditions
- Days, weeks, months of calendar
- Earlier proceedings in same cause

# Evidence and Findings

## *In re A.P.*

1. Is the issue in *A.P.* sufficiency of evidence, sufficiency of findings, or both?
2. How much and what kind of evidence is sufficient at a review hearing?
3. When if ever may the court make a ruling based only on written reports?
4. What is the effect of “closing” a case?



# Termination of Parental Rights

# TPR Evidence, Findings, Grounds

*In re L.A.B.*

- Findings supported conclusion that
  - rights to another child were involuntarily terminated and
  - respondent was unable or unwilling to establish a safe home



# TPR Evidence, Findings, Grounds

*In re J.T.W.*

- Findings were not sufficient to support conclusion of
  - neglect or
  - willfully leaving child in care without making reasonable progress to correct conditions that led to placement



# Terminating Putative Father's Rights

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

Plaintiff/movant must prove by clear and convincing evidence that respondent has not:

1. Established paternity in court or by affidavit filed with DHHS
2. Legitimated child or filed petition to do so
3. Legitimated child by marrying mother
4. Provided substantial financial support or consistent care with respect to child and mother

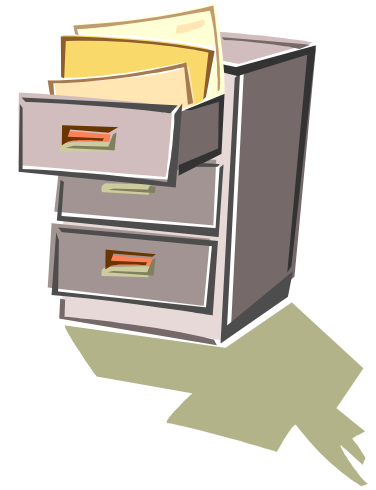




# Putative Father's Rights

## *A Child's Hope v. Doe*

- Trial court found that petitioner had not established grounds by clear and convincing evidence
- Court of appeals reversed, holding that there was uncontroverted evidence that respondent had not met requirements of G.S. 7B-1111(a)(5)
- Dissent



# Putative Father's Rights

Compare termination ground and determination under G.S. 48-3-601 that putative father's consent to adoption is not required

In re Adoption of Byrd (NC 2001)

In re Adoption of Anderson (NC 2006)



# In adoption proceeding

Putative father's consent is not required if

- he does not respond to notice or appear, or
- court determines after a hearing that his consent is not required



# In adoption proceeding

Putative father's consent is required if he has acknowledged paternity in any way, and

1. is obligated to support child under agreement or court order, or
2. has provided reasonable support and regularly visited or communicated (or attempted to do so) with mother, child, or both

# In adoption proceeding, statute

- does not specify burden or standard of proof
- does not provide for appointed counsel
- authorizes but never requires appointment of guardian ad litem for child in a contested case



# Procedural Issues

# Guardian ad Litem for Parent

*In re L.A.B.*

- On appeal from a tpr, a parent may not argue that failure to appoint guardian ad litem in underlying abuse/neglect case was error.
- GAL is not a “social worker”



# Statutory Time Limits

*In re T.S., III*

## Entry of Order

- Appellant did not show that 5-month delay was prejudicial
- Dissent
  - Delay was egregious and prejudicial





# Hearings after Remand

*In re T.S., III*

When an appellate court remands a case to the trial court, the court

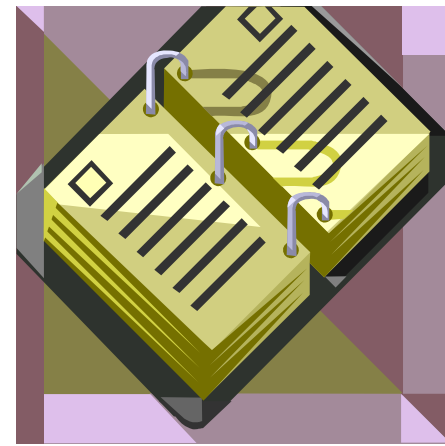
1. may not conduct new hearing before the order is certified, but
2. may calendar, send notices, etc.



# Statutory Time Limits

*In re J.T.W.*

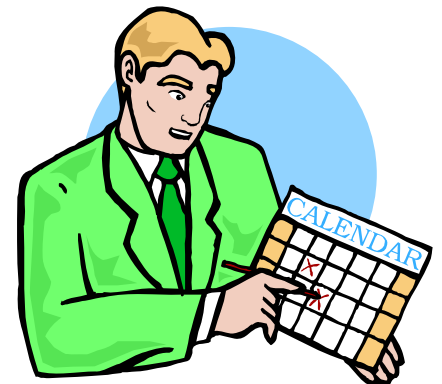
- Conducting TPR Hearing
  - Appellant did not show that 23-day delay was prejudicial.
  - Court apparently did not include delays due to proper continuances.
  - Time limits are not jurisdictional.



# Statutory Time Limits

*In re D.M.M.*

- Delay was egregious and prejudicial when
  - TPR hearing was held a year after petition was filed
  - Order was entered 7 months after the hearing



# Appealable Orders

(Cases filed before 10/1/05)

*In re A.R.G.; In re A.P.*

- Appeal from review or permanency planning order that does not affect status of the child or change custody is interlocutory.



# Delinquency

# Personal Jurisdiction

*In re D.S.B.*

- Juvenile waived any defect in service of process or personal jurisdiction
- The Rules of Civil Procedure apply in delinquency proceedings



# In-Custody Interrogation

In re W.R. (N.C. App. 10/3/06)

- School officials and SRO questioned 14-year-old in principal's office without warnings required by *Miranda* & Juvenile Code
- Would reasonable person in juvenile's position believe he was restrained to degree associated with formal arrest?



# “Stayed” Commitment

*In re T.B.*

- Only “available” dispositions may be stayed.
- Options at disposition and at probation violation are determined differently.





# After finding probation violation court may:

- continue conditions of probation
- modify conditions of probation
- order new disposition at next higher level\* and may include double number of detention days usually allowed

\* May not order commitment if underlying offense minor

