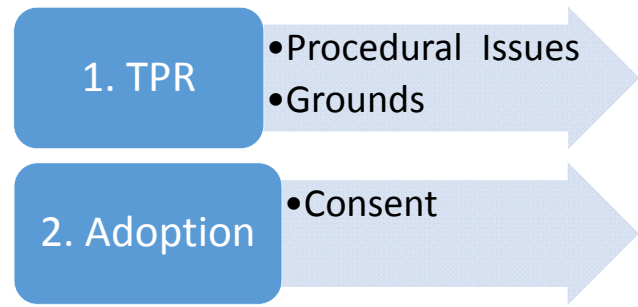


**Child Welfare Case Update, Part II**  
 District Court Judges Summer Conference - 2018



By: Sara DePasquale  
 UNC School of Government




**In re J.S.K. (p. 16)**  
 Pleading

Underlying Neglect Action	TPR Motion by DSS (May 20, 2016)
<ul style="list-style-type: none"> <li>• 2015 Petition/Adjudication                             <ul style="list-style-type: none"> <li>• Untreated MH/SA</li> <li>• DV</li> <li>• Improper care</li> </ul> </li> <li>• Jan 4, 2016 cease reunification order</li> </ul>	<ul style="list-style-type: none"> <li>• Any Issues on the Timing?</li> <li>• As of 1/1/2019</li> <li>Appeal: <u>65 days</u> after entry &amp; service of PPO</li> <li>• Can't exercise jurisdiction over a TPR</li> </ul>

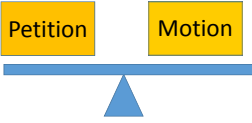
**In re J.S.K.**  
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**Notice Pleading  
(de novo review)** 

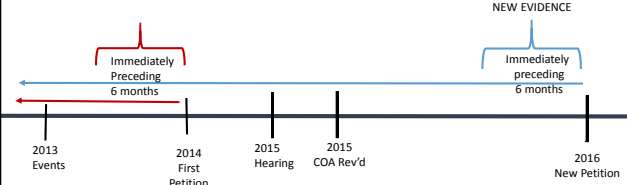
Facts must put party on notice of acts, omissions, conditions at issue

≠ Recitation of alleged ground



No Difference: G.S. 7B-1104(6) to allege sufficient facts


**Abandonment: Law of the Case Doctrine  
In re K.C. (p. 16)**




“The prior opinion of this Court does not mean that respondent is immune from termination of her parental rights based upon abandonment for the rest of the child’s minority even if she never seeks to see him or communicate with him again”

**Continuance & Rule 59 Re-Open  
In re S.G.V.S. (p. 17)**

HAYWOOD COUNTY: TPR Started

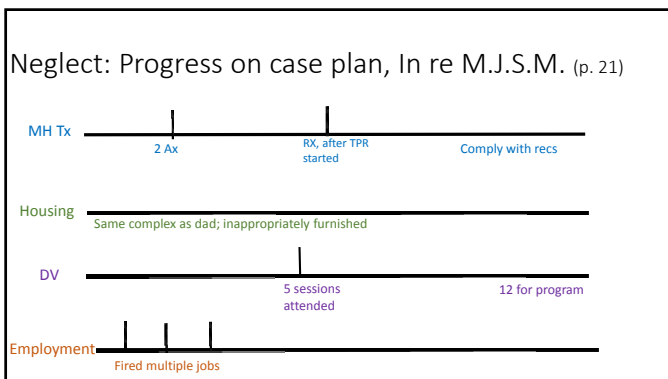
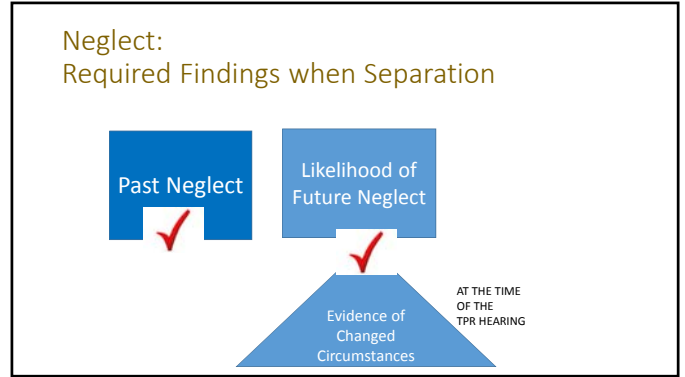
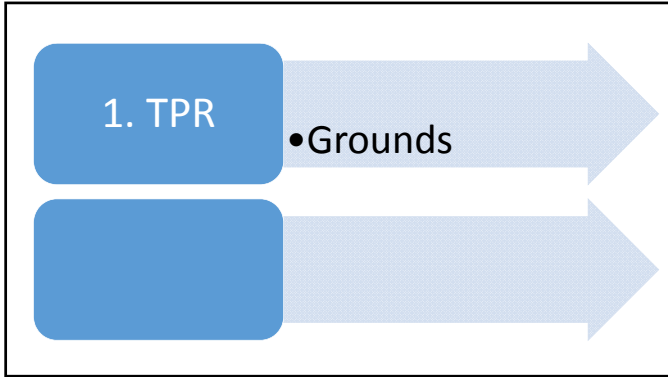


Buncombe County: Criminal Case Scheduled



**Due Process and Fundamental Fairness**

- Rule 59: Trial court’s discretion re: admit additional evidence
- TPR: fundamental liberty interest warranting due process
- Although parent not have absolute right to be present, private interests affected weigh in favor of presence at hearing
- Equal level court had previously scheduled hearing; TPR not a priority
- No evidence supporting mother “choosing” criminal case over TPR
- Misapprehension of law
- Substantial miscarriage of justice



Actions by father before paternity established


Should Know	Distinguish:
<ul style="list-style-type: none"> <li>• Grasp the opportunity of notice</li> <li>• In re S.D.W.</li> </ul>	<ul style="list-style-type: none"> <li>• In re R.D.H., III (p.21)</li> <li>• Named after another man identified as possible dad</li> <li>• Only relationship "casual meetings" (sexual in nature)</li> <li>• Reasonable to wait for paternity results before taking steps to obtain custody</li> </ul>

### Sufficiency of Findings

Not Required	Must
<ul style="list-style-type: none"> <li>Make a finding on every piece of evidence</li> </ul>	<ul style="list-style-type: none"> <li>Resolve material issues</li> <li>RF testified                             <ul style="list-style-type: none"> <li>wanted child to live with him</li> <li>had an appropriate home</li> </ul> </li> <li>No findings about                             <ul style="list-style-type: none"> <li>home or ability to provide care</li> <li>goes to current circumstances &amp; likelihood of repetition of neglect</li> </ul> </li> </ul>

### Sufficiency of the Findings In re E.B. (p. 20)

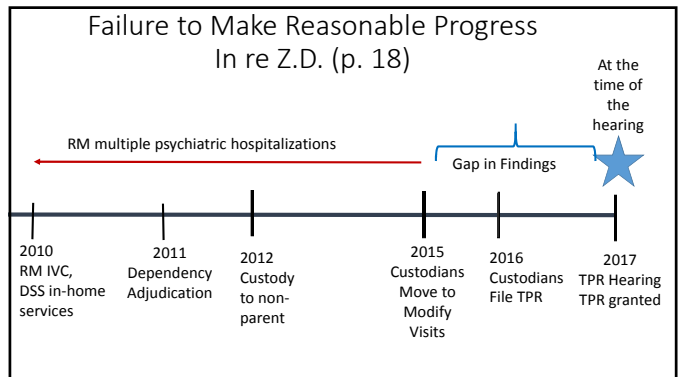
- Extreme DV between the parents
- Finding:** "there is no evidence of changed circumstances related to the respondent as he continues to engage in domestic violence with the respondent mother"
- Is this sufficient?
  - Lack Specificity/Vague
    - Circumstances
    - Severity
    - Impact on the juveniles
    - How RF was engaged in the DV (RM was offender)



### Lack of Specificity, In re Z.D. (p. 18)

"concerning"

"disturbing"



In re J.A.K. (p. 22)

**Willfully left in foster care more than 12 months**

- 8/2014 nonsecure
- 9/2014 adjudication neglect (service on mom only)
- 6/2015 paternity adjudicated, attorney appointed
- 9/2015 PPH addressing dad
- 4/2016 cease with dad
- 6/2016 TPR filed

**When does the 12 month period start?**

When order entered removing child from home

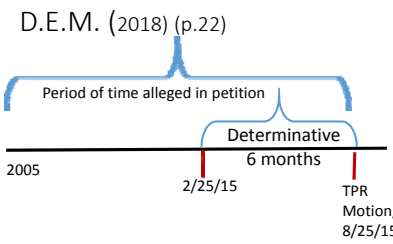
4/14 (order) to 6/16 (TPR filed)

Abandonment, G.S. 7B-1111(a)(7)  
In re D.E.M. (x2)



Forego All Parental Duties and Relinquish All Parental Claims  
Intention: Purpose & Deliberation  
Question of Fact  
Can look to financial support emotional contributions

D.E.M. (2018) (p.22)



2005


2/25/15

6 months

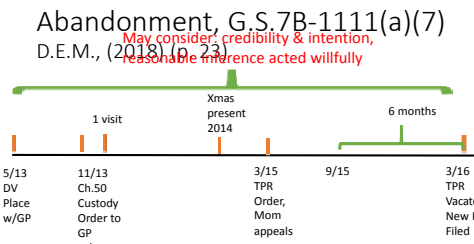
TPR Motion/Petition 8/25/15

**Findings:**

- Never provide \$ support
- No contact in many yrs
- Pre-petition, 1 letter
- Post-petition, sev. ltrs
- Most child's life, prison
- When not, no contact other than incidental

Are these findings sufficient?  No dates Willful, consider w/in limitations (expectations)

Abandonment, G.S. 7B-1111(a)(7)  
D.E.M., (2018) (p. 23)



5/13 DV Place w/GP

11/13 Ch.50 Custody Order to GP w/visits

1 visit

Xmas present 2014


3/15 TPR Order, Mom appeals

6 months

9/15

3/16 TPR Vacated, New Petition Filed


May consider credibility & intention, reasonable inference acted willfully

Is it Willful Abandonment? 

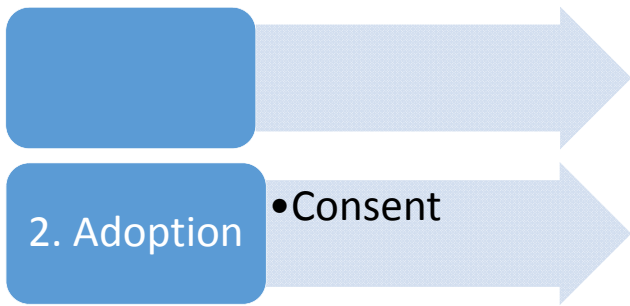
Although limited...  
No Request  
• Stay  
• Visit  
No Attempts to contact

Best Interests: Likelihood of adoption of juvenile

<b>Petitioners Express Interest</b>	<b>Ability to Adopt</b>
	<ul style="list-style-type: none"> <li>• Standing Issue</li> <li>• 48-3-301: Placement</li> <li>• May be waived</li> </ul>



2. Adoption



- Consent

### REVOCATION



In re Ivey (p. 25)

8/31 baby born  
 9/1 consent signed  
 9/9 called Ivey's attorney, want to revoke  
 9/10 hired lawyer  
 9/14 letter revoking and never rec'd copy  
 9/21 declaratory action filed  
 9/29 copy of consent from hospital file  
 10/3 adoption petition filed  
 10/4 revocation filed with clerk  
 11/15 order dismissing adoption

**G.S. 48-3-608**  
 period to revoke  
 not run until  
 receipt

**G.S. 48-3-605**  
 Requires orig or  
 copy to parent


← From receipt of original or copy

### Unwed Father's Consent

In re C.H.M. (p.25)

- G.S. 48-3-601(2)(b)4.ii.
  - **BEFORE PETITION FILED**
  - Acknowledge paternity
  - Reg. visit or communicate/attempt with mom, child, or both
  - Provide reasonable & consistent payments for support of mom, child, or both in accordance with his financial means



\$3260 at time of hearing

- Objective Time Period: B/4 Petition
- Burden on Father
- Insufficient Ev.
  - Time period
  - Each payment reasonable w/in his means
  - Consistent payment \*NEED A VERIFIABLE RECORD