

A/N/D Case Update

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Social Services Attorneys’ Winter Conference (2020)

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Abuse, Neglect, Dependency

Neglect Adjudication: Findings & Judicial Notice

In re J.C.M.J.C., 834 S.E.2d 670 (N.C. Ct. App. 2019)

Held: Reversed

- **Facts:** DSS filed a petition alleging neglect after (1) receiving reports of children being unattended outside, father smoking marijuana, suspected domestic violence, and an unclean home and (2) needing to file an interference petition due to parents refusal to cooperate with the DSS assessment. At the adjudicatory hearing, one witness was called – the DSS social worker. The children were adjudicated neglected based on the brief social worker testimony and judicial notice of the findings in the nonsecure custody order. Respondents appeal, challenging the findings of fact and conclusion of law.
- **Standard of review:** Are the findings of fact based on clear and convincing competent evidence, and do the findings support the conclusions of law. Conclusions of law are reviewed de novo.
- **Judicial Notice:** Although a trial court may take judicial notice of its own proceedings, “it is problematic to allow the trial court’s findings of fact in the [nonsecure custody order] to serve as the sole evidentiary support for the great majority of the adjudicatory findings....” Sl. Op. at 13. Although the same standard of proof applies to a hearing on the need for continued nonsecure custody and the adjudicatory hearing – clear, cogent, and convincing evidence – the rules of evidence do not apply to a nonsecure custody hearing. There is no way to know if the findings for the nonsecure custody order were based on evidence that would be admissible at an adjudicatory hearing where the rules of evidence apply.
- **Findings:** Many of the findings are recitations of allegations or reports and are not really findings of fact. They are not affirmative findings that would support a conclusion of neglect. Other findings are not supported by clear and convincing evidence. The affirmative findings that were made focus mostly on the respondents’ obstruction with the DSS assessment and do not support a conclusion of neglect based on a lack of proper care, supervision, or disciplines or that the children lived in an injurious environment.
- The smell of marijuana alone does not support an adjudication of neglect as there is no evidence of harm or substantial risk of harm to the juveniles (see Sl. Op. FN 5)
- Multiple absences from school without findings contextualizing those absences – the reason, whether they were unexcused, the degree to which the children were academically behind – are insufficient to show the children were denied an education such that they were neglected. See In re McMillan, 30 N.C. App. 235 (1976); In re R.L.G., 816 S.E.2d 914 (2018).

Adjudication: Neglect, Dependency, Residual Hearsay Exception, Collateral Estoppel, Substance Abuse

In re F.S., 835 S.E. 2d 465 (N.C. Ct. App. 2019)

Held: Reversed

- **Facts and Procedural History:** DSS filed its first petition alleging neglect and dependency in 2016. In 2017, the child was adjudicated neglected and dependent based mother’s on substance use. Respondent mother appealed, and in 2018 the court of appeals unanimously reversed the

adjudication (unpublished opinion) because the facts did not establish harm or risk of harm to the juvenile. During the pendency of the appeal, mother entered into a case plan with DSS. During that period, mother was hospitalized at least 8 times for alcohol addiction and symptoms of withdrawal. On the date of the COA mandate, DSS filed a second petition alleging (1) neglect based on a lack of proper care, supervision, and discipline by a parent and living in an injurious environment and (2) dependency. At hearing, residual hearsay involving the child's statements about mother's drinking was admitted over objection. The DSS social worker (who was the second social worker assigned to the case) testified to statements the child purportedly made to other individuals (including the prior DSS social worker and child's therapist). There was also testimony from the DSS supervisor about mother's need for hospitalizations prior to the filing of the second petition due to mother's use of impairing substances and her current participation in and compliance with the case plan. Respondent mother offered no evidence at the hearing. The child was adjudicated neglected and dependent and placed in DSS custody. Respondent mother appealed.

- Residual Hearsay Exception: The child's hearsay statements were admitted under Rule of Evidence 803(24) – the residual hearsay exception. For admission, the proponent must give written notice of its intention to offer the statement and the particulars of the statement. The court must find all three factors of Rule 803(24): the statement (1) is offered as evidence of a material fact; (2) is more probative on the point than any other evidence the proponent can procure through reasonable efforts, and (3) admission of the statement serves the general purposes of the rules of evidence and interests of justice.
 - The standard of review is an abuse of discretion; respondent mother must show she was prejudiced and a different result would likely have occurred had the statement not been admitted.
 - There was no testimony, arguments, or findings required by Rule 803(24).
 - The former social worker, the therapist, and the child were not called to testify and there were no findings by the court about their unavailability. The argument that availability of the child should be consider mother's failure to subpoena the child is rejected since DSS and not respondent mother has the burden of proof in an adjudicatory hearing.
 - There were no findings of the circumstantial guarantee of trustworthiness of the child's statements. The statements testified to by the current social worker were double hearsay as there were a summary of meeting notes taken by the former social worker and the therapist and were not heard by the social worker who was testifying. There were no findings of the conditions, situation, and motivation to be truthful under which the purported statements were made.
 - Without the child's hearsay statements, the record does not support the court's conclusion. Respondent mother was prejudiced by the admission.
- Collateral estoppel precludes DSS from retrying the fully litigated issues that were decided in the first adjudication but does not preclude an adjudication based on new allegations and events which occurred after the first adjudication.
- Neglect requires that there be some physical, mental, or emotional harm or substantial risk of such harm as a result of the failure to provide proper care, supervision, or discipline. At the time

of the second adjudication, the juvenile was not in mother's care such that the court must assess whether there is a likelihood of future neglect. The court considers "the risk for a particular kind of harm given [the juvenile's] age and the environment in which they reside." Sl.Op. at 14 (citation omitted). The appellate court looks to the totality of the evidence to determine whether the findings support the conclusion of neglect. Although mother had 8 hospitalizations between the first and second adjudication, "the trial court must consider 'the conditions as they exist at the time of the adjudication as well as the risk of harm to the child from return to the parent.'" Sl. Op. at 16 (*citing In re B.P.*, 809 S.E.2d 914, 920 (2018)). A parent's substance abuse in and of itself is not clear and convincing evidence of a substantial risk of harm to the child. The child was not in mother's care during the period of her hospitalizations and DSS supervisor testimony showed that since the petition was filed, mother was meeting with DSS regularly, participating in and compliant with her treatment services (including therapy, NA, and AA), and had several negative drug screens. There is no evidence that current circumstances or a likelihood of neglect exists.

- Dependency requires that the court makes findings of both the parent (1) is unable to provide for the child's care or supervision and (2) lacks and an appropriate alternative child care arrangement. Mother challenges the first prong. Although chronic alcoholism may impair a parent's ability to parent, the order did not include findings of mother's present inability to supervise her child. The evidence shows mother had been in treatment since the petition was filed and her previous relapses were prior to the filing of the petition. The evidence of mother's present compliance with her treatment "tends to show an ability or capability of Respondent-mother to parent" her child. Sl.Op at 19.

Adjudication: Neglect, Abuse

In re S.G., 835 S.E.2d 479 (N.C. Ct. App. 2019)

Held: Affirm adjudication order

Affirmed in part and vacate in part disposition/permanency planning order,

Remand for new visitation order

- Facts: DSS responded to a report of a 3 year old with a black eye. The 3-year-old child has two older siblings. All three children have the same mother, and the older children have the same respondent father. Initially, the parents evaded the DSS social worker and ultimately explained the youngest child's bruise as him falling when running and hitting his head on the table. DSS sought mother's agreement to keep the children from respondent father while an assessment was being completed, but respondent mother would not agree. DSS filed a petition and obtained adjudications that the 3-year-old child was abused, neglected, and dependent and the two older siblings were neglected and dependent. At the disposition and permanency planning hearing, the court ordered respondents to complete and follow recommendations of substance abuse and mental health assessments, participate in parenting classes, obtain and maintain safe and stable housing, and submit to random drug screens. The order set forth a visitation plan of one visit per month and further designated that contact between the 3 year old and respondent father (who is not the father of the 3 year old) was to be based on the child's therapist's recommendation.

- **Abuse Adjudication:** An abused juvenile under G.S. 7B-101(1) includes a juvenile whose parent inflicts or allows to be inflicted serious physical injury, or substantial risk of such injury, upon the juvenile by non-accidental means. The determination of whether there is a “serious physical injury” is dependent on the facts of each case; there is no minimum threshold. The findings that the 3 year old had significant patterned bruising on his forehead and upper eyelid that was visible for at least 4 days after the incident causing the bruise is sufficient to support the conclusion that the child suffered a serious injury. Although there was no medical testimony that the injuries occurred through non-accidental means, there was medical evidence via unobjected to testimony from two medical professionals, the bruising was consistent with a being hit by a belt buckle and was not consistent with the child hitting his head on a table. This medical evidence supports the court’s determination that the injuries were non-accidental.
- **Neglect Adjudication:** The definition of neglected juvenile under G.S. 7B-101(15) includes a child who lives with a person who neglected or abused another child. The trial court has discretion to determine how much weight to give that evidence. Neglect also requires that there be some physical, mental, or emotional impairment or substantial risk of such impairment from the lack of proper care, supervision, or discipline. The court made findings of fact that (1) the mother would not agree to keep the children from their father and preferred to be with the father and have the children stay elsewhere, did not believe the child’s reports of what happened, did not believe she could protect the children from the father, and had no other placement options, and (2) both respondents denied responsibility for the youngest child’s injuries. The neglect adjudications of the two older children were supported by these findings and were not based solely by the finding that the older children lived in the same home as their 3-year-old sibling who was abused and neglected by respondent father.

Disposition: Case Plan and Visitation

In re S.G., 835 S.E.2d 479 (N.C. Ct. App. 2019)

Held: Affirm adjudication order

Affirmed in part and vacate in part disposition/permanency planning order,

Remand for new visitation order

- **Facts:** DSS responded to a report of a 3 year old with a black eye. The 3-year-old child has two older siblings. All three children have the same mother, and the older children have the same respondent father. Initially, the parents evaded the DSS social worker and ultimately explained the youngest child’s bruise as him falling when running and hitting his head on the table. DSS sought mother’s agreement to keep the children from respondent father while an assessment was being completed, but respondent mother would not agree. DSS filed a petition and obtained adjudications that the 3-year-old child was abused, neglected, and dependent and the two older siblings were neglected and dependent. At the disposition and permanency planning hearing, the court ordered respondents to complete and follow recommendations of substance abuse and mental health assessments, participate in parenting classes, obtain and maintain safe and stable housing, and submit to random drug screens. The order set forth a visitation plan of one visit per month and further designated that contact between the 3 year old and respondent father (who is not the father of the 3 year old) was to be based on the child’s therapist’s recommendation.

- Disposition and Court’s Authority to Order Case Plan: Applying the NC Supreme Court’s holding in *In re B.O.A.*, 831 S.E.2d 305 (2019) (a TPR case) to an A/N/D disposition order, a trial court has authority under G.S. 7B-904 to order a parent to ‘take appropriate steps’ to achieve reunification but “is not limited to ordering services which directly address the reasons for the children’s removal from a parent’s custody.” Sl.Op. at 12. The trial court may order services that aids in understanding and resolving the possible underlying causes of what contributed to the court’s removal, including those conditions that directly or indirectly contributed to the juvenile’s removal and allows for the court to modify and update a parent’s case plan in subsequent review proceedings based on new or existing evidence. *In re B.O.A.* overruled previous holdings from the court of appeals that applied a narrow application of G.S. 7B-904 (see *In re H.H.*, 237 N.C. App. 431 (2014); *In re W.V.*, 204 N.C. App. 290 (2010)).
 - Although the removal of the children in this case was based primarily on the nonaccidental injuries to the youngest children, the court did not abuse its discretion when ordering the parents to complete substance abuse and mental health assessments and follow all recommendations and to submit to random drug screens, and obtain and maintain safe and stable housing. At a minimum these directives will assist in understanding whether substance abuse or mental health issues were the underlying causes for the abuse and neglect. Given the parents attempts to keep their residence hidden from DSS and believed housing instability (multiple moves), the court did not abuse its discretion when requiring the parents to obtain and maintain safe and stable housing.
- Visitation: G.S. 7B-905.1 sets forth the visitation requirements, and an order of visitation is reviewed for an abuse of discretion.
 - The portion of the order that limited contact between the three year old and respondent father, who is not that child’s father (*note, this author believes he is a caretaker*) as recommended by the child’s therapist is an order of no visitation. Visitation was not required as G.S. 7B-905.1 “only requires the setting of a visitation plan between a child and his or her ‘parent, guardian, or custodian.’ ” Sl.Op. at 22. Because visitation was not required, an order of no visitation was not error.
 - Author’s Note: The language of G.S. 7B-905.1(a) states “an order that removes custody of a juvenile from a parent, guardian, or custodian or that the continues the juvenile’s placement outside of the home shall provide for appropriate visitation as may be in the best interests of the juvenile consistent with the juvenile’s health and safety.”
 - An order of one visit per month between respondent mother and her children (all three children) and respondent father and his children (the older two) is not an abuse of discretion as there were findings that respondents have frequently missed visits, many of which were not cancelled beforehand.
 - The order did not specify the duration of the visits as required by G.S. 7B-905.1 and therefore this portion is remanded for a minimum duration time.

Visitation: Cost of Supervised visitation; preserve issue for appeal

In re J.T.S., 834 S.E.2d 637 (N.C. Ct. App. 2019)

Held: Affirmed in part; Vacate and remand in part

- Facts: The trial court ordered weekly supervised visitation but made no findings about the costs of supervised visitation. Respondent mother appeals.
- The court erred in ordering supervised visitation without addressing costs; who would pay; and if the respondent mother, her mother's ability to pay those costs. See In re J.C., 368 N.C. 89 (2015); In re Y.I., 822 S.E.2d 501 (2018).
- Appellate preservation:
 - To preserve the issue of costs associated with supervised visitation for appellate review, the respondent is not required to object at the hearing. The costs were neither discussed or consented to at the hearing.
 - Respondent agreed to conditions that were recommended by DSS that addressed the terms of visitation (e.g., obtain assessments and treatment, submit to drug screens, not miss visits). These terms were provided in writing, read by a social worker in court, and addressed by the court with respondent's attorney. Respondent did not properly preserve the issue for appellate review.

Permanency Planning Hearing: Competent Evidence Requires Testimony

In re S.P., 833 S.E.2d 638 (N.C. Ct. App. 2019)

Held: Vacated and remanded

- Facts: This case involves an appeal by respondent father of a permanency planning order that (1) awarded guardianship to a nonparent and (2) included a visitation plan that authorized the guardian in her discretion to expand the visitation beyond the ordered minimum of one 2-hour supervised visit per month. At the permanency planning hearing, the court accepted court reports by DSS and the child's GAL and heard arguments by counsel.
- Standard of review: Whether there is competent evidence to support the findings and whether the findings support the conclusions of law. Conclusions of law are reviewed de novo.
- Holding: There must be testimony at a permanency planning hearing to support a permanency planning order. This case refers to previously published opinions making the same holding – *In re J.T.*, 252 N.C. App. 19 (2017); *In re D.Y.*, 202 N.C. App. 140 (2010); *In re D.L.*, 166 N.C. App. 574 (2004). This case is indistinguishable. The evidentiary portion of the hearing consisted solely of court reports and counsel's arguments. Court reports alone are insufficient to support findings of fact.

Permanency Planning: waiving further reviews and “period of at least one year”

In re J.T.S., 834 S.E.2d 637 (N.C. Ct. App. 2019)

Held: Affirmed in part; Vacate and remand in part

- Facts: Respondent mother appeals from an August 17, 2018 permanency planning order that awards guardianship to the maternal grandparents and waives review hearings under G.S. 7B-906.1(n), arguing the children had not resided with the grandparents for a continuous period of at least one year. The court made a finding that the children were placed with their maternal

grandparents since Oct. 2017, and before that the children had spent previously resided with their grandparents.

- **Standard of review:** Questions of statutory interpretation are questions of law that are reviewed de novo.
- **Holding & Rationale:** G.S. 7B-906.1(n) allows the court to waive further reviews if the court finds by clear, cogent, and convincing evidence each of the 5 factors, the first of which is “the juvenile has resided in the placement for a period of at least one year.” Because “a period of at least one year” is ambiguous, the court looks to the purposes of the Juvenile Code to determine the intent of G.S. 7B-906.1(n). Given the purpose of achieving a safe permanent home within a reasonable period of time and the required findings of G.S. 7B-906.1(n) that address a stable and continuing placement with a permanent guardian or custodian, a period of at least one year means “a continuous, uninterrupted period of at least 12 months” and not an aggregation of interrupted, sporadic placements. Sl. Op. at 14. This opinion is distinguished from In re T.P., 217 N.C. App. 181 (2011), which allowed for the 12 month period to span over different relatives. In In re T.P., the language of G.S. 7B-906.1(n) differed and referred to a juvenile who had resided with a relative or custodian versus today’s language that the juvenile resided in the placement. Here, the findings do not support the conclusion of law; this portion of the permanency planning order is vacated.
- **Preserve for appeal:** Although respondent did not object to this issue at trial, “when a trial court acts contrary to a statutory mandate and a defendant is prejudiced thereby, the right to appeal the court’s action is preserved notwithstanding [the] defendant’s failure to object at trial.” Sl. Op. at 9 (citation omitted). Failure to make written findings of each of the enumerated criteria in G.S. 7B-906.1(n) is reversible error.

Achievement of Permanent Plan: Guardianship, Findings and Evidence

In re S.B., 834 S.E.2d 683 (N.C. Ct. App. 2019)

Held: Affirmed

- **Facts:** Two children were adjudicated neglected and dependent. They were placed in the care of their maternal aunt. Initial concurrent permanent plans were guardianship with the aunt and reunification with mother. At the last permanency planning hearing held, the court ordered guardianship to the aunt, removed the concurrent plan of reunification since a permanent plan had been achieved. Respondent mother appealed arguing the court did not make the required findings to eliminate reunification as a permanent plan and relied on insufficient evidence to support the findings that the aunt understood the legal significance of the guardianship and had adequate resources to care for the children.
- **Standard of review:** whether there is competent evidence to support the findings of fact and whether the findings of fact support the conclusions of law. Conclusions of law are reviewed de novo.
- **A court’s determination that reunification efforts will be unsuccessful or inconsistent with children’s health and safety** is a conclusion of law that must be supported by findings of fact. When relevant, findings of fact that efforts to reunite the child with either parent would clearly be unsuccessful or inconsistent with the child’s health and safety and need for a permanent safe

home within a reasonable period of time are required under G.S. 7B-906.1(d)(3). Additionally, G.S. 7B-906.1(e) requires findings about whether it is possible for the child to be placed with the parent within the next six months. A court is not required to quote the exact language of the statute but instead must address the statute's concerns (citing *In re L.M.T.*, 367 N.C. 165 (2013)). "Pursuant to *In re L.M.T.*, we see no reason why the trial court's findings of fact, taken as a whole, cannot sufficiently address the concerns of multiple statutory criteria without more explicit reference to each." Sl.Op. at 8. The findings addressing mother continuing to struggle with substance abuse, failing to acknowledge her problem, and lack of progress such that the children's future health and safety are threatened and further efforts toward reunification would be unsuccessful fulfill the statutory requirement of G.S. 7B-906.1(d)(3).

- Reunification as a permanent plan was removed as a concurrent plan when the court ordered guardianship, which achieved the child's permanent plan. A secondary permanent plan is not required with a permanent plan has been achieved. G.S. 7B-906.2(a1). The court made all four findings required under G.S. 7B-906.2(d) and fulfilled the requirements of G.S. 7B-906.2(b) & (d).
- The court must verify that the guardian understands the legal significance of the appointment and will have adequate resources to care for the juveniles. There is sufficient evidence to support the findings of both requirements. Although the aunt did not testify, the DSS social worker did and the DSS summary was admitted. That evidence included that the aunt was informed of the legal significance of the guardianship, understands what it means and is aware that the role is permanent. The aunt's testimony was not required for the court to find she understand the legal significance of the appointment. The social worker testimony and summary are relevant and reliable evidence the court may consider under G.S. 7B-906.1(c). Additionally, the evidence that the aunt had provided for the children well over the past year and had financial support from her family (including respondent mother), worked part-time, and the children were eligible for Medicaid were sufficient to support the finding that the aunt had adequate financial resources to care for the children.

A/N/D Jurisdiction under 7B and UCCJEA

In re C.M.B., 836 S.E.2d 746 (N.C. Ct. App. 2019)

Held: reverse and remand for new hearing under UCCJEA

- Facts and Timeline
 - 2009: Neglect petition filed and child adjudicated neglected in NC
 - 2011: permanent plan of guardianship achieved; mother's attorney relieved; DSS relieved of reunification efforts; child's GAL discharged; further review hearings waived
 - 2014: upon mother's motion to review, consent order entered addressing mother's visitation; noted that guardians and child had moved to Tennessee; DSS continued to be relieved of reunification efforts and GAL continued to be discharged.
 - Nov. 2017: guardians file motion in TN to register NC custody order and request modification of order to suspend mother's visitation
 - Dec. 2017–Jan. 2018: mother files 3 pro se motions in NC including that NC invoke jurisdiction under the UCCJEA as the more appropriate forum
 - Jan 2018:

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- TN order determining TN has jurisdiction because guardians, child, and mother no longer reside in NC and grants the motion to modify limiting mother's visitation
- Guardians file unverified motion in NC to stay mother's pending motions or transfer jurisdiction to TN as NC is an inconvenient forum.
- 2018: NC court appoints attorney for mother, continues hearing, and determines it needs to discuss jurisdiction with TN judge; email then sent to guardians' attorney and court clerk (not to mother and/or her counsel) that NC judge spoke with TN judge and agreed jurisdiction is in TN so no need for hearing; order entered allowing guardians' stay and "transferring" jurisdiction to TN based on NC being an inconvenient forum. Mother appeals.
- Distinction between 7B and Chapter 50 Proceedings: Although the trial courts, mother, and guardians started treating this case as a Ch. 50 custody proceeding, it is a juvenile neglect proceeding under Ch. 7B, initiated by DSS in 2009 even though DSS has not been directly involved since 2011. The action was not transferred to a Ch. 50 custody matter under G.S. 7B-911.
- Juvenile Court's Continuing Jurisdiction: The trial court has not terminated its jurisdiction "thus, the juvenile court's jurisdiction continues 'until terminated by order of the court or until the juvenile reaches the age of 18 years or is otherwise emancipated, whichever occurs first.'" G.S. 7B-201(a). Sl. Op. at 11. "Only North Carolina can terminate its own juvenile court jurisdiction; a court in Tennessee cannot." *Id.* The TN order that transferred jurisdiction from NC to TN "has no effect on North Carolina's jurisdiction under Chapter 7B..." Sl. Op. at 17. Except for a transfer to Ch. 50 under G.S. 7B-911, "Chapter 7B does not provide an option for 'transfer' but instead provides for the trial court to ... terminate the juvenile court jurisdiction and return the parents to their pre-petition status..." Sl. Op. at 14. If the juvenile court determines TN is a more appropriate forum under the UCCJEA, it may terminate its jurisdiction under G.S. 7B-201 to allow for TN to address the custody issues.
- UCCJEA Inconvenient Forum: G.S. 50A-207 provides for the procedures and factors a court must consider when determining whether it is an inconvenient forum. G.S. 50A-110 establishes the procedure for communications between the states' courts. It includes a provision where the court may allow the parties to participate in the communication and if not, the court must give the parties an opportunity to present facts and legal arguments before a jurisdiction decision is made. Additionally, a record of the communication between the courts must be made and the parties must be granted access to the record. In this case, the record was the email from the NC judicial assistant, but it was only sent to the guardians' attorney rather than simultaneously to both parties' counsel. At a hearing that consisted of attorney arguments, unverified motions, and no sworn testimony, the court received no evidence regarding the facts of the case. Without an evidentiary hearing upon which to base findings of fact and a decision, the order determining NC is an inconvenient forum is unsupported. Remanded for an evidentiary hearing.

Termination of Juvenile Court Jurisdiction

McMillan v. McMillan, 833 S.E.2d 692 (N.C. Ct. App. 2019)

Held: Affirmed

- **Facts:** This case involves two jurisdictional issues one of which challenges whether the district court had subject matter jurisdiction in a Chapter 50 custody action based on whether the jurisdiction of a prior juvenile neglect action had been terminated.
 - In 2010, shortly after the child’s birth, DSS initiated a neglect proceeding. After DSS filed the neglect petition but before the child’s adjudication, mother filed a complaint for custody.
 - After the child’s adjudication in 2011, the Chapter 50 custody action was “administratively removed from the active court calendar and ordered closed by the Forsyth County District Court...” Sl.Op. at 2.
 - In 2012, a juvenile court order was entered that stated it “ ‘entered an order pursuant to N.C.G.S. 50- 13.1, 50-13, 50-13.5 and 50-13.7, as provided in G.S. 7B-911, awarding joint custody of the child’ to Plaintiff and Defendant” (Sl.Op. at 3), and “the Court terminates juvenile court jurisdiction and there shall be no further scheduled Court reviews” (Sl. Op. at 4). The record does not show a civil custody order was in fact entered.
 - In 2014, father (plaintiff) filed a motion to modify the Ch. 50 custody order. From 2014-2016, the parties operated under various memoranda of judgment/orders addressing temporary custody.
 - In 2018, the court entered an order awarding permanent primary legal and physical custody to mother (defendant) and secondary custody to father. Father appeals raising subject matter jurisdiction.
- **Subject matter jurisdiction** may be raised at any time and is a question of law that is reviewed de novo.
- **Juvenile Court Jurisdiction:** Pursuant to G.S. 7B-200 and -201, the district court had exclusive original jurisdiction over the juvenile neglect proceeding until terminated by court order or the juvenile turns 18 or is emancipated, whichever occurs first. G.S. 7B-911 specifically authorizes the court to transfer a juvenile proceeding to a Chapter 50 custody action and establishes a detailed procedure for how that is accomplished. In this case, the 2012 juvenile order was insufficient to transfer the action to a civil custody action; “[h]owever, a court presiding over a Chapter 7B abuse, neglect, and/or dependency proceeding may terminate jurisdiction under Section 7B-201 without having to comply with the transfer requirements of Section 7B-911.” Sl.Op. at 13. The juvenile court order expressly stated it was terminating its jurisdiction, ended DSS and the child’s GAL involvement, and returned the parents to pre-petition status. See G.S. 7B-201. The trial court, therefore, had subject matter jurisdiction to hear the child custody case under G.S. Chapter 50.

Appeal: Insufficient record on appeal

In re J.C.M.J.C., 834 S.E.2d 670 (N.C. Ct. App. 2019)

Held: Dismissed

- A trial court has subject matter jurisdiction in an abuse, neglect, or dependency action when a properly verified petition is filed with the district court. Because the record on appeal did not include copies of the petition for each child filed by DSS that alleged each juvenile was neglected, the record failed to show the trial court had subject matter jurisdiction over the matter. Because the appellate court cannot determine whether the trial court had jurisdiction, the appeal is dismissed. See *State v. Petersilie*, 334 N.C. 169 (1993). However, the court granted an appeal by writ of certiorari.