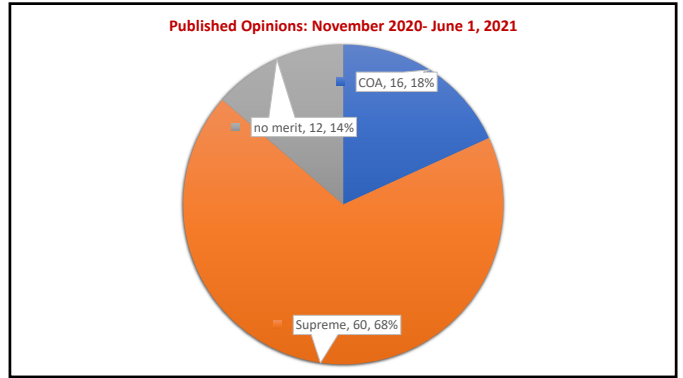


Child Welfare Case Update

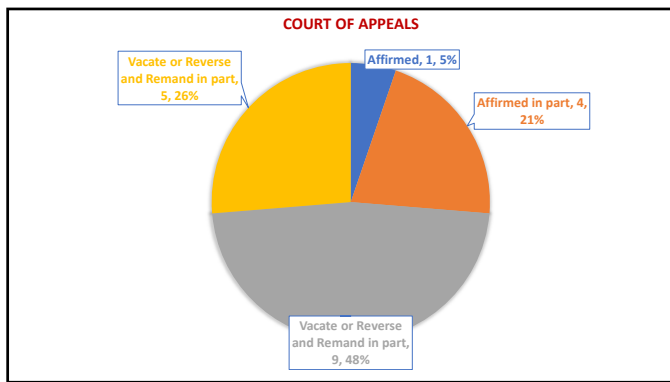
UNC School of Government
District Court Judges
Conference Summer 2021



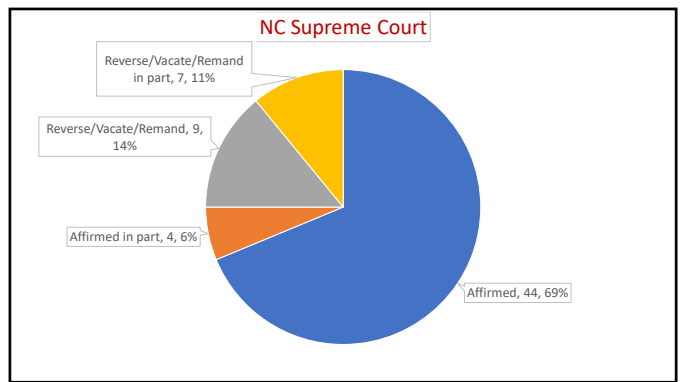
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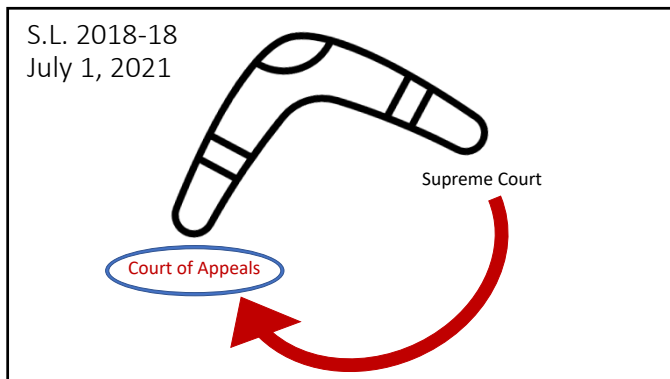
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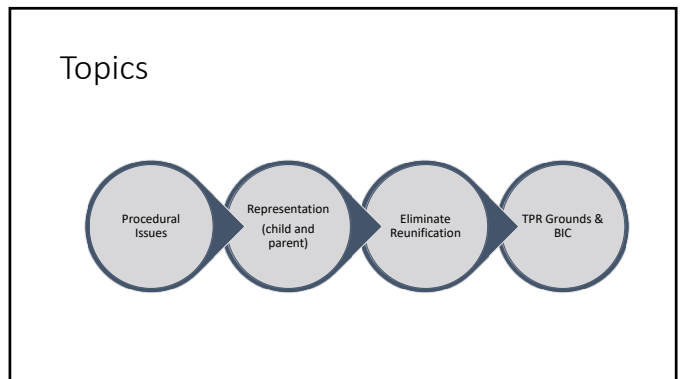
3



4



5



6

Service by Publication Is Jurisdictional
In re S.E.T. (p. 34)

7B-1106 (court findings and approval) + VOID = Service by Publication

7

ICWA

³ All participants should become familiar with the Indian Child Welfare Act of 1978, codified at 25 U.S.C. ch. 21, and the corresponding regulations, including but not limited to the regulations codified at 25 C.F.R. §§ 23.101–144, to ensure compliance with the ICWA and to assert objections on the record if compliance in a proceeding has not occurred.

8

Commencement of Proceeding: “Indian child”

Mandatory Inquiry with responses on the record
In re M.L.B., (p. 32) Reversed and Remanded

Notice Provisions (Notices not in record)
In re N.K. (p. 33) Remanded

9

Motion to Continue

Abuse of Discretion → Unless a Constitutional Right → Error and Prejudice

Burden on movant
Continuances are disfavored

10

A/N/D: In re L.G.A. (p. 5)

Neglect Petition Filed

Adjudication

Disposition

Motion for Review by Father

Motion to Continue by Mother - Denied (Criminal Charges + Self Incrimination)

Order of Custody to Father

11

G.S. 7B-803

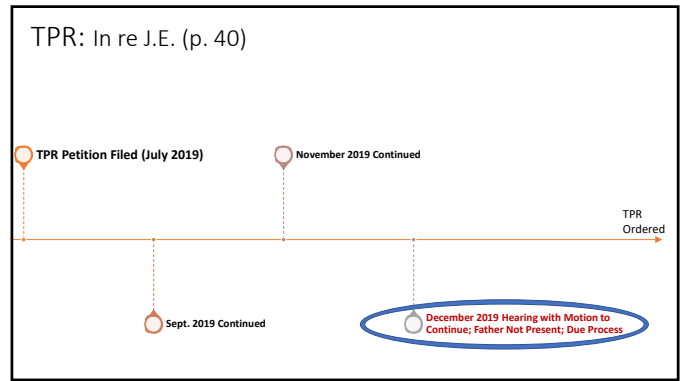
- Good Cause to receive additional evidence the court requested or in the BIC or expeditious discovery
- Extraordinary circumstances necessary for the proper administration of justice or BIC
 - NOT solely pending criminal action arising from same transaction or occurrence

12

No Error

- Not statutorily entitled
- No Prejudice
 - Not same transaction or occurrence
 - Gatekeeper of V Amendment right
 - Attorney advocacy
 - Unchallenged findings

13



14

G.S. 7B-1109(d)

- Continuance Up to 90 Days
 - Good Cause to receive additional evidence the court requested or in the BIC or expeditious discovery
- Continue Beyond 90 Days
 - Extraordinary circumstances necessary for the proper administration of justice or BIC

15

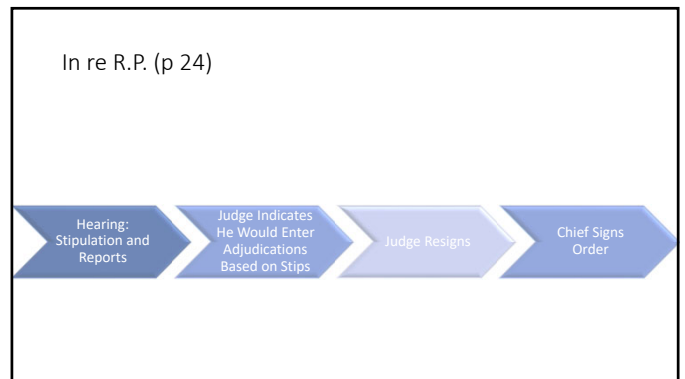
Parent's Absence

- Not per se prejudicial
- Not per se a violation of due process
- No explanation absence or lack of contact with attorney/DSS
- Attorney advocacy

16

Rule 63:
Substitute Judge

17



18

Ministerial Acts Only; Otherwise, Order = Nullity

Does the stipulation make it ministerial?

- No: Judge 1 did not render findings of fact and conclusions of law
- Making a conclusion is not a ministerial act
- Disposition beyond stipulations and oral statement of Judge 1

19

On remand
In re J.M. (p 26)

20

No Error

- Mandate was limited and precise to consider adjudication within the statutory framework
 - Remand: General rule is inferior court must follow the mandate of an appellant court in a case without variation or departure
 - Not a vacatur
 - Remand is not an opportunity to retry the case
- Did not resolve conflicts in the evidence
 - Bound by unchallenged findings

21

In re K.S. (p 27)

- 2007: First action, jurisdiction continued
- 2016: New action filed
- 2 different and separate actions

22

Reverse and Remand

In re M.N., 260 N.C. App. 203 (2018)

- 5MxG-JFMORIE? G? H <P@NPAID@IORI ?IIBNUTAPe>OG? NPKKJMOO@!
- /J @Q?@I >@R <NII@?P>@? G? NPKKJMOOJN@I@>@N-M?RI ?IIBNUT A<>O
- 3@Q@N@ k?I? M?H <I? AUMFMO@MKNJ>@@?IIBNUTJOLL>JIND@IOR. IBC! CENUTKILBI

23

Reversible error

"The district court committed reversible error by conducting a permanency planning (or review) hearing terminating the Schindlers' guardianship of Kaitlyn without first conducting a new adjudicatory hearing on the Second Petition and actually adjudicating Kaitlyn to be neglected as instructed."

24

How: In re R.L.O. (p 87)
discretion unless specified

25

In re L.G. (p. 16)

26

Attorney for Respondent Parent
In re K.M.W (p. 34)

- Motion to Withdraw
 - Inquiry
 - Notice to client; efforts to make sure client understood and protect right to counsel
- Knowing and Voluntary Waiver, 7B-1101.1(a1)
 - Court inquiry & findings
 - vs Forfeit (egregious dilatory or abusive conduct)
 - INQUIRY re: desire to proceed pro se
 - NOT discussed G.S. 7B-1109(b)
- Prejudice not required

27

Rule 17 GAL for Respondent Parent: Appointment
In re Q.B. (p. 37)
In re N.K. (p. 38)

Substantial deference to whether a substantial question of (in)competency

28

Parent's Functioning in Proceeding
"Behavior and Lucidity"

- Attended hearings
- Testimony indicated she understood
- Compliance with case plan provision
 - Attend visits
 - Obtain housing
 - Complete parenting program
 - Follow APS recs
- Participated in negotiations
- Own rep payee
- Acknowledged need for treatment
- Expressed preference for placement provider
- Available to court, DSS, GAL

29

Rule 17 GAL for Respondent Parent:
In re J.E.B. (p. 39)

Duties
7B-1101.1(d): "shall not act as an attorney"


- Strategy b/t attorney, GAL, mother
- Cross-Examine
- Present Oral Ar

• **Is this ok?**
CANNOT BE THE SAME PERSON
In re W.K. (p. 40) – duties not specified

30

Dual Role GAL for Juvenile: One Person In re R.D. (p. 80)

- Rule 3.7 of Rules of Professional Conduct
- Relevant, Reliable, Necessary Evidence (no finding of that required)
- No right to cross-examine




31

GAL's Role In re J.C.-B. (p. 15)

- Permanency Planning Hearing, consider information from juvenile and GAL
- Express wishes: ascertain and convey
- Not determinative, but must be considered
- 17 years old – important consideration
- Visitation


32

Break




33

Eliminate Reunification: Themes



Case Plans



Reasonable Efforts

34

Why ?

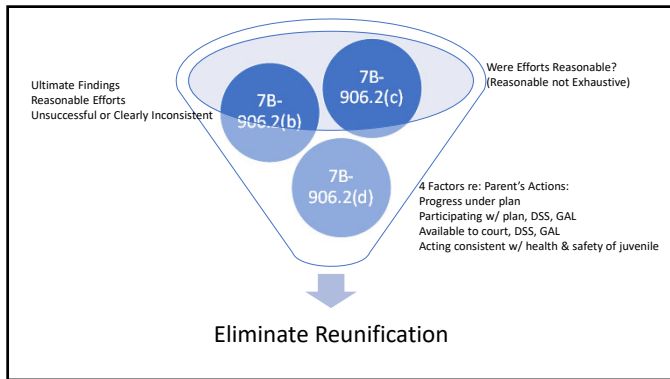
- _____ Protective Service
- _____ Constitutional Rights
- _____ Funding
- _____ Reunification Priority
- _____ Eliminate Reunification
- _____ TPR – Neglect or Failure to Make Reasonable Progress

35

Notice In re H.A.J. (p 17)

- Permanency Planning Hearing
- On notice court can change PP
- Juvenile Code does not require notice change in recommendation
- Court not bound by recs

36



37

7B-904

May Order Parent to

- Participate in parenting education
- Provide transportation for juvenile to treatment when in the home
- Take appropriate steps to remedy conditions that led to contributed to adjudication or removal from the home
 - Direct or indirect cause: Nexus (In re B.O.A.)

38

G.S. 7B-101(18): Reasonable Efforts

Diligent use of preventive or reunification services by a DSS when a juvenile's remaining at or returning to their home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time.

If not return home, *diligent and timely use of permanency planning services by DSS to develop and implement a permanent plan for the juvenile*

39

In re J.M. (p. 18)

- Unexplained Injury
- 4 Children – 2 Removed
- Neglected & Abused
- Case Plan (Complied)
- Eliminate Reunification
- Reverse & Remand
- No Reasonable Efforts to Promptly Reunify

40

NC Child Welfare Manual

Efforts

- Safety Assessment
- Create and implement case plan
- Arrange for assessments
- Hold CFT meetings
- Attempt to locate relative placement
- Supervise visits

41

Eliminate Reunification

G.S. 7B-906.2(b) Findings Not Supported by the Evidence (7B-906.2(d)) + No Finding re: Constitutional Rights – admission not a lawful basis

42

In re S.D. (p.19)


- Unaddressed MH Needs, Homelessness, Parenting Deficits
- Dependent
- Case Plan (Complied)
- Eliminate Reunification
- Award Guardianship
- Reversed & Remanded
- No Reasonable Efforts

43

Efforts

- Develop case plan
- Hold CFT meetings
- Link mom to MH services
- Link mom to parenting education
- Confirm services completed
- Facilitate visits
- Ensure children's needs met

No meaningful assistance in obtaining housing



44

Eliminate Reunification

G.S. 7B-906.2(b), (d) Findings Not Fully Address & Evidence Not Support

+

No Finding re: Constitutional Rights

45

In re J.C.-B. (p. 21)

- Mother's MH
- Neglected & Dependent
- Custody to GM
- Reunification Eliminated
- Vacated and Remanded

46

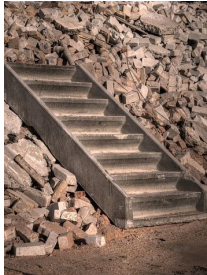
Efforts

Aimed at assessing juvenile's well-being (DSS contact & visits w/teen, collateral contacts)

No concrete steps or timelines (monitor progress via contact w/ mom, PPH, strengths & needs assessment)

No assessment of mother's home in Texas

Arguably non-existent



47

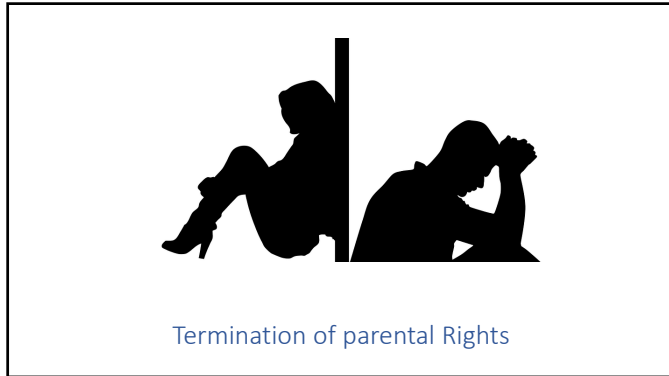
Eliminate Reunification

G.S. 7B-906.2(b), (d) Findings Not Supported by the Evidence

+

No Evidence or Finding re: Constitutional Rights (mom complying w/case plan)

48



49

In re D.A.A.R.(p.60)

- DV, SA, housing instability, MH issues
- Neglected & Dependent
- Case plan
- Visits suspended 2x; no visits with 1 child
- Daughter's run-away incident
- Mom's motion for review – made progress
- TPR - Failure to make reasonable progress
- Reversed

50

Overall: Reasonable Progress Made

Completed in/out-patient SA treatment	• Delay in entering case plan relevant but not last-minute, limited efforts (consistent & sustained)
Negative drugs screens	
Left NC to avoid DV	• Denied ICPC (due to error)
Completed DV courses	
Engaged in MH therapy	• Run-away incident
Obtained housing (one year)	• Visits suspended
Completed parenting classes in another state	

51

Last Minute Efforts

52

In re H.A.J.(p. 57)

- Substance Abuse and Domestic Violence
- Neglected
- Eliminated Reunification (Appeal - 7B=906.2 findings supported)
- TPR on Neglect
- After TPR filed, substance abuse treatment
- Likelihood of repetition, not stopped by last minute progress


53

In re B.T.J. (p.58)

- Mom's substance use
- Neglected & Dependent
- TPR on Neglect
- Likelihood of future neglect
- Limited Progress on housing, employment & SA treatment
- Limited progress (negative drug screens) 4 months before TPR hearing were just 1st steps and insufficient; housing 2 months

54

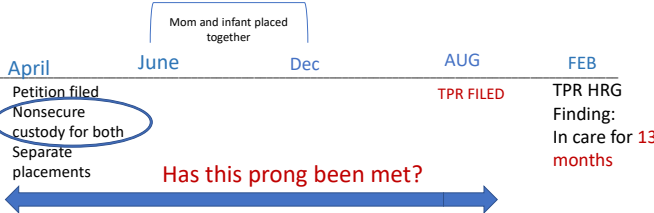
Neglect: Delay by parent



- “11th hour efforts” on parenting classes
 - Case plan: SA, housing, income, criminal
 - Period not incarcerated
 - In re O.W.D.A (p. 47)
- Delays
 - 1-year delay in signing case plan: SA, dr license, DV, housing, child support
 - 2-year delay in obtaining parenting eval/failing to complete program
 - In re K.P.-S.T. (p. 55)

55

7B-1111(a)(2): Willfully left juvenile in foster care... 12 mo
In re K.H. (p.59)



April June Dec AUG FEB

Mom and infant placed together

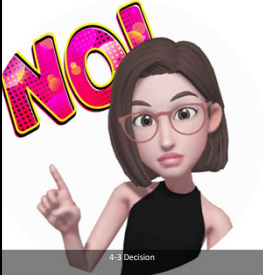
Petition filed
Nonsecure custody for both
Separate placements

TPR FILED

TPR HRG
Finding:
In care for 13 months

Has this prong been met?

56




Interpretation

- Order – Filing = Time Period
 - Notice 12 months to correct conditions
- Plain language = physically separated
 - Foster care, GS 131D-10.2(9)
 - Outside the Home
- June – Dec Together
- Only 10 months


57

Definition of Foster Care



Implications for ICPC
Non-Removal Parent

58



Juvenile Court Involvement Required

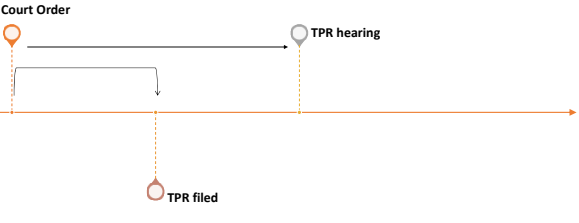
In re K.C.T. (p. 60)

- Ch. 50 order
- Does not provide sufficient notice rights are imperiled or steps needed to be taken

59

Reasonable progress

In re T.M.L. (p. 62)

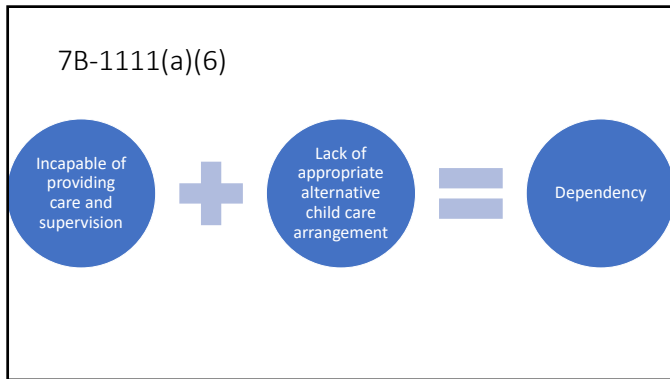


Court Order

TPR hearing

TPR filed

60



61

Lack of Appropriate Alternative Child Care
In re A.L.L., p. 71

Permanent Guardian = Appropriate Alternative Child Care Arrangement

Does not matter that mom did not identify alternative placement

DIFFERS FROM COA

62

Implications

What ground could have been alleged?

Will this impact adjudications of dependent juvenile?

63

Neither a Sword Nor a Shield

64



65

In re J.S. (p. 45)

During a parent's incarceration "constructive and positive parenting can occur, and parent/child bonds can be meaningful"

66

Willfulness
(Abandonment)
In re A.L.L.
(p. 75)

What's a Mental Illness?
A mental health condition that has a negative effect on the way an individual...

thinks feels and behaves

67

On the Civil Side

The TPR Dispositional Stage, the Juvenile's Best Interests, and the N.C. Supreme Court

This entry was contributed by Sara DePasquale on May 7, 2021 at 7:11 am and is filed under Child Welfare Law.

Since January 1, 2019, termination of parental rights (TPR) orders are appealed directly to the North Carolina Supreme Court. In August 2019, the Supreme Court published its first appellate opinions under this new TPR appellate procedure. Between August 2019 and today, the Supreme Court has decided 134 TPR opinions, all of which are published. Each of those published opinions from our state's highest court established or reinforced a precedent. Perhaps because of that, new and old arguments have been raised before the Supreme Court in those TPR appeals. This post focuses on what the Supreme Court has held when addressing the dispositional stage of the TPR.

68

Competent Evidence
In re S.M. (p 81)

What the N.C. Supreme Court's Ruling in In re S.M. may mean for Court Reports in Abuse, Neglect, and Dependency Cases

This entry was contributed by Timothy Martin on March 10, 2021 at 11:20 am and is filed under Child Welfare Law.

What happens if a court report is distributed to the parties and the court in an abuse, neglect, and dependency case, but the report is never formally offered or admitted into evidence? What if, despite dependence case, the court relies on the report in its order? Can a party appeal due to never being admitted into evidence, the court relies on the report in its order? Can a party appeal due to the report never having been admitted? In these questions a party must do to prevent this issue for appeal? This post will explore the answers to these questions in light of a recent N.C. Supreme Court decision in In re S.M., 375 N.C. 673 (2020).

69

Misapprehension of the Law

Adoption

Co-Parenting No (In re Z.O.G.I., p. 87)

TPR Needed Yes

Child's Best Interests

Guardianship

Co-Parenting Yes
TPR Needed No (In re A.K.O., p. 86)

70

Adoption vs Guardianship

TEEN'S PREFERENCE

WAIVE CONSENT
48-3-603(b)
In re B.E. (p. 85)

Older Juvenile
In re A.K.O. (p. 86)
note: 9 y.o. sibling

71

Please Don't

A Minor's Consent to Adoption: Where and in What Proceeding Is It Waived?

This entry was contributed by Sara DePasquale on March 5, 2021 at 4:55 pm and is filed under Adoptions.

North Carolina adoption laws are codified in G.S. Chapter 48. I find it to be one of the more difficult Chapters to navigate because it consists of interrelated Articles and Parts. As you get familiar with the Chapter, the procedures and requirements become less challenging to piece together. It is imperative to know these procedures because "the law governing adoptions in North Carolina is wholly statutory." *Boatman v. Jettell*, 364 N.C. 537, 542 (2010).

Under North Carolina adoption laws, before an adoption of an unemancipated minor may be granted, certain consents must be obtained. See G.S. 48-3-601 through -603. One required consent is from the minor adoptee if they are 12 years old or older, G.S. 48-3-601(1). However, that minor's consent may be waived when the court issues an order based upon a finding that it is not in the minor's best interests to require their consent. G.S. 48-3-603(b)(2).

What court has jurisdiction to enter the order waiving the minor adoptee's consent?

72



73