



Child Welfare Case Update

For Social Services Attorneys
2025 Winter Conference

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Today's Topics



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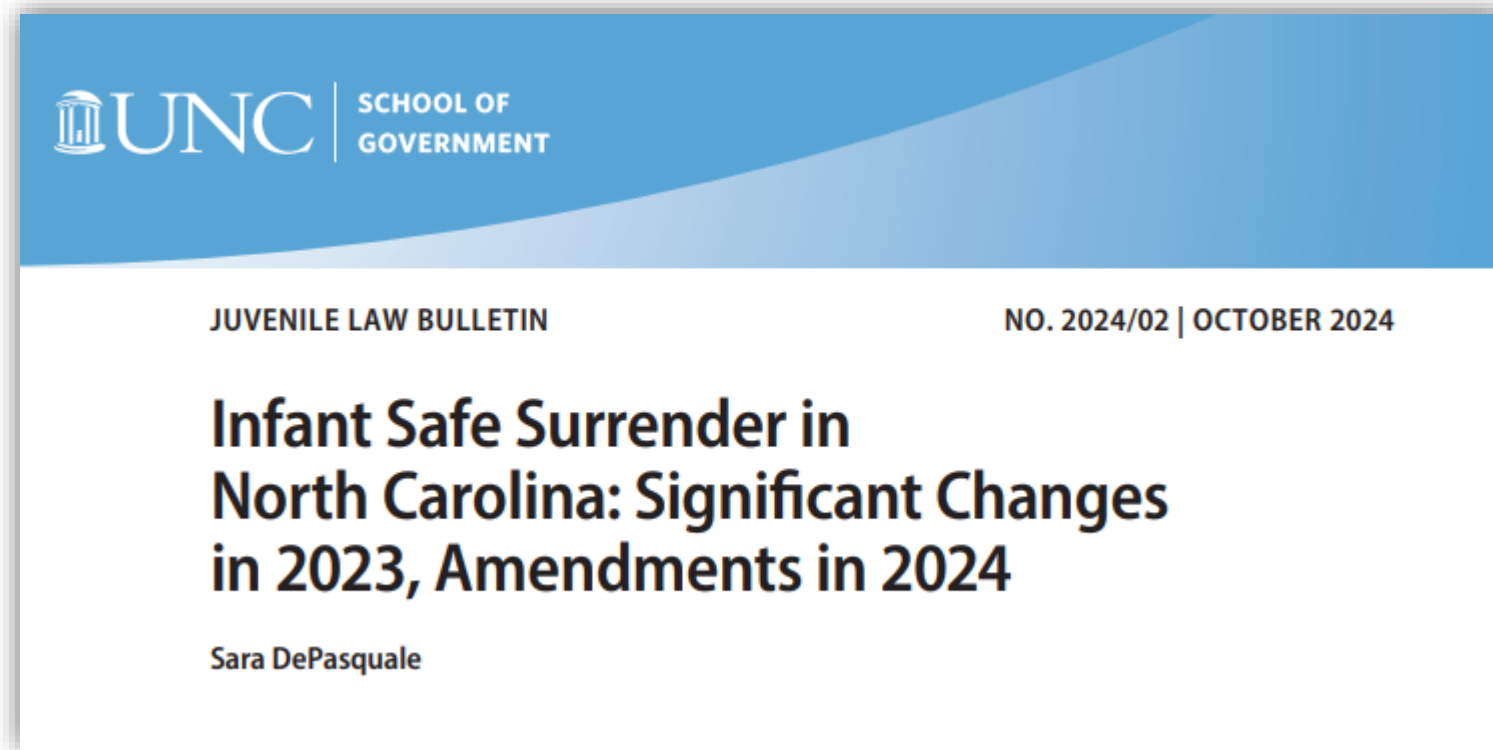
Legislation

A/N/D

TPR

Legislative Update

- Infant Safe Surrender: ex parte order after *initiation* of publication



Grandparents

July 8, 2024

A/N/D Intervention

7B-401.1(e1)

- Both parents deceased
- 1 parent deceased, other unknown or TPR



Payments to Unlicensed Placements

Relatives of child in
DSS custody

2023

2024

Half siblings placed in
home regardless of
relationship with caregiver

Safe Babies Court

New Article 5B, Ch. 7B

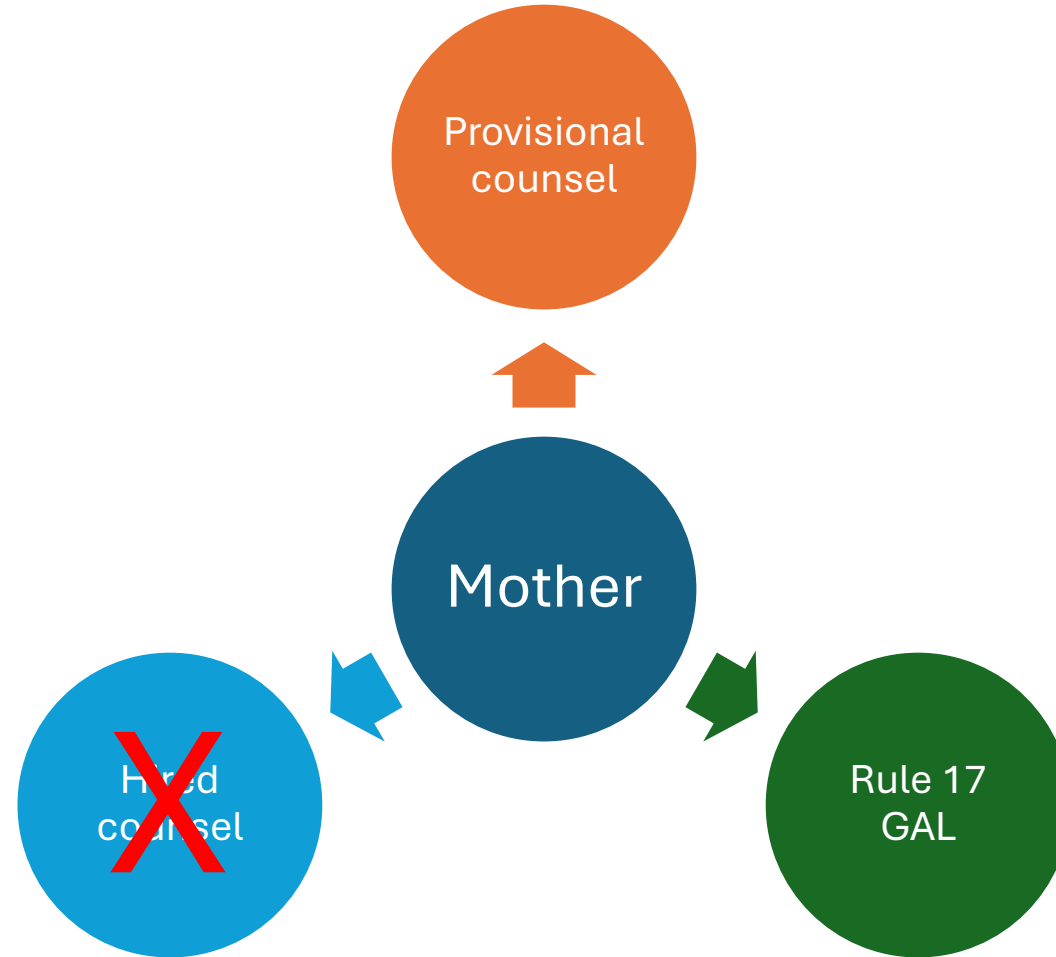


Today's Topics



Parent Counsel

In re A.K. (p.3)



Parent's Right to Hire Counsel

- Licensed + RPC (not local rules + experience)
- Court's inherent authority not unlimited

A Respondent Parent's Right to Retain Counsel: Lessons from a New Court of Appeals Decision, *In re A.K.*

This entry was contributed by Timothy Heinle on August 21, 2024 at 9:18 am and is filed under Child Welfare Law.



A recent decision by the North Carolina Court of Appeals considers the right of a respondent parent in a juvenile abuse, neglect, or dependency (AND) proceeding to hire counsel of their own choosing and what standards, if any, a retained attorney must meet to be allowed to represent a parent. *In re A.K.*, ___ N.C. App. ___ (August 6, 2024). The case also includes discussion of the procedures for appointing a Rule 17 guardian ad litem to a respondent parent – an issue I will explore in a later post. This post focuses on what the opinion in *A.K.* does – and does not – tell us about a parent's right to hire counsel.

A Parent's Right to Counsel, Generally

When an AND petition or a petition to terminate parental rights (TPR) is filed, the juvenile's parent has a statutory right to counsel, absent certain exceptions. See G.S. 7B-602(a); 7B-1101.1(a). Provisional counsel must be appointed for each parent named in the petition but must be dismissed at the first hearing if one of these statutory factors applies: the parent fails to appear at the hearing, the parent has retained private counsel, the parent is not indigent, or the parent knowingly and voluntarily waives their right to counsel. G.S. 7B-602(a)(a1); 7B-1101.1(a)(a1). If none of the statutory factors are satisfied, the court must confirm the appointed counsel. G.S. 7B-602(a); 7B-1101.1(a).

Rule 17 GAL

- Notice
- Opportunity to be heard
- Incompetency (35A-1101(7))
- Findings

Rule 17 GALs for Respondent Parents: A Final Lesson from In re A.K.

This entry was contributed by Timothy Heinle on October 18, 2024 at 8:52 am and is filed under Child Welfare Law, Juvenile Law, Social Services.



Recently, the North Carolina Court of Appeals rendered a decision in *In re A.K.*, ___ N.C. App. ___ (August 6, 2024), which touches on multiple issues relevant to juvenile abuse, neglect, dependency (AND) practitioners. (I blogged about one of those issues – a parent’s right to be represented by a retained attorney of their choosing, regardless of the attorney’s AND experience – [here](#). My colleague Sara DePasquale published [a blog](#) about another issue: considering a family’s culture, including religion and language, in an AND proceeding.) This post will explore a third issue raised in the opinion: the appointment of a Rule 17 guardian ad litem (GAL) to an incompetent respondent parent.

Cultural Issues



A Second Look at *In re A.K.*, Addressing Cultural Issues in A/N/D Cases



This entry was contributed by Sara DePasquale on September 6, 2024 at 7:48 am and is filed under Child Welfare Law.



The North Carolina Court of Appeals in *In re A.K.*, ___ N.C. App. ___ (Aug. 6, 2024) addressed a parent's right to be represented by a privately retained attorney of their choosing in an abuse, neglect, and dependency (A/N/D) action. See Timothy Heinle's post discussing that issue [here](#). The opinion also discusses issues related to the mother's and child's culture – their religion and language. This post explores those aspects of the opinion.



Who Are the Families and Children that Are Involved in Child Welfare?

Over the course of calendar year 2023, 15,885 children in North Carolina were in the custody of a county department of social services (DSS). Statistics identify the race of those children. The majority of children in DSS custody (56.3%) were white. Almost one out of three children (29.23%) were black. The remaining children were Hispanic (8.59%), Native American (3%), or "other race" (11.48%). See Child Welfare Statistics [here](#). There are, of course, other aspects of culture such as religion and national origin that are not identified in these statistics. Yet, we know that families from all races, ethnicities, religions, socioeconomic status, and more are involved in North Carolina's child welfare system.

Collateral Estoppel

In re A.D.H. (p. 5)

CH. 50

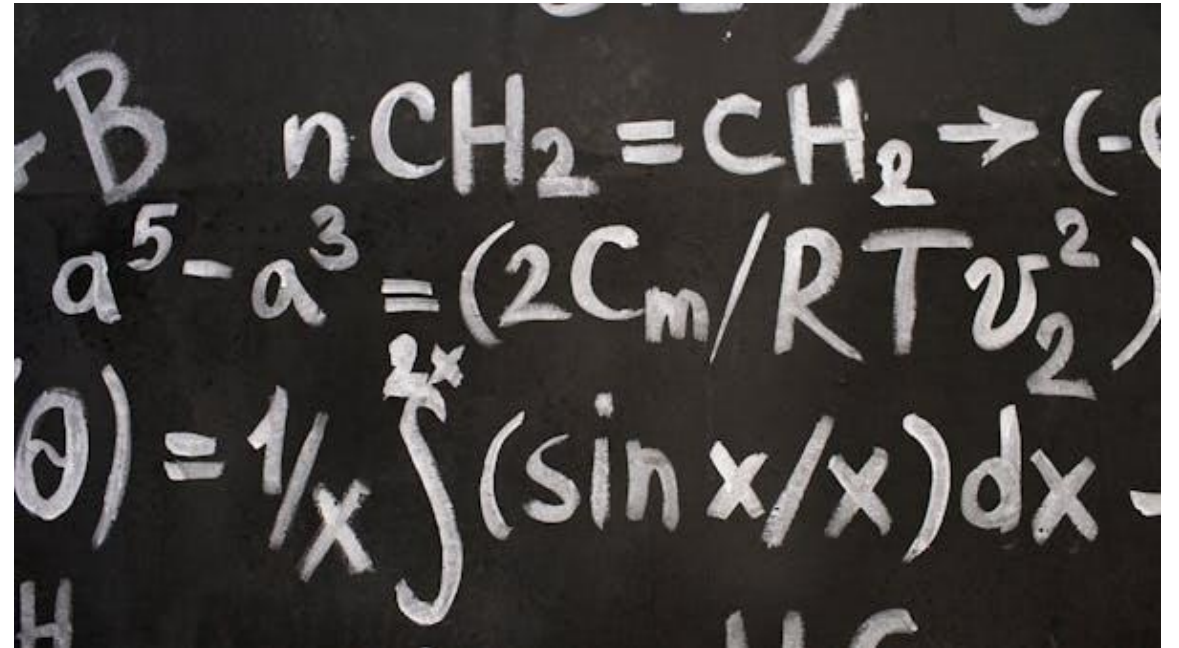
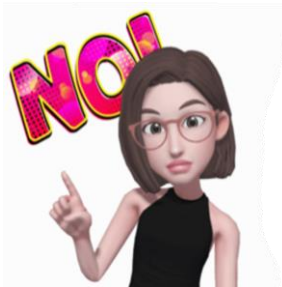
- Father did not sexually abuse daughter

Collateral Estoppel

- Not proved under lower standard or same standard



- Dismissal not ok, new allegations after orders



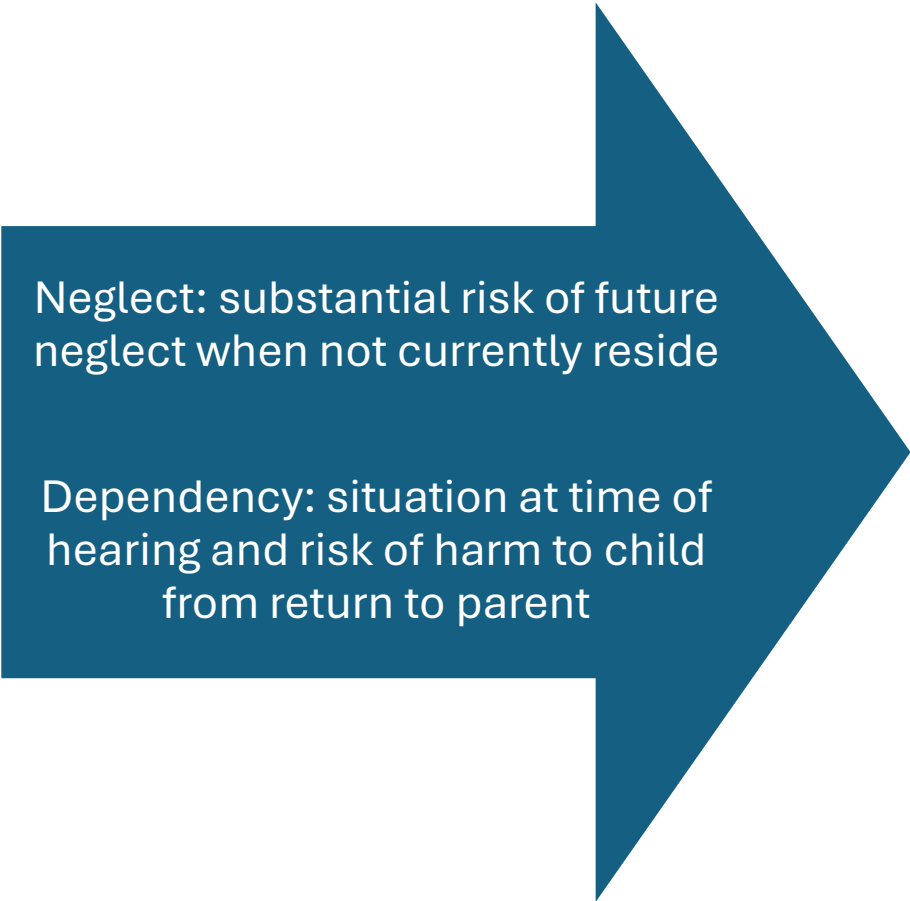
Evidence

In re A.J. (p. 7)



L.N.H.

No post-petition evidence



Neglect: substantial risk of future neglect when not currently reside

Dependency: situation at time of hearing and risk of harm to child from return to parent

Mental Illness

1

Court observed
hostile behavior

2

Not follow case
plan

3

Need expert
testimony or
admissible
documentary
evidence Dx

In re K.C. (p. 13) “Fixed and ongoing circumstance”



- Does evidence support harm based on behavior alleged in petition

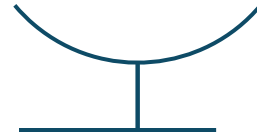


Appellate Review



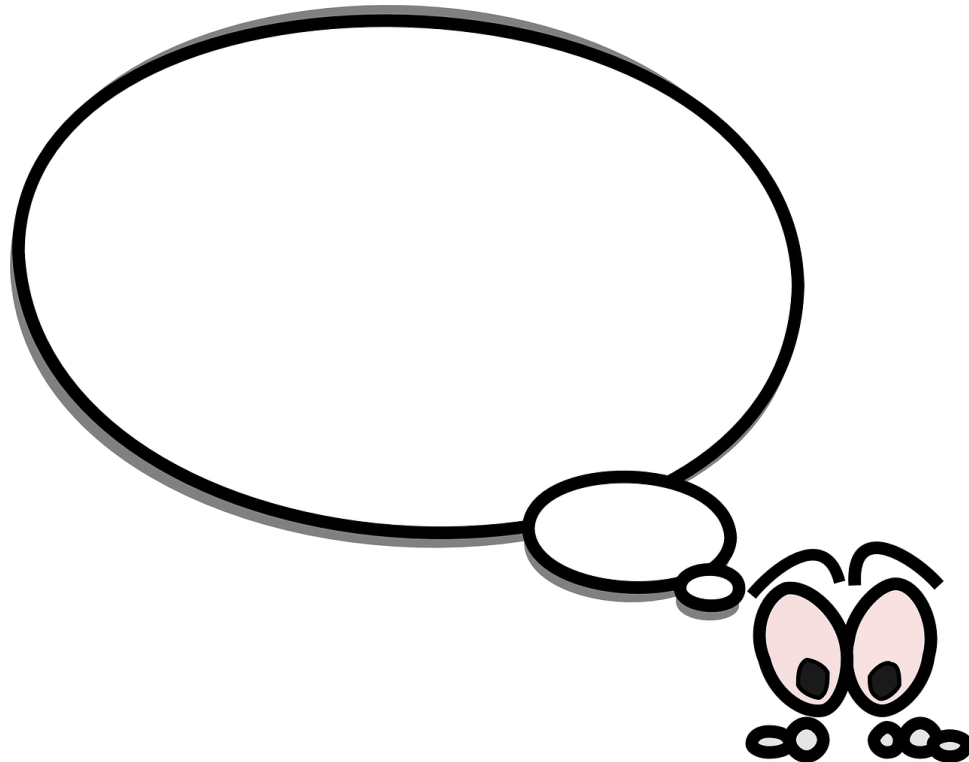
Insufficient Findings

Look to remaining findings



Adjudicatory Hearing: Evidence

In re N.N.; N.R.R.N. (p. 10-12)



STATE OF NORTH CAROLINA				File No. <input type="text"/>	
<input type="text"/> County				In The General Court Of Justice District Court Division	
IN THE MATTER OF				JUVENILE PETITION (ABUSE/NEGLECT/DEPENDENCY)	
Name And Address Of Juvenile <input type="text"/>					
Juvenile's Date Of Birth	Age	Race	Sex		
Name Of Petitioner <input type="text"/>				G.S. 7B-101, -400, -402 Condition Alleged <input type="checkbox"/> Abused <input type="checkbox"/> Neglected <input type="checkbox"/> Dependent	
Spoken Language Court Interpreter Needed For Any Party, Victim, Or Witness? (If Yes, identify person(s) and language(s). Interpreters provided for all court proceedings at no cost.) <input type="checkbox"/> No <input type="checkbox"/> Yes: (explain)					
I have sufficient knowledge or information to believe that a case has arisen that invokes the juvenile jurisdiction of the court, and therefore allege that:					
1. The juvenile named above resides in the district at the address shown above, was found in the district as alleged herein, or venue exists pursuant to G.S. 7B-400(a) or (b).					
2. The information required by G.S. 50A-209 is set out in the Affidavit As To Status Of Minor Child (AOC-CV-609) , which is attached hereto and incorporated herein by reference.					
3. The names, addresses, and telephone numbers of the juvenile's parents, guardian, custodian, or caretaker are as follows:					
Name		Relationship/Title	Address	Telephone No.	
<input type="text"/>		<input type="text"/>	<input type="text"/>	<input type="text"/>	
<input type="text"/>		<input type="text"/>	<input type="text"/>	<input type="text"/>	
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Unexplained Injuries

In re L.B. (p. 9)

Findings

- Multiple bruises on infant exist
- DSS says parents; parents say daycare

What's the problem with this?



Unexplained Injuries Findings

Multiple bruises on infant exist



Nothing about severity or non-accidental

DSS says parents; parents say daycare



Unresolved
Exclusive care?

In Contrast

In re N.N. (p. 10)

NICU behavior

SW home visit

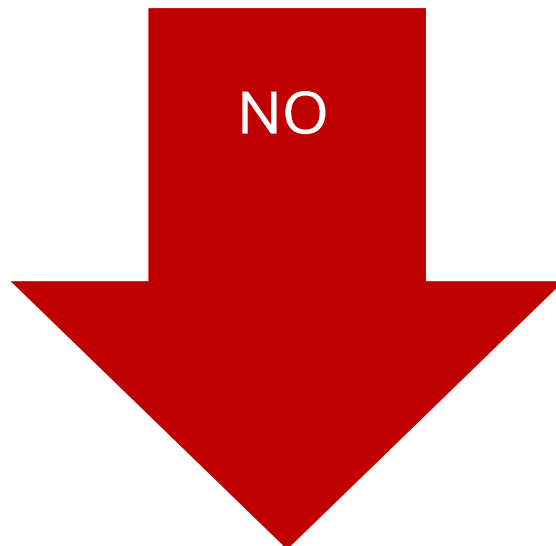
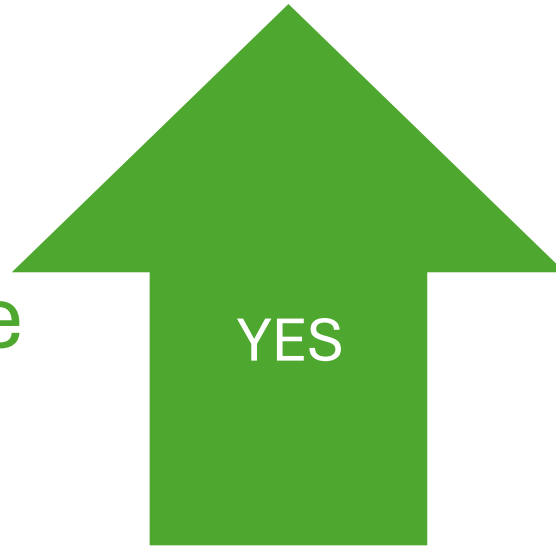
Nonaccidental life threatening
trauma

Sole care admission

Consideration of Abuse/Neglect of Other Juvenile

In re N.R.R.N. (p. 12)

Neglected Juvenile
7B-101(15)



Abused Juvenile

7B-101(1)

Direct action by PGCC

G.S. 7B-901(c): Relieve DSS of Reasonable Efforts

In re N.N. (p. 16)

In re N.R.R.N. (p. 18)

Chronic physical or emotional abuse

Relative Placement In re L.L. (p. 20)



G.S. 7B-903(a1)

the juvenile's home state.

(a1) In placing a juvenile in out-of-home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile. In placing a juvenile in out-of-home care under this section, the court shall also

NO REQUIRED FINDINGS!

prior to *any* consideration of a non-relative placement.”). To be sure, it would be functionally impossible for the trial court to determine which placement option is in the “best interests” of the juvenile without considering and comparing all the placement options.⁷

Eliminate Reunification Findings

In re L.L. (p. 23)

G.S. 7B-906.2

(d) At any permanency planning hearing under subsections (b) and (c) of this section, the court shall make written findings as to each of the following, which shall demonstrate the degree of success or failure toward reunification:

- (1) Whether the parent is making adequate progress within a reasonable period of time under the plan.
- (2) Whether the parent is actively participating in or cooperating with the plan, the department, and the guardian ad litem for the juvenile.
- (3) Whether the parent remains available to the court, the department, and the guardian ad litem for the juvenile.
- (4) Whether the parent is acting in a manner inconsistent with the health or safety of the juvenile.

7B-906.2(b)



NC Supreme Court Opinion Clarifies and Changes Findings Required in A/N/D Orders

This entry was contributed by Sara DePasquale on January 21, 2025 at 7:38 am and is filed under Child Welfare Law.



On December 13, 2024, the NC Supreme Court published *In re L.L.*, an appeal of a permanency planning order (PPO) that awarded custody to a non-parent. In the PPO, the court awarded permanent custody to the child's foster parents rather than the child's maternal grandfather. In achieving this permanent plan, the court eliminated reunification with the child's mother as a permanent plan. The issues for appeal focused on whether the trial court made the necessary statutory findings for placement with a non-relative and for eliminating reunification as a permanent plan. The Court of Appeals held the required findings were not made. See 291 N.C. App. 402 (2023) (unpublished). The Supreme Court reversed the Court of Appeals and addressed what findings are required for both non-relative placement and the elimination of reunification as a permanent plan. The answer may surprise you and will have an impact on court orders moving forward.

Parent's Constitutional Rights

In re K.C. (p. 15)

Oppose
custody or
guardianship

The diagram consists of three dark teal circles arranged horizontally. The first circle on the left contains the text 'Oppose custody or guardianship'. To its right is a light gray plus sign. The second circle in the middle contains the text 'Request reunification'. To its right is a light gray equals sign. The third circle on the right contains the text 'Waive'.

Request
reunification

Waive

N.C. Supreme Court Clarifies When and How to Preserve Parents' Constitutionally Protected Rights for an A/N/D Appeal

This entry was contributed by Timothy Heinle on January 13, 2025 at 11:05 am and is filed under Child Welfare Law, Constitutional Issues, Juvenile Law.



Five-year-old Katy* has experienced a lot in her young life. As a baby in her mother's care, Katy was exposed to substance use and domestic violence, leading to a county department of social services (DSS) petition alleging Katy was neglected. DSS and Katy's parents established a safety plan for her to live with her father. Katy was later adjudicated neglected. At initial disposition, the trial court was asked for the first time to consider removing Katy from her father, who was not the subject of allegations in the petition, based on concerns over his criminal history. The trial court agreed with DSS, granting temporary custody of Katy to paternal relatives. *In re K.C.*, __ N.C. __ (Dec. 13, 2024).

Today's Topics



Pitfalls to avoid



Withdrawal of counsel

In re D.E.-E.Y. (p. 30)



Notice: In re M.R.B. (p. 32)

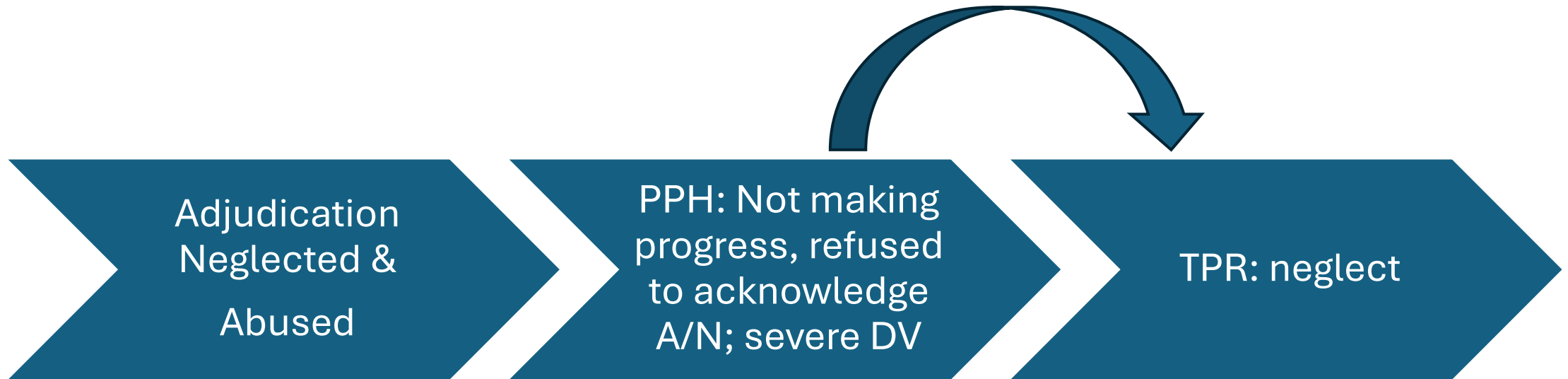
TPR Motion = prejudicial

TPR Hearing = harmless error
standard

Remember 30 days to answer

Judicial Notice

In re B.A.J. (p. 36)



V Amendment

- Pending felony child abuse charges
- Not a shield or sword
- Inference may be taken



Duties of GAL at Disposition In re S.D.H. (p. 42)

Investigate

Make
Recommendations

Court implicit duty
to ensure duties
performed

Signatures: Notice of Appeal

In re Z.A.N.L.W.C. (p. 46)

§ 7B-1002. Proper parties for appeal.

Appeal from an order permitted under G.S. 7B-1001 may be taken by:

- (1) A juvenile acting through the juvenile's guardian ad litem previously appointed under G.S. 7B-601.
- (2) A juvenile for whom no guardian ad litem has been appointed under G.S. 7B-601. If such an appeal is made, the court shall appoint a guardian ad litem pursuant to G.S. 1A-1, Rule 17 for the juvenile for the purposes of that appeal.
- (3) A county department of social services.
- (4) A parent, a guardian appointed under G.S. 7B-600 or Chapter 35A of the General Statutes, or a custodian as defined in G.S. 7B-101 who is a nonprevailing party.
- (5) Any party that sought but failed to obtain termination of parental rights.



Signed by

Appealing party
and counsel
(7B-1001(c))

With
Re
out
?





Other Interesting Cases

-
- UCCJEA noncompliance; order not recognized
 - Workplace Violence Prevention Act
 - Child Maltreatment Registry

See You July 17-19 in Wrightsville Beach

