

Ch. 50 can be your friend

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OFFICE OF THE PARENT DEFENDER

*The Office of the Parent Defender provides
and promotes high quality legal
representation for parents affected by the
child welfare system (DSS).*



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- Our office handles all appeals for indigent clients in A/N/D and TPR cases – also, civil contempt cases in North Carolina – don't handle Ch. 50 cases
- Available for consults/questions



Meeting point between Ch. 7B and Ch. 50

“A time may come when involvement by the Department of Social Services is no longer needed and the case becomes a custody dispute between private parties which is properly handled pursuant to the provisions of Chapter 50.”

In re AC, 929 S.E.2d 658 (NC Ct App 2026) (quoting Sherrick v. Sherrick, 209 NC App 166 (2011))



7B-911

- Custody award to someone, terminate jurisdiction, and convert to Ch. 50
- either starts civil case or modifies original civil order
- find facts to support award or modification
- find no need for “continued state intervention”
- at least 6 months passed since award was permanent plan OR not, if award back to parent or caretaker when petition filed



What about visitation?

-Ch. 7B or Ch. 50? Statutes? Case law?

-One order is sufficient to termination jurisdiction and start civil file, meaning the one order needs to comply with both Ch. 7B and Ch. 50 – See In re AS, 182 NC App 139 (2007)

-If two orders, suggestion/dicta that second order does not need to comply with Ch. 7B – In re SML, 272 NC App 499 (2020)



Ch. 7B Visitation

7B-905.1(a)

“An order that removes custody of a juvenile from a parent, guardian, or custodian or that continues the juvenile's placement outside the home shall provide for visitation that is in the best interests of the juvenile consistent with the juvenile's health and safety, including no visitation. ”



Ch. 7B Visitation w/ guardian/custodian

7B-905.1(c)

“If the juvenile is placed or continued in the custody or guardianship of a relative or other suitable person, any order providing for visitation shall specify the minimum frequency and length of the visits and whether the visits shall be supervised. The court may authorize additional visitation as agreed upon by the respondent and custodian or guardian.”



Visitation

50-13.2(a)

“An order for custody of a minor child entered pursuant to this section shall award the custody of such child to such person... as will best promote the interest and welfare of the child. In making the determination, the court shall consider all relevant factors... An order for custody must include written findings of fact that reflect the consideration of each of these factors and that support the determination of what is in the best interest of the child.”

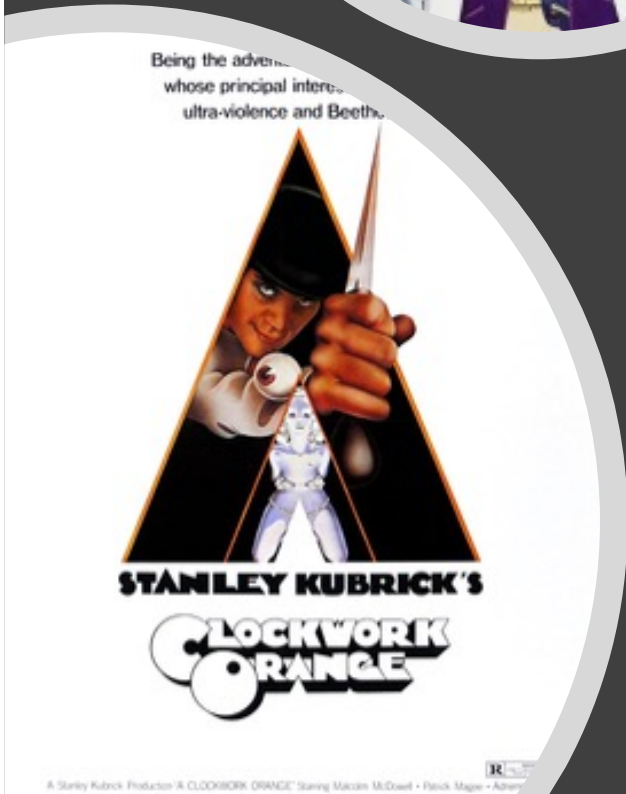


Visitation

50-13.5(i)

“In any case in which an award of child custody is made in a district court, the trial judge, prior to denying a parent the right of reasonable visitation, shall make a written finding of fact that the parent being denied visitation rights is an unfit person to visit the child or that such visitation rights are not in the best interest of the child.”

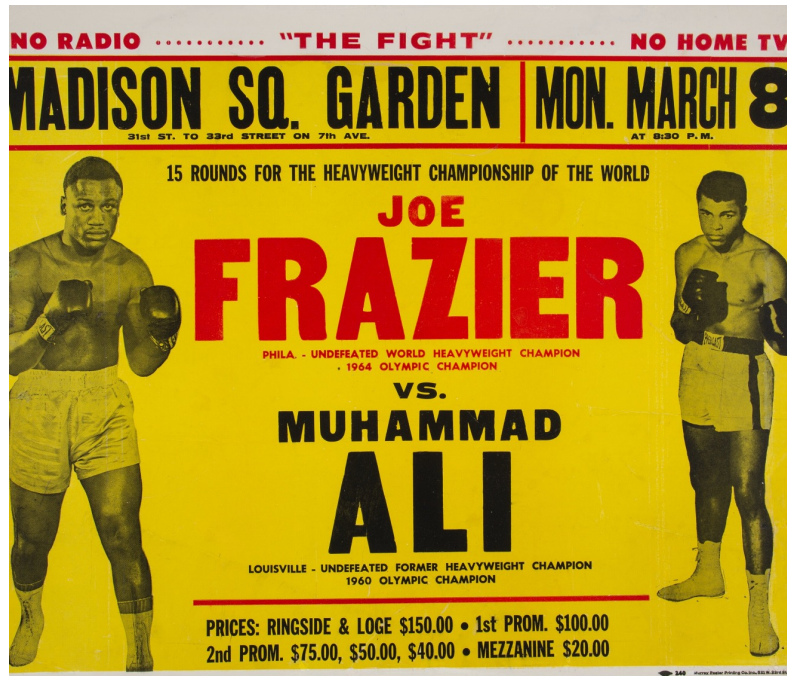




First, let's go
back to 1971



In re Custody of Stancil, 10 NC App 545 (1971) – Ch. 50 case



- Private custody case, Father given custody with Mother getting visitation every other weekend
- Father dies in hunting accident, court grants custody to paternal grandmother with Mother getting at grandmother's discretion, Mother appeals
- Mother had "mental disorders"
- pre-Santosky v. Kramer, 455 US 745 (1982), pre-Petersen v. Rodgers, 337 NC 397 (1994)
- Parents have "natural and legal right" to visit children

In re Custody of Stancil, 10 NC App 545 (1971) – Ch. 50 case

- “When the custody of a child is awarded by the court, it is the exercise of a judicial function. G.S. 50-13.2. In like manner, when visitation rights are awarded, it is the exercise of a judicial function.”
- “We do not think that the exercise of this judicial function may be properly delegated by the court to the custodian of the child. Usually those who are involved in a controversy over the custody of a child have been unable to come to a satisfactory mutual agreement concerning custody and visitation rights. To give the custodian of the child authority to decide when, where and under what circumstances a parent may visit his or her child could result in a complete denial of the right and in any event would be delegating a judicial function to the custodian.”
- “The court should safeguard the parent's visitation rights by a provision in the order defining and establishing the time, place and conditions under which such visitation rights may be exercised.”



Brief Timeline

-In re EC, 174 NC App 517 (2005) – adopting Stancil scheme b/c statute says visit plan must be “expressly approved by the court”

-In re KC, 199 NC App 557 (2009) – court should consider “specific facts under consideration”

-In re NB, 240 NC App 353 (2015) – says EC was abrogated by statutory change, only need minimum frequency and duration, not date, place, time, conditions of visitation

-In re JDR., 239 NC App 63 (2015) – invokes Stancil in “partial delegation” – vacates when RF turned into RM’s “case worker,” even though order had minimum frequency, duration, and specific holiday visits



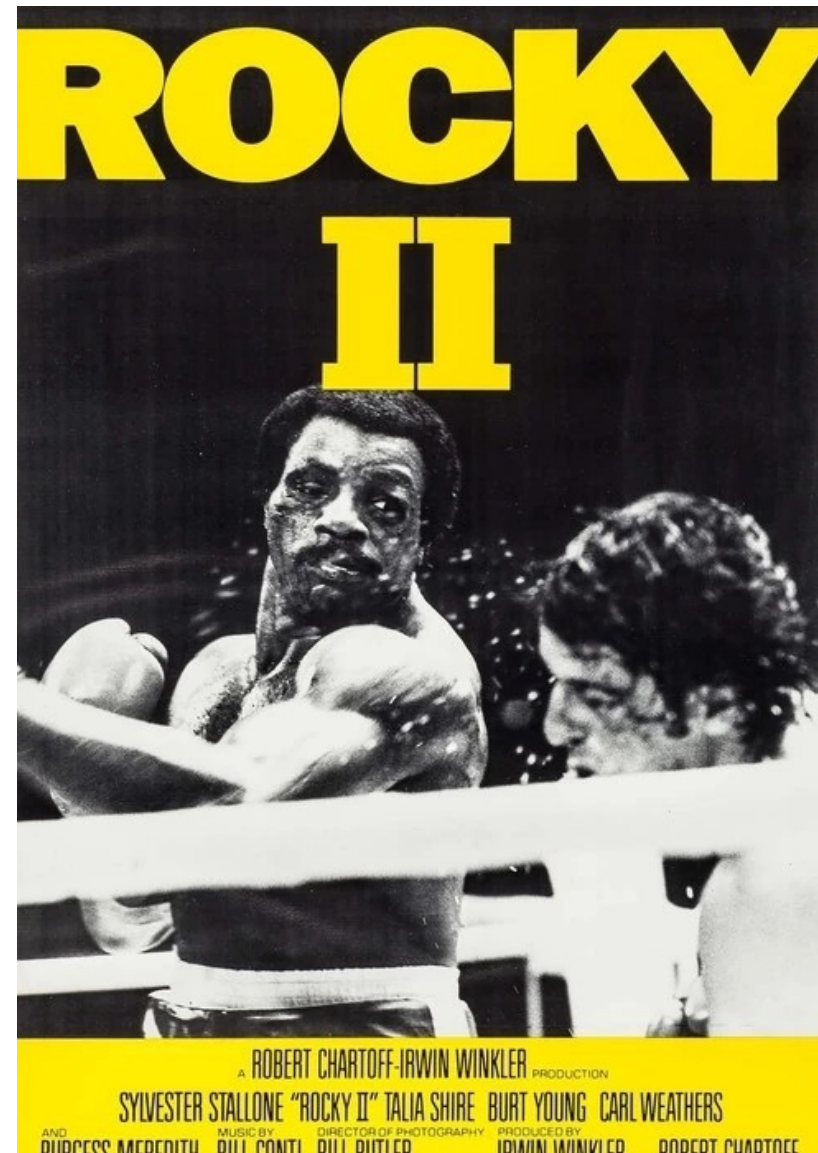
In re AC, 929 SE2d 658 (NC Ct App 2026)

- RF leaves older brother unattended in heat, who dies of dehydration
- sister, AC, adjudicated neglected, ultimately custody with paternal uncle in 7B-911 order
- RM visits 2 hours/weekly, “discretion given to custodian as to time and location”



In re AC, 929 SE2d 658 (NC Ct App 2026)

- -Like an underdog that you can't count out in the sequel, Stancil reappears... and Brewington v. Serrato, 77 NC App 726 (1985)
- - “[W]e cannot approve the provision permitting visitation ‘at such times as the parties may agree.’ As a practical matter, this provision effectively gives [the] plaintiff the exclusive power to deny defendant reasonable visitation with the child by withholding his consent.”



In re AC, 929 SE2d 658 (NC Ct App 2026)

- “As Mother points out, the delegation of authority to Sara's uncle carries the possibility of trivializing her visitation rights by "setting visitation to a limited location, such as the custodian's living room only, or setting visitation in the middle of the night when [Sara] is asleep.”
- “While it is perhaps unlikely that Mother would be received in such wanton bad faith in her attempts to see her daughter, it is for the trial court, not the child's custodian, to safeguard Mother's ability to exercise appropriate visitation with Sara, and it formally remains a possibility that such misconduct could occur under the terms of the current order's visitation scheme.”



In re SH, 929 SE2d 75 (NC Ct App 2026)

- RM six sons, multiple fathers, all kids living w/ RM, 3 kids w/ this specific RF, one kid hit by car wandering streets while RM and RF drinking – other issues of not giving medication, not attending appointments, housing problems
- Due to RM's housing problems, RF gets THP w/ PGM w/ the 3 kids
- RM gets better housing, gets THP w/ other sons
- These 3 sons prefer RM and want to live with her
- DSS takes no position
- Court closes case out with RF getting sole custody with RM getting every other weekend visits and “additional custodial periods from time to time that the parties mutually agree”



In re SH, 929 SE2d 75 (NC Ct App 2026)

- Stancil raised again, but COA says that was total delegation and this was only partial delegation
- Order provided “specific, regular visitation” and while order “lacking in detail,” it was a “reasoned exercise of discretion”
- Reviewed for AOD, not de novo statutory violation
- Dissent says RM was “fit and proper person” but order didn’t have visit provisions for holidays or vacations



Takeaway?

- While both cases were about partial delegations, AC explicitly gave custodian authority to determine place and location – implicit authority may be OK
- Frame as improper delegation, statutory violation
- Possible resurgence of the Stancil line to push for time, place, location of visits
- Door open to more Ch. 50 law



Ch. 50 case law



-“Although this section is found in Chapter 50 of our General Statutes... subsection (e) applies to “[a]n order for custody of a minor child.” N.C. Gen. Stat. § 50-13.2(a), (e) (emphasis added). We therefore hold that it is a generic provision which applies to all custody actions.” In re T.R.T., 225 N.C. App. 567 (2013)

-Lamond v. Mahoney, 159 N.C. App. 400 (2003) (“very detailed visitation decree” that includes holidays and vacation)

-Burger v. Smith, 243 N.C. App. 233, 247-48, 776 S.E.2d 886, 895 (2015) (“a custody plan that would foster the development of a close and meaningful relationship between the minor child and both of his parents”)

-Paynich v. Vestal, 269 N.C. App. 275 (2020) (reasonable visitation is unsupervised)

-Sood v. Sood, 222 N.C. App. 807 (2012) (order with only “indefinite” holiday schedule was interlocutory)

The 7B-911 of it all

-AC – Uncle suddenly gets custody in PPO that terminates JD, two days later, separate civil order entered

-SH – RF that had custody for a while gets sole custody in PPO that terminates JD, same day, civil order that incorporates PPO FOF



Original caretaker/custodian or 6 months elapsed

-AC – error to give Uncle custody in 7B-911 when he had not had custody for six months – not expressly what statute says

-also vacating civil order as “without jurisdiction” due to vacating PPO that terminated jurisdiction – nothing to do with “two days later” timing

-distinction between juvenile court and district court



Bread and butter **FOF support COL**

- SH – FOF need to support COL, BI, consider “all relevant factors” – kids prefer RM, but DSS has concerns over RM and kids doing fine w/ RF and PGM, affirm – dissent agreed on this
- Not discussed but even though kids only lived with RM, not RF, at beginning, custody award to RF OK because they had been in THP w/ RF for over a year



More on 7B-911 and interplay between Ch. 7B and Ch. 50

-7B-200(c), (d) – pre-existing civil orders automatically stayed, but can be consolidated into 7B action and transferred or venue changed

-Sherrick, 209 NC App 166 (2011)

-Rodriguez, 211 NC App 167 (2011)

-McMillan, 267 NC App 537 (2019)

-In re JDR, 239 NC App 63 (2015)

-In re AJJ, 299 NC App 616 (2025)



**Hopefully, we can
use Ch. 50 to our
benefit**

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Questions?