

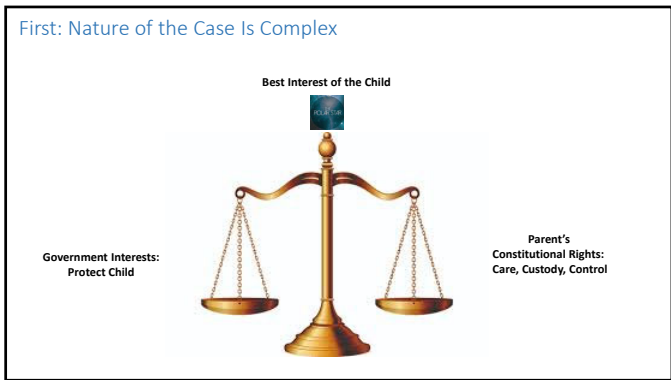
Juvenile Law Update: Abuse, Neglect, & Dependency

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- ## Emerging Issues
- Jurisdiction under G.S. Chapter 7B
 - Constitutional Rights of Parents
 - Adjudication
 - Evidence at Disposition
 - Dispositional Standard and Findings
 - Remand Instructions

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One Case

“Chapter 7B sets out a sequential process for abuse, neglect, or dependency cases.... the provisions in Chapter 7B establish one continuous juvenile case with several interrelated stages, not a series of discrete proceedings....”

In re T.R.P., 360 N.C. 588 (2006)

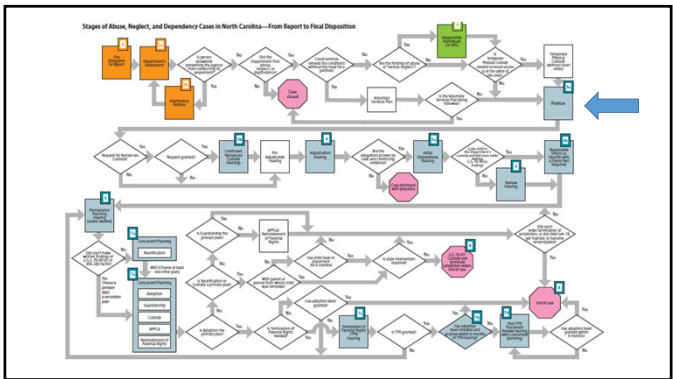
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Petition Required

“A trial court's subject matter jurisdiction over all stages of a juvenile case is established when the action is initiated with the filing of a properly verified petition.”

In re T.R.P., 360 N.C. 588 (2006)

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Post Relinquishment Permanency Planning
In re E.B., 375 N.C. 310 (2020)

- Child born
- Mom relinquish

2016 ————— 2018

6 Permanency Planning Hearings

May 2016 – Jan 2018

TPR

- Paternity established
- Out of home services
- Child in foster care

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No Petition
for A/N/D
G.S. 7B-402., -405

= VOID PPO

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Not Discussed

Post-Relinquishment Judicial Hearings

DSS or child-placing agency notify clerk to schedule review if child is not adopted within 6 months

Notification by

- Petition for review or
- Motion if court is exercising jurisdiction over the juvenile

G.S. 7B-909

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Analysis

We begin by noting that DSS's and the trial court's actions repeatedly infringed upon respondent's constitutional parental rights. "[T]he government may take a child away from his or her natural parent only upon a showing that the parent is unfit to have custody or where the parent's conduct is inconsistent with his or her constitutionally protected status." *Adams v. Tessener*, 354 N.C. 57, 62, 550 S.E.2d

Impact & Constitutional Rights Discussion

However, until respondent was confirmed as Ella's biological parent, DSS possessed sole legal custody of Ella. See N.C.G.S. § 48-3-601, -705.

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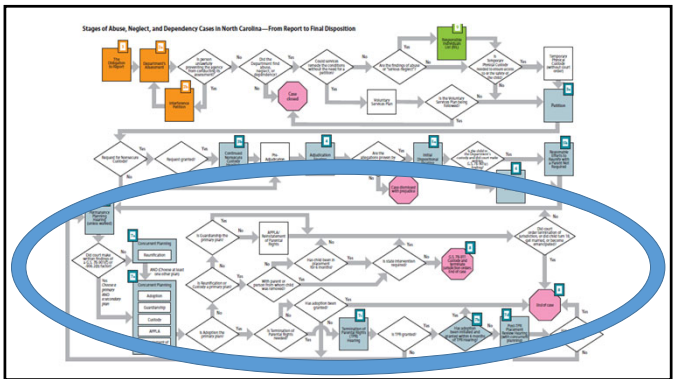
Length of Jurisdiction

When the court obtains jurisdiction over a juvenile, jurisdiction shall continue until

- terminated by order of the court or
- Juvenile turns 18 years old or is otherwise emancipated, whichever occurs first
- Juvenile is adopted*
- Foster Care 18-21*

G.S. 7B-201(a)*

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Recent Opinion Discussing Terminate by Order

- *McMillan v. McMillan*, 267 N.C. App. 537 (2019)
 - Entered order that terminated jurisdiction
- *In re C.M.B.*, 266 N.C. App. 448 (2019)
 - Jurisdiction continuing, hearings waived, no order terminating jurisdiction
- *In re K.S.*, ___ N.C. App. ___ (Dec. 1, 2020)
 - Jurisdiction of 2007 action continued; new action filed; 2 different actions
 - Docket No. Issue (RRK 12.1.1)

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Impact of Continuing Jurisdiction

Enforcement: G.S. 7B-201(b)

Modification:

Motion for G.S. 7B-906.1 review

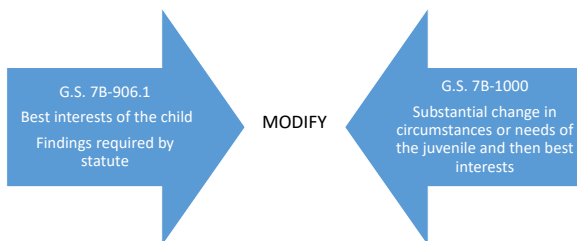
Motion to modify visits, G.S. 7B-905.1

Motion to modify or vacate, G.S. 7B-1000

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Different Criteria:

In re J.S., 250 N.C. App. 370 (2016)



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Adjudication

Child's Status: Abused, Neglected, Dependent
(not fault or culpability of the parent)

Universal Concept

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Stems from

- *In re Montgomery*, 311 N.C. 101 (1984)
 - In determining **neglect** ...
- *In re J.S.*, 182 N.C. App. 79 (2007) (abuse and neglect case)
 - The purpose of **abuse, neglect and dependency** proceedings is for the court to determine whether the juvenile should be adjudicated as having the status of abused, neglected or dependent. L. The purpose of the adjudication and disposition proceedings **should not be morphed** on appeal into a **question of culpability** regarding the conduct of an individual parent.

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But Now Confusion: June 16, 2020

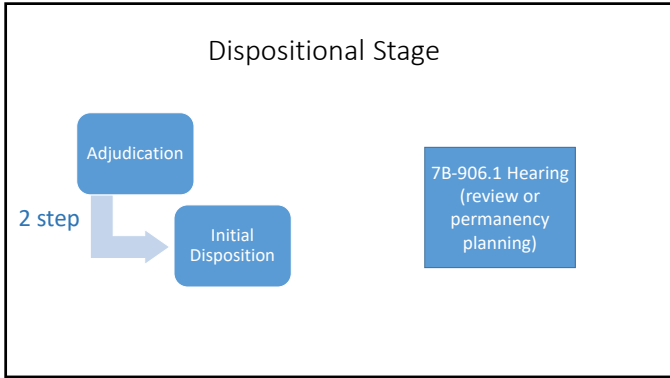
In re A.B.
Mother challenge findings about "parents"

- A/N/D
- Circumstances and conditions surrounding child
- Not fault or culpability
- Status of child

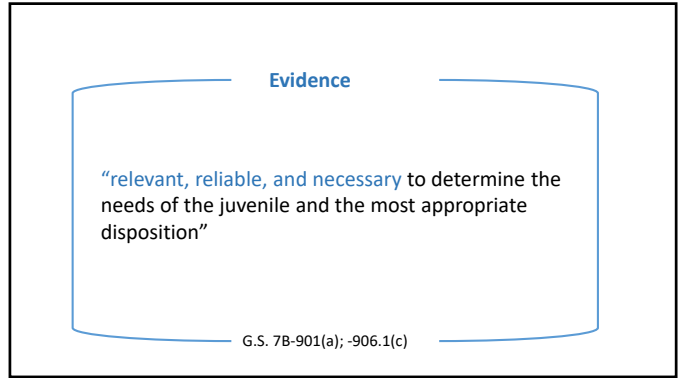
In re K.L.
Unexplained injuries
Challenge to exclusive care findings

- "the same is not true in an abuse proceeding"
- 7B-101(1) "Parent... inflicts"
- Inference of responsibility
- ? 7B-101(15) "Parent does not provide..." (not addressed)

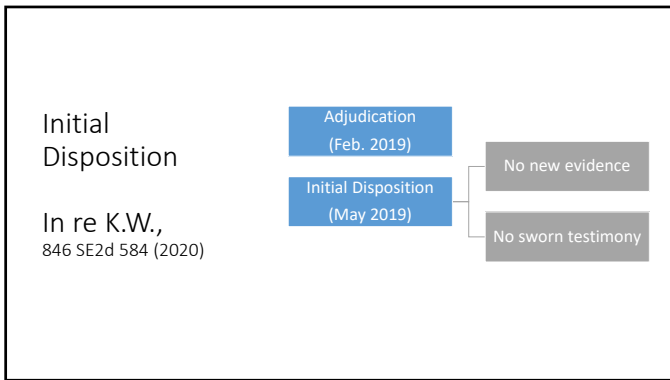
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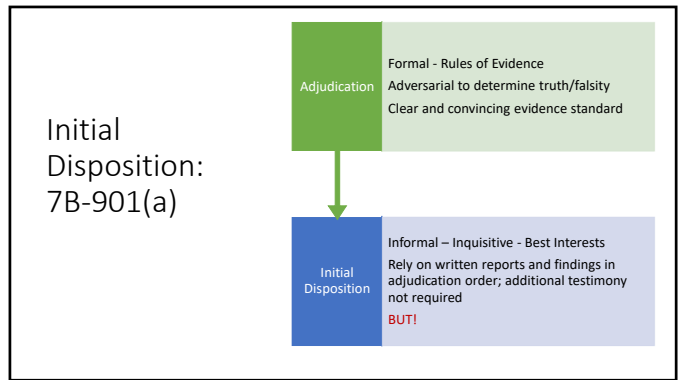
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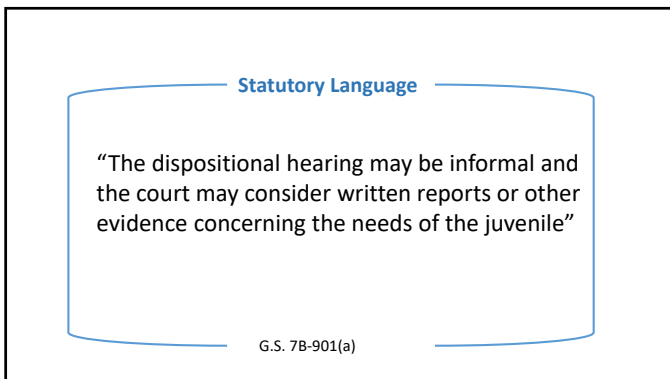
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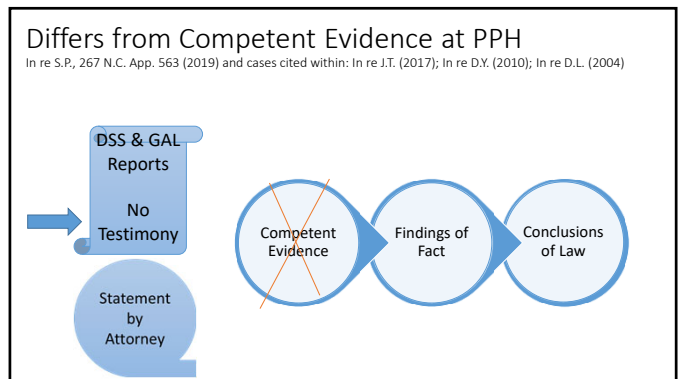
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Burden of Proof at PPH

No party has burden
Best interests standard NOT clear & convincing

(compare to *In re D.A.*, 248 N.C. App. 247 (2018): all findings by clear and convincing evidence)

In re L.E.W., 375 N.C. 124 (2020)

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UNLESS
3rd Party Custody/Guardianship
Parent's Constitutional Rights to Care, Custody, Control

FINDINGS

Clear & Convincing Evidence

- Unfit
- Neglected their child
- Acted inconsistently with parental rights

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When Are Those Findings Required

Permanency Planning Hearing – YES! *In re D.M.*, 211 N.C. App. 382 (2011)

Initial Disposition *In re S.J.T.H.*, 258 N.C. App. 277 (2018)

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In re S.J.T.H.

Mom	Dad: Appeals Initial Disposition
<ul style="list-style-type: none"> • Basis for Neglect • Drug Use • Prior DSS History • Case Plan: 11 mandates 	<ul style="list-style-type: none"> • No evidence or findings other than establishing paternity • Case Plan = Mom's • Custody to DSS/Not Dad

Reverse and remand to address dad's rights
Grant custody unless c,c,c evidence support other disposition


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Strictly Comply with Mandate

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Questions about Expectations

- Reverse
- Vacate
- Remand



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Reverse and Remand

- In re M.N., 260 N.C. App. 203 (2018)
 - Trial court failed to make sufficient findings of fact to support the conclusion that Kaitlyn is a neglected juvenile
 - No evidence was introduced to support those necessary findings of fact
 - Reverse and remand for further proceedings not inconsistent with this opinion

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In re K.S., ___ N.C. App. ___ (Dec. 1, 2020)

“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.”

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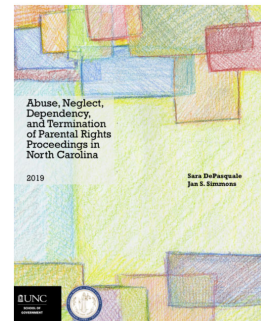
In re K.H., ___ N.C. ___ (Nov. 20, 2020)

- FN 5 We note that in an adjudicatory hearing on the termination of parental rights all findings of fact must be based on “clear, cogent, and convincing evidence.” N.C.G.S. § 7B-1109(f) (2019). We do not find such evidence in the record here that could support findings of fact necessary to conclude that respondent-mother’s parental rights could be terminated under N.C.G.S. § 7B-111(a)(2), (3), and (6). Thus, we conclude that the proper disposition is to reverse rather than remand.
- Dissent – remand (2 grounds) vs. reverse (1 ground)
 - Based on different between insufficient findings and insufficient evidence

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Resource

<https://www.sog.unc.edu/resources/microsites/abuse-neglect-dependency-and-termination-parental-rights>



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