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Abuse, Neglect, Dependency

Subject Matter Jurisdiction

Sufficient Notice

[In re M.M.](#), ___ N.C. App. ___ (December 19, 2023)

Held: Affirmed

- **Facts:** DSS filed a petition alleging five children were abused and neglected based on circumstances that were created in part by the parents’ high conflict separation. DSS filed a supplemental petition in August 2021 alleging Father sexually abused four of the five children. All five children were adjudicated abused and neglected. Father appeals, challenging the court’s subject matter jurisdiction to find any of the children abused based on emotional abuse, arguing DSS had not alleged emotional abuse in either of the petitions.
- “Whether a trial court possesses subject matter jurisdiction is a question of law” and reviewed de novo. Sl. Op. at 4 (citation omitted).
- The petition is the pleading in an abuse, neglect, or dependency case. G.S. 7B-401. “The petition must contain ‘allegations of facts sufficient to invoke jurisdiction over the juvenile.’ ” Sl. Op. at 4 (citation omitted). “[I]f the specific factual allegations of the petition are sufficient to put the respondent on notice as to each alleged ground for adjudication, the petition will be adequate.” Sl. Op. at 4 (citation omitted).
- G.S. 7B-101(1)(e) defines an abused juvenile to include any juvenile whose parent, guardian, custodian, or caretaker “creates or allows to be created serious emotional damage to the juvenile.”
- The trial court did not lack subject matter jurisdiction to adjudicate emotional abuse. Although DSS did not check the box under abused juvenile that stated that the parent “has created or allowed to be created serious emotional damage to the juvenile,” DSS checked the box on both petitions to indicate it was alleging that the children were abused and attached additional pages to the juvenile petitions detailing the facts supporting the allegations. These facts included concerns about the children’s emotional well-being because of the custody fight and dad’s coaching the children and making false reports about mother as well as stating the children seemed withdrawn, sad, depressed, and without affect. These allegations were “sufficient to put the respondent on notice as to each alleged ground for adjudication.” Sl. Op. at 7 (citation omitted).

Appointment of Counsel

Ineffective Assistance of Counsel

[In re M.M.](#), ___ N.C. App. ___ (December 19, 2023)

Held: Affirmed

- Facts: Father appeals the adjudication of his five children as abused and neglected. This summary focuses on Father’s argument that he received ineffective assistance of counsel due to his court-appointed attorney’s failure to object to DSS’s testimonial evidence of his daughters’ sexual abuse.
- “A party alleging ineffective assistance of counsel must show that counsel’s performance was deficient and the deficiency was so serious so as to deprive the party of a fair hearing.” Sl. Op. at 8 (citation omitted).
- Challenged testimony was not improper, therefore Father’s counsel was not deficient by failing to object to the evidence and Father did not receive ineffective assistance of counsel. Neither the forensic interviewer nor the nurse practitioner testified that sexual abuse had occurred, only that they had conducted forensic interviews and child medical evaluations, respectively, with determinations that it was highly concerning the children interviewed and examined had been sexually abused.

Adjudication

Evidence: Hearsay; Child’s Statements

[In re A.J.](#), ___ N.C. App. ___ (July 18, 2023), on appeal to NCSC, writ of supersedeas granted

Held: Reversed and Remanded

- Facts: DSS filed juvenile petitions alleging three juveniles (ages four, 13, and 15) were neglected, and the two older juveniles were also dependent based on three incidents reported to DSS. The two older juveniles had been voluntarily residing with their maternal great aunt, while the younger juvenile resided with the mother. One incident alleged an altercation between the mother and the 13-year old, where the child refused to exit the car; mother attempted to remove the child from the car by her leg; the child locked herself in the car; the mother broke the car window to unlock the car, slapped and hit the juvenile with a belt, and choked and threatened to kill the child. A second incident alleged the mother choked the 13-year old and threw her out of the car. The third incident alleged the mother locked the 13-year old out of the house following an argument about transferring the juvenile’s school district; when a social worker arrived, law enforcement had handcuffed mother to calm her down, which was witnessed by the youngest juvenile who was visibly upset, while the juvenile sought safety at a neighbor’s. At the adjudicatory hearing and over mother’s objections, DSS presented testimony of two social workers who testified to statements purportedly made to them by the 13-year old, noticed by DSS as admissible under the residual hearsay exception Rule 803(24) but presented by DSS at hearing as admissible as a statement by a party opponent. The court allowed the child’s statements as an admission of a party. The three juveniles were adjudicated neglected and the two older juveniles were also adjudicated dependent. All three juveniles were placed into DSS custody. Mother appeals.
- “The court reviews an adjudication ‘to determine whether the trial court’s findings of fact are supported by clear and convincing competent evidence and whether the court’s findings, in turn, support its conclusions of law.’ “ Sl. Op. at 4. The reviewing court disregards findings which lack sufficient evidentiary support and examines whether the remaining findings support the court’s conclusions.

- To admit hearsay under the residual exception, the trial court must conduct a six-part inquiry consisting of whether proper notice was sent; whether the hearsay statement is not covered elsewhere, possesses circumstantial guarantees of trustworthiness, is material, and is more probative than other evidence that can be procured by reasonable efforts; and whether the interests of justice will be served by its admission. The court must make findings reflecting its inquiry. Sl. Op. at 7. No findings were made at the hearing or in the order addressing this required six-part inquiry, and therefore, the juvenile’s statements were not properly admitted under the residual hearsay exception and should have been excluded upon mother’s objection.
- A statement of a party opponent must be offered against the party and be the party’s own statement. Rule 801(d). While parents are party opponents to the petitioner (DSS) in abuse, neglect, dependency actions, the juvenile is not a party to the case, and therefore, her statements do not fall under any of the Rule 801(d) exceptions for statements of a party opponent and were inadmissible.
 - *Author’s Note:* The opinion does not address G.S. 7B-401.1(f) and 7B-601(a), which state a juvenile is a party to the action and does not discuss whether a juvenile is a party opponent to the petitioner (DSS) or any other party in the action.
- “We disregard the challenged findings, or portions thereof, which rely upon [the juvenile’s] inadmissible hearsay statements or those which are otherwise unsupported.” Sl. Op. at 9.
- As the majority of the evidence supporting the allegations in the petition were based upon the juvenile’s statements, absent the inadmissible hearsay evidence from the social workers’ testimony, the conclusions of neglect and dependency are unsupported by the remaining findings of fact. The erroneous admission of hearsay and other unsupported testimony prejudiced mother.

Neglect

In re A.H., ___ N.C. App. ___ (July 5, 2023), appeal to NCSC

Held: Reversed

Dissent, Flood, J.

- Facts: A 9-year-old child was adjudicated neglected and dependent based on an incident occurring after being picked up by her Father from the bus stop after school. Upon engaging in a disagreement with her Father, where father said she was going to get a whooping, the child exited the truck before reaching their destination. The Father followed the child in his truck, but because of the neighborhood and hauling a trailer, could not keep up. Father pursued the child on foot until she reached a cross road and he turned back to return to the two other minor step-siblings remaining in the truck. Another driver saw the child run across a road, nearly being struck by a large truck, while also observing Father turning back and walking away. The driver followed the child who was visibly upset and claimed to be afraid of her Father and called the police. Following a DSS investigation spanning a couple of hours that same afternoon, DSS filed a petition alleging neglect and dependency. Father did not contact DSS between the time of the investigation and before the filing of the petition, though Father testified he later saw the child who he determined was safe upon observing her with a crowd. Within an hour of dropping the other two minors off with a relative, father contacted his wife who informed him that the child was in DSS custody. Father appeals the adjudication and subsequent disposition order placing

the child with DSS, contending that the findings are unsupported by the evidence and/or inadequate to support the adjudication.

- “An adjudication order is reviewed ‘to determine (1) whether the findings of fact are supported by clear and convincing evidence, and (2) whether the legal conclusions are supported by the findings of fact.’ ” Sl. Op. at 6. (citation omitted)
- Several findings determined to be unsupported by the evidence or improper are stricken. The child’s statement that her Father thought she’d gotten run over and just walked back to his truck is conjecture and insufficient to support a proper finding of fact regarding Father’s knowledge of the child being in danger. Findings restating the social worker’s testimony without any evaluation of credibility are improper.
- The remaining findings are insufficient to support a legal conclusion of neglect. The child’s actions of darting into the road, standing alone, do not constitute neglect, as the findings only show Father turned his back before the child crossed the road, not whether Father perceived a dangerous situation and was neglectful in failing to attend to it. Additionally, without the court making further findings supported by evidence introduced by DSS, Father’s failure to return to the scene or contact DSS within the 24 hour period between the events and the filing of the petition, while also tending to the other two minors in his care, do not amount to neglect. “The absence of evidence is not evidence.” Sl. Op. at 13 (citation omitted).
- Dissent: “Based on the totality of the evidence and the findings of fact... the trial court did not err by concluding [the child] was neglected when Respondent-Father left her in an ‘environment injurious to her welfare’ and that she was ‘at risk of physical, mental, and emotional impairment.’ ” Dissent at 21 (citation omitted). Findings of Father walking away as the child entered the roadway, leaving her with strangers, and not inquiring as to her well-being was “treatment that fell ‘below the normative standards imposed upon parents by our society.’ ” *Id.* (citation omitted).

[In re A.J.](#), ___ N.C. App. ___ (July 18, 2023), on appeal to NCSC, writ of supersedeas granted

Held: Reversed and Remanded

- Facts: DSS filed juvenile petitions alleging three juveniles (ages four, 13, and 15) were neglected, and the two older juveniles were also dependent based on three incidents reported to DSS. The two older juveniles had been voluntarily residing with their maternal great aunt, while the younger juvenile resided with the mother. One incident alleged an altercation between the mother and the 13-year old, where the child refused to exit the car; mother attempted to remove the child from the car by her leg; the child locked herself in the car; the mother broke the car window to unlock the car, slapped and hit the juvenile with a belt, and choked and threatened to kill the child. A second incident alleged the mother choked the 13-year old and threw her out of the car. The third incident alleged the mother locked the 13-year old out of the house following an argument about transferring the juvenile’s school district; when a social worker arrived, law enforcement had handcuffed mother to calm her down, which was witnessed by the youngest juvenile who was visibly upset, while the juvenile sought safety at a neighbor’s. At the adjudicatory hearing and over mother’s objections, DSS presented testimony of two social workers who testified to statements purportedly made to them by the 13-year old, noticed by DSS as admissible under the residual hearsay exception Rule 803(24) but presented by DSS at hearing as admissible as a statement by a party opponent. The court allowed the child’s statements as an admission of a party. The three juveniles were adjudicated neglected

and the two older juveniles were also adjudicated dependent. All three juveniles were placed into DSS custody. Mother appeals.

- G.S. 7B-101(15) defines a neglected juvenile as one who does not receive proper care, supervision, or discipline or who lives in an injurious environment.
- Some of the findings of fact were supported by inadmissible hearsay evidence. Those findings are disregarded. There was no properly admitted evidence to support the alleged second incident of mother choking child.
- Evidence does support that an argument between mother and child occurred in the car (first incident) and the incident that occurred when mother informed the juvenile that she would be transferring schools (third incident) but does not support the full findings about each incident.
- Supported findings regarding the first and third incidents are insufficient to establish mother’s improper care or supervision of her children.
 - “An argument between a parent and child or use of corporal punishment, with no evidence of any resulting marks, bruising, or other injury, does not constitute neglect.” Sl. Op. at 11-12.
 - “The place of the family’s residence and choice of their children’s school is a parent’s prerogative under parental care, custody, and control.” Sl. Op. at 12. The court found the properly admitted evidence establishes that the 13-year-old has “a recalcitrant and undisciplined pattern of behavior,” while mother testified she believed her actions relating to the car incident and school transfer were necessary due to the 13-year-old’s aggressive behavior. Sl. Op. at 13.
 - “Where a child is residing in a voluntary kinship arrangement prior to any DSS involvement, and no evidence or adjudicatory findings support a conclusion the child has been subjected to harm in the parent’s primary care, custody, and control, ‘the findings and evidence do not support a conclusion’ of the child ‘living in an environment injurious to her welfare and not receiving proper care and supervision.’” Sl. Op. at 13 (citation omitted). With the 13-year-old juvenile living with relatives during all relevant periods and with mother’s permission, the trial court erred in adjudicating the 13-year old as neglected.
- Under G.S. 7B-101(15), it is relevant whether a juvenile lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home. The court made no evidentiary findings concerning the other older juvenile who did not live with her mother, and only one relevant finding concerning the youngest juvenile – her presence during the third incident. This single finding does not support the conclusion that the youngest juvenile was neglected. With the evidence failing to support the 13-year-old juvenile as neglected, the trial court “erred in, ipso facto” adjudicating the two siblings neglected juveniles.
- The findings describing the behaviors of mother and the youngest child during the adjudicatory hearing is irrelevant when determining the existence or nonexistence of the conditions alleged in the petition, which is the purpose of the adjudicatory hearing. See G.S. 7B-802.

Dependency

[In re A.H.](#), ___ N.C. App. ___ (July 5, 2023), appeal to NCSC

Held: Reversed

Dissent, Flood, J.

- **Facts:** A 9-year-old child was adjudicated neglected and dependent based on incidents occurring after being picked up by her Father from the bus stop after school. Upon engaging in a disagreement with her Father, where father said she was going to get a whooping, the child exited the truck before reaching their destination. The Father followed the child in his truck, but because of the neighborhood and hauling a trailer, could not keep up and instead pursued the child on foot until he had to turn back and return to the two other minor step-siblings remaining in the truck. Another driver saw the child run across a road, nearly being struck by a large truck, while also observing Father turning back and walking away. The driver followed the child who was visibly upset and claimed to be afraid of her Father, called the police. Following a DSS investigation spanning a couple of hours the same afternoon, DSS filed a petition alleging dependency and neglect the following morning. Father did not contact DSS between the time of the investigation and before the filing of the petition, though Father testified he later saw the child and determined she was safe upon observing her with a crowd. Within an hour of dropping the other two minors with a relative, father contacted his wife who informed him that the child was in DSS custody. Father appeals from adjudication and the subsequent disposition order placing the child with DSS, contending that the findings are unsupported by the evidence and/or inadequate to support the adjudication.
- An adjudication of dependency requires the trial court to “ address both (1) the parent’s ability to provide care or supervision, and (2) the availability to the parent of alternative child care arrangements.” Sl. Op. at 13. (citation omitted).
- DSS failed to introduce evidence that the Father did not have alternative child care arrangements available. Findings as to both prongs are required. Sl. Op. at 13.
- Father not contacting DSS or providing DSS with alternative arrangements within the 24 hours, and Father’s wife not offering to take the juvenile into her custody or sharing the Father’s contact information with DSS, does not meet DSS’s evidentiary burden of showing no such arrangements exist.
- **Dissent:** The trial court fulfilled its duty to “address the parent’s ability to provide care and alternative childcare arrangements.” Dissent at 21. Father left the scene, did not return or contact DSS, and left town; Father’s wife was not willing to assist in finding care or offering Father’s contact information. DSS could not have attempted to work a plan with Father under these circumstances or gain assistance from Father’s wife. Findings are supported by clear and convincing evidence to support the child’s adjudication as dependent.

[In re A.J.](#), ___ N.C. App. ___ (July 18, 2023), on appeal to NCSC, writ of supersedeas granted

Held: Reversed and Remanded

- **Facts:** DSS filed juvenile petitions alleging three juveniles (ages four, 13, and 15) were neglected, and the two older juveniles were also dependent based on three incidents reported to DSS. The two older juveniles had been voluntarily residing with their maternal great aunt, while the younger juvenile resided with the mother. One incident alleged an altercation between the mother and the 13-year old, where the child refused to exit the car; mother attempted to remove the child from the car by her leg; the child locked herself in the car; the mother broke the car window to unlock the car, slapped and hit the juvenile with a belt, and choked and

threatened to kill the child. A second incident alleged the mother choked the 13-year old and threw her out of the car. The third incident alleged the mother locked the 13-year old out of the house following an argument about transferring the juvenile's school district; when a social worker arrived, law enforcement had handcuffed mother to calm her down, which was witnessed by the youngest juvenile who was visibly upset, while the juvenile sought safety at a neighbor's. At the adjudicatory hearing and over mother's objections, DSS presented testimony of two social workers who testified to statements purportedly made to them by the 13-year old, noticed by DSS as admissible under the residual hearsay exception Rule 803(24) but presented by DSS at hearing as admissible as a statement by a party opponent. The court allowed the child's statements as an admission of a party. The three juveniles were adjudicated neglected and the two older juveniles were also adjudicated dependent. All three juveniles were placed into DSS custody. Mother appeals.

- In determining dependency, the trial court must address the parent's ability to provide care or supervision and the availability to the parent of alternative child care arrangements. Failure to address both prongs will result in reversal of the court.
- The findings do not support the conclusion of dependency. There were no evidentiary findings or conclusions regarding the mother's ability to care for or to supervise the two older juveniles. The portion of the findings that were supported and described mother's arguments with the 13-year-old do not show mother's behavior as "wholly unable to parent." There was no contrary evidence to mother's testimony that she was willing and able to care for the two older juveniles and continue to parent the youngest juvenile. References to mother's mental state are not supported by findings. Evidence does not support a finding that mother's voluntary placement of the older juveniles with relatives was necessary or due to mother's unwillingness or inability to parent, but rather related to mother witnessing traumatic events and being hospitalized following a car accident.

Visitation: Denial

Parents' Constitutional Rights

[In re A.J.L.H.](#), ___ N.C. App. ___ (July 18, 2023)

Held: Vacated in Part and Remanded

- Facts and procedural history: Returned on remand from the supreme court, *see* 384 N.C. 45 (2023), this matter involves an appeal of the adjudication and visitation portion of the initial disposition order. All three children share the same mother. Respondent step-father is the biological father of the youngest child; the two older children have different biological fathers. DSS filed a petition based on the repeated use of corporal punishment with a belt that caused bruising and marks on the oldest child, who was 9 years old, as well as a requirement to stand in the corner for hours at a time and to sleep on the floor. The parents did not believe their disciplinary methods were cruel or unusual. After hearing, the oldest child was adjudicated abused and neglected and the younger siblings were adjudicated neglected. At initial disposition, the oldest child was placed with a relative and the younger siblings were placed in foster care. Only the biological father of one of the younger children was granted supervised visitation; respondent mother, and respondent (step)father, and the third biological father, were denied visitation, after a determination that visitation was not in the children's best interests while respondents were working on their case plans with DSS. The court also denied placement of the younger juveniles with respondent-father's relatives and denied requests to attend medical appointments. The court of appeals vacated and remanded the adjudication of

neglect for the oldest juvenile, ordered the trial court to dismiss the adjudications of the siblings, and ordered on remand that if the older juvenile was adjudicated the trial court order general and increasing visitation with the mother. The supreme court reversed the court of appeals decision, thereby affirming the adjudication orders, and held the court of appeals instruction to the trial court regarding disposition improper. The supreme court returned the matter to the court of appeals to address the respondents' remaining arguments regarding the disposition order. Respondents argue the trial court abused its discretion when it prohibited any visitation between respondent parents and their children.

- “The assessment of the juvenile’s best interests concerning visitation is left to the sound discretion of the trial court and ‘appellate courts review the trial court’s assessment of a juvenile’s best interests solely for an abuse of discretion.’ ” Sl. Op. at 7, citing *In re A.J.L.H.*, 384 N.C. at 57. “The standard of review that applies to an [assertion] of error challenging a dispositional finding is whether the finding is supported by competent evidence.” Sl. Op. at 8.
- Visitation may be denied “when it is in the juvenile’s best interest consistent with the juvenile’s health and safety.” Sl. Op. at 8 (citation omitted). Based on precedent, factors a court must consider is whether the parent has a long DSS history, if the reason for the child’s removal is related to previous issues that led to another child’s removal, whether the parent failed to or minimally participated in the case plan, whether a parent failed to consistently attend visits, and whether a parent relinquished their rights.
- “After initially concluding a parent is either unfit or has acted inconsistent with his or her parental rights, ‘even if the trial court determines that visitation would be inappropriate in a particular case. . . it must still address that issue in its dispositional order and either adopt a visitation plan or specifically determine that such a plan would be inappropriate in light of the specific facts under consideration.’ ” Sl. Op. at 8.
- The trial court failed to make specific determinations of the factors affecting visitation for “each child with each parent.” Sl. Op. at 9 (emphasis in original). There were no findings or conclusions regarding unfitness or conduct inconsistent with their parental rights, which must occur when no visitation is ordered. The dispositional findings must be supported by clear and convincing evidence.
 - *Author’s note:* This author believes the requirement that the dispositional findings be made by clear and convincing evidence relate to those that support a conclusion that parent is unfit or has acted inconsistently with their constitutionally protected rights.
- “Neither the record nor the order provides a finding or explanation for the objectively disparate treatment accorded to [one of the younger children]’s biological father and the other three parents involved in the matter, nor the denial of family or relative placement, and participation in the children’s medical appointments.” Sl. Op. at 11. These failures constitute an abuse of discretion.
- Court vacated the dispositional portions of the order and remanded to the trial court to make the “required findings of fact and conclusions of law concerning visitation, family placement, and parental involvement in medical treatment in the best interests of *each child for each respective parent of each child.*” Sl. Op. at 11 (emphasis in original).

Electronic-only

In re K.B., ___ N.C. App. ___ (August 1, 2023), appeal to NCSC

Held: Affirmed in Part, Vacated in Part, and Remanded

Dissent in part, Stroud, J.

- Facts: This matter involves three juveniles adjudicated neglected and dependent. All three juveniles were placed with their great aunt, a North Carolina resident, within a week of the petition's filing. Following adjudication, the initial dispositional order set the primary plan as reunification and the secondary plan as custody with a court approved caretaker. The court continued to hold dispositional hearings and enter orders for the following three years, during which placement continued with their great aunt. During this time, the court ordered that the grandmother, a Georgia resident, be considered for placement and that an ICPC home study assessment be made by Georgia officials. A later order ceased reunification efforts and shifted the primary plan to guardianship with a secondary plan of adoption. After hearings over several months and prior to the completion of the grandmother's home study, the court granted guardianship of the children to the great aunt and granted mother, a Georgia resident, voluntary electronic visitation twice a week. The court noted the matter closed, relieved DSS and the GAL of further responsibilities, but retained jurisdiction. Mother appeals.
- Trial courts must "provide for visitation that is in the best interests of the juvenile consistent with the juvenile's health and safety, including no visitation." G.S. 7B-905.1(a).
- The court of appeals has held that ordering electronic-only visitation is equivalent to granting no visitation and therefore the court must make specific findings equivalent to the findings required in granting no visitation. Sl. Op. at 8-9 (citations omitted). The court "must make 'specific findings that' a parent 'forfeited her right to visitation or that visitation would be inappropriate under the circumstances.'" Sl. Op. at 10 (citation omitted).
- The findings regarding visitation are insufficient to meet the requirements for electronic-only visitation. Limited findings include the current visitation plan of weekly virtual visits and telephone calls, initiated by mother, are inconsistent and often during school hours and dinner time, and provide the date of the last in-person visit.
- Frequent in-person visitation may not be eliminated solely due to the distance between children placed in-state and an out-of-state parent.
- G.S. 7B-905.1(c) requires an order providing for visitation to "specify the minimum frequency and length of the visits and whether the visits shall be supervised." Noncompliance with the requirements of G.S. 7B-905.1 is referred to as "leaving the terms of visitation to the discretion of the custodians." Sl. Op. at 11, FN 2.
- The order providing for electronic-only visitation twice a week only meets the requirement of specifying the minimum frequency of the visits, while not addressing the length or supervision of the visits. Therefore, the order improperly delegates authority regarding visitation.

Findings

[In re P.L.E.](#), ___ N.C. App. ___ (August 15, 2023)

Held: Vacated and Remanded

- Facts: Juvenile was adjudicated neglected due to lack of proper care, supervision, or discipline and living in an environment injurious to her welfare where she was at risk for abuse based on non-accidental injuries sustained by her younger sibling while living in the family home. Mother was ordered to comply with her case, where she initially made progress but then failed to continue with that progress. At a permanency planning hearing, the court ordered a primary permanent plan of adoption with a secondary plan of guardianship. The court ceased reunification efforts and denied mother visitation with both juveniles while mother's misdemeanor child abuse charges were pending. Later, when mother made some progress with her case plan and one of the juvenile's therapy was suspended when the juvenile met her treatment goals, the court restored limited telephone and video contact with the juvenile. At the next permanency planning hearing, the court found the juvenile had resumed therapy based on regressive behaviors following initial video visits with mother, mother was not in full compliance with her case plan, and DSS recommended that the primary permanent plan be changed to guardianship. After hearing testimony from one of placement providers to whom guardianship was recommended and receiving an affidavit with financial information for the proposed guardians and after determining the parents acted inconsistently with their parental rights, the court changed the primary plan to guardianship, awarded guardianship and denied mother all visitation. Mother appeals the final permanency planning order.
- Permanency planning orders disallowing visitation are reviewed for abuse of discretion.
- G.S. 7B-906.1(d) lists criteria a court must consider at review and permanency planning hearings. G.S. 7B-906.1(d)(2) requires the court to consider and make written findings of "reports on visitation that has occurred and whether there is a need to create, modify, or enforce an appropriate visitation plan in accordance with G.S. 7B-905.1," which requires an order removing custody from a parent, guardian, or custodian or that continues the juvenile's placement outside the home to "provide for visitation that is in the best interests of the juvenile consistent with the juvenile's health and safety". Sl. Op. at 13 (quoting G.S. 7B-906.1(d)(2); G.S. 7B-905.1(a)).
- G.S. 906.1(e) lists additional criteria a court is required to consider and make written findings after any permanency planning hearing where the juvenile is not placed with the parent. These criteria center around whether or not it is possible for the juvenile to be placed with a parent within the next six months and if not, what disposition is appropriate.
- The court failed to make written findings and conclusions of law in the permanency planning order required by G.S. 7B-906.1(d) and (e). The record shows the court made a single finding relating to visitation which reflected the therapist's summary of the juvenile's behavior during and following the video visits with mother. Findings that "could support a potential conclusion it was not possible for [the juvenile] to be placed with [mother] within six months" are insufficient. The matter is remanded to make mandated written and supported findings required by G.S. 7B-905.1 and G.S. 7B-906.1(d) and (e).
 - Author's note: This opinion does not address the language of G.S. 7B-906.1(d) and (e) that requires the court to consider all the factors and make written findings of those

that are relevant, where a factor is relevant when there is conflicting evidence about the factor.

Disposition

Guardianship: Legal significance; ICPC home study

In re K.B., ___ N.C. App. ___ (August 1, 2023), appeal to NCSC

Held: Affirmed in Part, Vacated in Part, and Remanded

Dissent in part, Stroud, J.

- Facts: This matter involves three juveniles adjudicated neglected and dependent. All three juveniles were placed with their great aunt, a North Carolina resident, within a week of the petition’s filing. Following adjudication, the initial dispositional order set the primary plan as reunification and the secondary plan as custody with a court approved caretaker. The court continued to hold dispositional hearings and enter orders for the following three years, during which placement continued with their great aunt. During this time, the court ordered that the grandmother, a Georgia resident, be considered for placement and that an ICPC home study assessment be made by Georgia officials. A later order ceased reunification efforts and shifted the primary plan to guardianship with a secondary plan of adoption. After hearings over several months and prior to the completion of the grandmother’s home study, the court granted guardianship of the children to the great aunt and granted mother, a Georgia resident, voluntary electronic visitation twice a week. The court noted the matter closed, relieved DSS and the GAL of further responsibilities, but retained jurisdiction. Mother appeals.
- Before awarding guardianship, the court must determine the proposed guardian understands the legal significance of the placement pursuant to G.S. 7B-600. Specific findings are not required, but the record must show “the trial court received and considered adequate evidence on this point.” Sl. Op. at 3-4 (citation omitted).
- Evidence shows the trial court received adequate evidence of the guardian’s understanding of the legal significance of the placement. The court received evidence including that the children had been living with the great aunt for three years during which time she provided care such as scheduling and taking them to medical appointments and meeting teachers, and the great aunt testified that she wanted and was willing to continue providing care, understood her obligations to comply with court orders involving the children, and acknowledged the greater control of a guardian.
- The trial court should consider the children’s best interest when placing them in ‘out-of-home’ care, but “[p]lacement of a juvenile with a relative outside of this State *must* be in accordance with the Interstate Compact on the Placement of Children [ICPC].” G.S. 7B-903(a1).
- “Where the ICPC applies, ‘a child cannot be placed with an out-of-state relative until favorable completion of an ICPC home study.’” Sl. Op. at 5 (citation omitted) (emphasis in original). However, “[t]here is no obligation under the ICPC that a home study by completed to rule out an out-of-state relative as a placement option.” Sl. Op. at 5 (emphasis in original).
- No abuse of discretion to award guardianship to the great aunt, an in-state person, without the benefit of the completed previously ordered home-study of the grandmother, an out-of-state person. The order granting guardianship to the great aunt is based on the children’s best interests and supported by findings and conclusions, most notably that the juveniles had lived with the great aunt for three years and had bonded with her. “[I]t is only when a trial court

judge actually places a child with an out-of-state person that the trial court lacks discretion to make that placement without the benefit of a home study of that person, because such study is required under the ICPC.” Sl. Op. at 7 (emphasis in original).

- Stating in the decretal portion of the order that “the matter is closed and DSS and its counsel are released and relieved of further responsibilities regarding this matter,” but noting retention of jurisdiction, is not error. The clause is not read as preventing mother from filing motions in the future concerning her children, as her parental rights have not been terminated and she was granted visitation rights by the court. Sl. Op. at 7-8.
- Dissent: The majority improperly reviewed the issue concerning the home study requirement under the ICPC for “abuse of discretion rather than de novo,” as the issue addresses statutory compliance under G.S. 7B-903(a1). Dissent at 2 (citation omitted). Under the court’s prior caselaw, “the ICPC definitively applies to the situation here where there is a potential placement with an out-of-state relative, [g]randmother.” Dissent at 3-4. The court’s interpretation that the ICPC only applies when a child is actually placed with an out-of-state relative contradicts (1) the purpose the Juvenile Code in attaining permanency as soon as possible, and (2) the purpose of the ICPC to exchange information between states to ensure any outside placement is not contrary to the best interests of the juvenile. Whether the court must wait for a completed ICPC home study when considering a potential placement with an out-of-state relative is decided on a case-by-case basis. In this case, the court was required to wait for the home study evaluating the grandmother as a potential placement, who was identified within days of the filing of the petition as potential placement. The home study was ordered three times with only DSS at fault for not complying with the court’s orders, while mother and grandmother continued to assert the need for the study throughout the proceedings. It cannot be assumed that the placement decision would be the same if the home study were received, as without the home study, “it is impossible to be certain what we, the parties, or the trial court would learn about [g]randmother’s home or her capacity to care for more children.” Dissent at 9.

Guardianship: Verification of Understanding the Legal significance

[In re P.L.E.](#), ___ N.C. App. ___ (August 15, 2023)

Held: Vacated and Remanded

- Facts: Juvenile was adjudicated neglected due to lack of proper care, supervision, or discipline and living in an environment injurious to her welfare where she was at risk for abuse based on non-accidental injuries sustained by her younger sibling while living in the family home. Mother was ordered to comply with her case, where she initially made progress but then failed to continue with that progress. At a permanency planning hearing, the court ordered a primary permanent plan of adoption with a secondary plan of guardianship. The court ceased reunification efforts and denied mother visitation with both juveniles while mother’s misdemeanor child abuse charges were pending. Later, when mother made some progress with her case plan and one of the juvenile’s therapy was suspended when the juvenile met her treatment goals, the court restored limited telephone and video contact with the juvenile. At the next permanency planning hearing, the court found the juvenile had resumed therapy based on regressive behaviors following initial video visits with mother, mother was not in full compliance with her case plan, and DSS recommended that the primary permanent plan be changed to guardianship. After hearing testimony from one of placement providers to whom

guardianship was recommended and receiving an affidavit with financial information for the proposed guardians and after determining the parents acted inconsistently with their parental rights, the court changed the primary plan to guardianship, awarded guardianship and denied mother all visitation. Mother appeals the final permanency planning order.

- Permanency planning review orders are reviewed to determine “whether there is competent evidence in the record to support the findings [of fact] and whether the findings support the conclusions of law.” Sl. Op. at 6 (citation omitted). Any evidence that the court finds “relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition” may be considered at a permanency planning hearing. G.S. 7B-906.1(c).
- The court is required “to determine whether the proposed guardian ‘understands the legal significance of the appointment’ and ‘will have adequate resources to care appropriately for the juvenile.” Sl. Op. at 7; G.S. 7B-600(c), G.S. 7B-906.1(j). “The record must contain competent evidence demonstrating the guardian’s awareness of [their] legal obligations,” which can be satisfied by testimony of a desire to take guardianship, signing a guardianship agreement acknowledging an understanding of guardianship, and social worker testimony of a guardian’s willingness to assume legal guardianship. Sl. Op. at 7 (citation omitted).
- Joint guardianship requires sufficient evidence that both persons understand the legal significance of guardianship appointment.
- There was insufficient evidence that the proposed guardians jointly understood the legal significance and responsibilities of guardianship. Although the testimony of one of the proposed guardians confirmed the information in the financial portion of the affidavit was accurate, the section about the understanding of the legal significance of the appointment was not addressed by the testimony or the DSS or GAL reports. The affidavit that was entered into evidence was not signed by either proposed guardian nor notarized. No other evidence was offered to support the finding that either, let alone both, proposed guardians understood the legal significance of the guardianship appointment.

Termination of Parental Rights

Subject Matter Jurisdiction

G.S. 7B Jurisdiction

In re M.A.C. & S.X.C., ___ N.C. App. ___ (October 17, 2023)

Held: Affirmed

Dissent, Hampson, J.

- Facts: Mother appeals order terminating her parental rights to her two minor children on the ground that the trial court lacked subject matter jurisdiction under G.S. 7B-1101. Mother’s two children resided with their paternal Grandparents and their Father pursuant to a consent order from August 2017 until their father’s death in March 2019. Mother moved out of state following entry of the consent order and ceased contact with the children. Following their Father’s death, the children continued to live exclusively with their Grandparents in Columbus County. The Grandparents filed verified petitions to terminate Mother’s parental rights to the two children in June 2021, later amended in August 2021. The petitions alleged that the two children resided with the Grandparents in Columbus County and that each child was “present in” Harnett County (a different judicial district than Columbus County) at the time of the filing of the petitions.

Mother filed unverified answers motioning to dismiss the petition for lack of personal jurisdiction, insufficiency of service of process, and failure to state a claim. At the TPR hearing, Mother's motions were denied and the court concluded that grounds to terminate Mother's parental rights had been established and that termination was in the juvenile's best interests.

- Whether a trial court possesses subject-matter jurisdiction is reviewed de novo. "Absent subject-matter jurisdiction, a trial court cannot enter a legally valid order infringing upon a parent's constitutional right to the care, custody, and control of his or her child." Sl. Op. at 4 (citation omitted). A court's subject-matter jurisdiction can be challenged "at any stage of the proceedings, even for the first time on appeal." Sl. Op. at 4 (citation omitted).
- "A verified pleading containing factual allegations that satisfy the statutory requirements for invoking the trial court's subject matter jurisdiction is sufficient to raise 'the prima facie presumption of rightful jurisdiction.'" Sl. Op. at 7. The party challenging the court's jurisdiction has the burden to rebut the "prima facie presumption of rightful jurisdiction which arises from the fact that a court of general jurisdiction has acted in the matter." Sl. Op. at 4 (citation omitted).
- G.S. 7B-1101 grants a trial court exclusive original jurisdiction over any petition or motion relating to termination of parental rights to any juvenile who resides in or is found in the district at the time of filing of the petition or motion. Binding precedent of the court of appeals has interpreted "found in" to mean "physically present in[.]" Sl. Op. at 10 (citation omitted).
- Grandparent-petitioners invoked the prima facie presumption of rightful jurisdiction upon filing verified TPR petitions containing factual allegations that included the children were present in Harnett County at the time the petitions were filed. The allegation of the children's presence is sufficient to satisfy the jurisdictional requirement that the children be "found in" the judicial district where the action was filed, Harnett County.
- Mother did not carry her burden to rebut the prima facie presumption of rightful jurisdiction. The only competent evidence in the record regarding the physical presence of the two children at the time of the filing of the petition is the verified TPR petitions. "The allegations of a verified juvenile petition that support the trial court's subject-matter jurisdiction, and which remain uncontested by competent evidence throughout the proceedings, may sufficiently determine the threshold issue of the court's jurisdiction." Sl. Op. at 12. Though Mother's filed answers denying that the two children were present in Harnett County at the time of the filing of the petition, Mother's answers were unverified and therefore not competent evidence and not considered by the court. It is immaterial that there is no statutory requirement that an answer be verified. Mother also failed to dispute the allegation at the TPR hearing.
- The court confines this holding "to the sole issue of the sufficiency of competent record evidence to support the trial court's conclusion that it possessed subject-matter jurisdiction." Sl. Op. at 12.
- Dissent: The presumption of rightful jurisdiction only applies when it is not inconsistent with the record. In this case, Mother's answer denied the jurisdictional allegations in the petitions that the children were present in Harnett County at the time of the filing of the petitions. Beyond the "conclusory allegations in the petitions," the Grandparent-petitioners did not present any evidence to support the court's finding that the children were found in Harnett County at the time of the filing of the petitions. The record contains no evidence to support the finding that the children were present in Harnett County when the petition was filed such that the court lacked subject matter jurisdiction.

Appointment of Counsel

Forfeiture of Counsel

This opinion is also summarized and discussed in the On the Civil Side blog post, [Parents Forfeited Their Right to Court-Appointed Counsel in TPR: What Is the Law for Attorney Representation of Parents in A/N/D and TPR Actions?](#)

In re D.T.P., ___ N.C. App. ___ (November 7, 2023)

Held: Affirmed

- **Facts:** Mother and Father appeal from orders terminating their parental rights, challenging the trial court’s conclusion that each parent forfeited their right to court-appointed counsel requiring the parents to appear pro se at the TPR hearing. During the period between DSS filing neglect petitions in 2017 and 2018, through to the TPR in 2022, Father had five and Mother had six different court appointed attorneys. Mother and Father filed invalid appeals to the Court of Appeals and the U.S. Supreme Court. Mother and father used the procedure of having their attorneys withdraw right before the TPR hearing in order to obtain a continuance. Together, acting pro se, mother and father filed a civil action against their appointed counsel while the TPR proceedings were pending, resulting in a motion to withdraw. In the TPR order, the trial court made the above findings and concluded the parents’ conduct was egregious, dilatory, and abusive; undermined the purposes of their right to counsel by making their representation impossible; and prevented the TPR proceedings from timely occurring.
- “A trial court’s conclusion that a parent waived or forfeited [their] statutory right to counsel in a termination of parental rights proceeding is a question of law ... reviewed de novo.” Sl. Op. at 6 (citation omitted). A court’s ruling is reviewed on appeal to determine whether the trial court’s findings are supported by competent evidence, and if so, whether those findings support its conclusion that ‘respondent parents each separately and together forfeited their right to court appointed counsel by their deliberate acts’ ”. Sl Op. at 7 (citation omitted).
- G.S. 7B-1101.1 provides the parent in a termination of parental rights proceeding the right to counsel, and appointed counsel in cases of indigency, unless the parent knowingly and voluntarily waives their right. G.S. 7B-1101.1(a), (a1).
- “The right to court-appointed counsel is not absolute; a party may forfeit the right ‘by engaging in ‘actions [which] totally undermine the purposes of the right itself by making representation impossible and seeking to prevent a trial from happening at all’ ”. Sl. Op. at 8 (citations omitted). A conclusion of forfeiture is limited to when the parent’s conduct is “egregious dilatory or abusive.” Sl. Op. at 8 (citation omitted).
- The trial court’s findings are supported by competent evidence, including Mother’s invalid appeal from a memo of the trial court; Father’s invalid appeal to the U.S. Supreme Court, which he testified that he did not expect the Court to accept; several motions and orders allowing for withdrawal and appointment of counsel; both Parents’ testimony that they understood withdrawal and appointment of counsel would lead to a continuance; and the Parents’ pro se civil suit against their appointed counsel and their acknowledgement of their intent to force the attorneys’ withdrawal.
- The trial court’s findings are sufficient to support the conclusion that the Parents’ actions were egregious, dilatory, and abusive conduct that undermined the purpose of their right to

appointed counsel, making their representation impossible to prevent the TPR trial from happening.

Adjudication

Appellate Review: Single Ground

In re E.Q.B., ___ N.C. App. ___ (August 1, 2023)

Held: Affirmed in Part, Vacated in Part

- Facts: This is an appeal of a private TPR, where father’s rights were terminated on the grounds of abandonment, neglect by abandonment, and neglect. The court of appeals affirmed the ground of abandonment and discussed the jurisprudence regarding the affirmation of one ground is sufficient to support a TPR order.
- “An adjudication of any single ground for terminating a parent’s rights under G.S. 7B-1111(a) will suffice to support a termination order,” and the court need not review any of the remaining grounds challenged on appeal once the court has affirmed one particular ground for termination exists. Sl. Op. at 12 (citation omitted).
- “This opinion recognizes that the validity of additional grounds for termination may be relevant and impact a parent’s ability to regain their parental rights in a reinstatement of parental rights action pursuant to G.S. 7B-1114 (effective October 1, 2011). In that action, the court must consider whether the parent seeking reinstatement has “remedied the conditions which led to the juvenile’s removal and termination of the parent’s rights.” G.S. 7B-1114(g)(2).
- “As we affirm the trial court’s finding of abandonment in accordance with G.S. 7B-1111(a)(7), we need not review either of the remaining grounds for the purposes of the termination of parental rights,” “as resolving these issues would have no practical effect on the case.” Sl Op. at 12, 13. Further, father has not argued for reconsideration of the court’s “single ground” jurisprudence.

Willfully Leaving Child in Placement

In re K.N., ___ N.C. App. ___ (December 19, 2023)

Held: Affirmed

- Facts: Mother appeals the termination of her parental rights to two children based on the grounds of abuse, neglect, and willfully leaving the children in foster care for more than 12 months and her failure to make reasonable progress to correct the conditions which led to their removal. DSS became involved in 2018 and the children were ultimately adjudicated abused, neglected, and dependent in 2019 based on circumstances involving Mother’s inappropriate discipline resulting in criminal charges and convictions, and mother’s mental health and failure to comply with in-home services. Throughout disposition, Mother failed to complete many of the ordered services and activities in her case plan, including demonstrating the ability to meet the basic and therapeutic needs of her children, including creating a stable home environment and engaging and cooperating in the treatment of one of the children’s therapeutic treatment; and recommendations adopted by the court relating to her mental health and irrational behavior, including consistently taking her medication and participating in cognitive therapy and substance use treatment. DSS filed the TPR motion in June 2021, which was granted and entered on December 21, 2022. In its order, the court made findings based on witness testimony and from findings and conclusions in permanency planning orders.

- A trial court’s adjudication of grounds to terminate parental rights are reviewed to determine “whether the findings of fact are supported by clear, cogent[,] and convincing evidence and whether the findings support the conclusions of law.” Sl. Op. at 13 (citation omitted). Conclusions of law are reviewed de novo. Sl. Op. at 13.
- G.S. 7B-1111(a)(2) authorizes a trial court to terminate parental rights after “the parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile.” Sl. Op. at 13, *quoting* G.S. 7B-1111(a)(2). Termination under this ground requires a “two-step analysis” to determine both whether the parent willfully left the child in foster care for more than 12 months and the parent’s failure to make reasonable progress in correcting the conditions that led to their child’s removal. Sl. Op. at 13 (citation omitted). A parent’s “prolonged inability to improve her situation, despite some efforts in that direction, will support a finding of willfulness . . . and will support a finding of lack of progress . . .” Sl. Op. at 14 (citation omitted). Noncompliance with the case plan can only support termination if there is “a nexus between the components of the court-approved case plan with which the respondent failed to comply and the conditions which led to the child’s removal from the parental home.” Sl. Op. at 14 (citation omitted).
- Mother challenges nine findings of fact as not supported by clear and convincing evidence, and further argues that several findings are improperly based upon judicially-noticed facts from prior court orders. The challenged findings were supported by the evidence, including witness testimony. “While a trial court ‘may not rely *solely*’ on judicially-noticed evidence from prior hearings or rely on evidence ‘from prior dispositional orders, which have a lower standard of proof[,]’ a trial court may use testimony from former hearings to corroborate additional testimony received at the current adjudicatory hearing.” Sl. Op. at 12 (emphasis in original) (citation omitted). There must be some oral testimony at the TPR hearing and that testimony corroborated the judicially-noticed facts from the prior permanency planning orders resulting in the court making an independent determination of the new evidence presented at the TPR hearing.
- Unchallenged findings support that the children were placed in foster care from the time of their removal in November 2018 through the life of the case, satisfying the first requirement of G.S. 7B-1111(a)(2) that the juvenile was willfully left in placement outside of the home for more than 12 months before the TPR motion was filed.
- Mother failed to make reasonable progress in correcting the conditions that led to the children’s removal. Mother admitted she did not consistently take prescribed medication to manage her bipolar disorder and had ceased taking the medication altogether since becoming pregnant. Mother failed to create and maintain a stable living environment and to actively treat and manage her behaviors resulting from her mental health condition relating to violence and aggression toward her children, evidenced by Mother terminating her treatment with her therapist and bringing another child alleged to have participated in the over-discipline of the other two children back into her home. These components of her case plan address the issues that contributed to the circumstances of the children’s removal from her home and Mother’s noncompliance support termination.

In re A.N.R., ___ N.C. App. ___ (November 21, 2023)

Held: Affirmed

- Facts: Juvenile was placed in DSS custody upon filing of a dependency petition in September 2021. The juvenile was adjudicated in November 2021 and ordered to remain in DSS custody while Mother completed services and activities with the goal of reunification. DSS filed a TPR motion in October 2022 after Mother failed to complete many of the ordered services and activities, including supervised visits at DSS, substance abuse assessment and treatment, stable housing, and maintaining legal, verifiable income. The TPR was granted on the grounds of neglect and willfully leaving the juvenile in placement outside of the home for more than 12 months and failing to show reasonable progress had been made in correcting the conditions which led to removal of the juvenile. Mother appeals, challenging nine findings of fact relating to her progress as unsupported.
- A trial court’s adjudication of grounds for termination are reviewed to determine “whether the trial court’s findings of fact ‘are supported by clear, cogent, and convincing evidence and whether the findings support the conclusions of law’ ”. Sl. Op. at 6 (citation omitted). “[I]t is the responsibility of the trial court to weigh testimony, pass upon the credibility of witnesses, and draw reasonable inferences from the evidence[.]” Sl. Op. at 11 (citation omitted). Conclusions of law are reviewed de novo. Sl. Op. at 6.
- G.S. 7B-1111(a)(2) authorizes terminating a parent’s rights when the parent willfully leaves the child in placement outside of the home for more than 12 months and fails to show that reasonable progress has been made in correcting the conditions which led to removal of the juvenile. The trial court may look to evidence up until the time of the TPR adjudicatory hearing to assess the parent’s reasonable progress in correcting the conditions that led to the child’s removal. Sl. Op. at 6. “A parent’s ‘prolonged inability to improve [their] situation,’ . . . will support a finding of willfulness regardless of [their] good intentions[.]” Sl. Op. at 6 (citation omitted).
- Unchallenged findings support that the child was placed in DSS custody in September 2021 and remained in DSS custody at the time the TPR motion was filed in October 2022, satisfying the first requirement of G.S. 7B-1111(a)(2) that the juvenile was willfully left in placement outside of the home for more than 12 months before the TPR motion was filed.
- Challenged findings, except the disregarded finding relating to the description of Mother’s pending charges at the time of the hearing, are supported by clear, cogent, and convincing evidence, including mother’s stipulation at adjudication, her certified criminal record, her admissions and testimony and DSS social worker testimony. Record evidence supports challenged findings of Mother’s sporadic and minimal visits with the child; failure to appear for DSS supervised visits; history of substance abuse issues, criminal history related to possession, and periods of incarceration; failure to show for requested drug screens or obtain a substance abuse assessment or engage in treatment; and failure to fully complete parenting classes on her own. Although mother was incarcerated, which limited her ability to complete some components of her case plan, she was released for at least five months and did not address the issues required of her, such as obtaining stable housing. Together with the unchallenged findings relating to Mother’s unstable housing, frequent incarceration, and failure to provide proof of income to support the child, these findings support the conclusion that Mother failed to make reasonable progress in correcting the conditions that led to the child’s removal.

Abandonment; Obstruction of Ability to Contact

In re C.J.B., ___ N.C. App. ___ (September 5, 2023)

Held: Reversed and Remanded

- **Facts:** Father appeals the order terminating his parental rights on the ground of willful abandonment. Mother and Father executed a 2011 consent order shortly after the child at issue was born in which they agreed to joint custody of the child, Mother was given primary custody, and Father was ordered to pay monthly child support. Father was incarcerated in Indiana from 2014 to 2017 following two felony convictions relating to sexual misconduct against a minor. Upon release in 2017, Father was subject to restrictive parole conditions which included an absolute bar to any form of contact or communication with any minor child, including his biological child, without prior approval from the Indiana Parole Board. Father petitioned the Parole Board for modification of his parole conditions in 2017 and 2019, which were denied. Mother filed the termination petition in June 2021. Father again petitioned the Parole Board for modification of his parole conditions in 2021 after the filing of the petition, which was denied. Father appeared at the adjudication hearing while incarcerated for a sex offense charge in North Carolina. Father challenges two findings of fact as unsupported by the evidence and argues the court’s conclusion of willful abandonment is unsupported by the findings.
- **Standard of review:** A trial court’s adjudication that a ground exists to terminate parental rights is reviewed “to determine whether the findings are supported by clear, cogent, and convincing evidence and the findings support the conclusions of law.” Sl. Op. at 6 (citation omitted). Conclusions of law that a ground exists to terminate parental rights are reviewed de novo.
- **An ultimate finding is a finding supported by other evidentiary facts reached by natural reasoning.** Sl. Op. at 9. Findings of ultimate fact are conclusive on appeal “if the evidentiary facts reasonably support the trial court’s ultimate finding [of fact.]” Sl. Op. at 7 (citation omitted).
- **G.S. 7B-1111(a)(7)** authorizes the termination of parental rights on the grounds of willful abandonment if the trial court finds that that the parent “has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion.” Sl. Op. at 8 (citing G.S. 7B-1111(a)(7)). The determinative period for adjudicating willful abandonment is the six months preceding the filing of the petition, though the trial court can look to a parent’s conduct outside of the determinative period “in evaluating a parent’s credibility and intentions.” Sl. Op. at 8.
- **“Abandonment implies conduct on the part of the parent which manifests a willful determination to [forgo] all parental duties and relinquish all parental claims to the child.”** Sl. Op. at 11 (citation omitted). The trial court’s “findings must clearly show that the parent’s actions are wholly inconsistent with a desire to maintain custody of the child.” Sl. Op. at 11. Willful intent is a factual determination of the trial court.
- The challenged finding that Father failed to make sufficiently reasonable efforts to request approval from the Parole Board to allow contact with his child post-release is an ultimate finding. This ultimate finding of Father’s intentions is supported by the evidentiary facts regarding the frequency of Father’s attempts to modify his parole conditions.
- The trial court’s finding of fact that Father did not send any cards, letters, gifts, or tokens of affection to the child during the determinative period fails to address Father’s restrictive parole conditions that barred contact without approval of the Parole Board. This finding is disregarded

to the extent the finding implies Father “possessed the ability to contact [the child] without subjecting himself to a real and significant risk of criminal prosecution.” Sl. Op. at 10.

- The findings are insufficient to sustain a conclusion of willful abandonment. Though undisputed that there was no contact during the determinative period, Father remained current on his child support obligations during the determinative period and petitioned the Parole Board for modification of his parole conditions after the TPR petition was filed. Father completed tests required for consideration of any modification of his parole conditions, and promptly petitioned the Parole Board for modification of his parole conditions in 2017 and again in 2019. These findings show Father’s actions are “not consistent with a parent who has manifested a willful determination to forgo all parental duties and all parental claims to the child.” Sl. Op. at 12.
- Although Father’s conduct in Indiana is reprehensible, it is not willful abandonment. The court will not speculate on other grounds for termination not alleged in the petition and the holding does not prevent Mother from bringing a new TPR petition.

[In re E.Q.B.](#), ___ N.C. App. ___ (August 1, 2023)

Held: Affirmed in Part, Vacated in Part

- Facts: Father challenges adjudication order terminating his parental rights of three children and dispositional order prohibiting contact with the children. Mother and father were married with two children. The couple divorced during a period of father’s incarceration and had a brief reconciliation following father’s release, during which time mother became pregnant with their third child. The couple again separated during father’s subsequent incarceration, during which their third child was born. After father’s release, father briefly lived with mother and the children, during which time mother paid all expenses. The couple again separated in January 2020. Father began calling mother and threatening her and the children. Mother blocked father from contacting her by phone and changed her phone number. In March, April, and July 2020, father sent money and toys through a relative to send to the mother for the children, but since the couple’s final separation, father did not attempt to communicate or otherwise offer support to the children. Father was again incarcerated from September through December 2020. In December, upon release, father moved to Arizona. In February 2021, mother obtained a temporary domestic violence protective order (DVPO) against father, which became a final order in April 2021. In March 2021, mother filed the petition to terminate father’s parental rights. After hearing, the court issued the TPR order based on abandonment, neglect by abandonment, and neglect by failure to provide proper care. The court also ordered father to have no further communication or contact with the children. Father appeals.
- An adjudicatory order is reviewed to determine “whether the findings are supported by clear, cogent, and convincing evidence and the findings support the conclusions of law, with the trial court’s conclusions of law being subject to de novo review.” Sl. Op. at 6 (citations omitted).
- G.S. 7B-1111(a)(7) authorizes termination of a “party’s parental rights when it finds that the parent ‘has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion.’ ” Sl. Op. at 6. “To find abandonment, the trial court must find that the parent’s conduct ‘manifests a willful determination to forego all parental duties and relinquish all parental claims to the child[,]’ but the relevant inquiry is limited to the statutory period of six months.” Sl. Op. at 7 (citations omitted).

- Challenged findings regarding the parties’ relationship and father’s failure to provide care, financial support, a safe and loving home, and emotional support to the children are supported by clear, cogent, and convincing evidence. Mother testified as to the time periods of their relationship, her provisions of total financial support for the children, her provision of a home for the children since birth, the children’s injuries when left alone with father in the past, and the older children’s desire to stay away from their father.
- The findings support the court’s conclusion of abandonment. “The obstruction of a parent’s ability to contact the children is relevant to the court’s consideration; however, the trial court must consider the parent’s other actions and inactions in determining the impact of the obstruction on the parent’s lack of contact.” Sl. Op. at 1. Although mother obtained a temporary DVPO that was in effect for one and a half months of the determinative six-month period, it did not prohibit contact with the children. Mother blocked father after repeated threatening phone calls. During the determinative statutory period from September to March, father was incarcerated from September to December, moved to another state following release without attempting to see the children, and, while calling mother repeatedly, did not contact his children. Father did not offer any excuse for not seeking custody or signing a voluntary support agreement when the court found he had the means, opportunity, and ability to do so. Father did not provide financial or emotional support for the children.
- The DVPO did not preclude contact with his children.

[In re A.N.B.](#), ___ N.C. App. ___ (August 15, 2023)

Held: Affirmed

- Facts: This is an appeal of a private TPR that mother initiated against father. In 2015, Mother initiated a Chapter 50 custody proceeding, which resulted in a custody order that granted mother primary physical custody of the child and father visitation. Father was arrested for driving while impaired and misdemeanor child abuse two years later, in December 2017, during an incident where father and his brother were found passed out from a drug overdose in a car, stopped at a red light, with the child at issue and her half-sibling in the back seat without any child seats or restraints. Mother took custody of the child from the scene; father survived, and this was the last date father saw the child. Mother filed a motion to modify the custody order, which was granted in 2020 and awarded mother sole custody, allowed paternal grandparents to intervene and awarded them visitation, and restricted father from all visitation unless the parties agreed. Mother filed a TPR petition against father in July 2021 on the grounds of willful abandonment and willful failure to pay child support ordered by the court. Conflicting evidence was presented at the adjudication hearing concerning father’s attempts to contact mother or child, mother’s obstruction of father’s attempts to contact mother or child, and father’s contribution to gifts for the child given by the paternal grandparents. The TPR was granted on the ground of willful abandonment. Father appeals for insufficient findings.
- At adjudication in TPR cases, the standard of review is “whether the findings of fact are supported by clear, cogent and convincing evidence and whether these findings, in turn, support the conclusions of law.” Sl. Op. at 19 (citation omitted).
- G.S. 7B-1111(a)(7) allows the court to terminate parental rights upon a finding that “the parent has willfully abandoned the juvenile for at least six months immediately preceding the filing of the petition or motion.” The supreme court has further stated that the ground of abandonment

“implies conduct on the part of the parent which manifests a willful determination to forego all parental duties and relinquish all parental claims to the child.” Sl. Op. at 20 (citation omitted). The determinative time period is the six months immediately preceding the filing of the TPR petition, but the court may look to a parent’s conduct outside of that time period to assess a parent’s intent and willfulness. Willfulness is a question of fact.

- Challenged findings are supported by competent evidence and other unchallenged binding findings establish abandonment. The finding addressing father’s testimony that he contributed some money toward gifts provided by the grandparents to the child but no other evidence was offered to support this testimony resolves the conflict in the evidence about father’s contributions and that he did not make any.
- “[T]he trial court is not required to make findings of fact on all evidence presented, nor state every option it considered.” Sl. Op. at 24 (citation omitted) “Even when there is evidence in the record to the contrary, ‘[i]f the trial court’s findings of fact are supported by ample, competent evidence, they are binding on appeal.’ ” Sl. Op at 25 (citation omitted).
- Findings are sufficient and support conclusion of willful abandonment. Concerning the conflicting evidence of father’s attempts to contact the child and mother’s “interposed obstacles,” “[t]he trial court reviewed both parties’ evidence and made detailed findings resolving the factual issues presented at the termination hearing, and these findings reveal the trial court ultimately concluded that the mother’s version of events [regarding father’s efforts to contact the child] was more credible.” Sl. Op. at 25. Regarding father’s argument that mother prevented access to the child, the court held that “even if there is evidence that a petitioner has attempted to prevent the respondent from having access to the minor child, if the respondent still has some means available to contact the child or establish access, the trial court may find evidence of the respondent’s willful intent to abandon the child by remaining absentee and not trying to contact the child by any means necessary.” Sl. Op. at 27. Father was not prevented from contacting mother or child in the 2020 custody order, father failed to seek modification of the custody order to reinstate visitation, and findings demonstrate father did not attempt to contact mother or child by phone, text, email, or mail, or contact mother in any way to inquire as to the child’s education, health, or safety during the determinative period.

Conception Resulting from Sexually Related Criminal Offense

[In re N.J.R.C.](#), ___ N.C. App. ___ (November 7, 2023)

Held: Affirmed

- Facts: This is a private TPR initiated by Mother. Mother and Father engaged in sexual relations that resulted in the conception of the child at issue while Mother was 15 and Father was 21. Father was convicted of taking indecent liberties with a child. The trial court terminated Father’s parental rights on several grounds including his conviction of a sexually related offense resulting in conception of the child. Father appeals and argues that his conviction of indecent liberties with a child is not a “sexually related offense” authorizing termination.
- TPR orders are reviewed to determine “whether the findings of fact are supported by clear, cogent, and convincing evidence and whether [the] findings . . . support the conclusions of law.” Sl. Op. at 3 (citation omitted). Conclusions of law are reviewed de novo.
- G.S. 7B-1111(a)(11) authorizes termination of parental rights upon finding “the parent has been convicted of a sexually related offense under Chapter 14 of the General Statutes that resulted in

the conception of the juvenile.” G.S. 7B-1111(a)(11). This ground was “intentionally drafted in a manner broad enough to encompass not only acts and offenses which may explicitly involve sex, but also offenses associated with sex or that have some sexual component.” Sl. Op. at 5.

- G.S. 14-201.1 defines the crime of taking indecent liberties with children, and while criminalizing certain actions “which are not explicitly required to be sexual acts,” the crime “unequivocally contains a sexual component”, which includes arousing or gratifying a sexual desire. Sl. Op. at 4, 5. Appellate precedent cites the offense as sexual in nature. The definition of “sexually violent offense” at G.S. 14-208.6(5) includes taking indecent liberties with children. As a result, the crime of taking indecent liberties with children constitutes a “sexually related offense” within the meaning of G.S. 7B-1111(a)(11). See Sl. Op. at 6-7.

Disposition

Best Interests Findings

[In re K.N.](#), ___ N.C. App. ___ (December 19, 2023)

Held: Affirmed

- **Facts:** Mother appeals the termination of her parental rights to two children based on the grounds of abuse, neglect, and willfully leaving the children in foster care for more than 12 months and her failure to make reasonable progress to correct the conditions which led to their removal. The Court affirmed the trial court’s adjudication of the ground for termination in G.S. 7B-1111(a)(2). Mother challenges the trial court’s dispositional determination that termination of her parental rights was in the best interest of both children.
- A trial court’s dispositional findings of fact are reviewed to determine “whether they are supported by the evidence received during the termination hearing.” Sl. Op. at 16 (citation omitted). “The trial court’s assessment of a juvenile’s best interests at the dispositional stage is reviewed for [an] abuse of discretion.” Sl. Op. at 16 (citation omitted).
- In determining whether termination is in the child’s best interests, G.S. 7B-1110(a) lists factors a trial court must consider and make findings regarding those relevant, including the child’s age, their likelihood of adoption, whether termination will aid in accomplishing the child’s permanent plan, the parent-child bond, the child’s bond with any proposed adoptive parent or other placement, and any other relevant considerations.
- The trial court did not abuse its discretion in determining termination of Mother’s parental rights was in the best interests of both children. Findings included the age of the children and Mother’s inability to provide a safe and stable home; the children’s likelihood of adoption (one very likely and a possibility for the other following continued therapeutic treatment) and that termination would aid in accomplishing their primary plans of adoption; the children’s bond with their Mother (both maintaining a desire not to live with their Mother); and the children’s bond with proposed placements (finding one of the children has bonded with their foster parents who expressed a commitment to adoption).

Limited Authority

[In re E.Q.B.](#), ___ N.C. App. ___ (August 1, 2023)

Held: Affirmed in Part, Vacated in Part

- **Facts:** Mother initiated a TPR against father, which was granted. Father appeals by challenging the adjudication order terminating his parental rights of three children and dispositional order

prohibiting contact and communication with the children. Father had a long history of repeated incarcerations, made threatening phone calls to mother, and was subject to a DVPO prohibiting contact between himself and mother. This summary focuses on the dispositional argument that the court had no authority to prohibit contact and communication between father and the children in the dispositional portion of the TPR order.

- Although father argued the court issued a no-contact order when entering the dispositional order prohibiting contact and communication between father and the children, “[t]here is no indication in the Record that the trial court attempted to issue its no-contact order under Chapter 50B.” Sl.Op. at 14.
- The court abused its discretion by restricting father’s ability to contact the children. No provisions of G.S. Chapter 7B authorize a trial court to issue a no-contact order in a G.S. Chapter 7B case. The trial court lacked statutory authority to include the no-contact provision in its dispositional order, therefore the court must vacate that portion of the order.

Appeal

Writ of Certiorari

In re A.N.B., ___ N.C. App. ___ (August 15, 2023)

Held: Affirmed

- **Facts:** This matter involves a private TPR initiated by mother where father’s parental rights were terminated on the grounds of willful abandonment. Father appealed the adjudication based on insufficient findings. Father failed to serve notice of appeal on the child’s GAL. Father filed a petition for writ of certiorari (PWC) as an alternative ground for review in the event the court of appeals found the potential lack of service to the child’s GAL a jurisdictional issue. This summary discusses the PWC and notice of appeal.
- Rule of Appellate Procedure 3.1 requires a party seeking appeal under G.S. 7B-1001(a) to file the notice of appeal with the clerk of superior court pursuant to G.S. 7B-1001 and serve copies of the notice of appeal on all other parties. There is no case law addressing whether this failure is a jurisdictional defect under Appellate Rule 3.1.
- Relying on previous opinions interpreting Appellate Procedure Rules 3 (civil) and 4 (criminal), a party’s failure to serve their notice of appeal on all parties is a non-jurisdictional defect that must be “assessed for whether the party’s noncompliance is a ‘substantial or gross violation of appellate rules.’” Sl. Op. at 16 (citation omitted).
- Father acknowledged in the PWC that notice of appeal was not served on the child’s GAL; however, the court found “there is no indication in the record . . . that any party would be prejudiced” if the court were to hear father’s appeal. Sl. Op. at 17. The GAL appeared to have actual notice of appeal, was present at Father’s hearing on his Rule 60 motion after father filed notice of appeal, and did not raise any issue with the court regarding service in an appellate brief, response to the PWC, or motion to dismiss the appeal.
- PWC denied as “superfluous” upon the court concluding “that any error in service made by [Father] is non-jurisdictional and is not a substantial or gross violation of the appellate rules.” Sl. Op. at 17 (citation omitted).

Role of Child's GAL; Waive Issue

[In re A.N.B.](#), ___ N.C. App. ___ (August 15, 2023)

Held: Affirmed

- **Facts:** This matter involves a private TPR initiated by mother against father. Father filed an answer denying the allegations. The court appointed the public defender's office as the GAL for the juvenile. The public defender's office delegated the GAL duties to a licensed attorney, per local rules. The GAL completed an investigation and prepared a GAL court report in which termination of father's parental rights was recommended. The GAL testified at the dispositional hearing. Father did not raise objections or concerns about the GAL's role and need for the juvenile to have separate legal representation. The TPR was granted on the grounds of willful abandonment. Father appeals, asserting the trial court erred by failing to appoint an attorney for the minor child and failing to make sufficient findings of fact to support its conclusions. Father also filed a Rule 60 motion raising the failure to appoint separate legal representation for the child. This summary focuses on father's challenge regarding the role of the child's GAL.
- Rule of Appellate Procedure 10(a)(1) states that "[i]n order to preserve an issue for appellate review, a party must have presented to the trial court a timely . . . objection, or motion, stating the specific grounds for the ruling the party desired to make if the specific grounds were not apparent from the context." Sl. Op. at 17-18.
- G.S. 7B-1108 determines when a GAL is appointed for a child in a TPR proceeding. The court of appeals has held that violations of G.S. 7B-1108 are not automatically preserved for appellate review. Sl. Op. at 18 (citation omitted).
- Father did not preserve the issue of the attorney's role as the child's GAL for appellate review. Father failed to object at trial regarding the attorney's role as the child's GAL or the need for separate legal representation for the child.
- Appellate Rule 2, which allows the appellate court to suspend or vary the requirements of any appellate rule of procedure, is used cautiously and in exceptional circumstances, which do not exist here.

UCCJEA

Subject Matter Jurisdiction: From Temporary to Home State

This opinion is also summarized and discussed in the On the Civil Side blog post, [UCCJEA: Transitioning from Temporary Emergency Jurisdiction to Home State Jurisdiction in A/N/D Cases](#)

[In re N.B. & N.W.](#), ___ N.C. App. ___ (July 5, 2023)

Held: Affirmed

- **Facts:** Mother and four children lived in Washington State. This case involves two of the children who relocated to North Carolina. In October 2020, Mother separated from husband and began relocating with her children to North Carolina. Two of the children were picked up by an aunt and brought to NC later that month. In December, DSS received a report of sexual abuse by mother's husband of one of the children staying with the aunt. In January 2021, Mother travelled with one of the children involved in this case to Pennsylvania. DSS filed petitions regarding all four children in January 2021 (the petitions for two of the children who relocated to Pennsylvania were voluntarily dismissed). Mother returned to North Carolina with the other child who is the subject of this case and appeared before the court on February 4, 2021. The

court exercised temporary emergency jurisdiction to enter nonsecure custody orders for the two children. In March, the court held the adjudication hearing, at which time the mother had relocated to Charlotte. The court entered its adjudication and disposition order on July 6, 2022, after determining NC had home state jurisdiction and adjudicated one of the children as a neglected and dependent juvenile and the other as a neglected and abused juvenile, continued DSS custody, suspended Mother's visitation, and ceased reasonable efforts for reunification with Mother. Mother appeals and only challenges the court's subject matter jurisdiction over the proceedings under the UCCJEA.

- "Whether a court possesses subject matter jurisdiction is a question of law, which this Court reviews de novo on appeal." Sl. Op. at 5 (citation omitted).
- "The jurisdictional requirements of the UCCJEA must be satisfied for a court to have authority to adjudicate petitions filed pursuant to our Juvenile Code." Sl. Op. at 6.
- G.S. 50A-204 "provides that the courts of this State may exercise 'temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.'" Sl. Op. at 8-9 (citation omitted). It is uncontested that NC was not the home state of any of the children at the commencement of the proceedings as none of the children had resided in the State for six months, and that the trial court properly exercised temporary emergency jurisdiction at the initiation of the proceedings. The trial court had temporary emergency jurisdiction to enter the initial, temporary nonsecure custody orders.
- This State can become the home state of the child if a child-custody proceeding has not been or is not commenced in a court of a state having home state jurisdiction under N.C.G.S. §§ 50A-201 through 50A-203, whereby the child-custody determination made by the court in this State exercising temporary emergency jurisdiction can be declared the final determination if so provided. G.S. 50A-204(b). Applying *In re M.B.*, 179 N.C. App. 572 (2006), a case with nearly identical facts, the trial court properly declared that NC had obtained home-state jurisdiction under the UCCJEA after it initially exercised temporary emergency jurisdiction. At the time of the adjudication and disposition order, the children and Mother had lived in North Carolina for well over six months and no other custody order existed in any other state with jurisdiction. NC acquired home state jurisdiction.

Subject Matter Jurisdiction

Rook v. Rook, ___ N.C. App. ___ (September 19, 2023)

Held: Vacated and Remanded to determine whether NC court has subject matter jurisdiction

- **Facts:** Mother appeals custody order entered by a North Carolina court for lack of subject matter jurisdiction under the UCCJEA. Child was born in North Carolina in 2002 and resided with mother and father. In 2019, Mother moved out of the home with the child, and Mother and Father entered into a separation agreement that gave Mother legal and physical custody and Father a minimum of bi-monthly accompanied visitation. Later in 2019, Mother filed for custody. In 2020, Mother filed for a domestic violence protection order (DVPO), and an ex parte DVPO was entered. In May 2020, Mother voluntarily dismissed her custody complaint and moved to Utah with the child. In October 2020, five months later, Mother filed a petition for custody in Utah. At the end of November 2020, Father filed a complaint and motion for ex parte

temporary custody in North Carolina. The court denied Father’s request for the ex parte temporary custody order and scheduled a hearing on temporary custody in December. Mother filed a motion to dismiss Father’s complaint for lack of subject matter jurisdiction and requested a judicial conference, which she later voluntarily dismissed. In 2021, the North Carolina court entered an order that directed judicial communication with the Utah court, and in February 2021, a consent order on subject matter jurisdiction was entered for the North Carolina court to determine custody of the child. The North Carolina court entered a temporary custody order that incorporated the terms of the separation agreement and granted primary custody of the child to Mother and later ordered Mother to return the child to North Carolina for the duration of the custody trial in North Carolina. In March 2022, a permanent custody order was entered by the North Carolina court that granted joint custody to Mother and Father and awarded Father authority to make final decisions regarding the child if the parents disagreed. Mother was prohibited from taking the child outside of the State except to visit family in Virginia; and Father was instructed to enroll the child in a North Carolina school.

- The standard of review of whether a court possesses subject matter jurisdiction under the UCCJEA is a matter of law reviewed de novo.
- “The jurisdictional requirements of the UCCJEA must be met for a court to have power to adjudicate child custody disputes.” Sl. Op. at 8 (citation omitted). “Subject matter jurisdiction cannot be conferred by consent, waiver, or estoppel.” Sl. Op. at 6 (citation omitted).
- The UCCJEA includes four bases for a trial court to obtain subject matter jurisdiction over an initial custody determination, which include obtaining jurisdiction as a court in the child’s home state or by a court of the home state of the child declining to exercise jurisdiction on the ground that this State is the more appropriate forum. G.S. 50A-201(a)(1), (2).
- “A child’s ‘home state’ is ‘the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of the proceeding.’” Sl. Op. at 7 (citing G.S. 50A-102(7)).
- The North Carolina court lacked subject matter jurisdiction to enter the March 2022 custody order. The record does not indicate whether North Carolina possessed subject matter jurisdiction over the custody determination under one of the four grounds under the UCCJEA. The trial court’s findings show Mother moved to Utah with the child in May of 2020, more than six months before father filed his custody complaint. If Utah declined jurisdiction, it was required as the court of the home state to make findings that another state is the more appropriate forum before declining to exercise jurisdiction. See G.S. 50A-207 and 208. The record does not include findings from the Utah court determining that North Carolina is the more appropriate forum and that it was declining to exercise its jurisdiction. The consent order on subject matter jurisdiction is ineffective.

Adoption

Consent

In re B.M.T., ___ N.C. App. ___ (January 2, 2024)

Held: Affirmed

- Procedural history: This is an appeal of a district court order concluding Father’s consent was required for adoption of the child. The court of appeals previously found no error in the district court’s determination, concluding that the criteria of G.S. 48-3-601(2)b.4.II. had been met to

require Father's consent. Father had provided reasonable and consistent payments for the support of the child and Mother in accordance with his financial means and had communicated with and visited with Mother while pregnant and the child after birth. The supreme court granted a PDR and issued an order that reversed and remanded to the court of appeals for "consideration of any outstanding issues on appeal." In this opinion, the court of appeals affirmed the district court's conclusion that father's consent was required on a different basis.

- Facts: Mother directly placed the child with the prospective adoptive parents without Father's knowledge or consent. Prior to the prospective adoptive parents filing a petition for adoption of the child in North Carolina, Father and Mother executed a Voluntary Acknowledgement of Paternity (VAP) with the State of Tennessee, which was the child's home state. In his Appellee's Brief, Father argues that the VAP executed prior to the filing of the adoption served as legitimation under TN law, requiring his consent to adoption of the child under G.S. 48-3-601(2)b.3.
- Under G.S. 48-3-601(2)b.3., "[i]n a direct placement, consent is required of a man who may or may not be the biological father but who '[b]efore the filing of the [adoption] petition, has legitimated the minor under the law of any state[.]' " Sl. Op. at 3. Tennessee law provides that (1) a legally executed VAP constitutes a legal finding of paternity on the individual named, and (2) that establishing paternity equates to establishing legitimation (unlike in NC).
- Unchallenged findings include that before the adoption petition was filed in NC, Father filed a VAP in Tennessee, which included notarized signatures of both Mother and Father; a certified copy of the VAP was an exhibit in the adoption proceeding; and that Tennessee was the home state of the child and under TN law a VAP requires a father's consent to adoption.
- Father's consent was required under G.S. 48-3-601(2)b.3. The VAP filed in TN constitutes legitimation under TN law, and this legitimation occurred prior to the filing of the adoption petition.