

## Adjudicating Grounds to TPR

### Abandonment Scenario (*In re C.J.H.*, 240 N.C. App. 489 (2015))

TPR petition is filed by mother on March 4, 2018 and alleges abandonment under G.S. 7B-1111(a)(7). The hearing is May 19, 2018.

The petition includes facts that state the following. For the last 6 years, since mother and father broke up, father has not lived up to his parenting responsibilities. In 2014, mother obtained a child support order because father hadn't paid anything. Father was taken back to court every year for nonpayment of child support. In February 2018, his taxes were intercepted to pay child support arrearages. Father rarely visited the child since the break-up and never calls. He did not visit at all in 2016. Father did ask for a visit in August of 2017 after mother sent him a letter asking him to consent to her husband adopting the child. In December 2017, father sent a Christmas card and gift and asked for a visit.

Father is served with the petition on March 15<sup>th</sup>. On March 20<sup>th</sup>, father sent a child support payment to mother. On April 2, 2018, father called and asked to speak with child. On April 20<sup>th</sup>, father sent another child support payment.

Question 1:

What is the determinative time period to determine abandonment.

Question 2:

Assuming all the facts are proved by clear and convincing evidence, is this abandonment?

Question 3:

What if abandonment alleged under 7B-1111(a)(1) (neglect), what is the determinative time period?

### Scenario for Abuse/Neglect: prior and likelihood of future abuse/neglect

A 4 month old has been adjudicated abused and neglected based on multiple fractures caused by non-accidental injury. The adjudicatory order found both parents were jointly responsible as they were the sole caregivers. At a PPH, the court finds reasonable efforts would clearly be unsuccessful and contrary to the child's health and safety and orders a primary permanent plan of adoption. DSS files the TPR.

The court hears the TPR and makes the following findings.

The parents, as the only caretakers for the child, are responsible for the child's injuries. The Court cannot determine if a parent does not know what happened, knows what happened and will not tell on the other parent, or is the parent who inflicted the injuries. The Court currently cannot separate the parents as to culpability and has no way to address the issues as long as each parent maintains his/her current position that he or she did not injure the child and does not know how the child was injured.

On the dates of this TPR hearing, the perpetrator of the juvenile's abuse still has not been identified. Respondent-mother and respondent-father were sole caretakers for the juvenile; however, neither respondent-mother nor respondent-father has accepted responsibility for the child's injuries.

The Court hoped that the parenting capacity evaluations would identify who caused the injuries and why. The Court's hope was based on a level of culpability being established which would allow determination of whether reunification could occur with a non-offending parent or issues could be rectified with an offending parent so that the child could be returned to her home.

The Court has exhausted the available resources except for the possibility of a forensic interrogation, which could possibly lead to criminal charges against one, or both, of the parents.

Each parent has abused and neglected the juvenile within the meaning of GS 7B-101. The juvenile is less than 18 years of age and the parent inflicted or allowed to be inflicted upon the juvenile a serious physical injury by other than accidental means; created or allowed to be created a substantial risk of serious physical injury to the juvenile by other than accidental means. The juvenile did not receive proper care, supervision, or discipline from the parent and/or lived in an environment injurious to her welfare. Repetition of abuse or neglect is probable.

The juvenile would be at risk if placed back in the home with the respondent-mother and/or the respondent-father because the perpetrator of the juvenile's injuries has never been identified.

Parents appealed arguing the court cannot TPR without specifically finding that either Respondent was the perpetrator of the child's injury.

What do you think?