

Child Welfare Case Update

Social Services Attorneys Winter Conference, 2016

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In re R.R.N. (p. 3)

- **Caretaker**
 - “Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting.”
 - “means ... an adult relative entrusted with the juvenile's care.”



Adult Relative

Do you have...

a mother or a
step-mother?
an aunt? a
grandmother?



a father or a
step-father?
an uncle? a
grandfather?



a brother? a cousin?



a sister?



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“Entrusted with the Juvenile’s Care”

- Totality of Circumstances Test of Significant Degree of Parent-Type Responsibility
 - Duration
 - Frequency
 - Location
 - Decision-Making Authority



Neglect: 7B-101(15)

- Definition
- **Additional requirement**
 - must be some physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment as a result of the neglect



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Neglect: 7B-101(15)

- “A juvenile ... who is not provided necessary medical care; or... remedial care”



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In re C.B. (p. 7)

- 10 y.o. twin sisters: SB and CB
- SB multiple psychiatric hospitalizations
 - Violent (assaulted officer, school staff)
 - Erratic behavior (run away from staff)
- Mom: not participate in discharge planning
 - Not accept diagnosis (fever & seizures)
 - Not consent to available PRTF
 - Not obtain in home services

Adjudication



- No meaningful mental health services that could of prevented or mitigated S.B.'s need for repeated hospitalizations
- Dissent
 - Disagreement over treatment recommendations
 - Mom's constitutional right includes right to choose other care

Neglect: 7B-101(15)

- "A juvenile who lives in an environment injurious to the juvenile's welfare"

Neglect

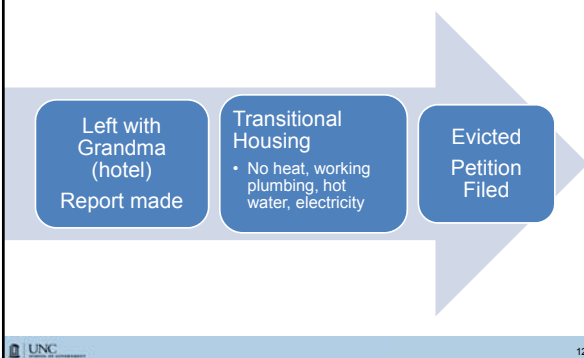
- “In determining whether a juvenile is neglected, it is relevant whether that juvenile lives in a home ...where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home”

C.B. also Neglected



- CB exposed to SB's violent/erratic behaviors
 - Mom's testimony: “held hostage”
- Failure to get treatment for SB impacted CB, so exposure would continue
- Risk of harm

In re Q.A. (p. 6)



Stipulations: children's circumstances prior to petition

girls

Dad in jail

Adjudicate

boys

Dad available

Order: Dismiss & Place with Dad

Mom Appeals

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Abuse: 7B-101(1)c.

- “uses or allows to be used ...cruel or grossly inappropriate procedures ...or devices to modify behavior”
- In re F.C.D. (p. 5)
 - ✓Told possessed by demons, began to believe it
 - ✓Forced to sleep outside 2 nights (Feb)
 - ✓Blindfolded and forced self-baptism in bathtub
 - ✓Repeatedly hit with belt
 - ✓Tied to tree with duct tape

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Abuse: 7B-101(1)c.

- “uses or allows to be used ...cruel or grossly inappropriate procedures ...or devices to modify behavior”

Definition focuses on the severity and brutality of procedures and devices, **NOT** the child's behaviors

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Factors

- Age
- Environment
- Cause child some physical, mental, or emotional impairment or creates substantial risk of such

In re F.C.B. (p.6)

- Sister not physically harmed
- Witnessed:
 - Exorcism
 - Bathtub baptism
 - Forced to sleep outside
 - Psychologist – evaluation – testimony that distressing for here, cause fear/worry, emotional abuse
- Injurious environment and risk of harm

Neglect: No Risk of Harm



- In re J.R. (p. 6)
- Safety Plan: both parents
 - NO CONTACT WITH DAD
Conviction: indecent liberties w/ a minor
 - Arrested for Probation Violation
19 m.o. son sitting on dad's lap on bus
 - mom lost housing
 - Petition Filed



Findings: injurious environment & lived in home of another child abused/neglected

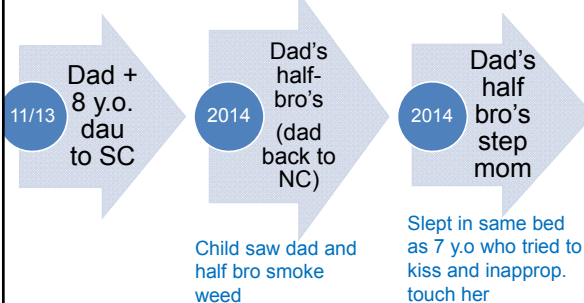
- Mom had older children previously removed
 - No evidence of why/circumstances
- No evidence RF regularly lived in home
- No evidence of risk of harm
 - No evidence of facts underlying conviction (age, nature of offense)

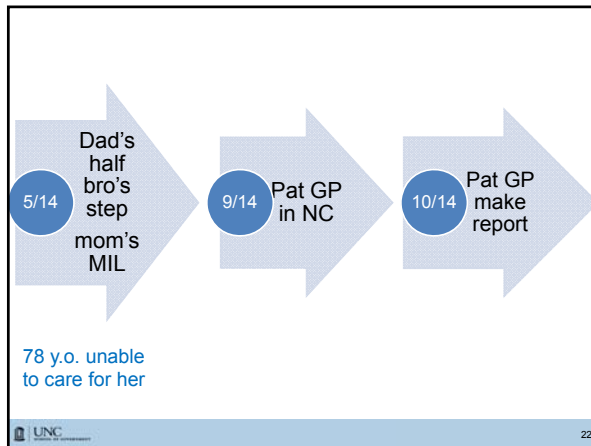
Housing Instability

- No evidence of risk of harm
 - Always had shelter
 - 10 days left at shelter = post petition
 - Housing instability
 - Did not impede mom's care or supervision
 - Did not expose child to injurious environment
- Totality of evidence

Out of State Acts

- In re T.N.G. (p. 7)





Adjudication

- Did not receive proper care, supervision, or discipline from parent, guardian, custodian or caretaker
- Has been abandoned
- Lives in an environment injurious to her welfare
- At substantial risk of harm

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UCCJEA: G.S. 50-201(a)(2)

- No home state
 - Past 6 months in SC
 - No parent/person acting as parent or child living in SC
 - Signification connection other than physical presence in NC
 - Substantial evidence available in NC

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Disposition Authority: -904

- Maintain stable employment
- Obtain DV offender assessment and follow recs
- **NEXUS** addendum to petition
 - RF reports unemployed and unable to care for child
 - DSS has concerns of admitted DV history

G.S. 8C-803(24): other hearsay exception

- Written notice to adverse party sufficiently in advance of intended admission of intention to offer statement, the particulars of it & name and address of declarant

G.S. 8C-803(24):

- Equivalent circumstantial guarantee of trustworthiness
- Evidence of material fact
- More probative on point it is offered than any other evidence proponent obtain through reasonable efforts
- General purpose of rules and interests of justice served by admission

In re M.A.E. (p. 4)

- 8 y.o. sister sexually abused by 12 y.o. brother
 - Told DSS worker while at school in a private room
 - Video interview with forensic interviewer at advocacy center

G.S. 8C-803(24):

- – Equivalent circumstantial guarantee of trustworthiness
 - Evidence of material fact
- – More probative on point it is offered than any other evidence proponent obtain through reasonable efforts
 - General purpose of rules and interests of justice served by admission
- Standard: Abuse of Discretion

Other Evidence: Child's Testimony

- Testimony of therapist of effect
 - Confusion, anxiety, and trauma
 - May not be truthful: feelings of guilt
- Findings and conclusions
 - Detrimental to child's welfare
 - Cause anxiety
 - Hamper progress in therapy
 - Age

Trustworthiness

- What are the circumstances when the statement was made?
- Factors
 - Personal knowledge of the events
 - ★ Motivated to be truthful
 - Any recantations
 - Whether available for cross-examination at trial

The interview

- Comfortable and safe environment
 - Interviewer adhered to protocol
 - No leading questions
 - Age appropriate language
 - Demeanor (Not appear afraid/upset)
- = Motivated to speak the truth

Presumption of competency

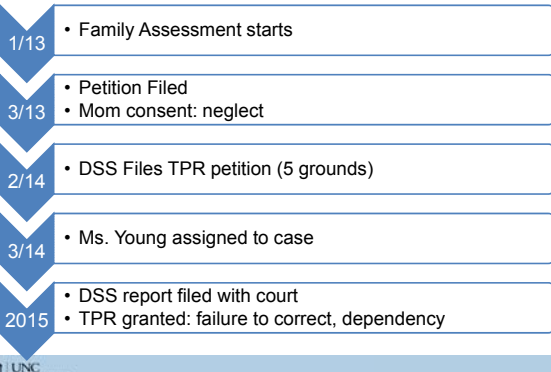
- Truth vs lie
- Able to express self
- Therapist testimony

Abuse: 7B-101(1)(d)

- “any juvenile... whose... parent ... permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile...”

- 12 y.o. offender
- 8 y.o. victim

DSS Record (In re C.R.B., p. 4)



Hearsay Objections

- **SW testimony based on DSS report**
- Objections preserved
 - Motions to strike testimony of events before 8/14
 - No first hand knowledge of mom's lack of progress and mental health issues



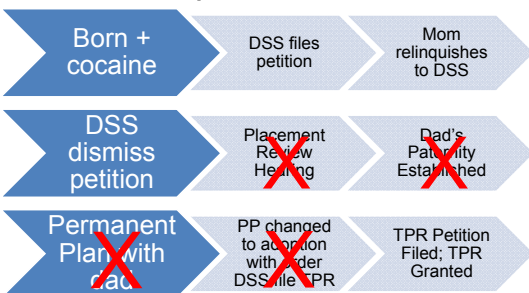
G.S. 8C-803(6) Business Records

- A report...in any form, of act, events, conditions, opinions, or diagnoses
- made at or near the time ... by a person with knowledge
- If kept in the course of regularly conducted business activity and
- In the regular practice of that business to make that report
- As shown by testimony of custodian or other qualified witness

Laying the Foundation

- By witness familiar with records and methods
- No requirement record be authenticated by person who made them
- RE: contents
 - If record is admissible, witness can testify about the contents of the records if familiarized herself with the record

Where's A.L. (p.6)? Find the Gap In Jurisdiction



TPR: 7B-1111(a)(3)

- For 6 months before TPR, **failure to pay reasonable portion of cost of care** although physically and financially able to do so
 - Placed in custody of DSS, licensed child-placing agency, child-caring institution, or foster home

Placed in DSS custody

- In re A.L. (p. 11)
- Relinquishment
 - Placed in the custody to DSS

Placed in Foster Care

- In re E.L.E. (p. 14)
- 2010: Adjudicated neglected
- 2012: 7B-911 custody to mat. great aunt/uncle
- 2013 private TRP petition

Foster Care, G.S. 131D-10.2(8):

- private residence of 1 or more people who permanently reside in the household and
- who provide continuing full time foster care for
 - child placed there by child placing agency or
 - Placed by court order
 - 2 or more children who are unrelated to adult members by blood, marriage, guardianship, or adoption
 - Related by blood



ICPC

- Placement in foster care
- Rholetter vs. AAICPC regs

