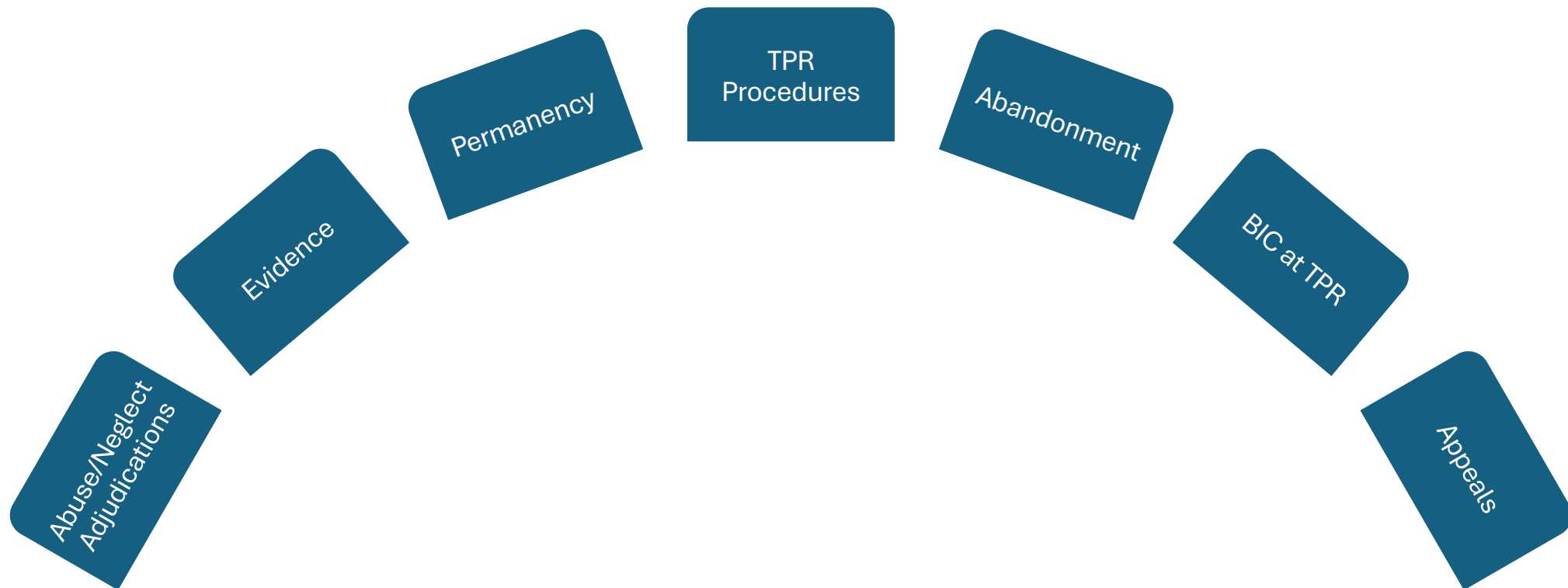
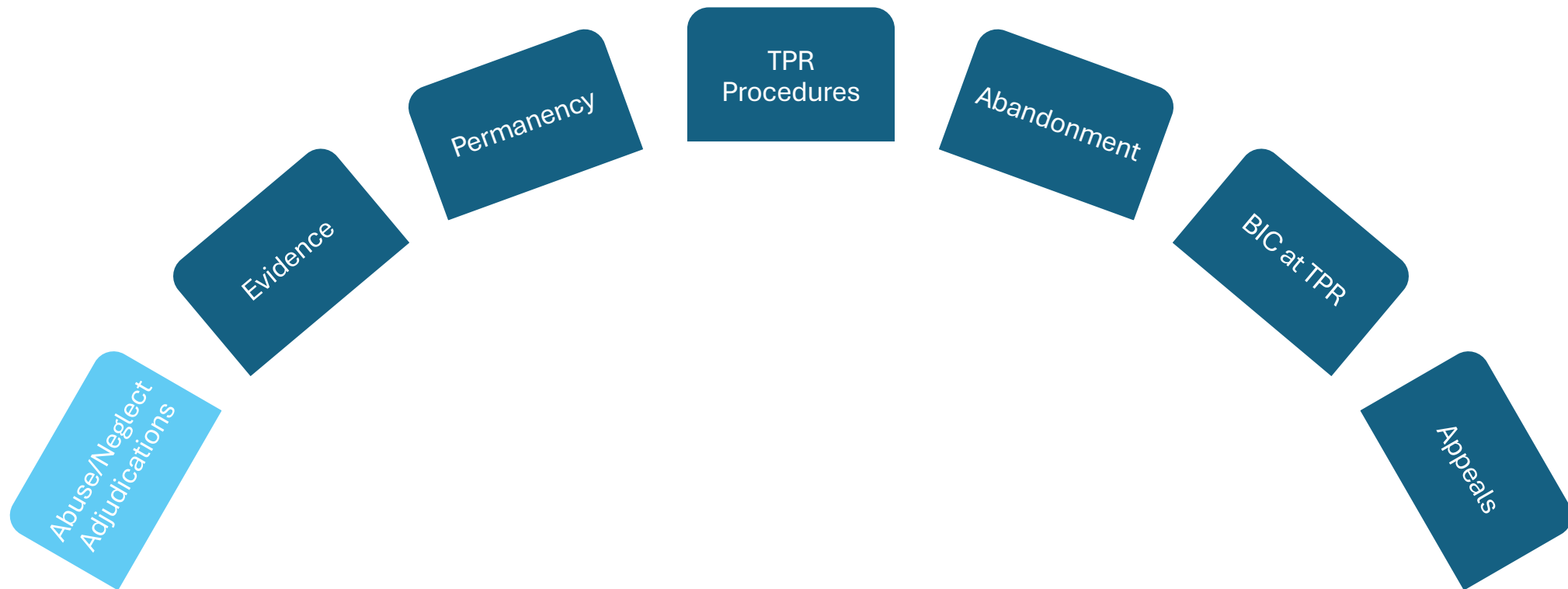


Case Law Update Part I

Sara DePasquale
UNC School of Government





Emotional Abuse 7B-101(1)e.

Serious emotional damage evidenced by juvenile's severe anxiety, depression, withdrawal, or aggressive behavior towards self or others

Sexual abuse allegations by mom against dad

In re B.C. (p.10)

- Mother coached children
- Unnecessary evaluations
- Alienate children from father
- Did not acknowledge impact on children

In re K.E.P. (p.14)

- Multiple evaluations
- No requirement to find reports were made in bad faith (G.S. 7B-309 immunity not apply)

Is this serious
physical injury by
nonaccidental
means?
In re A.D.W. (p.15)

10 y.o. with Type 1 diabetes

- Insulin monitoring
- Diet
- Medical appointments

Multiple hospitalizations

- Diabetic ketoacidosis
- Acute kidney damage
- High risk of death

Serious Physical Injury

Not defined in
Juvenile Code

G.S. 14-318.4 an
injury that causes
great pain and
suffering

Substantial Risk Created



PARENT IS AWARE



FAILS TO TAKE NECESSARY
STEPS TO PROTECT MINOR



INCLUDES MEDICAL
ISSUES AND TREATMENT

Neglect

In re L.C. (p.10)

- Substance use
- Per mom: home “infested with rats”
- TSP – no unsupervised contact
- 2 days later, TSP violated
- Petition filed
- Juvenile adjudicated
- COA vacated: finding lacked specificity re: harm

No requirement of specific finding of harm (In re G.C.)

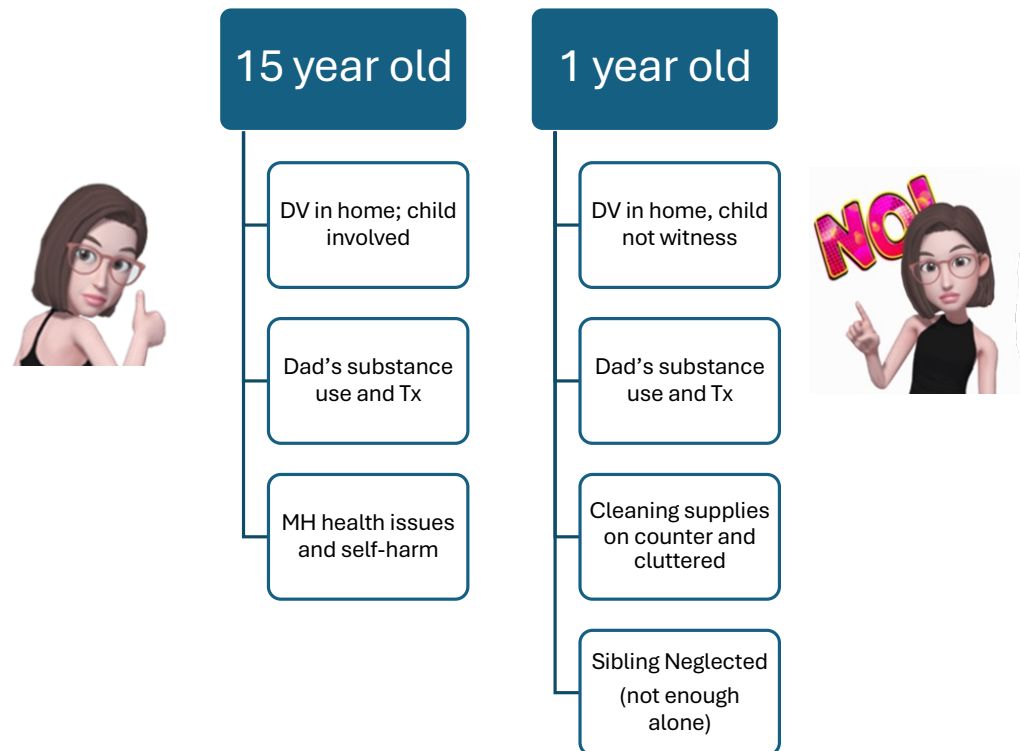
- Findings are sufficient
 - Ongoing illegal substance use
 - + at birth
 - Drug use on day siblings born
 - Claimed infested with rats
 - Access to unsecured needles
 - Blacks out
 - Uncooperative with DSS
 - Violated safety plan

- Injurious environment
- Lacked proper care, supervision, discipline

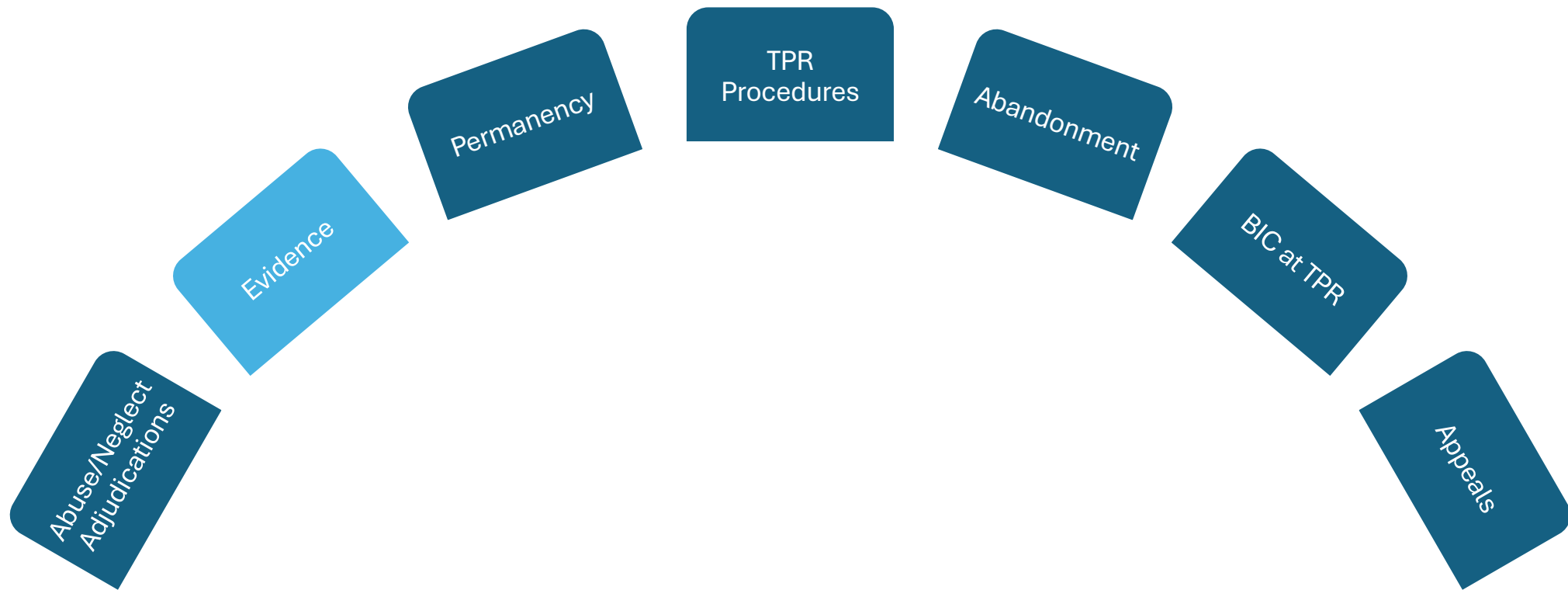
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ULTIMATE

Neglect: Reasonable Inferences, Weight of Evidence, Risk of Harm



In re G.B.G. (p.22)



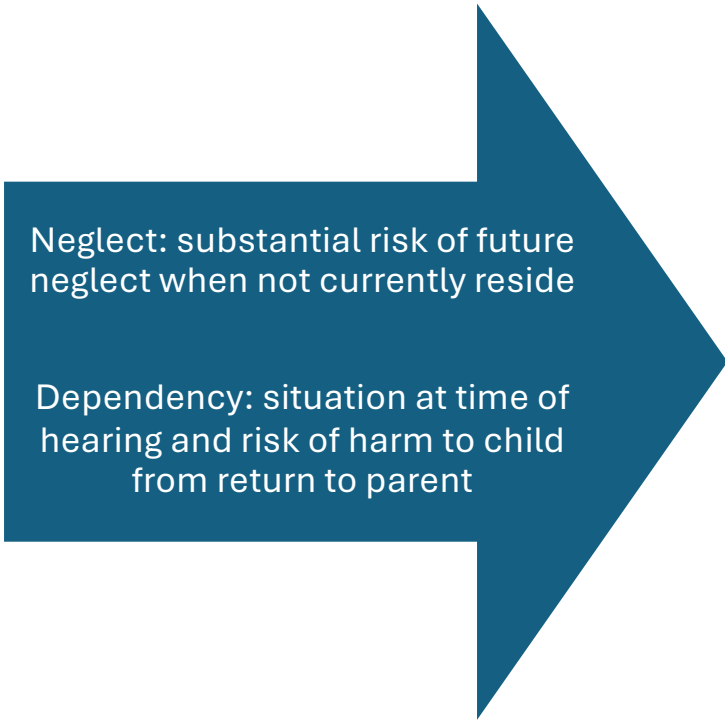
Evidence

In re A.J. (p.20)



L.N.H.

No post-petition evidence



Neglect: substantial risk of future neglect when not currently reside

Dependency: situation at time of hearing and risk of harm to child from return to parent

Mental Illness

1

Court observed
hostile behavior

2

Not follow case
plan

3

Need expert
testimony or
admissible
documentary
evidence Dx

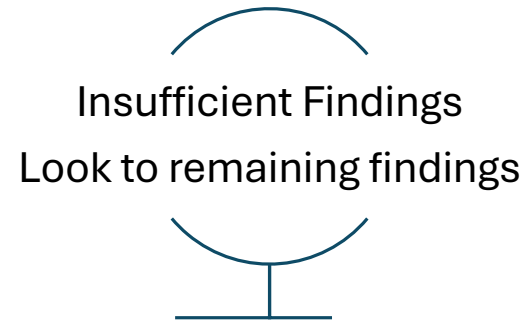
In re K.C. (p. 25) “Fixed and ongoing circumstance”

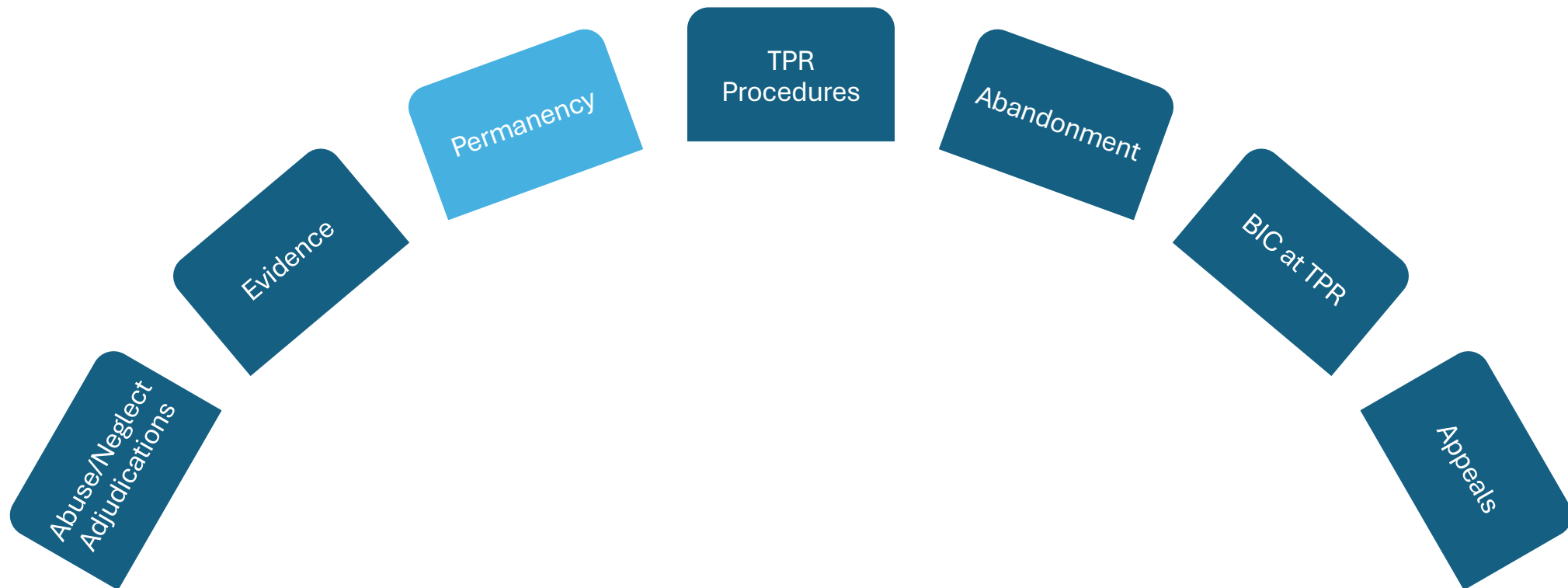


- Does evidence support harm based on behavior alleged in petition



Appellate Review







Initial Disposition: No Reasonable Efforts Impact on PPO

In re H.G. (p. 31)

Findings under G.S.
7B-901(c) excludes
reunification as a
permanent plan

Notice not required

PPH Oral testimony required

In re J.A.S.F. (p.34)



COURT OF APPEALS
PRECEDENT



NOT ADDRESSED BY
SUPREME COURT

Relative Placement In re L.L. (p. 35)



G.S. 7B-903(a1)

the juvenile's home state.

(a1) In placing a juvenile in out-of-home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile. In placing a juvenile in out-of-home care under this section, the court shall also

NO REQUIRED FINDINGS!

prior to *any* consideration of a non-relative placement.”). To be sure, it would be functionally impossible for the trial court to determine which placement option is in the “best interests” of the juvenile without considering and comparing all the placement options.⁷

Eliminate Reunification Findings

In re L.L. (p. 40)

G.S. 7B-906.2



(d) At any permanency planning hearing under subsections (b) and (c) of this section, the court shall make written findings as to each of the following, which shall demonstrate the degree of success or failure toward reunification:

- (1) Whether the parent is making adequate progress within a reasonable period of time under the plan.
- (2) Whether the parent is actively participating in or cooperating with the plan, the department, and the guardian ad litem for the juvenile.
- (3) Whether the parent remains available to the court, the department, and the guardian ad litem for the juvenile.
- (4) Whether the parent is acting in a manner inconsistent with the health or safety of the juvenile.

7B-906.2(b) ~~=====~~

NC Supreme Court Opinion Clarifies and Changes Findings Required in A/N/D Orders

This entry was contributed by Sara DePasquale on January 21, 2025 at 7:38 am and is filed under Child Welfare Law.



On December 13, 2024, the NC Supreme Court published *In re L.L.*, an appeal of a permanency planning order (PPO) that awarded custody to a non-parent. In the PPO, the court awarded permanent custody to the child's foster parents rather than the child's maternal grandfather. In achieving this permanent plan, the court eliminated reunification with the child's mother as a permanent plan. The issues for appeal focused on whether the trial court made the necessary statutory findings for placement with a non-relative and for eliminating reunification as a permanent plan. The Court of Appeals held the required findings were not made. See 291 N.C. App. 402 (2023) (unpublished). The Supreme Court reversed the Court of Appeals and addressed what findings are required for both non-relative placement and the elimination of reunification as a permanent plan. The answer may surprise you and will have an impact on court orders moving forward.

Incarceration

In re M.L.H. (p.45)



Voluntary = lack of commitment to reunification

Verification of custodian: 7B-906.1(j)

In re A.J.J. (p. 39)

Understand
legal
significance

- One in couple may testify about both

Parent's Constitutional Rights

In re K.C. (p. 27)

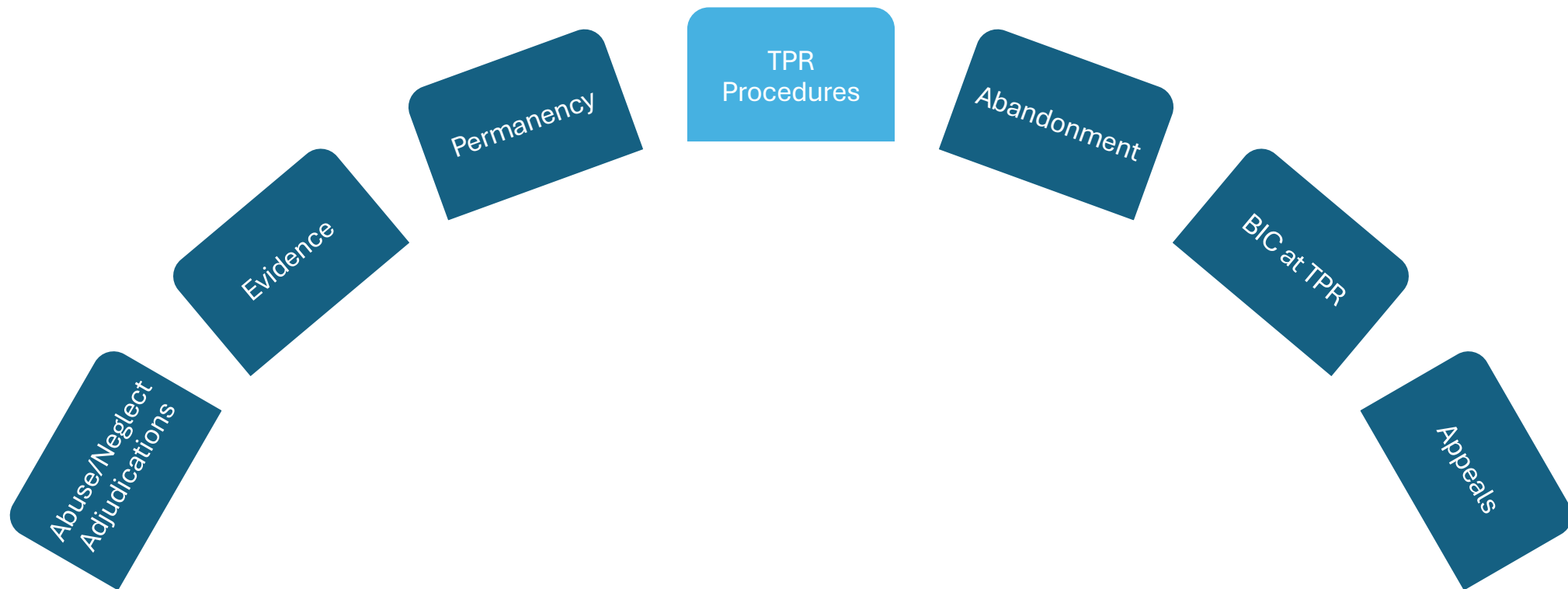


N.C. Supreme Court Clarifies When and How to Preserve Parents' Constitutionally Protected Rights for an A/N/D Appeal

This entry was contributed by Timothy Heinle on January 13, 2025 at 11:05 am and is filed under Child Welfare Law, Constitutional Issues, Juvenile Law.



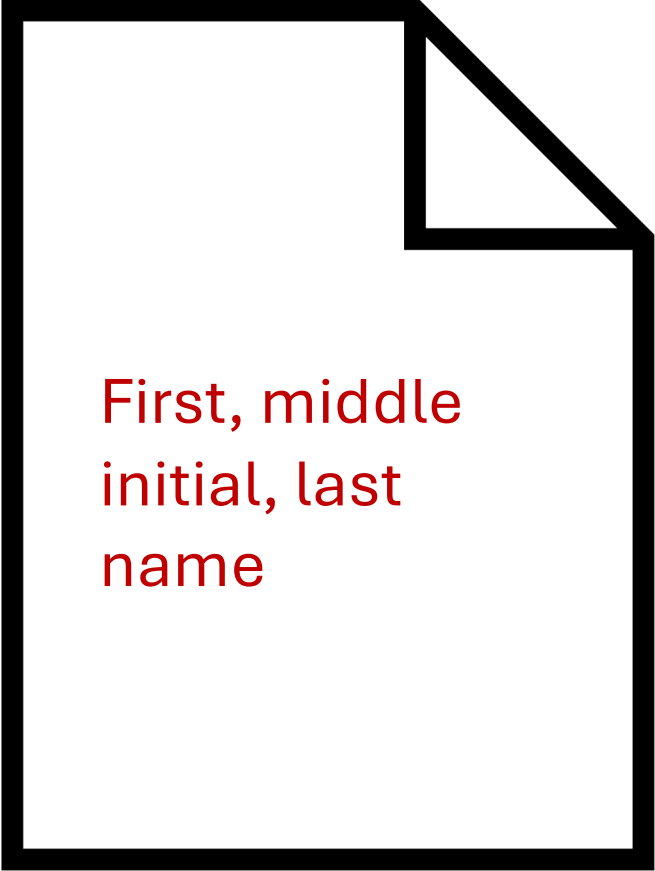
Five-year-old Katy* has experienced a lot in her young life. As a baby in her mother's care, Katy was exposed to substance use and domestic violence, leading to a county department of social services (DSS) petition alleging Katy was neglected. DSS and Katy's parents established a safety plan for her to live with her father. Katy was later adjudicated neglected. At initial disposition, the trial court was asked for the first time to consider removing Katy from her father, who was not the subject of allegations in the petition, based on concerns over his criminal history. The trial court agreed with DSS, granting temporary custody of Katy to paternal relatives. *In re K.C.*, __ N.C. __ (Dec. 13, 2024).



Child's Name in TPR Petition

In re A.J.B. (p.51)

- 7B-1104: Full legal name on birth certificate
- Identity of child



First, middle
initial, last
name

Remanded:
Respondent must
show prejudice

Counsel

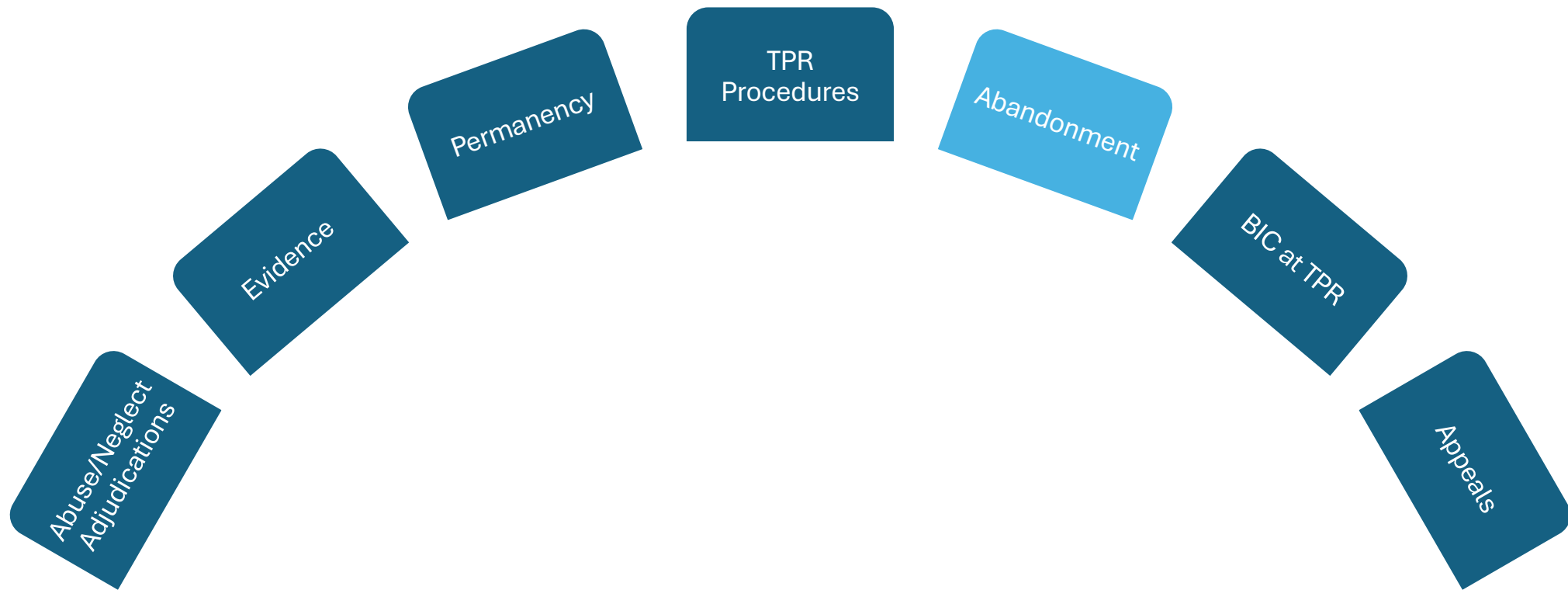
In re N.M.W.
In re A.K.H.
In re D.E.-E.Y.
(pp. 53-55)

Withdraw

- Justifiable grounds
- Notice to client
- Permission of the court

Waive and Forfeit

- Knowing
- Egregious conduct



Abandonment & Rule 17 GAL

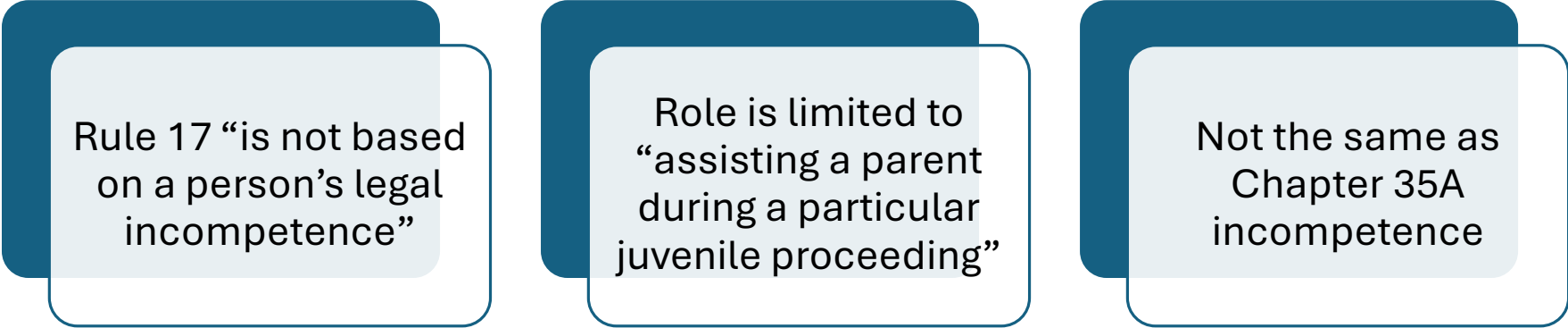
In re K.J.P.W. (p.74)

7B-1111(a)(7):
Willful (purpose
and deliberation)

Rule 17 =
incompetent

Can they engage
in willful action?

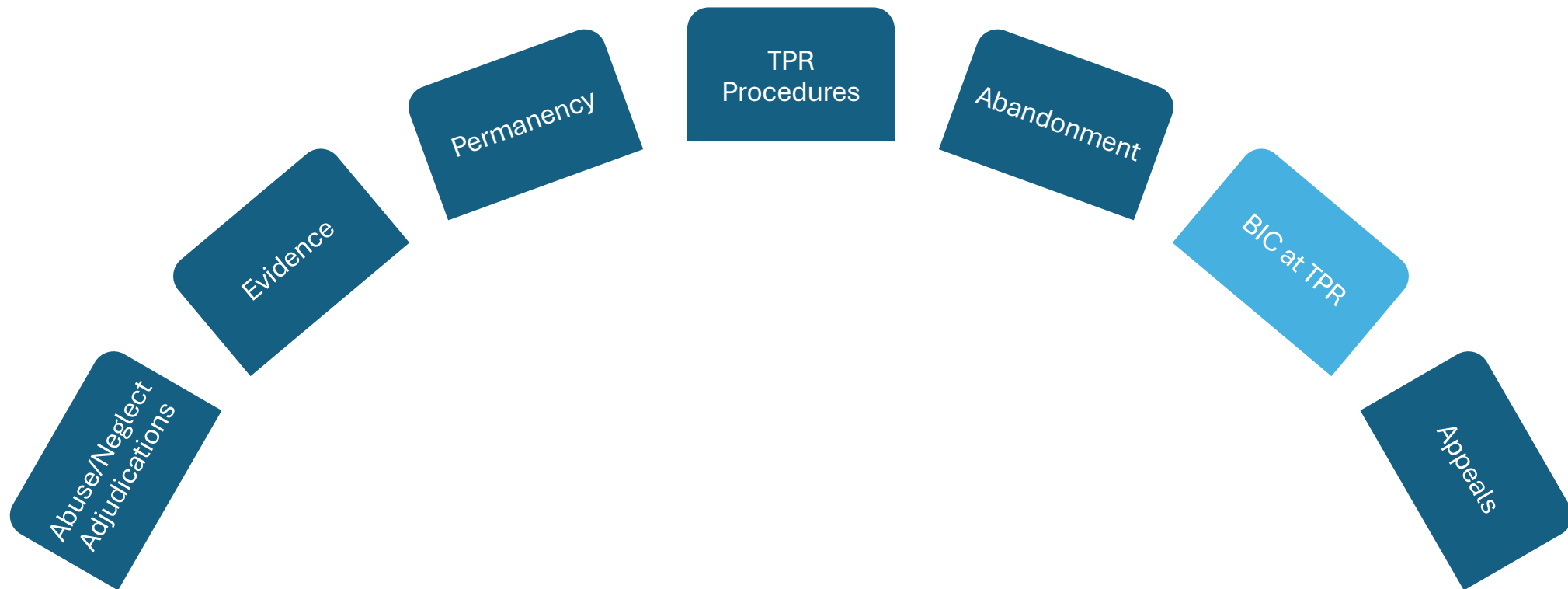
Yes



Rule 17 “is not based
on a person’s legal
incompetence”

Role is limited to
“assisting a parent
during a particular
juvenile proceeding”

Not the same as
Chapter 35A
incompetence





Duties of GAL at Disposition In re S.D.H. (p. 76)

Investigate

Make
Recommendations

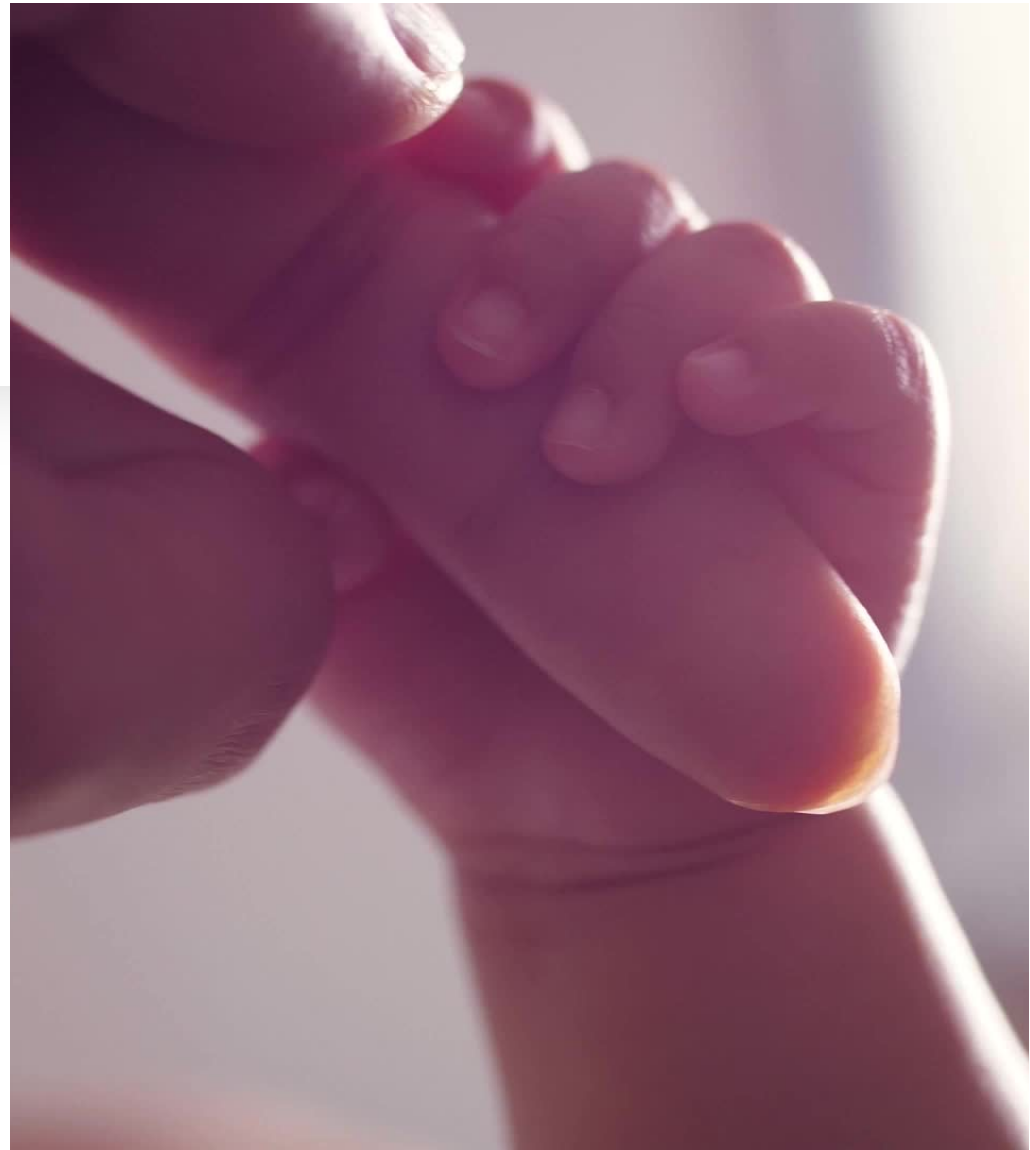
Court implicit duty
to ensure duties
performed

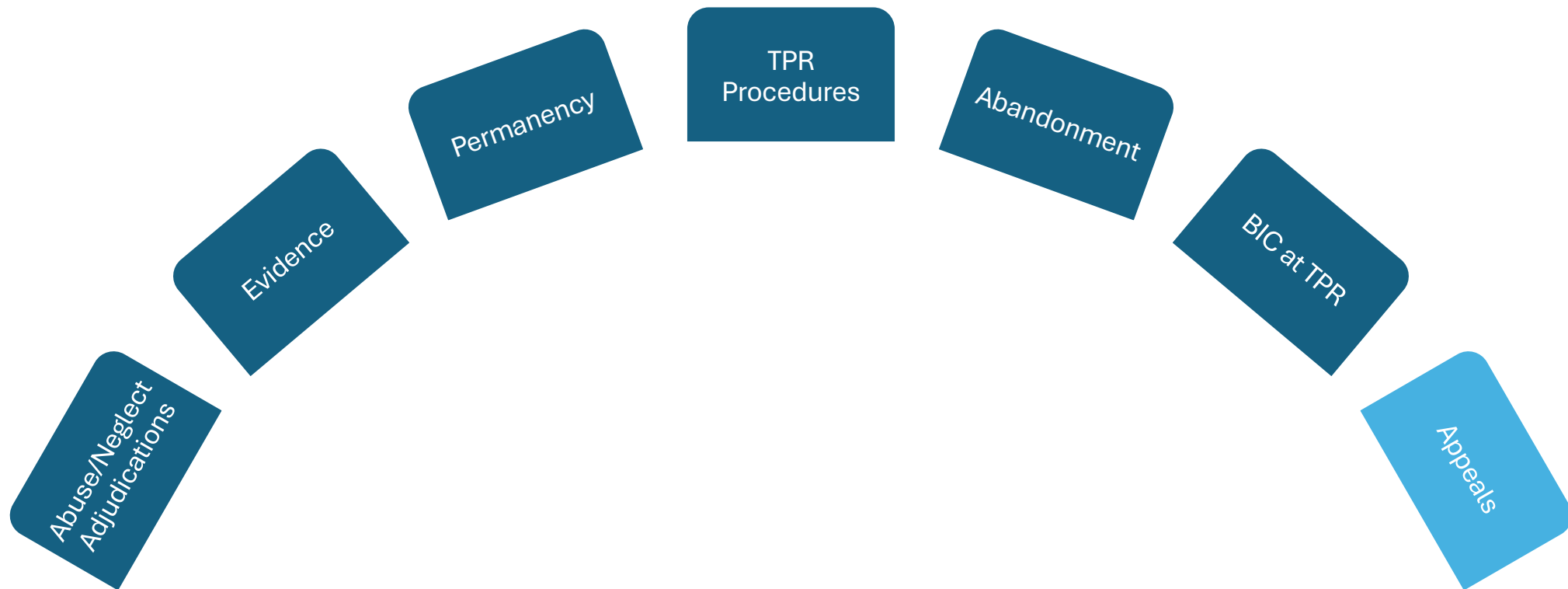


Denial of TPR at Best Interests In re B.B.A. (p. 77)

- Mom relinquish to agency day after child's birth
 - Dad opposes adoption pre/post birth
 - Agency refuses to work with dad & attorney
 - Agency places with adoptive parents and files TPR on -1111(a)(5)
 - Dad learns child born and relinquished; wants visitation & custody
 - No concerns about dad despite no relationship with child
-

- Reasons for -1111(a)(5) outside dad's control
- Dad actively worked to be involved in child's life
- Not act contrary to constitutional rights, which is not irrelevant to BIC
- TPR unnecessary severance
- Relationship is relevant to child's interests





Signatures: Notice of Appeal

In re Z.A.N.L.W.C. (p. 80)

§ 7B-1002. Proper parties for appeal.

Appeal from an order permitted under G.S. 7B-1001 may be taken by:

- (1) A juvenile acting through the juvenile's guardian ad litem previously appointed under G.S. 7B-601.
- (2) A juvenile for whom no guardian ad litem has been appointed under G.S. 7B-601. If such an appeal is made, the court shall appoint a guardian ad litem pursuant to G.S. 1A-1, Rule 17 for the juvenile for the purposes of that appeal.
- (3) A county department of social services.
- (4) A parent, a guardian appointed under G.S. 7B-600 or Chapter 35A of the General Statutes, or a custodian as defined in G.S. 7B-101 who is a nonprevailing party.
- (5) Any party that sought but failed to obtain termination of parental rights.





Signed by

Appealing party
and counsel
(7B-1001(c))

What about
Rule 1?



Signatures: Notice of Appeal

In re G.B.G. (p. 47)

§ 7B-1002. Proper parties for appeal.

Appeal from an order permitted under G.S. 7B-1001 may be taken by:

- (1) A juvenile acting through the juvenile's guardian ad litem previously appointed under G.S. 7B-601.
- (2) A juvenile for whom no guardian ad litem has been appointed under G.S. 7B-601. If such an appeal is made, the court shall appoint a guardian ad litem pursuant to G.S. 1A-1, Rule 17 for the juvenile for the purposes of that appeal.
-  (3) A county department of social services.
- (4) A parent, a guardian appointed under G.S. 7B-600 or Chapter 35A of the General Statutes, or a custodian as defined in G.S. 7B-101 who is a nonprevailing party.
- (5) Any party that sought but failed to obtain termination of parental rights.

Director



Includes authorized representative



108A-14(b): statutory delegation

15 Minute Break

