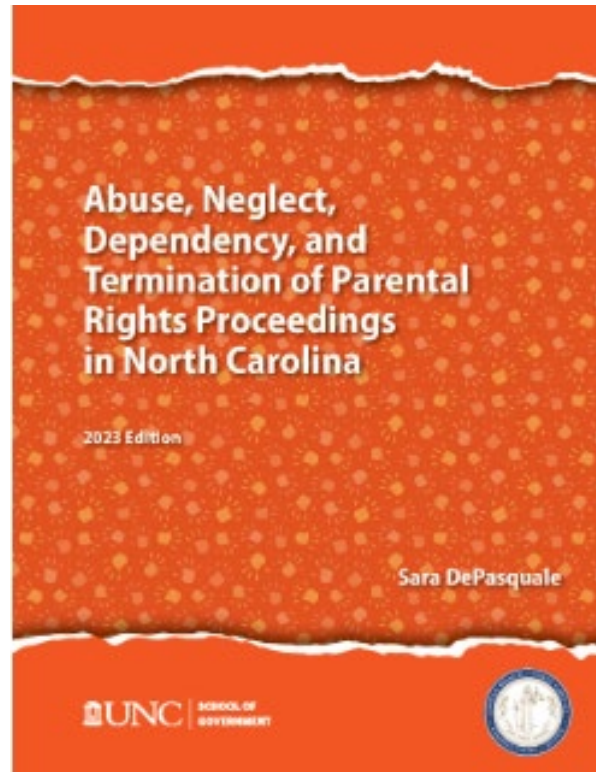


Procedural Issues in TPR Proceedings

- Chapter 9
- & Throughout



FOCUS ON UNDERSTANDING

Similarities & differences w/ procedures in an A/N/D case

Relationship to the A/N/D Case

Procedural requirements under the Juvenile Code

Purposes

- Provide judicial procedures
 - when parents demonstrated they will not provide the degree of care that promotes the healthy physical & emotional well-being of child
- Recognize need for any child to have permanent plan of care at earliest possible age & need to protect all juveniles from unnecessary severance of parental relationship
- Action in child's best interests should be taken when interests of child and parents or others conflict
- Not circumvent the UCCJEA

Constitutional Rights

... nor shall any state deprive any person of life, liberty, or property, without due process of law...



ART. 1, SEC. 19
NC
CONSTITUTION

Similarities with A/N/D

7B controls

UCCJEA applies

Child is the subject of the suit (party)

Court appointed attorney for respondent

GAL appointment issues
(parent & child)

Other Similarity: Sequential Process

Adjudication:
clear &
convincing

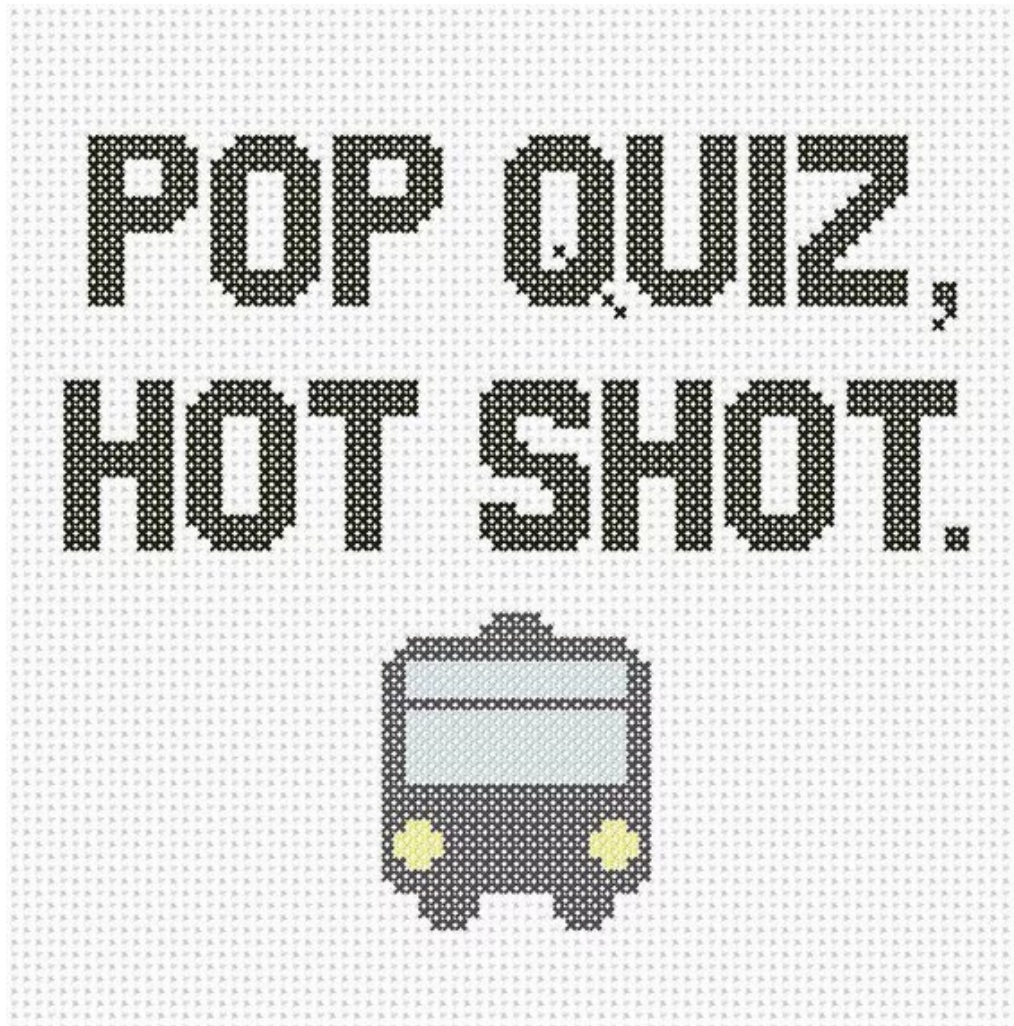


Disposition:
best interests



Post-TPR
reviews
hearings

Applicable federal laws, which ones apply?



Differences

A/N/D

- Only DSS initiates
- GAL for child always in abuse/neglect
- Petition only
- Length of jurisdiction
 - Pre-petition status

TPR

- Individuals/county/agency
- GAL if deny material allegation or if appointed in A/N/D
- Petition or motion
- Survives jurisdiction termination

Relationship to underlying A/N/D case

TPR

- is not a “permanent plan” (BUT affects permanent plan)
- 60 days to initiate TPR (*appeal timing)
- must be considered at reviews & permanency planning hearings
- can be consolidated w/ or initiated by motion in the A/N/D action
- parent attorney remains
- child’s GAL remains
- may seek to intervene for purpose of TPR





May not exercise jurisdiction in
TPR while appeal of A/N/D
order pending

G.S. 7B-1003(b)(1)

TPR specific procedures



Standing

Limited by statute
(G.S. 7B-1103)

Parent

Guardian

DSS or agency w/
court ordered
custody

DSS or agency to
which child
surrendered for
adoption (relinquish)

A person the child
has continuously
lived w/ in the
immediately
preceding 18 months

Child's 7B-601 GAL

Adoption petitioner

Grandparent only if
TPR unknown parent
and all known
parents have died

The initiating pleading & procedures

Verified Petition

- Anyone with Standing
- Summons
 - 7B-1106(a)
- Provisional Counsel
 - or service on attorney in A/N/D
- Answer

Verified Motion

- A/N/D case
- Notice prepared by movant
- No provisional counsel
 - Upon request
 - A/N/D counsel
 - Serve attorney of record (-1102)
- Response

Service of process

Verified Petition

- Summons
- Rule 4 service
- Exceptions to Rule 4
 - Unknown parent
 - Known respondent served by publication

Verified Motion

- Motion & Notice
- Rule 5 service unless Rule 4 if
 - person was not served with summons originally,
 - person was served by publication that did not include required notice about TPR,
 - action was filed 2+ years ago, or
 - court orders Rule 4 service.

G.S. 7B-1102(b)

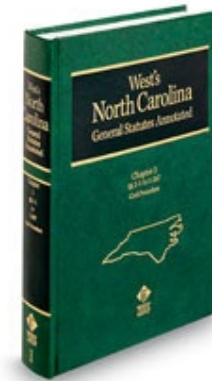
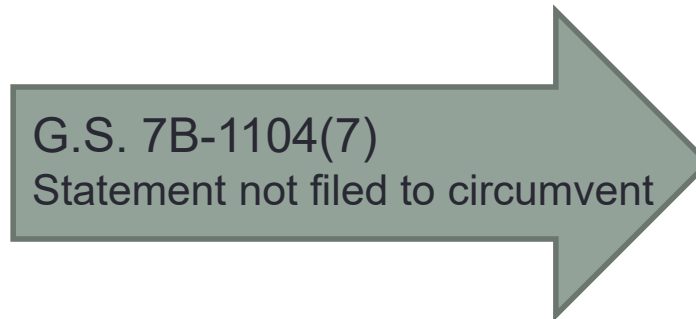
Service by Publication

- Jurisdictional
 - In re S.E.T., 375 N.C. 665 (2020)
- What does the statute say about procedure?

- DSS filed an abuse petition & obtained nonsecure custody of the child. DSS has decided to pursue the adjudication and TPR simultaneously. It filed a motion to TPR in the A/N/D case. The parent attorney files a motion to dismiss the TPR for lack of standing.
- Does DSS have standing?

After child was adjudicated neglected, he was ordered in DSS custody. DSS placed the child in his grandmother's home on March 30, 2020. Eventually, at a PPH, the court awarded grandma custody and entered a Ch. 50 custody order under G.S. 7B-911 and terminated jurisdiction in the neglect action. Grandma files a TPR petition on June 6, 2021.

Does grandmother have standing?



Ch.
50A

G.S. 7B-1101: Before exercising jurisdiction,
court must find

1. Initial jurisdiction (G.S. 50A-201),
2. Jurisdiction to modify (-203), or
3. Temporary emergency juris. (-204)*

Venue and Subject Matter Jurisdiction

North Carolina Counties



- Resides
- Found
- In custody of county DSS



On the Civil Side
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It's Complicated: Venue vs Jurisdiction in A/N/D and TPR Actions



This entry was contributed by Sara DePasquale on February 22, 2017 at 1:22 pm and is filed under Child Welfare Law.

Within North Carolina, the appropriate location of a district court where an abuse neglect or dependency (A/N/D) action is filed is a matter of venue. [GS 7B-400](#). And the appropriate location of the district court where a termination of parental rights (TPR) action is filed is a matter of jurisdiction. [GS 7B-1101](#). Why are they different? Because the statutes governing A/N/D and TPR proceedings have different requirements and impose different limitations on the parties and the court.



NO SINGLE COURT REQUIREMENT

Out of State Parent

- ◆ Jurisdiction under initial or modification jurisdiction under the UCCJEA
- ◆ Process served pursuant to G.S. 7B-1106
- ◆ Submits to court's jurisdiction
- ◆ Served while physically present in NC
- ◆ No Minimum Contacts Required

Hearing on unknown parent

- W/in 10 days after petition filed (or next term)
 - In re A.N.S. (2015)
- Notice petitioner
- Court may summons others to appear & testify (including other parent)
- Court may order petitioner to conduct diligent search (w/in 30 days)



Outcomes of hearing: Order w/in 30 days

Identity Determined

- Make findings about name and identify
- Must be summonsed to appear under G.S. 7B-1106

Continues Unknown

- Order service on unknown parent and specify counties for publication & wording of notice
- No summons required

TPR for Safely Surrender Infant



G.S. 7B-1105.1



Similar hearing, different determinations



This does not arise from an A/N/D case

Pretrial Hearing Required, G.S. 7B-1108.1

- May combine w/ adjudicatory hearing (if so, separate order not required)
- Written notice in accordance w/ G.S. 7B-1106 & -1106.1
- Must consider
 - Retain/release provisional counsel
 - Should GAL be appointed for child
 - Are all summons, services of process, notice requirements met
 - Any pretrial motions
 - Issues raised in responsive pleading (if any)/affirmative defenses
 - Any other issue properly addressed as preliminary matter

Other pre-
adjudication
issues

Discovery (G.S. 7B-700?)

Consolidate (G.S. 7B-1102(c))

GAL for parent (minor or
incompetent) (G.S. 7B-1101.1)

Funds for expert (G.S. 7A-454)

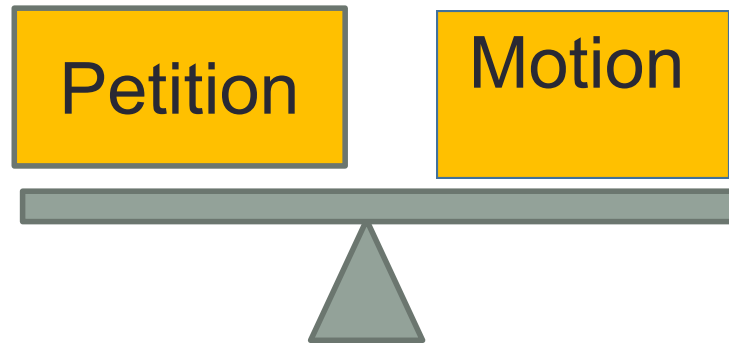
Dismiss

Paternity

Notice Pleading (de novo review)

Facts must put party on notice of acts, omissions, conditions at issue

≠ Recitation of alleged ground



No Difference: G.S. 7B-1104(6) to allege sufficient facts

- Respondent willfully abandoned the child for more than 6 months immediately before this petition was filed.
- Is this sufficient notice pleading?

Continuances, G.S. 7B-1109(d)

- If good cause to receive additional evidence, discovery, or other information that is in BIC, may continue for up to 90 days
- More than that requires finding of extraordinary circumstances*

Continuances at time of hearing – Right to Counsel

G.S. 7B-1109(d)

Mandatory Inquiry

- is parent present
- w/ an attorney
- if no attorney, ask if desire counsel but indigent



If desire counsel

- appoint attorney
- continue for reasonable period of time to allow attorney to prepare defense

Hearing
7B-1109



of filing petition/motion

Must take evidence, find facts

= have a hearing (no default/summary judgment)

Keep KIDS in mind



Benchmark