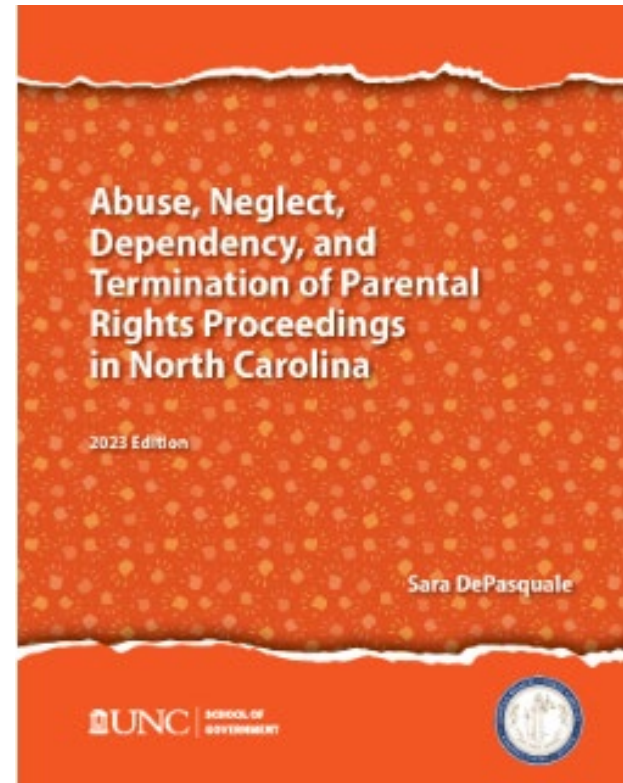
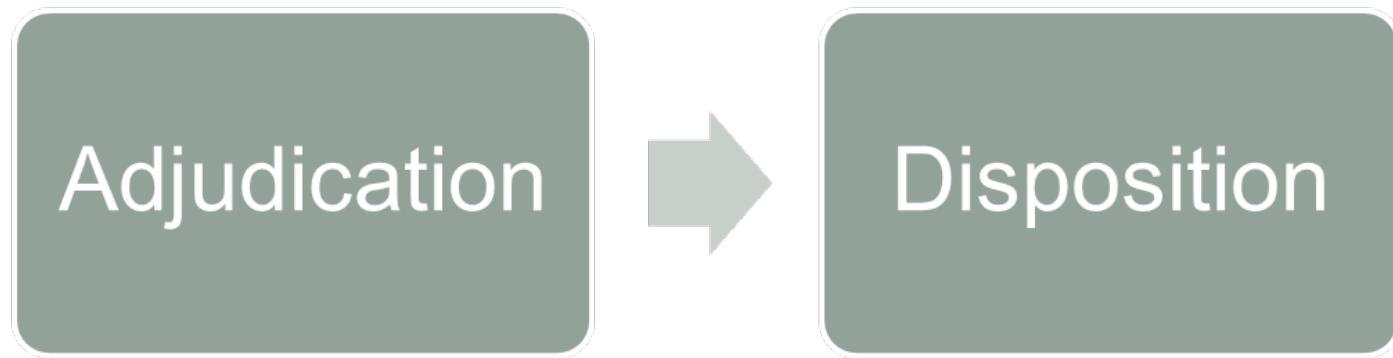


# Adjudicating TPR Grounds



## Chapter 9

## Similarity to A/N/D: 2 Stages



# More Similarities



RULES OF EVIDENCE  
APPLY



CLEAR & CONVINCING  
EVIDENCE



BURDEN IS ON  
PETITIONER/MOVANT

# More Similarities



SIMILAR GROUNDS



GROUND MUST BE ALLEGED  
TO ADJUDICATE



MUST HAVE  
HEARING/TESTIMONY  
(NO SUMMARY JUDGMENT)

# Difference: Not Deciding

Reasonable efforts

Whether parent  
acted  
inconsistently with  
parental rights

# Difference: What's Being Determined

District Court Division

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**JUVENILE PETITION  
(ABUSE/NEGLECT/DEPENDENCY)**

G.S. 7B-101, -400, -402

Condition Alleged

☐ Abused      ☐ Neglected      ☐ Dependent

District Court Division

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**NOTICE OF MOTION SEEKING  
TERMINATION OF PARENTAL RIGHTS**

G.S. 7B-1106.1, 7B-1102(b)

Name And Address Of Respondent 2

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Petition/Motion alleging one or more grounds for TPR

**Child's Status:**  
Is this child an "abused, neglected, and/or dependent juvenile"?

**Parent's Culpability:**  
Did this parent commit this ground (e.g, did this parent neglect their child)?

# The Grounds

## § 7B-1111.

### **§ 7B-1111. Grounds for terminating parental rights.**

(a) The court may terminate the parental rights upon a finding of one or more of the following:

- (1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.
- (2) 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. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.
- (3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition or motion, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.
- (4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition or motion willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.
- (5) The father of a juvenile born out of wedlock has not, prior to the filing of a
- (11) 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.

\*Can only adjudicate ground alleged

## Notice Pleading

Statutory citation not required

Language of statute important

as ground

as factual allegations



# Relevant Time Period Court Considers



Differs depending on the ground



Some grounds are limited to before the petition/ others include the circumstances AT TIME of adjudication hearing



Must look at the statute

# Abandonment



## 2 Different Grounds

### **G.S. 7B-1111(a)(1)**

- Neglect

### **G.S. 7B-1111(a)(7)**

- willfully abandoned child for at least 6 consecutive months immediately before TPR filed; or
- w/in first 7 days of child's life, voluntarily abandoned child in a "safe surrender," and at least 60 consecutive days have passed before TPR filed\*

# Abandonment



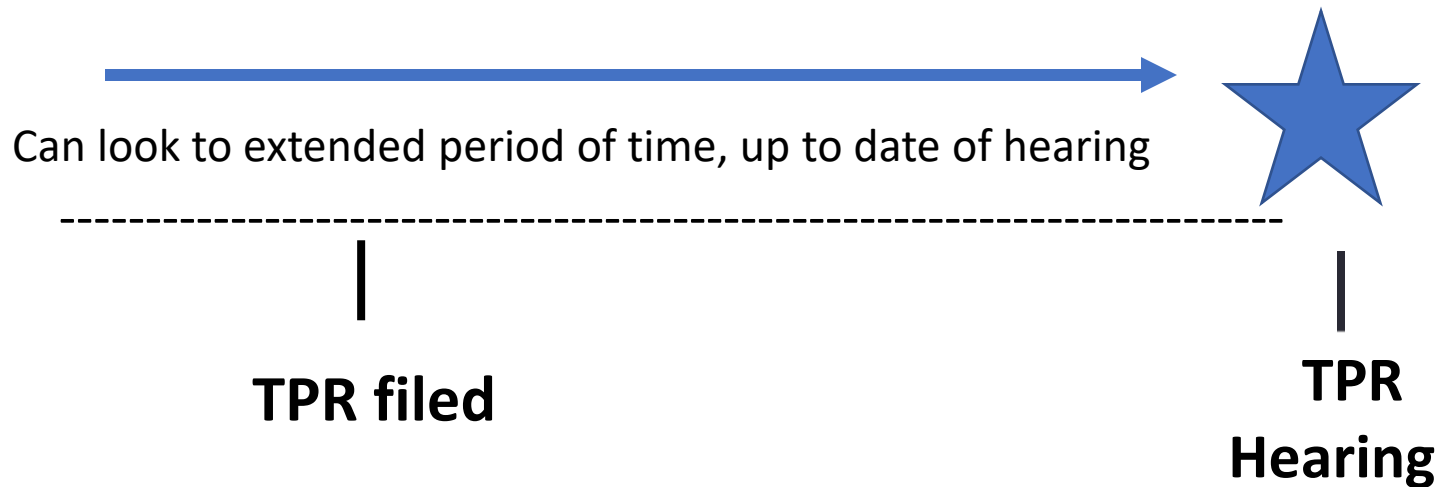
“evinces a settled purpose and a willful intent to forego all parental duties and obligations and to relinquish all parental claims to the child.”

Willfulness = Question of Fact

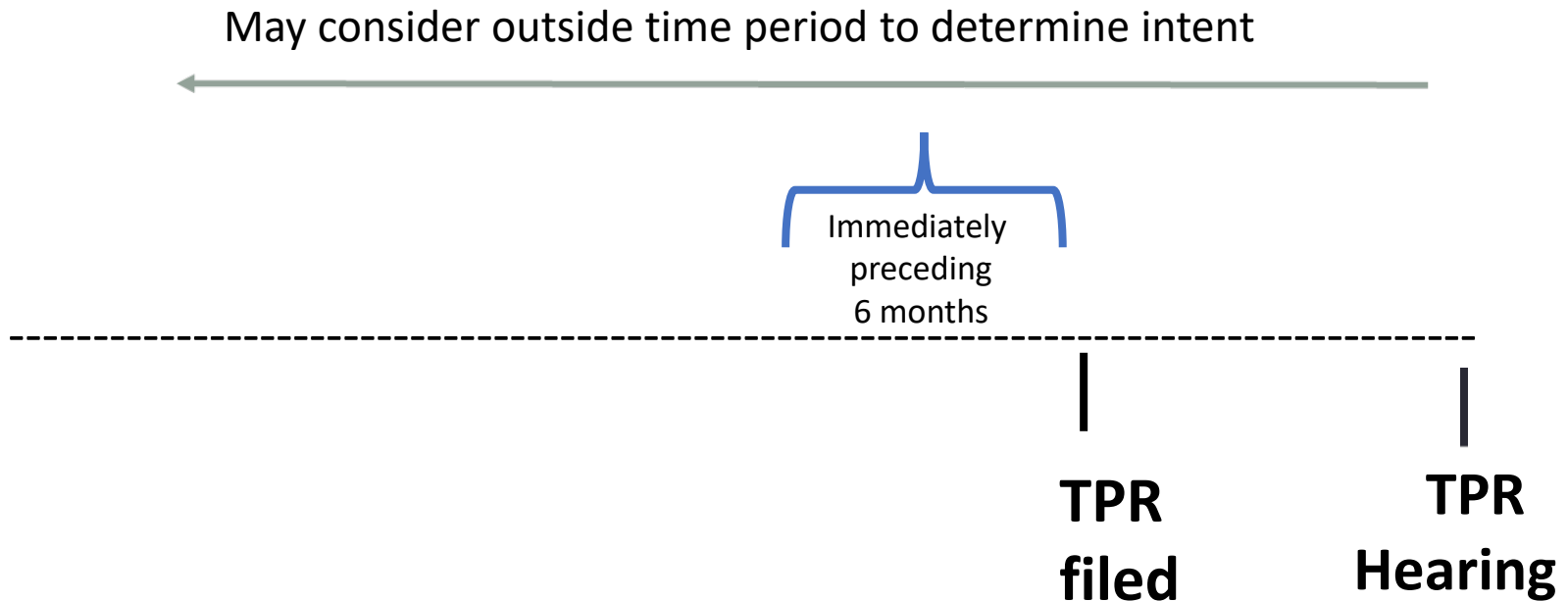
Requires Intention → Purpose & Deliberation

Can look to financial support & emotional contributions

What is the determinative time period if alleged under G.S. 7B-1111(a)(1)



What is the determinative time period if alleged under G.S. 7B-1111(a)(7)



# Single act

- “it is not necessary that a parent absent himself continuously from the child for the specified six months, nor even that he cease to feel any concern for its interest.”
  - Affirmed when
    - One \$500 child support payment made
    - One phone call made
    - A visit

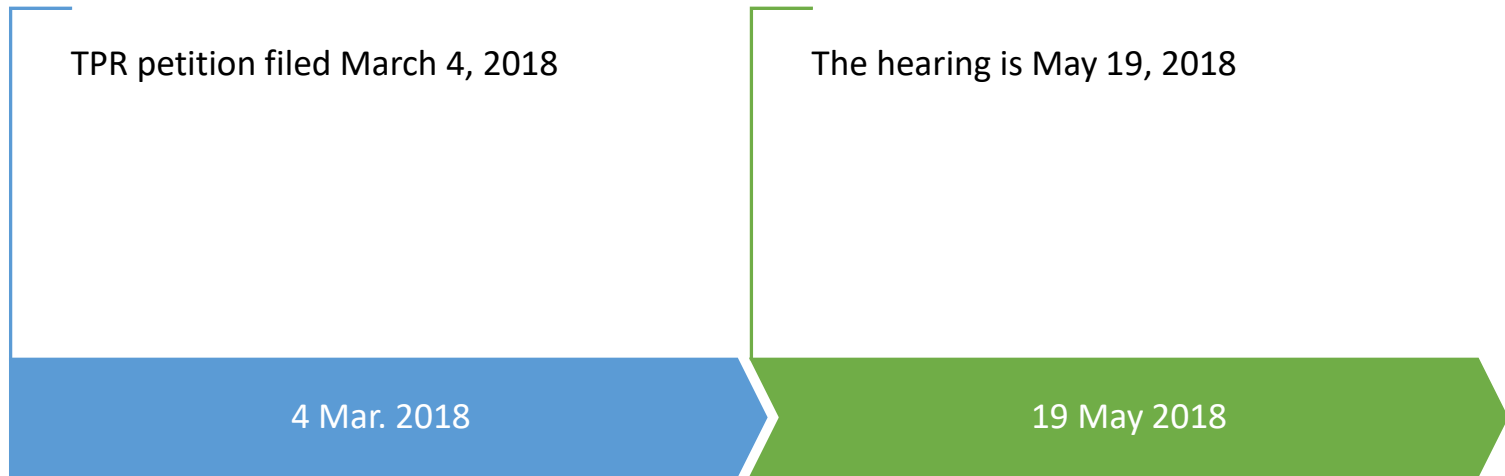
# What is the determinative time period?

TPR petition filed March 4, 2018

The hearing is May 19, 2018

4 Mar. 2018

19 May 2018



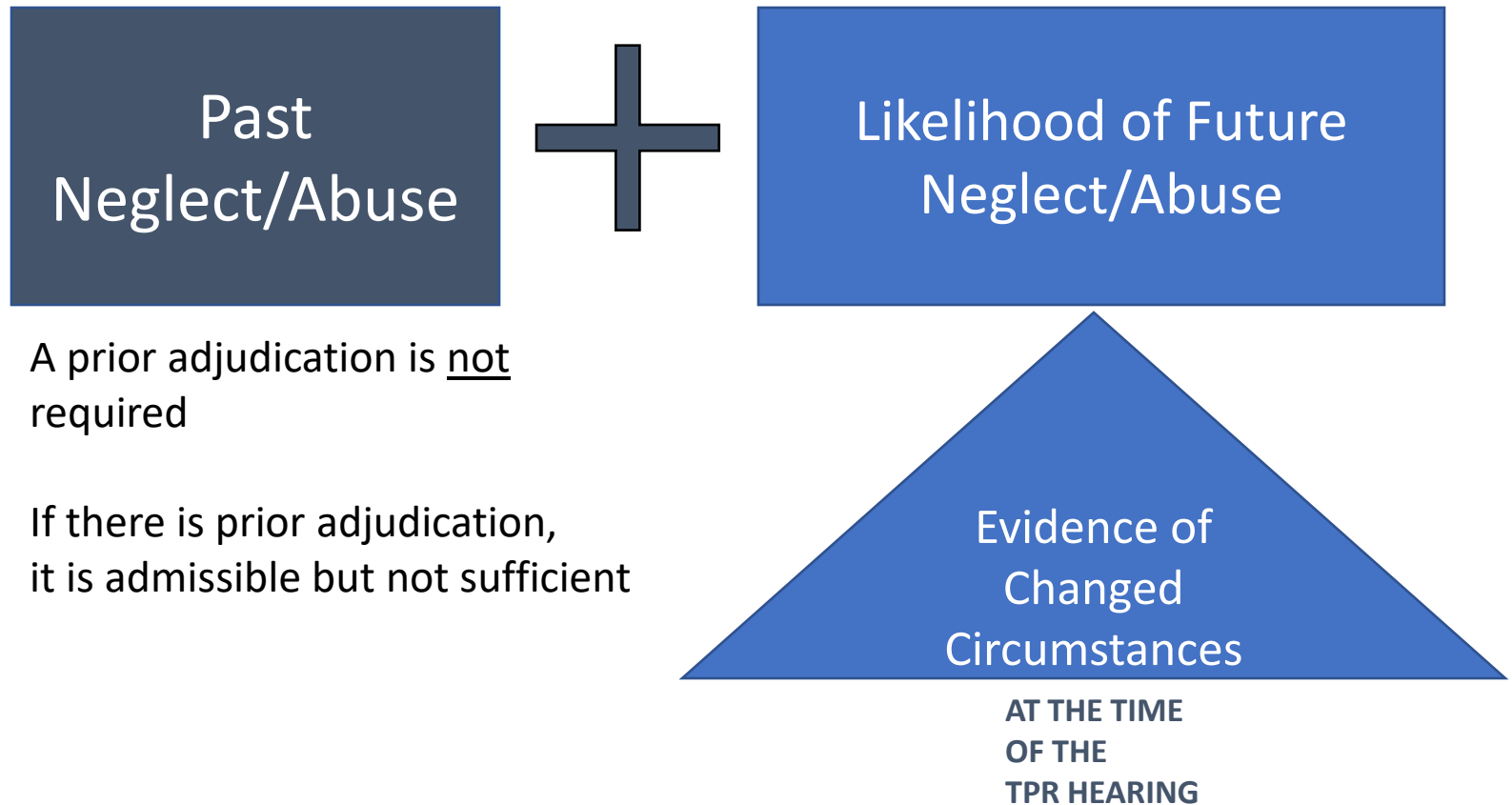


# Abuse or Neglect, 7B-1111(a)(1)

Is there still  
neglect?



# When prior, must prove



Does progress or  
completion  
of case plan  
prevent court from finding  
likelihood of future neglect?

---

# Case scenario: 4 month old

- Respondents' argument is flawed as we have held above that the trial court properly found Respondents were jointly and individually responsible for their child's injury. Furthermore, Respondents' argument is contrary to public policy and would establish a dangerous precedent should we be persuaded by their contention. Such a holding would encourage individuals to deny responsibility for and knowledge of harm inflicted upon a child and would thwart the ability of the courts to serve the best interest of the child.
- The parents have protected each other throughout the course of these proceedings by refusing to identify the perpetrator. Respondents' conduct further indicates that Respondents continue to put their own self-interests first, and are not prepared to act in the best interest of their child.

*In re Y.Y.E.T.*, 205 N.C. App. 120, 128–29 (2010)

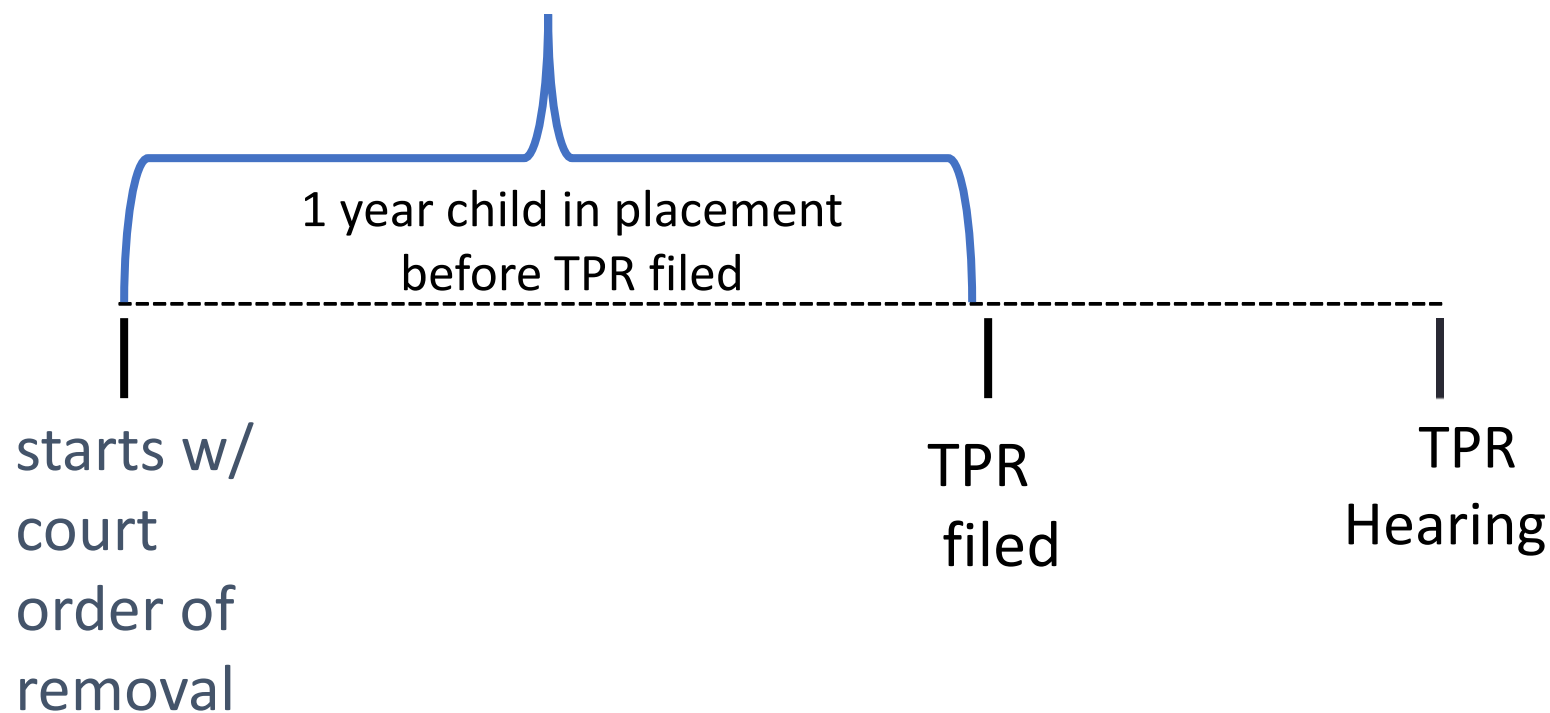
# G.S. 7B-1111(a)(2)

- The parent has willfully left the child in foster care or other placement
- more than 12 months
- without reasonable progress under the circumstances
- in correcting conditions that led to removal

# Willful

- Parental fault for why child came into care is not required
- Parent has the ability to show reasonable progress but was unwilling to make the effort
  - Consider limitations:
    - what can a minor parent do (e.g., obtain housing and employment)
    - what can an incarcerated parent can do (what is available for services, ability to contact others)
    - Mental Illness
- Some effort does not preclude finding of willfulness
  - e.g. stopping services at some point

12-month time period child is in foster care



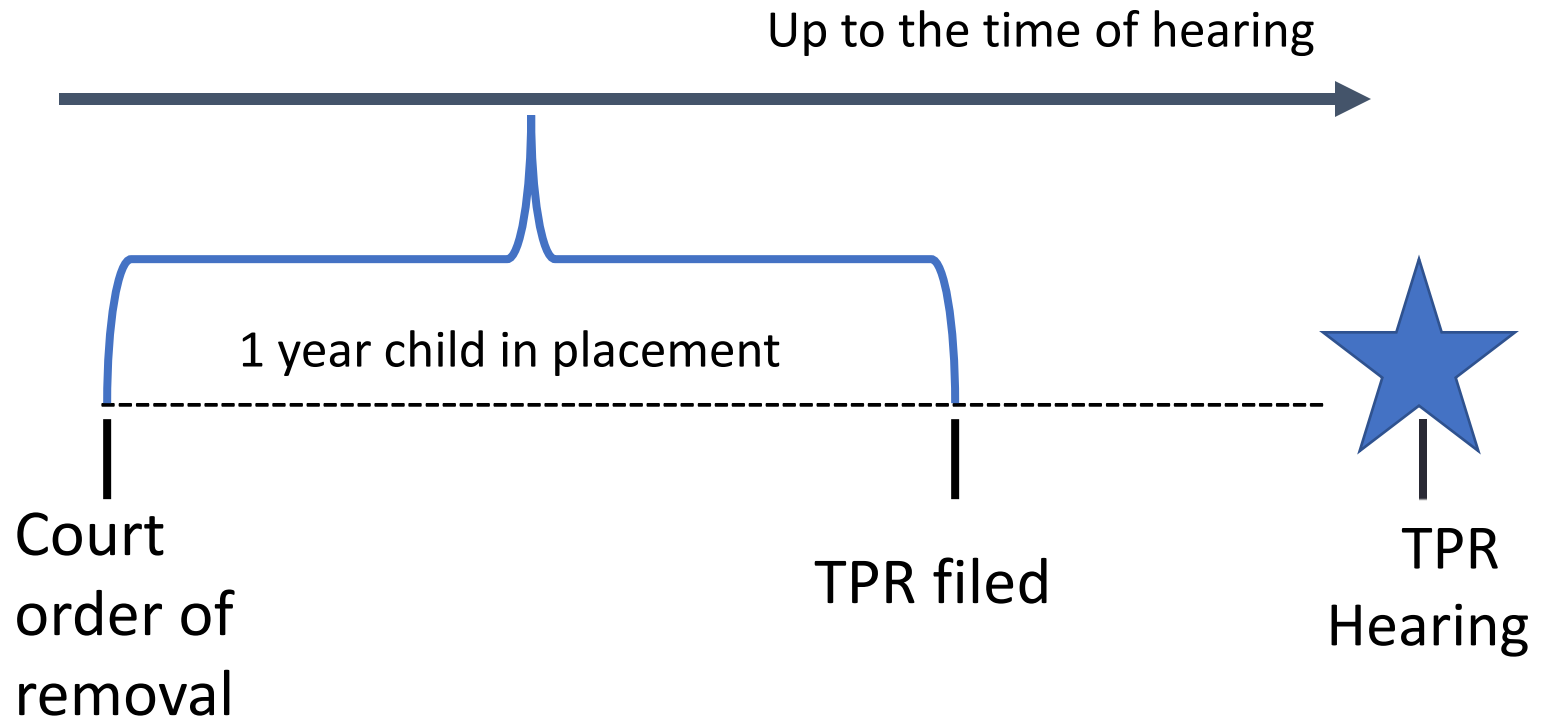
# What is reasonable progress?

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None                  Limited                  Some                  A lot                  Perfection



What is the time period for reasonable progress



# Timing Review

- Jan. 10, 2017 report received of abuse and neglect
- Jan. 11, 2017 parents enter in a TPSA with DSS and child is placed in grandma's house
- Feb. 8, 2017 DSS files petition and obtains a nonsecure custody order
- April 21, 2017, child is adjudicated abused and neglected
- Feb. 1, 2018, DSS files TPR motion
- April 12, 2018, TPR hearing is scheduled
  
- Have the time periods been satisfied?

Poverty may not be basis for termination  
G.S. 7B-1111(a)(2)

The trial court however, expressed concern that Ms. Nesbitt had paid the last two months rent with money from her income tax returns but failed to provide a plan for paying future rent. While we acknowledge this as a legitimate concern, we also recognize that making ends meet from month to month is not unusual for many families particularly those who live in poverty. However, we do not find this a legitimate basis upon which to terminate parental rights.

# Poverty

- Because parents subject to termination proceedings are often poor, uneducated, or members of minority groups, such proceedings are often vulnerable to judgments based on cultural or class bias.
- *Santosky v. Kramer*, referring to *Smith v. Organization of Foster Families*, 431 U.S. 816 (1977)



# Budget Exercise

**STRUGGLING TO  
MAKE **ENDS** MEET?**





# NonSupport

## Willful failure to pay

Ability to  
pay  
finding  
required

- reasonable portion of cost of care
- for child in placement
- for 6 months before TPR filed
- 7B-1111(a)(3)

**Joint Federal Guidance**  
G.S. 7B-904 Amendment

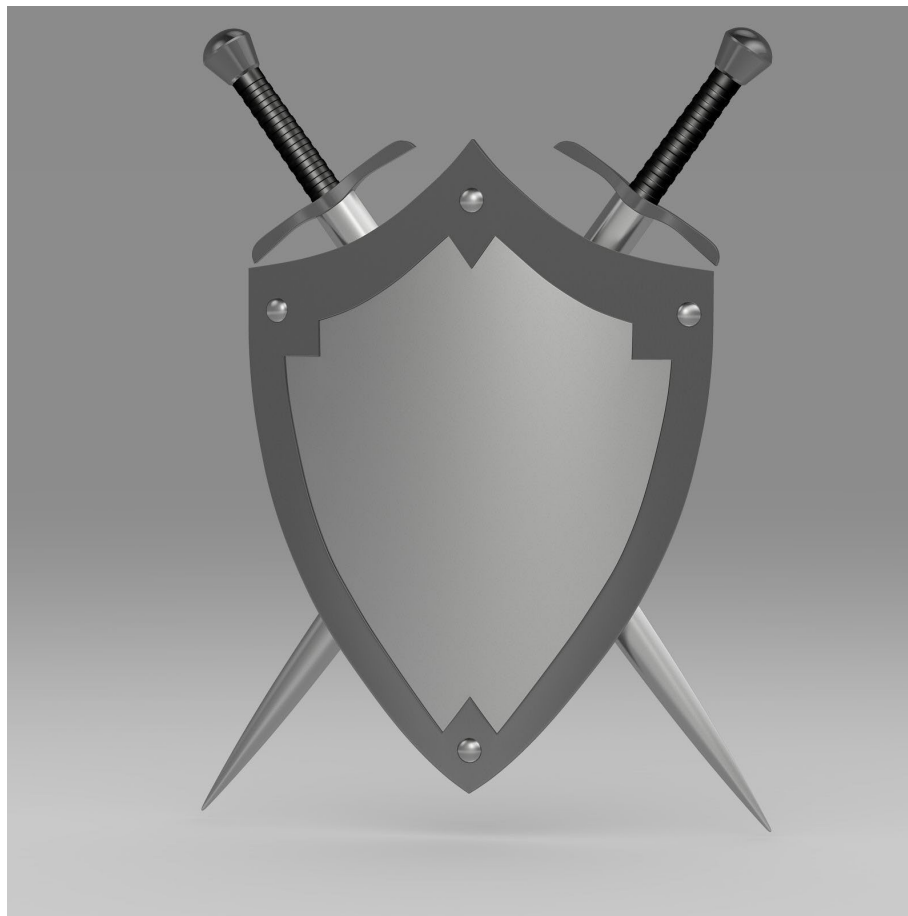
The parent is incapable of providing proper care and supervision, and



*Incapability* may be due to any “cause or condition that renders the parent unable or unavailable to parent” the child.

G.S. 7B-1111(a)(6)

# Special Circumstances

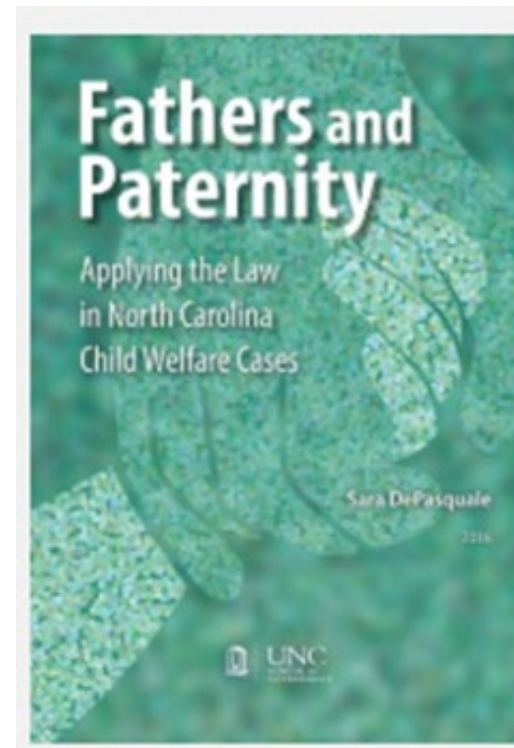




# Unwed Fathers, G.S. 7B-1111(a)(5)

Before the filing of the TPR, failed to do any of these

- File an affidavit of paternity with DHHS
  - certified reply admitted
- Legitimate the child
  - G.S. 49-10, -12.1 or filed petition
  - Married mother
- Provide financial support/care to juvenile and mother
- “Established paternity” through G.S. 49-14, 110-132, 130A-101, 130A-118, or other judicial proceeding
  - Name on amended birth certificate creates rebuttable presumption



7B-1111(a)(9)

```
graph TD; A[7B-1111(a)(9)] --> B[Prior TPR to another child]; A --> C[Lacks Ability or Willingness to Establish Safe Home]
```

Prior TPR to  
another  
child

Lacks Ability  
or Willingness  
to Establish  
Safe Home

# # of grounds

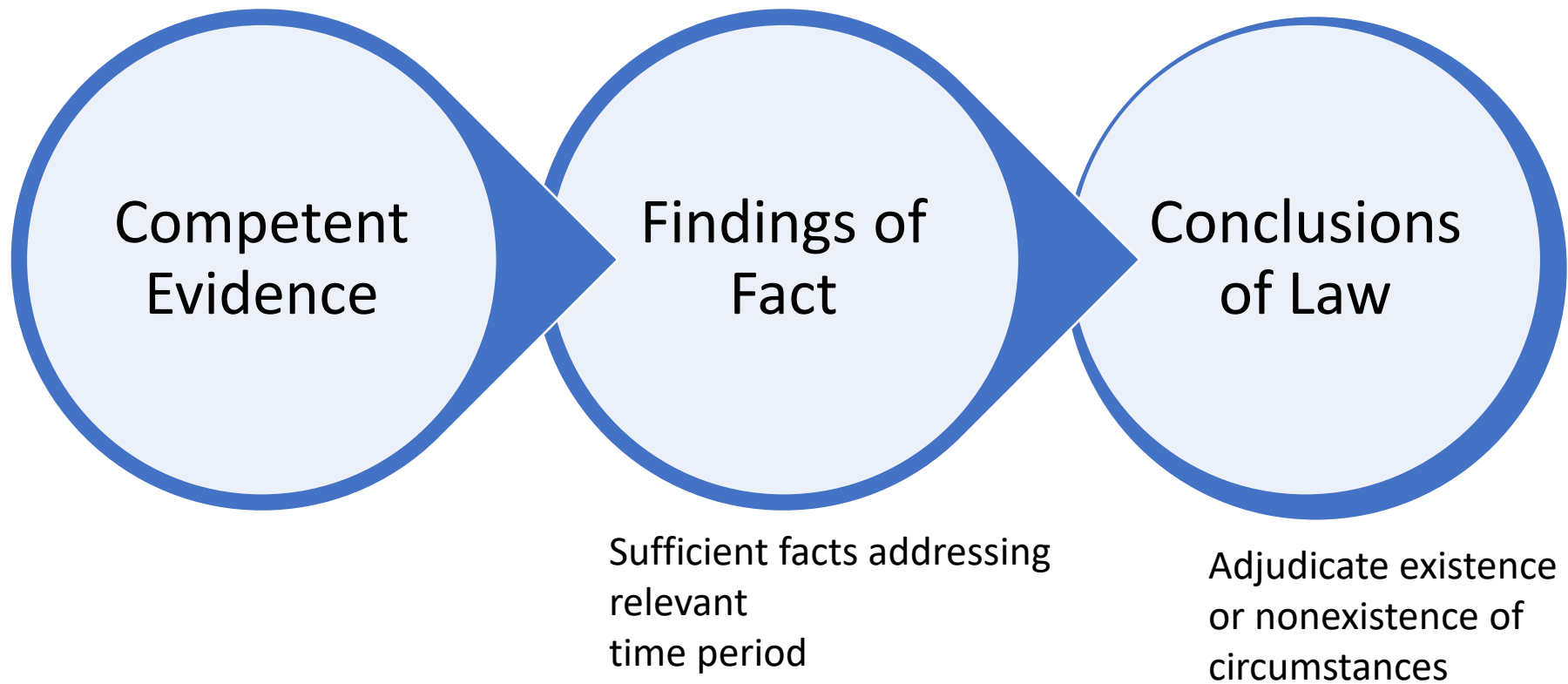
Must Have 1

but

Address Them All



G.S. 7B-1109(e)

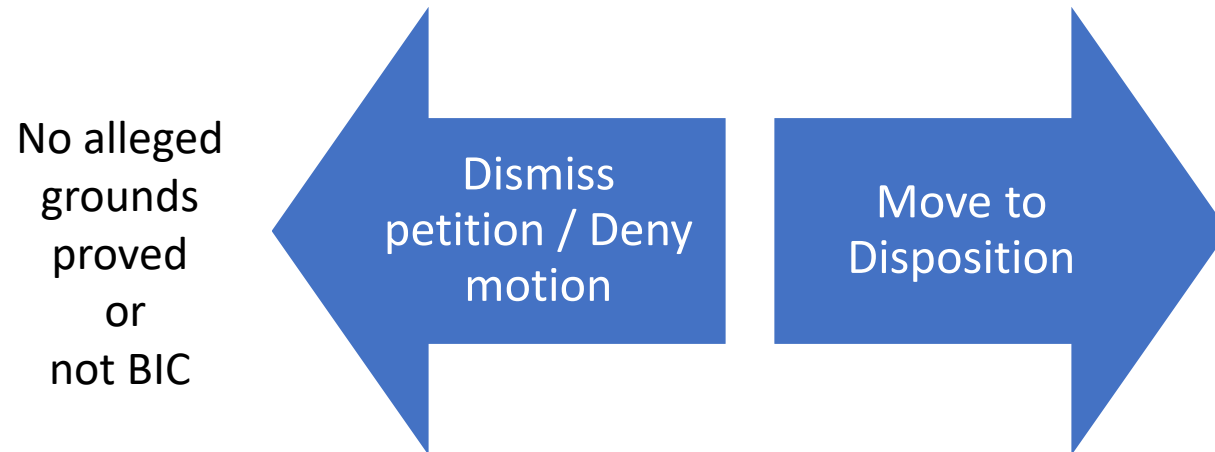


# Order either

No alleged  
grounds  
proved  
or  
not BIC

Dismiss  
petition / Deny  
motion

Move to  
Disposition



# Adjudicatory Order



- No appeal from adjudication order only
- Finding of ground is not automatic TPR (stage 2)

Keep KIDS in Mind



Benchmark