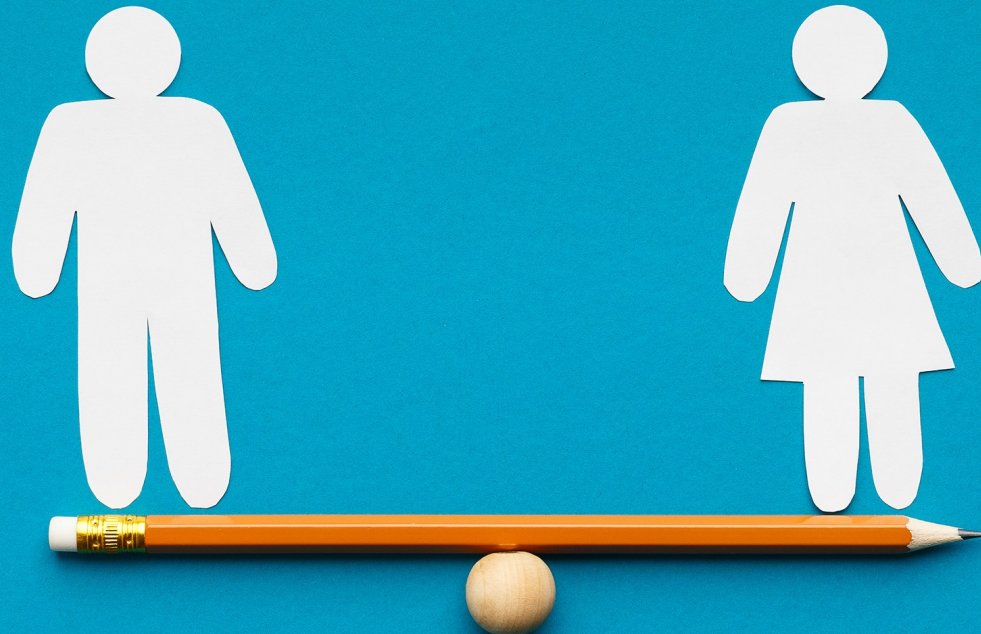




Case Law Update Plus, Part 2

BY: Sara DePasquale
&
Timothy Heinle

Topics

N.N. & N.R.R.N.



Evidence at Adjudication & Preservation Issues

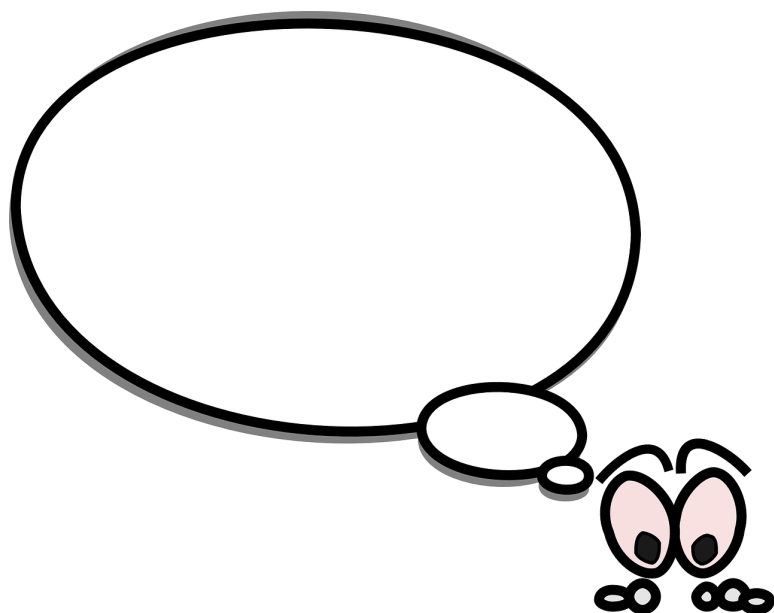


Cases to look out for



Adjudicatory Hearing: Evidence

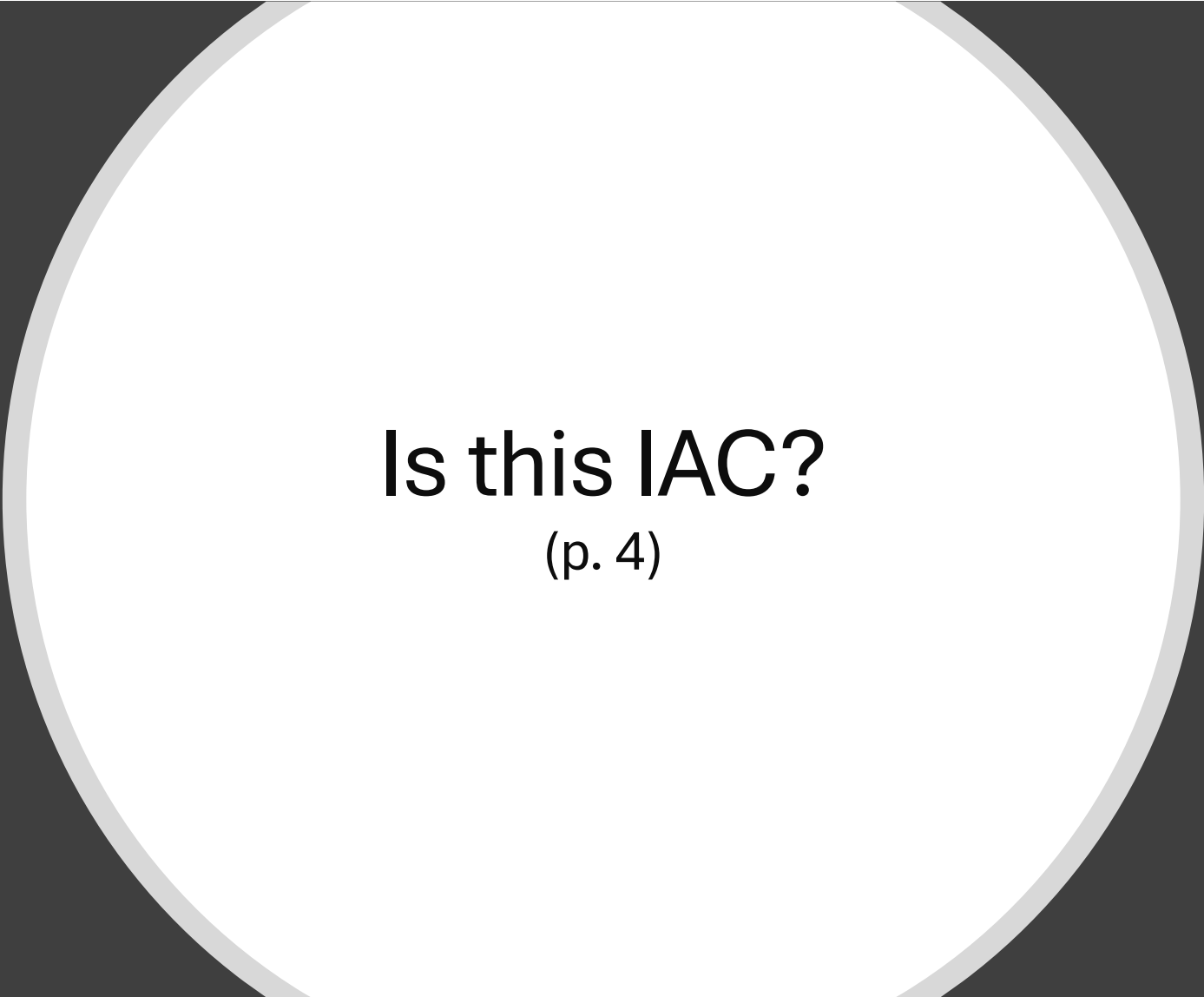
In re N.N.; N.R.R.N. (p. 17-20)



STATE OF NORTH CAROLINA				File No.
County				In The General Court Of Justice District Court Division
IN THE MATTER OF				JUVENILE PETITION (ABUSE/NEGLECT/DEPENDENCY)
Name And Address Of Juvenile				
Juvenile's Date Of Birth	Age	Race	Sex	
Name Of Petitioner				G.S. 7B-101, -400, -402
				Condition Alleged ☐ Abused ☐ Neglected ☐ Dependent
Spoken Language Court Interpreter Needed For Any Party, Victim, Or Witness? (If Yes, identify person(s) and language(s). Interpreters provided for all court proceedings at no cost.)				
☐ No ☐ Yes: (explain)				
I have sufficient knowledge or information to believe that a case has arisen that invokes the juvenile jurisdiction of the court, and therefore allege that:				
1. The juvenile named above resides in the district at the address shown above, was found in the district as alleged herein, or venue exists pursuant to G.S. 7B-400(a) or (b).				
2. The information required by G.S. 50A-209 is set out in the Affidavit As To Status Of Minor Child (AOC-CV-609) , which is attached hereto and incorporated herein by reference.				
3. The names, addresses, and telephone numbers of the juvenile's parents, guardian, custodian, or caretaker are as follows:				
Name	Relationship/Title	Address	Telephone No.	



No Objections



Is this IAC?

(p. 4)





Speak now or forever hold your peace

- Evidence, objections, motions, arguments
- E.g., admissibility of testimony and petition

Have a strategy for adj. + disp.

- Reasonable strategy $\neq$ IAC
- Actively participated at disposition

Considerations (balancing test)

- Risks of participating (open door; 5th amendment)
- Risks of silence (for trial and appeal)
- Consents/stipulations (criminal; judicial notice)

Unexplained Injuries

In re N.N. (p. 17)

NICU behavior

SW home visit

Nonaccidental life threatening
trauma

Sole care admission

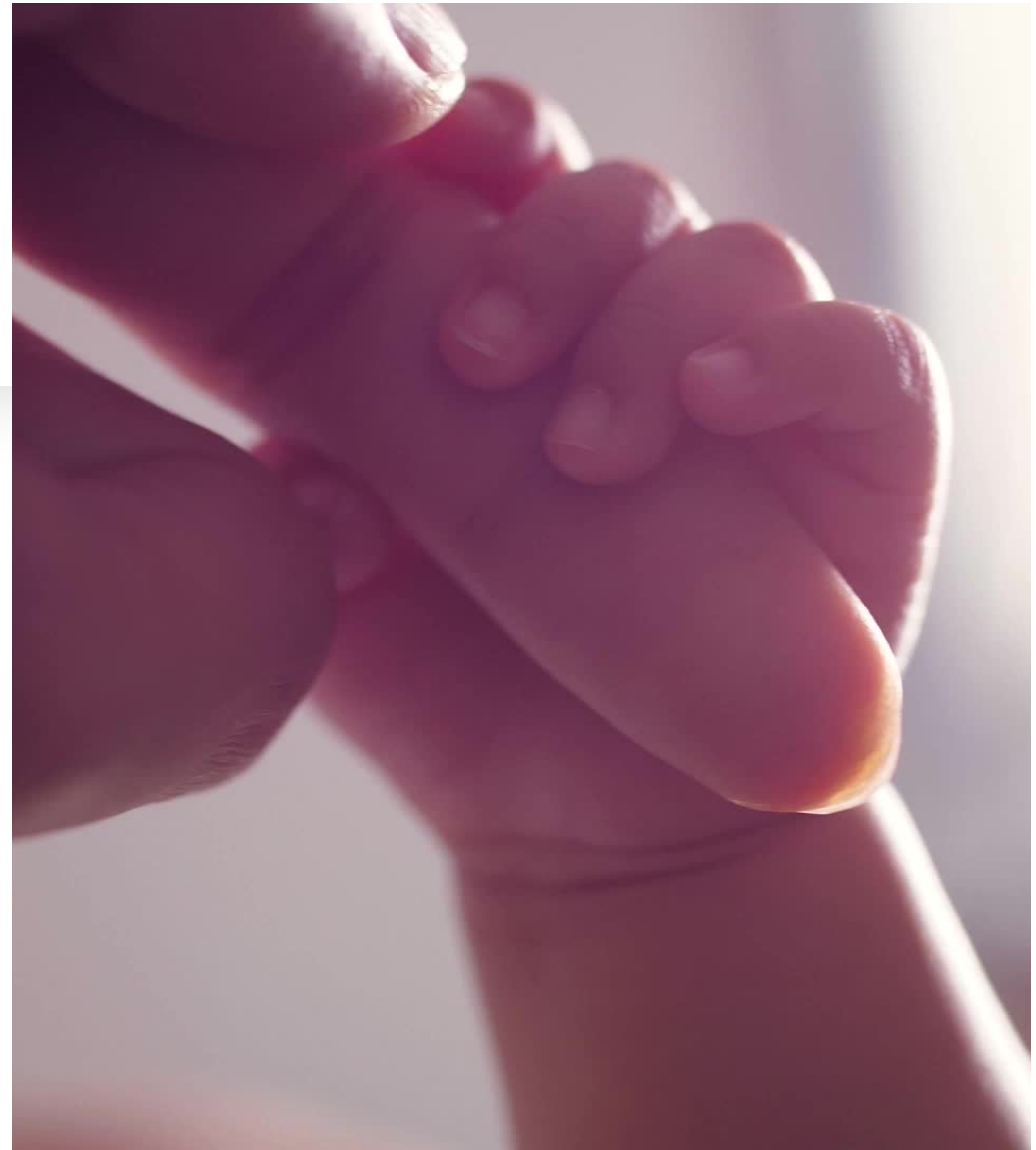
In Contrast

In re L.B. (p. 12)

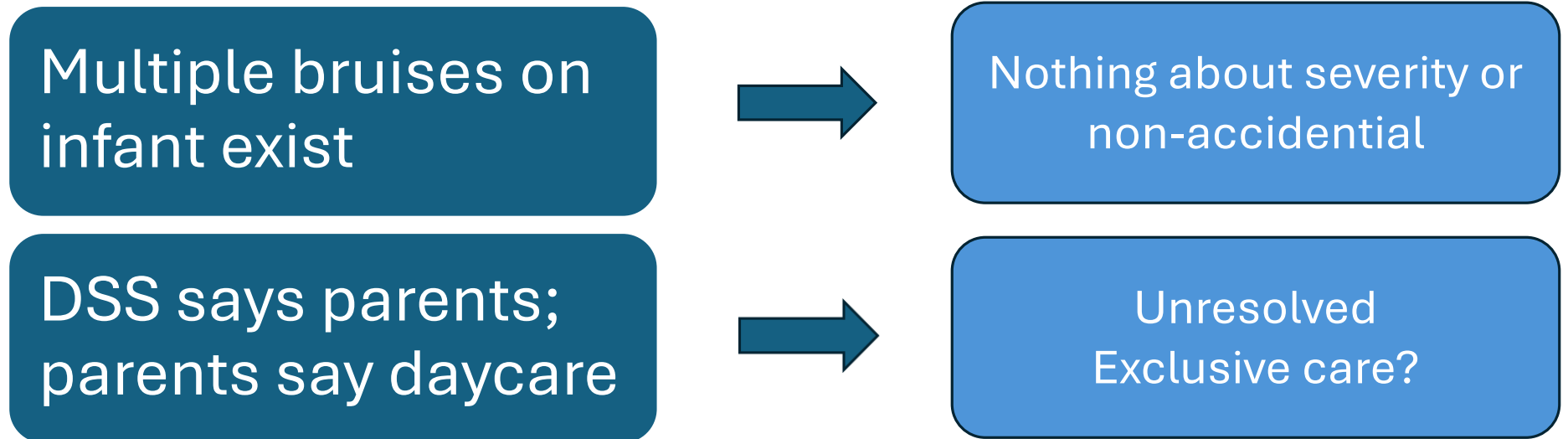
Findings

- Multiple bruises on infant exist
- DSS says parents; parents say daycare

What's the problem with this?



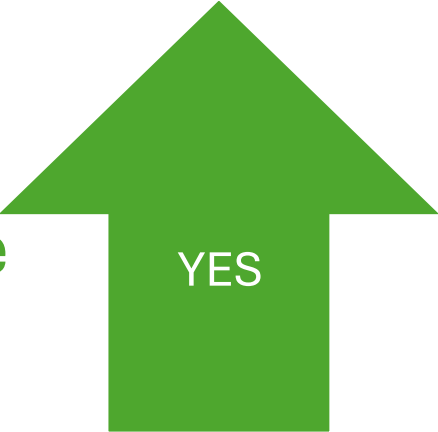
Unexplained Injuries Findings



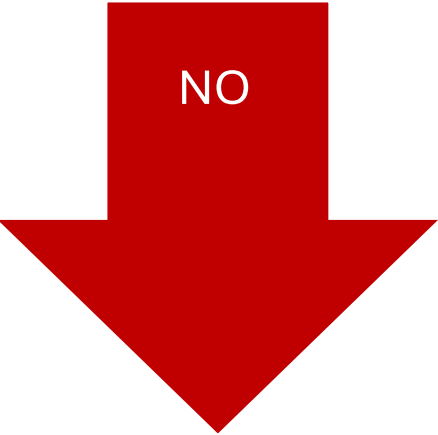
Consideration of Abuse/Neglect of Other Juvenile

In re N.R.R.N. (p. 19)

Neglected Juvenile
7B-101(15)



YES



NO

Abused Juvenile

7B-101(1)

Direct action by PGCC

Dig Deep



- Access during relevant timeframe
 - Difficult to remember the benign
 - Allow sufficient time
- Nonverbal child



Stay vigilant



- Prior abuse of J1 $\neq$ Present abuse of J2
- Watch for arguments, implications, FOF

G.S. 7B-901(c): Relieve DSS of Reasonable Efforts

In re N.N. (p. 29)

In re N.R.R.N. (p. 30)

Chronic physical or emotional abuse



Plan ahead

- Mini-criminal trial
- Aggravated circumstances (e.g., chronic; other acts, increased enormity; added to injurious consequences)
- Whose child?

Standard at disposition

- For DSS to be relieved of efforts
- Clear + Convincing vs. Preponderance?

Timing

- Get what you need in the record
- But hold ultimate card until closing

Topics



Evidence at Adjudication & Preservation Issues



G.S. 7B-807

Factual stipulation
can support
adjudication

In writing, signed by
party stipulating,
submitted to court

OR

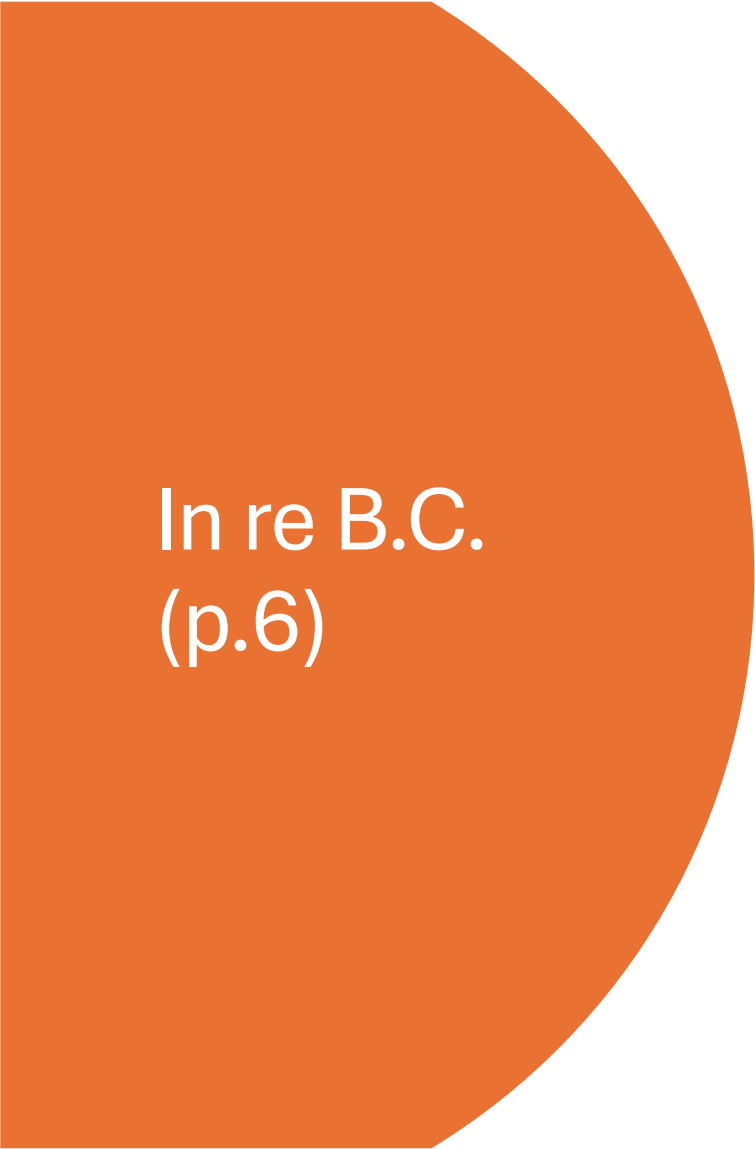
Read facts and oral
statement of
agreement by party
stipulating

Stipulations In re T.C. (p.5)

- Father, DSS, and GAL stipulate to 23 allegations mostly re: mother
- Hearing: mother objects, requests hearing
- Court relies on stipulation
- Adjudication of abuse and neglect



One parent cannot bind another
parent who objects

A large orange shape on the left side of the slide, consisting of a rectangle with a quarter-circle cutout on its right side.

In re B.C. (p.6)

Alleged sexual abuse by father

Concern about trauma due to mother's behavior re: father's alleged abuse

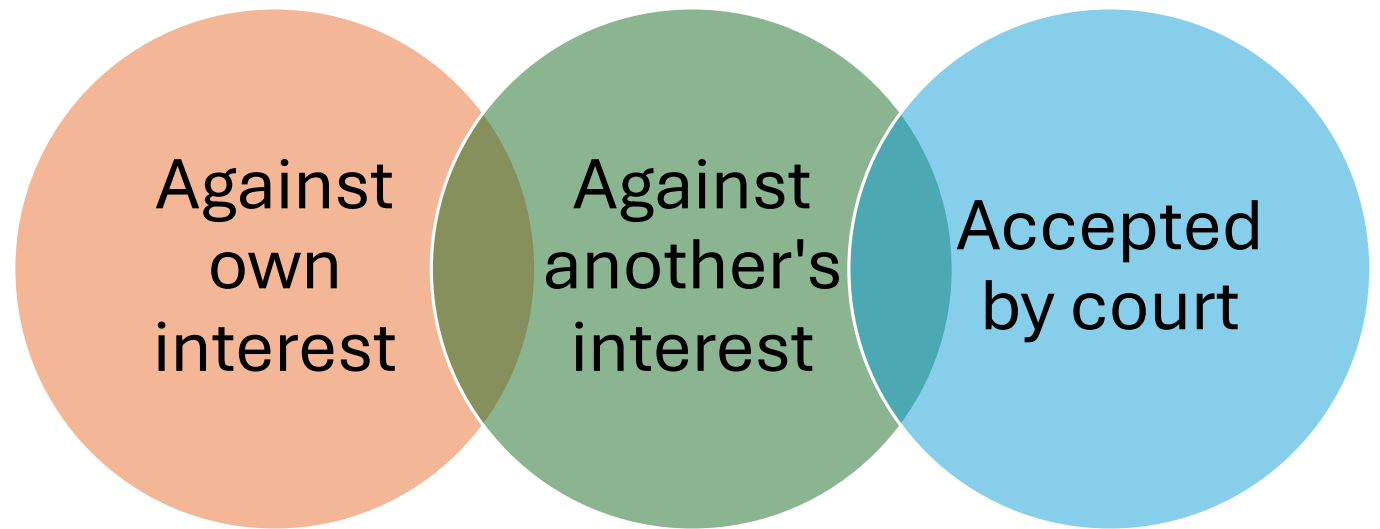
Father stipulated that sexual abuse allegations were made against him

He denied allegations were true

Petition emotional abuse, neglect, dependency

The Stipulation

Clarify bases of the
petition and
adjudicatory hearing



Preservation?

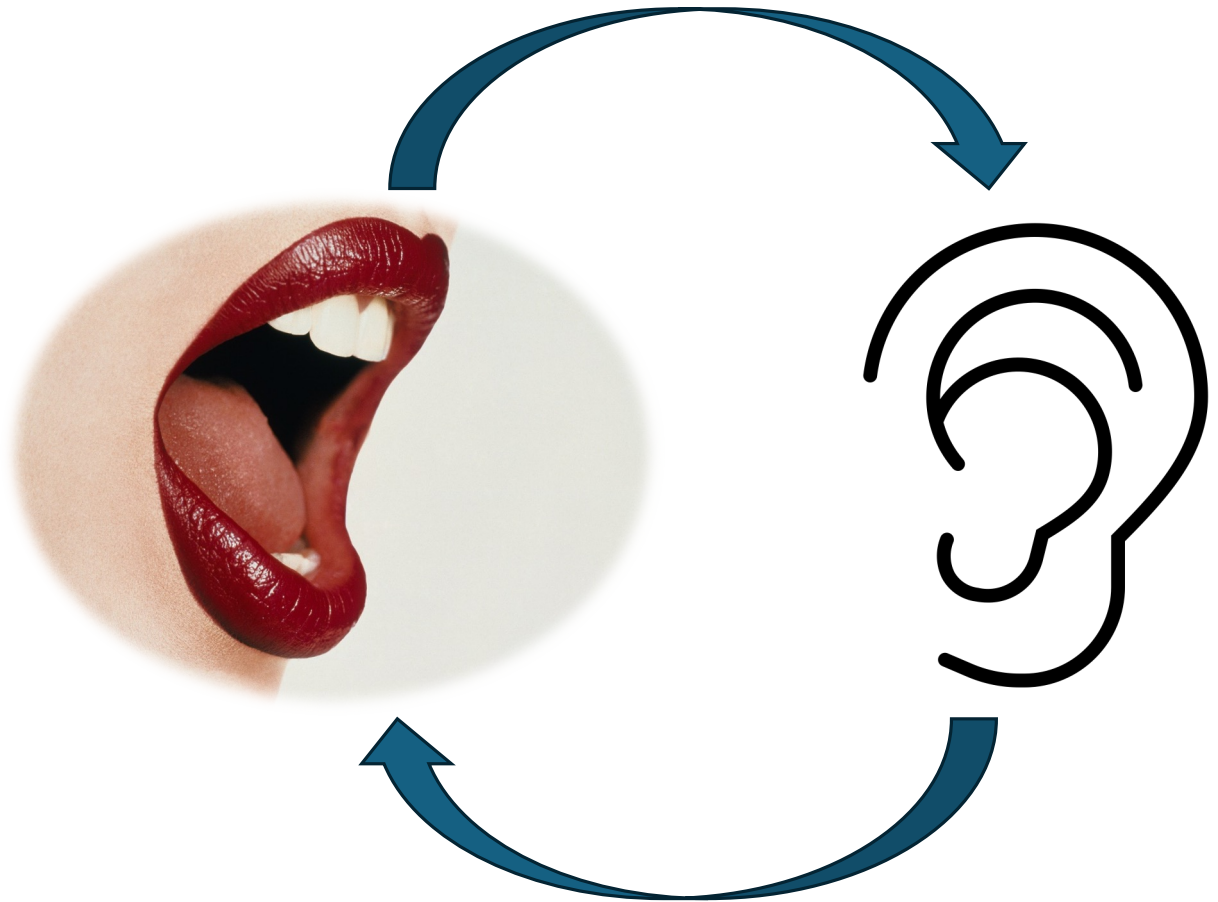
In re J.M.V., Jr. (p.61)



SW Testimony:
child's sexual abuse
allegations;
DSS substantiate

- Initial objection on hearsay grounds
- Later in direct, testimony repeated without objection
- Cross-examination, elicited similar testimony

- Standing/repeat objections
- Eliciting inadmissible testimony
- Opening doors



Hearsay Exceptions

In re K.E.P.
(p.6)

Business records, Rule 803(g)

- SW testimony properly testified about records kept by DSS
- 5 DSS reports

CME

- Dual Purpose
- Medical Dx and Tx, Rule 803(4)
- Basis of Expert Opinion

Hearsay



Business Records Exception (R. 803(6))

- The record of a business
- Prepared in ordinary course of business
- At/near the time of the event
- Info from someone with knowledge
- With a duty to report accurately
- Sworn to by testimony or affidavit with notice to parties

In re S.D.J., 192 N.C. App. 478 (2008)

SW laid foundation for drug lab results

- Collected sample
- Ordered report
- Filed results with office

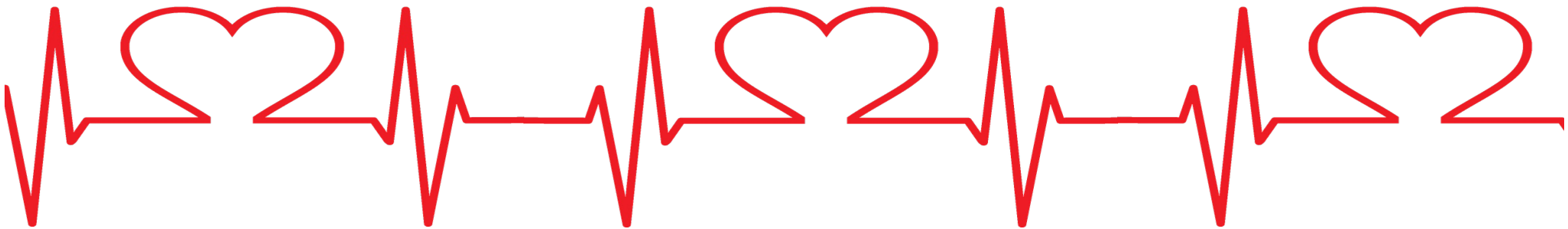
Hearsay

Medical Diagnosis or Treatment Exception

- Did the declarant understand the statement would lead to medical d/t?
- Was the statement reasonably pertinent to medical d/t?

Child Medical Exams (CMEs)

- Business record?
- Medical diagnosis/treatment?
- Basis for expert's opinion?



Social Worker Smith,
please read the
details of every CPS
report on Jonny's
family since 1997.

- Purpose: show misconduct occurred or explain investigative steps?
- Statements must be limited in detail due to potential for prejudice.

The “Explains Conduct” Non-Hearsay Purpose



October 13, 2009 [Jeff Welty](#)

Print

Most readers of this blog know that hearsay evidence, meaning an out-of-court statement “offered in evidence to prove the truth of the matter asserted,” N.C. R. Evid. 801(c), is presumptively inadmissible. Sometimes the proponent of hearsay evidence can introduce the evidence under one of the exceptions in Rules 803 and 804. But equally often, the proponent of what appears to be hearsay evidence will attempt to introduce it for a non-hearsay purpose, i.e., for a purpose other than to establish the truth of the matter asserted.

Here’s an example. Dan Defendant is charged with PWISD cocaine. Ollie Officer is on the stand, and Pat Prosecutor asks, “how did Dan first come to your attention?” Ollie begins to say that Winnie Witness, who lived near Dan, contacted Ollie and told him that Dan was selling drugs. Dan’s lawyer objects on hearsay grounds, and

Topics



Cases to look out for

Collateral Estoppel

In re A.D.H. (p. 8)

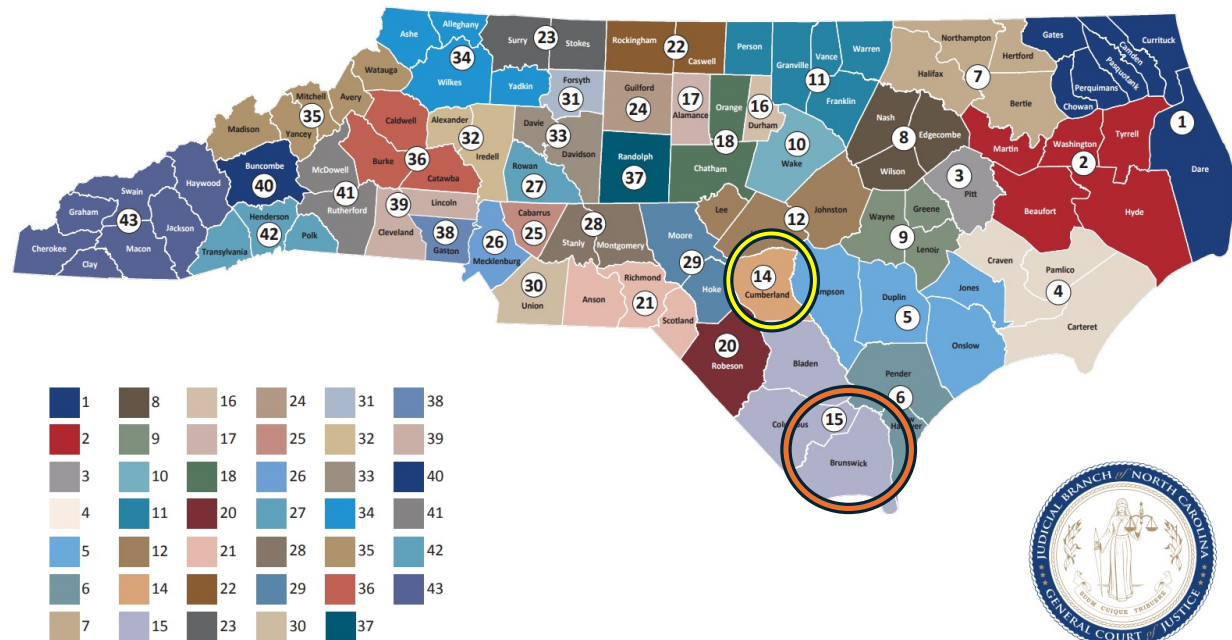
CH. 50

- Father did not sexually abuse daughter

TPR/Underlying A/N/D case

In re S.W. (p.49)*

NORTH CAROLINA DISTRICT COURT DISTRICTS



Effective January 1, 2024

A wide-angle photograph of a two-lane asphalt road stretching straight into the distance. The road is flanked by fields of tall, dry grass and some scattered trees. The sky is filled with large, dark, dramatic clouds, with a bright light source breaking through near the horizon, creating a lens flare effect. The word "Questions?" is centered in the middle of the image in a large, black, sans-serif font.

Questions?

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