

Judicial Notice at TPR

A FRAMEWORK FOR
DISTRICT COURTS



At a TPR hearing...



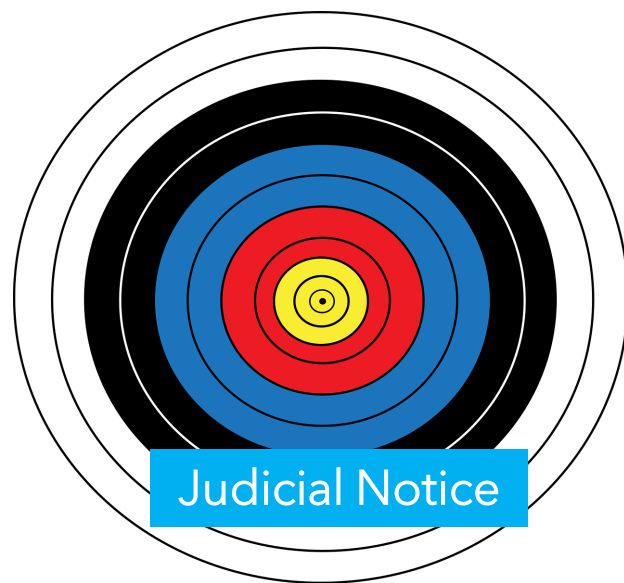
"DSS asks Your Honor to take judicial notice of all prior proceedings and the entire file."

Objection!



Traditionally, what is a proper subject of judicial notice?

-
- A fact “not subject to reasonable dispute.”
N.C. Evid. R. 201(b)
 - Ex: 105-mile distance between parents’ residence in Rowan County and foster placement in Ashe County. *In re A.D.*, 285 N.C. App. 88 (2022)



Judicial Notice Framework

Conclusive

Rebuttable

Evidentiary

CONCLUSIVE

Settled facts of the world

- R. 201(authoritatively settled and not subject to reasonable dispute)
- See *In re A.D.*, 285 N.C. App. 88 (2022) (distance to foster home)

Administrative details from proceedings

- Record entries
- Decretal portions of orders

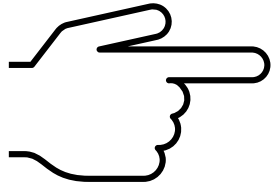
Collateral estoppel

- Cannot relitigate fully determined, necessary issues between similar hearings
- FOF & COL from prior adjudicatory hearings

Judicial admissions

- Stipulations in prior proceedings.
- See *In re A.E.*, 379 N.C. 177 (2021) (not receiving proper care or supervision)

CONCLUSIVE



A judge's own memory
is an insufficient basis
for taking judicial notice
of a fact.

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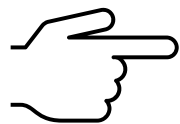
REBUTTABLE

Findings of fact and conclusions of law from non-adjudication hearings

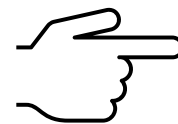
- *E.g.*, child is behind academically (*In re Z.J.W.*, 376 N.C. 760 (2021))
- *E.g.*, lack of case plan progress (*In re T.H.*, 372 N.C. 403 (2019))

Impact on proceeding

- Parties are not collaterally estopped from relitigating these issues (e.g., contrary evidence; impeachment)
- Does not "waste" prior work; arguably shifts burden



Presumption incompetent
evidence disregarding



Court assigns weight





Thinking about taking judicial notice of...

Prior adjudicatory orders

- Parties are estopped from relitigating facts (conclusive)
- TPR ground 7B-1111(a)(1)
 - Prior adj. order admissible
 - Likelihood of repetition in future? See, e.g., *In re A.E.*, 379 N.C. 177 (2021) (photos of improved conditions; failure to make changes)

Non-adjudicatory orders

- May receive evidence against judicially noticed fact
- Need evidence in *this* hearing to prove noticed facts
 - Admissible under Rules
 - Clear and convincing standard
- TPR grounds focused on
 - circumstances at the time of hearing, or
 - preceding 6 months (e.g., Abandonment)
- Be clear in the record about the present, admissible evidence that supports your facts

Judicial Notice Framework

Conclusive

Rebuttable

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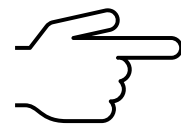
EVIDENTIARY

Evidence admitted at prior proceedings

- Must be admissible under Rules of Evidence
- General objections are likely insufficient


Court reports are tricky

- See *In re J.K.F.*, 379 N.C. 247 (2021); *In re D.T.H.*, 378 N.C. 576 (2021) (Concerning, but OK if you disregard incompetent evidence)



Be clear in the record.

DSS has filed a TPR petition alleging grounds 7B-1111(a)(1) (neglect) and (a)(7) (abandonment).



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Objection!

Prior adjudication order

- Found Mom used cocaine in front of Juvenile
- Adjudicated juvenile neglected

Prior review hearing order

- Found Mom lost job for being high at work
- Ordered Mom to participate in drug treatment

Prior admitted evidence

- Drug screen with affidavit of records custodian
- Handwritten letter, purportedly from Mom's boss, explaining she was let go for being high at work
- DSS review hearing court report which includes reference to domestic violence incident



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