

**District Court Judges'
2008 Summer Conference**

Juvenile Law Update

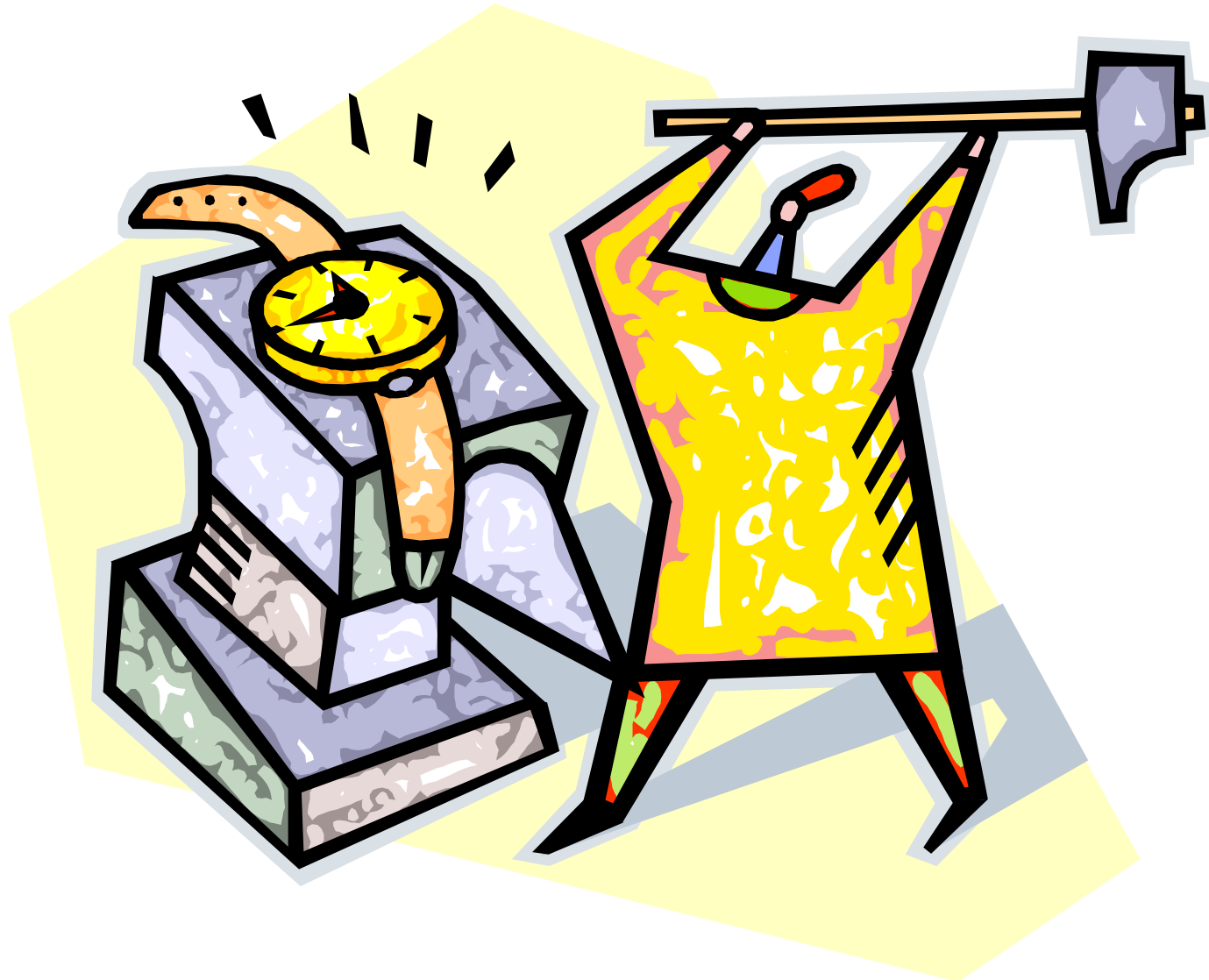


Janet Mason
School of Government
UNC at Chapel Hill
October 1, 2008



Abuse, Neglect, Dependency

Timely Entry of Orders



Mandamus



In re T.H.T.



Guardian ad Litem for Parent

G.S. 7B-602

- Always for minor parent
- Otherwise, court may appoint
if reasonable basis to believe parent
 1. is incompetent or has diminished capacity, and
 2. cannot adequately act in his/her own interest.




Appointment of GAL for adult parent is discretionary

1. Court may have a duty to conduct inquiry (per Rule 17). **In re M.H.B.**
2. Compare **In re L.B.**
GAL under G.S. 7B-1101.1
(argued in Sup. Ct. 9/10/08)
3. Attorney's Guidance: Rule 1.14



Adjudication Evidence **In re J.M.**

- Rules of Evidence apply
- Right to present evidence
- Testimony from other hearings must be
 - properly introduced
 - within exception to hearsay rule



Adjudication Evidence:
Rape Shield Law (G.S. 8C-1, Rule 412)

In re K.W.

1. may apply in civil case to exclude evidence of victim's sexual history
2. applies only to sexual activity – not to
 - a. false reports or
 - b. contradictory statements



Adjudication Evidence: Neglected Infant **In re A.S.**

Neglect adjudication supported by

- ❖ DSS and GAL reports
- ❖ judicial notice of other children's files

What if respondent had objected?



Adjudication Evidence:
Neglected Infant
Compare **In re N.G.** (9/18/07)

Detailed findings supported by

- prior tpr = collateral estoppel
- extensive social worker testimony
- physician testimony



Disposition: Neglected and Abused Infant **In re B.W.**

- Adjudicatory facts stipulated
- At disposition, court found
 1. “aggravated circumstances”
 2. reunification efforts futile and should cease
 3. custody should be with DSS



Disposition: Neglected Infant **In re A.S.**

Disposition was unclear where court

- incorporated whole reports
- found statements in reports true
- adopted recommendations in reports



Disposition: Visitation **In re M.H.B.**

Court may not delegate decisions about parent's visitation rights.





Nonsecure Custody Order **In re A.T.**

- was not appealable.

- Unanswered:

Could court require DSS to pay foster care board rate to relatives for period before DSS had custody?

Termination of Parental Rights: Jurisdiction





What might deprive court of subject matter jurisdiction?



1. Summons not renewed


In re D.B.

- Summons expired
- No extension or alias & pluries

The action discontinued.

- New summons issued and served

Issuance of new summons began new action and reinvoked jurisdiction



2. No valid summons issued to parent in underlying case

In re K.J.L.

- Is this really about standing?

Compare **In re E.X.J.**

- Failure to serve one parent in underlying case did not affect tpr jurisdiction.



3. Failure to issue summons to child when tpr petition filed

In re S.F.

Before September 2

- Distinguish issuance and service
- Is issuance to GAL sufficient?
- What does “referencing” juvenile mean? (**In re J.A.P.**)



September 2

In re S.D.J. and **In re N.C.H.** (with dissents)

- Court has subject matter jurisdiction if
 1. proper summons is issued referencing juvenile in caption, and
 2. designated representative of juvenile certifies that the juvenile was served.



Supreme Court to review

In re J.T., 657 S.E.2d 692 (3/4/08)

“Where no summons has been issued to the juvenile as required by [statute], we must vacate an order terminating parental rights . . . for lack of subject matter jurisdiction.”



4. UCCJEA

Findings (evidence) must support conclusion that court has

1. jurisdiction for initial custody determination, or
2. exclusive continuing jurisdiction, or
3. jurisdiction to modify, or
4. temporary emergency jurisdiction.



UCCJEA In re E.X.J.

- Temporary emergency jurisdiction when DSS given custody
- No action in TN, so NC became home state
- TPR jurisdiction is determined separately from abuse/neglect



Other possible jurisdiction problems:

5. failure to verify pleading
6. failure to initiate properly
7. child not in district (and no exclusive continuing jurisdiction)
8. TPR initiated by motion when court not “exercising jurisdiction over” parent in abuse/neglect/dependency case (G.S. 7B-1102; no cases)

TPR Evidence and Grounds





Juvenile Code

VS.

Rules of Civil Procedure

In re A.M.

Rule 43 applies to require oral testimony at hearing to terminate parent's rights.



Willfully leaving child in foster care
without making reasonable progress . . .

In re J.Z.M.

Evidence and findings supported
ground under G.S. 7B-1111(a)(2).



Need to distinguish

1. judicial notice
2. collateral estoppel
3. res judicata



Judicial Notice

Trial court

1. may take judicial notice of earlier proceedings in same case, but
2. is presumed to disregard any incompetent evidence.

In re S.D.J.



Collateral estoppel

precludes relitigation of issues already decided between parties, but only if issues were

1. fully litigated and
2. necessary to prior decision

See In re N.G., ___ N.C. App. ___, 650 S.E.2d 45 (9/18/07), affirmed per curiam, 362 N.C. 229, 657 S.E.2d 355 (3/7/08).



Res judicata

may bar a second action after dismissal, but only if


1. issues are identical, and
2. dismissal was a “final judgment on the merits”

Delinquency



Jurisdiction

In re K.W.

- 
- Failure to file petition within 15 days (30 days if extended)
 - no subject matter jurisdiction
 - 1. What constitutes “receipt of the complaint”?
 - 2. What evidence of extension is required?
 - 3. Can new petition allege same offense?



Transfer to Superior Court **In re E.S.**

Superior court review limited to abuse of discretion.

District Court:

1. Will transfer serve protection of the public and the juvenile's needs?
2. Consider factors in G.S. 7B-2203(b).
3. State reasons for transfer.




Accepting Juvenile's Admission **In re D.C.**

- State must show “factual basis”
 1. prosecutor's statement of facts
 2. juvenile's written statement
 3. sworn testimony (including hearsay)
 4. statement by juvenile's attorney
- Petition alone is not sufficient

Proof

Beyond a Reasonable Doubt

- 
- **In re R.D.L.** – suspicion or conjecture not sufficient
 - **In re S.D.R.** –
 - substantial evidence in record
 - circumstantial evidence sufficient



Modifying Disposition **In re D.G.**

1. residential sex offender treatment
2. youth development center

Findings → Conclusions

- funds were not available
- state & county couldn't be forced to provide services
- lack of funds = changed circumstances

. . . Modifying Disposition **In re D.G.**



Dissent:

insufficient proof and legal authority

Issues:

1. undocumented alien eligibility
2. is sex offender treatment an “impermissible public benefit”?
3. is “benefit” incidental if action is to protect public?
4. can court order payment?



Revocation of post-release supervision

1. does not require detailed findings
2. results in re-commitment supported by initial commitment order

In re D.M.




Preview: H.R. 6893

“Fostering Connections to Success and Increasing Adoptions Act of 2008”


(effective late 2010?)

1. State may use IV-E funds for guardianship assistance in some relative placements
2. State must make diligent efforts to identify and notify all adult relatives within 30 days after child removed from home
3. DSS will have direct access to Federal Parent Locator Service

H.R. 6893

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4. State may waive non-safety foster home licensing standards for relatives
 5. Expands eligibility for adoption assistance payments
 6. Expands adoption incentive program
 7. State must make reasonable efforts to
 - place siblings together
 - provide frequent visitation or interaction

H.R. 6893

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8. Support for youth in foster care past age 18
 9. DSS must coordinate with education agencies to ensure educational stability

H.R. 6893

Policies with Implications for Courts

1. Preference for relative placements and for plans other than foster care
2. Need for prompt and diligent efforts to identify and notify relatives
3. Strong preference for placing siblings together
4. Need for frequent visitation or interaction when siblings not together
5. Need for educational stability