
District Court Judges' Fall Conference

Juvenile Law Update

Janet Mason
School of Government
UNC at Chapel Hill
October 19, 2007

Can the Judge Do That?

**The answer is always “No”
if the court does not have
jurisdiction.**



- N.C. Supreme Court:
In re T.R.P. (2006)
If petition is not signed and verified,
No subject matter jurisdiction

Jurisdiction



In re A.R.G. (2007)

- No affidavit of status of child
- Child's address not in petition
 1. Did not defeat jurisdiction
 2. To say otherwise "would be to elevate form over substance"

Jurisdiction



- DSS Director = Mary Doe
- Social Worker = John Roe

John signed & verified petition:

“Mary Doe, by John Roe”

No subject matter jurisdiction
[A.J.H-R.; S.E.P.]

Jurisdiction



John (social worker) signed & verified the petition:

“John Roe, Mills County DSS”

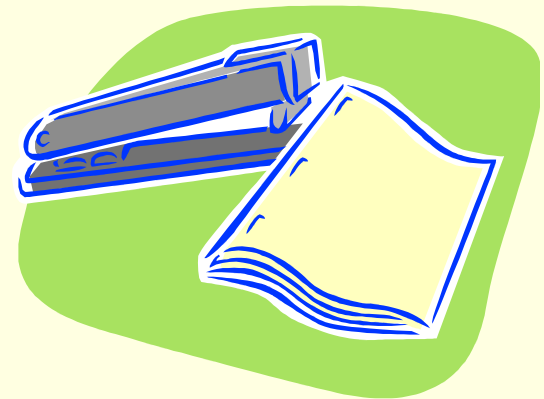
Probably okay if clear, or no dispute, that social worker is director’s authorized representative [Dj.L.]

TPR Jurisdiction

- No custody order attached to tpr petition

Probably does not defeat jurisdiction,
if custody is clear from the record

[H.L.A.D.]



TPR Jurisdiction

- G.S. 7B-1101.

TPR must be where child resides, is found, or is in agency custody

- This rule does not apply if state has UCCJEA exclusive continuing jurisdiction

[H.L.A.D.]

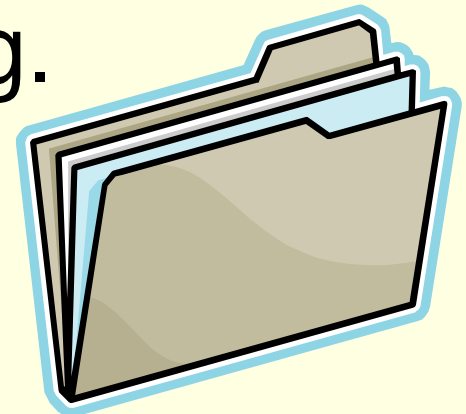
(with a dissent)



Jurisdiction

- For subject matter jurisdiction, record on appeal must show that summons was issued.
- Parties waive lack of personal jurisdiction by appearing and participating in proceeding.

[S.J.M.]



Jurisdiction: Delinquency Cases

- Court counselor received complaint
- Petition was approved for filing within 30 days
- Petition actually filed more than 30 days later

No subject matter jurisdiction.

[J.B.]



Multi-County Cases

- Child relinquished to DSS in County **A**;
placed in foster care in County **B**
- Child sued County **A** and **DHHS**
- Judge found conflict of interest & directed **B** to file dependency petition
- **A** filed motion for review; court allowed **DHHS**'s motion to intervene
- Court adjudicated dependency, placed child in custody of **B**, and changed venue
- County **B** appealed

In re J.L.H. and In re Z.D.H.

COA granted DHHS motion to dismiss appeal taken by Counties B & C

State DHHS:

1. has “principal-agent” relationship with county DSS in relation to child protective services
2. can control county DSS’s handling of a juvenile case

In re J.L.H. and In re Z.D.H.
suggest, but did not hold:

1. DHHS may intervene in juvenile case
2. Court may adjudicate dependency at a review hearing, based on child's relationship with DSS
3. Court may give legal custody to DSS in County B, after County A (which had legal custody) places child in County B

Evidence: In re N.G.

- Collateral estoppel precludes relitigation of issues decided in earlier case involving same parties
- Evidence and findings supported
 - a. adjudication of neglect, based on injurious environment,
 - b. conclusion that reunification efforts would be futile, and
 - c. order ceasing visitation.

Review Hearings: Findings

1. Incorporating DSS & GAL reports was not error because court also made independent findings
2. Recitations of witness's testimony were not findings

[L.B.]



Review Hearings: Waiver

1. Child with relative or in custody of other person for a year;
2. Placement stable & in child's best interest;
3. Parties' rights do not require reviews;
4. Parties know they can ask for review;
and
5. There is designation as guardian or permanent caretaker.

[L.B.]

G.S. 7B-906(b)

Entry of Chapter 50 Order

The Court

1. adjudicated abuse & neglect
2. placed child in father's custody
3. entered Ch. 50 custody order
4. terminated juvenile court jurisdiction

COA found findings sufficient to support entry of Ch. 50 custody order.

[T.H.T.]

Enter a Chapter 50 Order Only

1. at or after disposition;
2. after findings & conclusions to support entry / modification of Ch. 50 order; and
3. after finding in separate juvenile order:
 - a. no need for continued intervention &
 - b. six months have passed since court determined this was permanent plan (except when custody is to a parent).

[T.H.T.]

Appeals

- After entry of cease-reunification efforts order, parent may appeal
 1. later, when appealing tpr order, or
 2. after 180 days, if no tpr action
- However, parent must give notice of intent to appeal

[D.K.H.]

TPR: Effect of Dismissal

- June 2004. DSS filed tpr petition
- April 2005. Children returned home on trial basis
- August 2005. Children back in foster care
- March 2006. At hearing on tpr petition court grants motion to dismiss for delay
- April 2006. DSS files new tpr petition alleging same grounds

[I.J.]

TPR: Effect of Dismissal

- Second action not barred by *res judicata*.
 - Trial court limited evidence & based tpr only on post-June 2004 events
 - Not identity of issues
- COA did not decide whether the dismissal would have been a 'final judgment on the merits' for purposes of *res judicata*.

[I.J.]

ASFA & Reasonable Efforts

- In TPR appeal,
 1. Parent argued DSS violated ASFA by not making meaningful reunification efforts
 2. Court of appeals held that DSS did make reasonable efforts
 - Is compliance with ASFA a precondition of termination?

[A.R.H.B.]

Americans with Disabilities Act

1. ADA did not preclude termination of rights of parent with developmental disability
2. ADA does not apply to termination of parental rights actions.
3. ADA was complied with in this case.

[C.M.S.]

Appellate Procedure

1. Party may give proper notice of appeal between time judgment is rendered and time judgment is entered.
2. Failure to serve notice of appeal on guardian ad litem is reversible error if not waived.

[J.L.]

Timelines



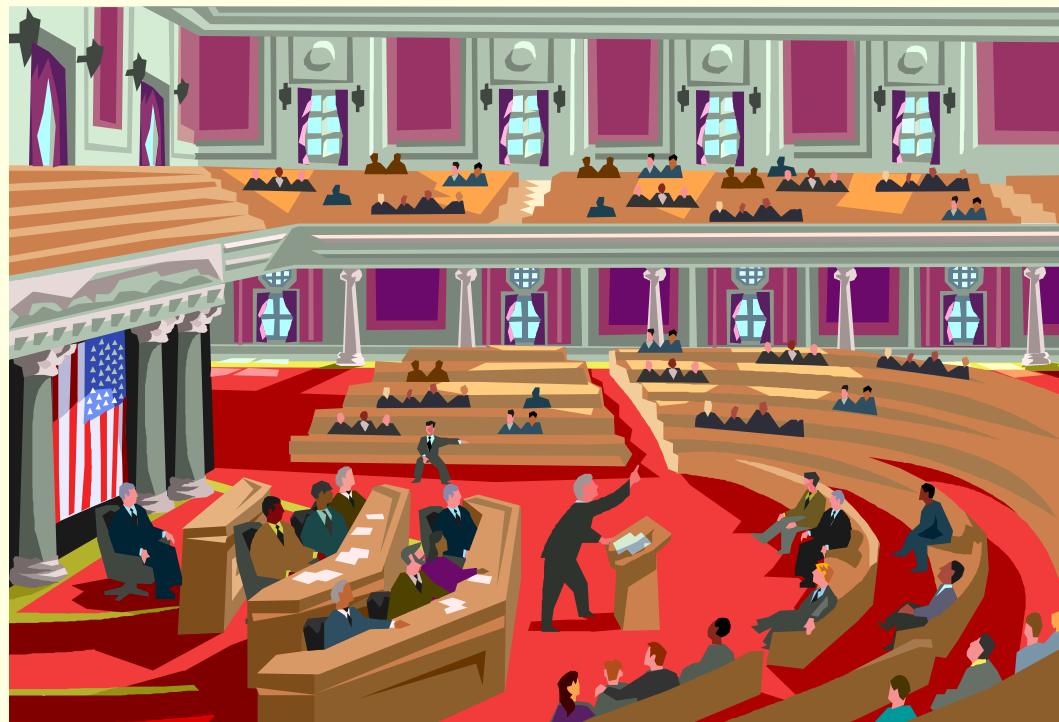
- Prejudice not shown:
 - TPR hearing held almost 6 months after petition filed [Dj.L.]
 - Order entered more than 2 months after hearing and no hearing about why order had not been entered [T.H.T.] (with dissent)

Timelines



- Prejudice not shown:
 - Court presumed oral rendition of order stated everything in written order entered 6 months later, so late entry did not prejudice parent's ability to comply with the order. [A.R.H.B]
- Prejudice shown; reversed:
 - Holding tpr hearing 420 days after petition filed [J.Z.M.] (with dissent)

2007 Legislation



Contempt by a Juvenile

Critical first question:

- If this is contempt by a juvenile is it **DIRECT** or **INDIRECT**?

Contempt by a Juvenile: Direct or Indirect

- Direct Contempt by a Juvenile:
 1. in sight or hearing of judicial official,
 2. in or near courtroom, and
 3. likely to interrupt or interfere with matters before the court

- All other contempt is Indirect Contempt by a Juvenile

Response to Direct Contempt

1. Summary proceeding or
2. Issuance of show cause order for later hearing in juvenile court

Court orally may order juvenile taken into custody and restrained to ensure presence for summary hearing or service of show cause order.

Response to Direct Contempt

Summary proceeding requires

- Notice
- Opportunity to be heard
- Appointment of counsel & time to confer
- Findings (beyond reasonable doubt)
- Finding of willfulness or warning

Response to Direct Contempt

- Regardless of type of hearing, for direct contempt by a juvenile, court may order only:
 1. up to 5 days juvenile detention
 2. up to 30 hours community service
 3. evaluation to determine juvenile's needs

Direct Contempt by a Juvenile

- Is not an act of delinquency
- Does not result in points for a juvenile's delinquency history level

Indirect Contempt by a Juvenile

- Is an act of delinquency
- Does not result in points for a juvenile's delinquency history level

Indirect Contempt by a Juvenile

- Handled through intake & procedures that apply to all delinquency cases
- Is a “minor” offense
- If adjudicated, results in disposition as any other minor offense
- Does not count as a “prior offense”

Restraint of Juvenile in Courtroom

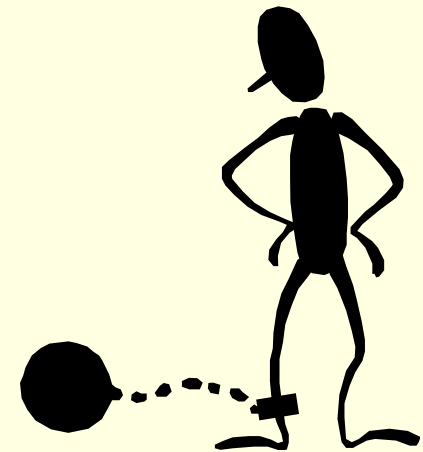
- Court may require restraint only after finding it reasonably necessary to
 1. maintain order,
 2. prevent escape, or
 3. provide for safety in courtroom.



Restraint of Juvenile in Courtroom

- When possible, court must give juvenile and attorney chance to be heard
- Court must make findings of fact to support order
- Applies to all hearings in delinquency and undisciplined cases

[S.L. 2007-100 (H 1243)]



New Secure Custody Ground

When

1. juvenile charged with impaired driving or driving after consuming alcohol / drugs,
2. court finds reasonable factual basis to believe juvenile committed the offense,
and
3. juvenile has demonstrated he is a danger to persons.

Effective 12/1/07

Termination of Parental Rights

Court may terminate rights of out-of- state parent if

1. N.C. has non-emergency jurisdiction under UCCJEA and
2. Parent has been served with summons pursuant to GS 7B-1106

What about *Truman, Finnegan, Dixon?*

[S.L. 2007-152 (H 866)]

New TPR Ground

■ When

1. parent in N.C. has relinquished child or consented to adoption, and
2. adoption is taking place in another state, and
3. that state requires termination of parental rights, and
4. parent does not contest termination.

Child Welfare Changes for Federal Compliance

- Post-TPR hearings must be held until a final order of adoption is entered
- Various changes emphasize the “right” (not just opportunity) of various participants to present evidence and be heard

[S.L. 2007-276 (H 698)]