

District Court Judges' Conference

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Juvenile Case Update

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Neglect cases decided 6/16/09

1. In re H.D.F.

Reversal required where notice of key events in case was not given to father whose attorney had withdrawn.



2. In re J.B.

Findings were insufficient to:

- create or modify a Chapter 50 custody order,
- terminate jurisdiction in juvenile case, or
- award custody to non-parent.

Without findings necessary to override it, a parent's paramount rights as a parent exist in juvenile case.



3. In re B.G.

Findings were insufficient to apply “best interest” standard and award custody to non-parent.

There was no showing that the parent

- was unfit,
- had neglected the child, or
- had acted inconsistently with his constitutionally protected rights as a parent

Magic Words that can make a case disappear

**No
Subject Matter
Jurisdiction**





State of North Carolina
Every County

2009 KJL 618

Subject Matter Jurisdiction

VS.

Judgment

Summons

The court hereby grants an absolute divorce.

Supreme Court of N.C.

June 18, 2009



In re K.J.L.

6/18/09

Summons in neglect case not dated or signed.

In appeal from tpr:

Court of Appeals


- order giving DSS custody was void
- so DSS lacked standing to file tpr

Supreme Court

- summons related only to personal jurisdiction
- parents waived defect by coming to court and stipulating to neglect

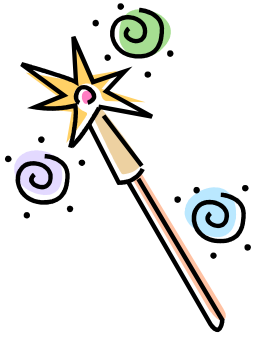
Monster summons Ride





Summons & Subject Matter Jurisdiction in TPR

1. Statute required summons to child
2. Court of Appeals
 - a. child not named in caption →
no jurisdiction
 - b. summons not issued to child →
no jurisdiction
 - c. child named in caption and child's GAL
is served → court had jurisdiction
 - d. expiration of summons → no jurisdiction



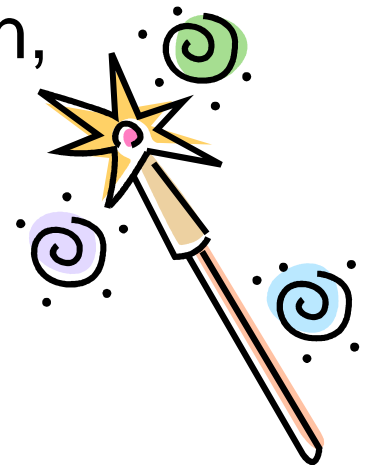
Supreme Court's Magic

February 2009

- ~~child not named in caption → no jurisdiction~~
- ~~summons not issued to child → no jurisdiction~~
- ~~child named in caption and child's GAL is served → court has jurisdiction~~
- ~~expiration of summons → no jurisdiction~~

With respect to subject matter jurisdiction,
In re J.T. either

- reversed,
- overruled, or
- disapproved reasoning



In re J.T.
N.C. Supreme Court

1. Key question:

Was a summons issued?

2. If it was, issues of naming or serving the juvenile are about personal, not subject matter, jurisdiction.

3. Child's GAL, by participating, waived any defect.





J.T.

- Left issue of personal jurisdiction for cases in which no GAL to waive service on child.
- But only in cases filed before 5/27/09, when S.L. 2009-38 (H 1272) repealed statute requiring summons to child.



J.T. seemed to still require
issuance of valid summons.

- “[W]here no summons is issued, the court acquires jurisdiction over neither the parties nor the subject matter”

K.J.L. (6/18/09)

- That language “could be interpreted to mean the failure to issue a summons defeats subject matter jurisdiction.”
- “We disavow such an interpretation.”





In termination cases,

if initiated by **petition**,

1. summons required (but not for child)
2. issuance and service of summons may be waived
3. if not waived, court may lack personal jurisdiction



In termination cases,

if initiated by **motion**,

1. notice is required (but not for child)
2. service of notice may be waived
3. if not waived, may have reversible error

Magic Words that can make a case disappear

**No
Subject Matter
Jurisdiction**





A. UCCJEA

Court must conclude it has

1. temporary emergency jurisdiction, or
2. jurisdiction to enter initial child-custody order, or
3. exclusive continuing jurisdiction, or
4. jurisdiction to modify another state's order



Order and record must support UCCJEA jurisdiction.

- Order should state findings and conclusion, supported by evidence in record
- But sufficient (without findings) if conclusion supported by evidence in the record



UCCJEA:

In re J.W.S. – Neglect Case

In re E.X.J – TPR Case (aff'd)



B. Standing

DSS has standing only if child in DSS custody.

- nonsecure custody is sufficient
- if order giving DSS custody is void, DSS lacks standing

In re D.D. (COA, 6/16/09)

- no summons issued in neglect case
- so court did not have jurisdiction
- even though parents participated
- DSS did not have custody when it filed tpr
- **Effectively overruled 6/18/09 by K.J.L.**

Father was not served in neglect case.


In re E.X.J.

- In neglect case, service on one parent sufficient. [Poole]
- Actions in neglect case do not determine jurisdiction in tpr.

Because father not served initially,

1. at tpr use petition, not motion
2. findings not collateral estoppel
3. failure to participate in neglect case cannot be used as evidence





C. Jurisdiction at TPR Disposition In re I.T.P-L.

Trial court

- terminated parents' rights
- gave DSS legal & physical custody
- ordered placement with grandparent

G.S. 7B-1112:

1. Agency with custody when tpr filed has exclusive placement authority.
2. Otherwise, court decides custody based on best interest.



D. Jurisdiction during appeal In re K.L.

- TPR order appealed.
- Issue = failure to issue summons in neglect case.
- In the neglect case, trial court allowed DSS motion to amend summons.


G.S. 7B-1003:

- During appeal of tpr order, court may only enter temporary orders affecting custody or placement of child.



In re C.N.C.B. (6/16/09)

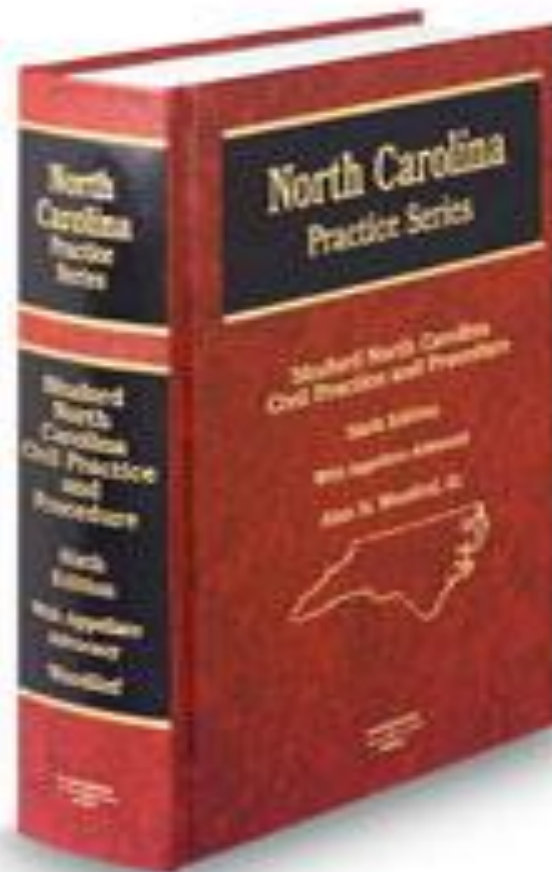
- After notice of appeal was given, court did not have jurisdiction to “correct” its order to add a critical finding of fact.
- Rule 60(a) allows correction of clerical errors until appeal is docketed in court of appeals.




E. Jurisdiction of Court of Appeals In re L.B. (aff'd)

- Appellate Rule 3A – respondent must sign notice of appeal
- Signature of parent's GAL was not sufficient
- Court of appeals lacked jurisdiction to consider appeal

Civil Procedure





Does a particular Rule of Civil Procedure apply?

1. Yes, Ch. 7B provides specifically that the rule applies
2. No, Ch. 7B provides a different procedure

If neither,

3. Yes, the rule fills a procedural gap
4. No, the rule confers a new right
5. Totally unclear



Rule 15

In re B.L.H. (Sup. Ct. aff'd *per curiam*)

- Rule 15 does not apply to permit amendment to conform to evidence
- key is sufficiency of notice given by factual allegations, not whether ground is specifically alleged

In re S.R.G.

- only abandonment alleged
- evidence related to “willfully leaving child in care . . .”



Rule 17

1. GAL: minor parent
 - 7B-602(b) & -1101.1 → Rule 17 applies
2. GAL: juvenile
 - 7B-601 & -1108(c) → different rules
3. GAL: parent, if reasonable basis to believe incompetent or diminished capacity
 - 7B-602(c) → Rule 17
 - 7B-1101.1(c) → different rule?
4. GAL: incompetent parent
 - In re L.B. → Rule 17 (Ch. 35A) ???



Appointing GAL for adult parent is in court's discretion.

Court may have duty to hold hearing on whether to appoint GAL

- M.H.B. – evidence raised substantial issue
- N.A.L. – same
- C.G.A.M. – allegation of dependency ground alone did not require hearing

Rule 43. Evidence

“(a) Form. – In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules.”

- Summary tpr is not allowed.
- Court may not rely solely on written evidence.
- Court must hear some testimony.

In re A.M.

In re N.B.



Compare In re A.S.

Supreme Court affirmed *per curiam*

- Neglect case
- Parent did not object to admission of DSS and GAL reports

Court of appeals said:


“Since there was no objection . . . to the admission of these reports . . . the reports constitute substantive evidence sufficient to support the trial court’s findings of fact.”





Rule 24: Intervention

- GS 7B-1103(b)
 - No reference to Rule 24 but allows intervention in abuse/neglect case by someone with standing to file tpr
- Older tpr case allowed intervention by right by IV-D agency (Hill v. Hill, 1996)
- How should court approach motions for permissive intervention?



Permissive Intervention: Rule 24(b)(2) and (c)

1. Motion to intervene must
 - a. be timely,
 - b. include pleading of claim or defense,
 - c. state common question of law or fact,
 - d. be served on parties.
2. Would intervention “unduly delay or prejudice” adjudication of parties’ rights?
3. Does Rule 24 “fill a gap” or “confer a right”?

Delinquency





Interrogation

In re W.R.

- Supreme Court
 1. Because juvenile did not object or move to suppress, trial court did not have evidence to consider issues of custody and voluntariness.
 2. Court of appeals should not have found “plain error.”




Interrogation

In re J.D.B.

1. 13-year-old questioned at school
2. present = SRO, investigator, principal, intern
3. juvenile confessed, then principal said he did not have to answer questions and was free to leave

Held: juvenile was not in custody

Dissent: juvenile clearly was in custody



Trespass at School

In re S.M.S

1. Evidence of boys running through girls' locker room
2. Sufficient for 2nd degree trespass
3. Why did the case go to court?

What if the answer is

- pressure from school?
- pressure from parent?
- case had been diverted?



Dispositions

1. In re S.S.

- more than 6-month delay in disposition did not affect jurisdiction.

2. In re D.R.H.

- must consolidate adjudications for disposition
- failure to object to work sheet = stipulation

3. In re D.M.B.

- order for restitution requires 'best interest' evidence and finding