


# **District Court Judges' Conference**

## **Juvenile Law Update**



**Janet Mason**  
**School of Government**  
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# Delinquency reminders:

- 
- Facts must be found, unequivocally, beyond a reasonable doubt. **In re B.E. (11/6/07); In re C.B. (12/18/07)**
  - Adjudication for disorderly conduct in school requires evidence of substantial disruption. **In re S.M. (5/20/08)**
  - Court may delegate how a dispositional alternative is to be implemented but not whether it will be implemented. **In re V.A.L. (11/20/07)**


# N.C. Supreme Court



In two TPR cases, reversed and adopted dissenting opinion in COA, with result of upholding trial court's order:

- **J.Z.M.** – respondent did not show prejudice resulting from delay in holding hearing
- **J.E.** – issues about GAL appointments in underlying neglect case were not properly before the court

# jurisdiction



ju·ris·dic·tion – *noun* -- from Latin *jurisdiction-*, *jurisdictio*, from *juris* + *diction-*, *dictio* act of saying —

1. the power, right, or authority to interpret and apply the law
  2. the power or right to exercise authority
  3. the limits or territory within which authority may be exercised
- **Synonyms:** see **power**



# Juvenile Code

- G.S. 7B-101

(7) *Court of competent jurisdiction* –

A court having the power and authority of law to act at the time of acting over the subject matter of the cause.



# Subject Matter Jurisdiction

1. establishing that you have it
2. exercising it
3. ending it



# Sis (age 4), Mom, Dad, SW, Atty

- Sis is found on street Friday night
- DSS takes custody
- SW calls judge who authorizes nonsecure custody by telephone
- First thing Monday, Atty files a petition alleging neglect
- Parties are properly served

Parent moves to dismiss for lack of SM jurisdiction because nonsecure custody order was entered before petition was filed.

1. Dismiss

✓ 2. Do not dismiss





## **In re L.B. (1/2/07)**

Dismissal was not required.  
Court acquired jurisdiction when  
petition was signed, verified, and  
filed.



## In re Sis

Because the petition is drafted and filed under pressure, SW and Atty make some mistakes.

Assuming that everything else is proper, would any of the following affect subject matter jurisdiction?

SW signs but does not verify the petition.

**Does court have SM jurisdiction?**

1. Yes
- ✓ 2. No
3. It depends



**In re C.M.H. (12/18/07)**  
**In re T.R.P., 360 N.C. 88 (2006)**

When required by statute,  
verification is essential for  
subject matter jurisdiction.

Petition does not include Sis's age, birth date, or address.

**Does court have SM jurisdiction?**

- ✓ 1. Yes
- 2. No
- 3. It depends




## In re T.M.H. (12/6/07)

Jurisdiction is not affected if

- petition is substantially compliant and
- respondents have access to omitted information.

Petition does not state that SW is *authorized agent* of DSS director.  
**Does court have SM jurisdiction?**

1. Yes
2. No
-  3. It depends;  
probably
4. It depends;  
probably not



## In re D.D.F. (12/4/07)

SW was authorized representative for purpose of signing petition, when

- record showed SW was assigned to child's case, and
- no indication SW was not DSS director's authorized representative or was acting outside her authority.



Summonses are issued only for Mom and Dad; no summons is issued to Sis.  
**Does court have SM jurisdiction?**

- ✓ 1. Yes
- 2. No
- 3. It depends




## **In re M.G. (12/18/07)**

In abuse, neglect, or dependency proceeding, statute does not require that summons be issued to or served on child.

Summons issued to and served on Mom. No summons to Dad. Dad moves to dismiss for lack of SM jurisdiction.

1. Dismiss
- ✓ 2. Do not dismiss
3. It depends



**In re Poole, 151 N.C. App. 472  
(2002) (Timmons-Goodson, J.,  
dissenting), *adopted per curiam*,  
*357 N.C. 151 (2003)***

In dependency case, failure to issue and serve summons on father did not affect subject matter jurisdiction when summons was issued to and served on mother

Summons issued to & served on Mom.  
No summons to Dad. Dad moves to  
dismiss for lack of personal jurisdiction.

1. Dismiss
- ✓ 2. Do not dismiss
3. It depends



# **In re Poole**

## **UCCJEA**

In dependency (or neglect or abuse) case, personal jurisdiction over parents is not required.



Both parents participate at adjudication. Evidence shows

- Sis was at Dad's for visitation
- Dad left Sis and 6-year-old nephew alone while he went to a party
- Dad returned at 1:00 a.m. but did not notice Sis was missing until he awoke late in the morning

The court could adjudicate Sis to be

1. neglected as to Dad
- ✓ 2. a neglected juvenile
3. either 1 or 2
4. neither 1 nor 2





## Neglected ~~as to Dad~~

- **M.G. (citing J.S.)** – Purpose is for court to determine status of child, not culpability of parent
- ***But see, R.L.*** –  
COA makes no comment on “as to” adjudications



## One year later,

- Sis has been in foster care since Mom seriously hurt in accident
- Court gives custody to Mom and terminates jurisdiction
- In civil district court your calendar includes “Dad vs. Mom,” in which Dad is seeking custody of Sis

In custody action against Mom, Dad has burden of showing



1. best interest
2. substantial change of circumstances affecting Sis's welfare
3. neither, because only juvenile court can change custody

# G.S. 7B-201

## When jurisdiction terminates:

1. Court cannot modify or enforce any order previously entered in the case
2. Legal status of child and rights of parties revert to what they were before juvenile petition was filed (unless changed by other law or court order)



# Mom vs. Dad

- Mom files complaint seeking divorce and termination of Dad's rights, alleging abandonment
- Dad is served with both a regular civil summons and a termination of parental rights summons

If neither party raises an issue of jurisdiction, can you proceed with the termination matter?

1. Yes
- ✓ 2. No
3. It depends



## **In re S.D.W. (12/4/07)**

Procedures in Juvenile Code for initiating termination proceeding are exclusive.



Two years later,

- In juvenile case in County A, the court
  - placed Sis in custody of Aunt
  - waived further review hearings
  - relieved DSS and GAL
- In County B, Dad files civil action against aunt and mom seeking custody of Sis




Can the district court proceed in Dad's action for custody?

1. Yes

 2. No

## G.S. 7B-200

- 
- Civil action is stayed automatically
  - County A judge (after consulting B) could
    - order civil action in County B transferred to County A
    - transfer juvenile case to County B
    - stay the juvenile case and dissolve stay in civil case



## Two years later


- Aunt has legal custody and has moved with Sis to South Carolina
- Aunt wants to adopt Sis
- Aunt files a juvenile petition in N.C. to terminate rights of Mom and Dad, who still live in N.C.

Dad moves to dismiss for lack of SM jurisdiction because Sis does not reside in, is not found in, and is not in agency custody in N.C.

1. Dismiss

 2. Do not dismiss

## Juvenile Code says




district court has exclusive jurisdiction, to hear and determine any tpr motion or petition,

- relating to any juvenile who resides in, is found in, or is in the custody of a DSS or licensed child-placing agency in the district
- when the petition or motion is filed.

*But see, In re H.L.A.D. (N.C. App., 7/3/07, aff'd per curiam, 1/25/08).*

## Two years later

- 
- Custody has remained with DSS
  - Permanent plan has changed to adoption
  - DSS files a petition to terminate rights of Mom and Dad
  - New SW and new Atty make some mistakes

**Do any of the following affect jurisdiction?**

Summons issued to Dad expires. Ten months later a new summons is issued and served on Dad.

**Is there a SM jurisdiction problem?**

1. Yes

 2. No



## **In re D.B. (11/6/08)**


If action discontinues because summons is not served or renewed, issuance of new summons begins a new action and reinvokes subject matter jurisdiction.



No order giving DSS custody is attached to the petition.

**Is there a SM jurisdiction problem?**

1. Yes
2. No
- ✓ 3. It depends



**In re T.M. (4/17/07)**  
***(affirmed per curiam, 11/9/07)***

- Failure to attach custody order is not per se reversible error
- Issues are:
  1. Did DSS have standing to file petition/motion?
  2. Is it clear from record that DSS had custody of child?
  3. Was respondent prejudiced by failure to attach custody order?

No summons is issued to Sis or her GAL, but GAL states in court that he waives service of process.

**Is there a SM jurisdiction problem?**

- ✓ 1. Yes
- 2. No
- 3. It depends




**In re K.A.D. (12/4/07)**

**In re I.D.G. (2/5/08)**

**In re S.F. (6/3/08)**

- When tpr is initiated by petition, failure to issue summons to child deprives trial court of subject matter jurisdiction.

## Some questions: In tpr,

- 
- is it sufficient to name child in caption of summons but only Mom and Dad as respondents?

**No**

- is it sufficient to name child's GAL, but not the child, as respondent?

**Probably**

- when child has no GAL, how should child be served?

**Safest way is through a GAL**



## More questions:

- What is the role of a parent's GAL?


**In re L.B. (review denied)**

- When Juvenile Code is silent about a procedure, when does a Rule of Civil Procedure apply?

**In re B.L.H. (with dissent)**

## BONUS QUESTION

Will State Supreme Court affirm COA holding that failure to issue summons to child when tpr petition is filed deprives trial court of subject matter jurisdiction?

1. Yes
2. No
-  3. Abstain