

PARENTS' CONSTITUTIONAL RIGHTS IN ABUSE, NEGLECT AND DEPENDENCY CASES

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N.C. Gen. Stat. § 7B-100

This Subchapter shall be interpreted and construed so as to implement the following purposes and policies:

(1) To provide procedures for the hearing of juvenile cases that assure fairness and equity and that protect the constitutional rights of juveniles and parents;

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OVERVIEW

- ✓ What are the constitutional rights of parents?
- ✓ What procedures are required to assure fairness and equity for parents?

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Constitutional Rights

The 14th Amendment

Meyer v. Nebraska, 262 U.S. 390 (1923). "[w]ithout doubt" the fourteenth amendment "denotes ... the right of the individual to ... bring up children ... according to the dictates of his own conscience."

Troxel v. Granville, 530 U.S. 57, 65-66 (2000)

"The liberty interest ... of parents in the care, custody, and control of their children— is perhaps the oldest of the fundamental liberty interests recognized by this Court."

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Constitutional Rights

North Carolina

- The general rule in a custody dispute between a parent and a non-parent is that the parent is entitled to custody unless there is proof that the parent is unfit, has neglected the child, or has acted inconsistently with the parent's protected status.
- If there is no such proof, it is error to determine custody based on the 'best interests' of the child.

Petersen v. Rogers, 337 N.C. 397 (1994)

Price v. Howard 346 N.C. 68 (1997)

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TIP #1

General Rule-There is no duty on the court to address the issue until requested to do so by a party.

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Actions Inconsistent with Protected Status as a Parent – When to Address?

- Constitutional issues not raised and addressed at trial will not be considered for the first time on appeal.
In re C.P., 258 N.C. App. 241 (2018) (refusing to consider respondent's argument that trial court erred in applying the best interest standard because respondent did not raise this objection at trial).
- Caveat 1. A parent must not be prevented from raising the issue.
In re R.P., 252 N.C. App. 301(2017) (holding that the respondent was not offered the opportunity to raise an objection on constitutional grounds when the trial court limited the issues of the hearing).
- Caveat 2. *In re S.J.T.H.*, 258 N.C. App. 277 (2018) suggests that when a non-removal parent appears and requests custody, the court should receive evidence and make findings about the parent's ability to parent before determining custody.

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TIP #2

When the issue is raised, you must make findings and those findings must be supported by clear and convincing evidence.

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Actions Inconsistent with Protected Status as a Parent – How to Address?

- *In re D.M.*, 211 N.C. App. 382 (2011)
Where there was no finding that the father acted inconsistently with his constitutional rights as a parent, the trial court erred in awarding permanent custody of the child to a nonparent.
- *In re R.P.*, 252 N.C. App. 301(2017)
The finding that a parent was unfit or acted inconsistently with his constitutionally protected status as a parent is required even when a juvenile has previously been adjudicated neglected and dependent.
- *In re E.M.*, 249 N.C. App. 44 (2016)
Absent an indication that the [district] court applied the clear and convincing standard, we must vacate this portion of the PPR order and remand for entry of a new finding of fact that makes clear the standard of proof applied by the district court in determining whether Respondent's actions have been inconsistent with her constitutionally-protected status as the child's parent.

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What are Actions Inconsistent with Protected Status as a Parent?

1. Actions of putative fathers
2. Non-removal parent
3. Actions of co-respondent

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Putative Fathers

- *In re Byrd*, 354 N.C. 188 (2001)
- *In re A.C.V.*, 203 N.C. App. 473 (2010)
- *In re S.D.W.*, 367 N.C. 386 (2014)
- *In re Adoption of B.J.R.*, 238 N.C. App. 308 (2014)

An putative father must grasp the opportunity to develop a relationship with his child for constitutional protections to apply.

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Non Removal Parent

- *In re B.G. (2)* 197 N.C. App. 570 (2009)
- *In re R.P.*, 252 N.C. App. 301(2017)
- *In re S.J.T.H.*, 258 N.C. App. 277 (2018)

There must be clear, cogent, and convincing evidence to demonstrate a parent is unfit or has acted inconsistently with his parental rights to support a disposition that does not grant a parent custody.

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Actions of Co-Respondent

- *In re J.A.G.*, 172 N.C. App. 708 (2005)

The court reversed the disposition part of the order, stating since there were no grounds to prolong the removal of custody from the mother, “the trial court abused its discretion in finding and concluding it was in the juvenile’s best interest that his custody remain with DSS.”

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Procedural Due Process.

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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Procedural Due Process

- Right to Receive Notice of Proceedings
- Right to Participate in Hearings
- Right to an Appropriate Standard of Proof in Hearings
- Right to Counsel

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Right to Receive Notice of Proceedings

- *In re H.D.F.*, 197 N.C. App. 480 (2009) (reversing a neglect adjudication when the pro se father did not receive notice of hearings nor copies of the earlier orders in the proceeding).

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Right to Participate in Hearings

- *In re Murphy*, 105 N.C. App. 651, aff'd, 332 N.C. 663 (1992)
- *In re Quevedo*, 106 N.C. App. 574 (1992)
- IDS Policy re Depositions

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Right to an Appropriate Standard of Proof

- *Santosky v. Kramer*, 455 U.S. 745 (1982). (TPR requires that the State support its allegations by at least clear and convincing evidence.)
- *Adams v. Tessener*, 354 N.C. 57 (2001) (A trial court's determination that a parent's conduct is inconsistent with his or her constitutionally protected status must be supported by clear and convincing evidence.)

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Right to Counsel

- N.C. Gen. Stat. §§ 7B-602 and 7B-1101.1
- Effective Assistance of Counsel
 - ✓ *In re T.D.*, 248 N.C. App. 366 (2016)
- Withdrawal of Counsel
 - ✓ *In re D.E.G.*, 228 N.C. App. 381 (2013)
- Waiver of Counsel
 - ✓ *In re J.R.*, 250 N.C. App. 195 (2016)
- Forfeiture of Counsel
 - ✓ *State v. Montgomery*, 138 N.C. App. 521 (2000)

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Right to Counsel

- Provisional counsel
 - IDS guidance*
- Counsel for non-parent
 - IDS Policy*
- Counsel after permanent plan achieved
 - IDS Policy*

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Final Thoughts...

- Hold DSS to their burden at all hearings
- Maintain high standards for all attorneys involved
- Ensure ample and quality visitation between parents and children; never take away visitation as punishment
- Don't raise the bar; separate safety and treatment issues
- Recognize that families of color are disproportionately impacted/represented in juvenile court (benchcards)

- Call me if you have any concerns about the parent attorneys in your district

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