



#### Start with the end in mind

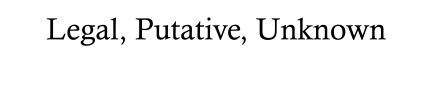
- Label your fathers in your initial pleadings
- Establish & adjudicate paternity as often as you can
- Check with Child Support as soon as possible
- Use your preliminary/pre-trial hearings to clean up paternity issues as soon as possible (7B-800.1 & 7B-1108.1 7B-1105)
- It's all about freeing the child for Adoption

# §7B-1105 Preliminary hearing; unknown parent

- Hearing required within ten days when identity of father is unknown (see In re A.N.S., 2015 N.C. App. LEXIS 16)
- Court may inquire as to identity of parents or require a diligent search; summons
- Court may order publication upon unknown parent
- Court shall terminate parental rights of unknown parent if no answer filed

# Adjudicating Paternity

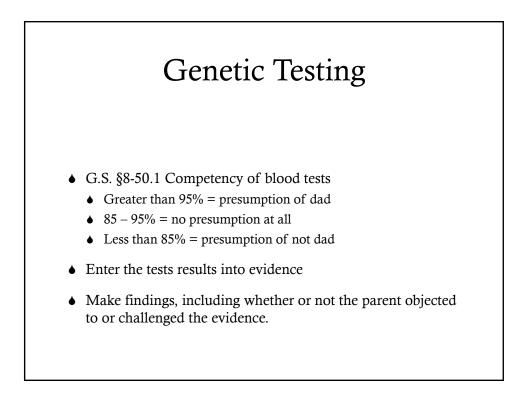
- Is paternity "at issue?"
  - G.S. 7B-506(h)(1) and G.S. 7B-901
- Credible evidence
  - Testimony of mother or father/credible evidence of non-access or impotence
  - Genetic testing if available
  - ♦ Affidavits
- Proper order contents
  - Findings
  - Conclusions
  - Decree



- A legal father is one who:
  - Is on the birth certificate, §130A-101 / (signed an AOP?)
  - Was married to mother at time of birth or subsequently
- A putative father is one who:
  - Is not married to the mother
  - Has not established paternity
  - Has been named by the mother as a possible father

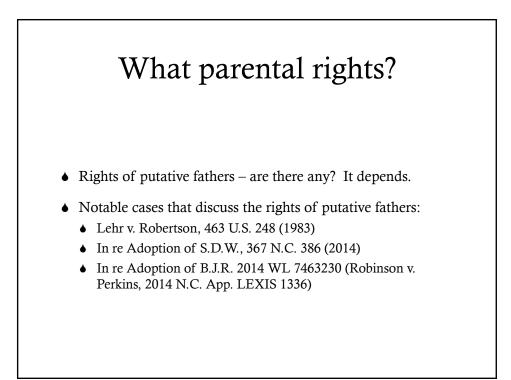
### **Rebuttable Presumptions**

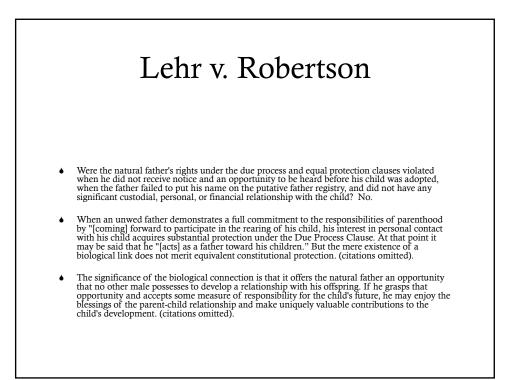
- "The most important consideration in the creation of presumptions is probability. Most presumptions have come into existence primarily because the judges have believed that proof of fact B renders the inference of the existence of fact A so probable that it is sensible and timesaving to assume the truth of fact A until the adversary disproves it."
   Kenneth S. Broun et al., <u>2 McCormick on Evidence §343</u>, at 500-01 (6<sup>th</sup> ed.2006)
- Examples: marital, genetic testing, name on AOP?

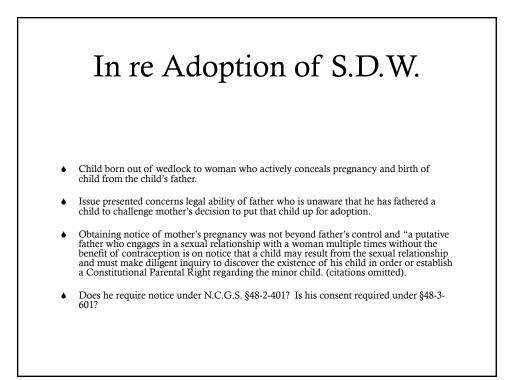


# Not all putative fathers are created equal

- The absent putative dad who knows about his child
- The absent putative dad who doesn't know about his child
- The putative dad who is raising or helping raise his child (aka the "purported" father) one who has "grasped"
- The putative dad who visits, is a part of the child's life, but has not taken an active parenting role one who may or may not have "grasped"







## In re Adoption of B.J.R. (Robinson v. Perkins)

- Child born January 7, 2013. Father files actions for custody and genetic testing January 13, 2013.
- Robinsons file adoption petition on February 13, 2013. Father files objection to adoption on February 21, 2013, contending that his consent is required.
- Court orders genetic testing on June 7, 2013. Test comes back in July proving Plaintiff to be the father.
- Court enters order on August 26, 2013 finding that father's consent to the adoption is not required because he failed to make reasonable and consistent payments for support pursuant to §48-3-601(2)(b)(4)(ii)
- Court of appeals upholds the lower court's ruling, and also finds that father had failed to develop a parent-child
  relationship with his child and remained largely "passive."
- Also noteworthy that the Court indicated that waiting until after the results of genetic testing to provide support was not an excuse.

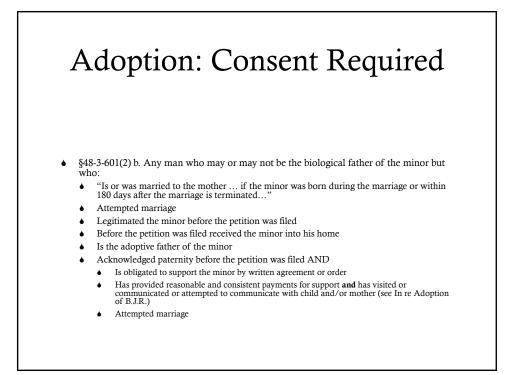
#### Adoption: Notice of Pendency of Proceedings

#### • N.C.G.S. §48-2-401(c)(3):

A man who to the actual knowledge of the petitioner claims to be or is named as the biological or possible biological father of the minor, and any biological or possible biological fathers who are unknown or whose whereabouts are unknown, but notice need not be served upon a man who has executed a consent, a relinquishment, or a notarized statement denying paternity or disclaiming any interest in the minor, a man whose parental rights have been legally terminated or who has been judicially determined not to be the minor's parent, a man whose consent to the adoption is not required under G.S. 48-3-603(a)(9) due to his conviction of a specified crime, or, provided the petition is filed within three months of the birth of the minor, a man whose consent to the adoption has been determined not to be required under G.S. 48-2-206.

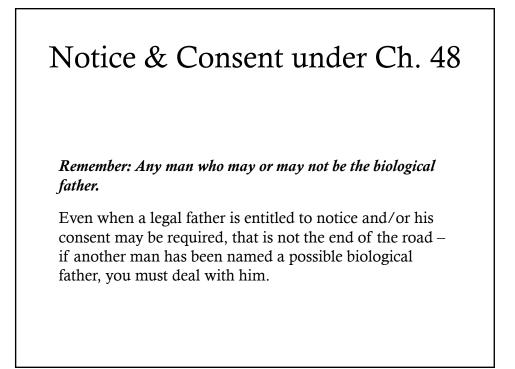
#### Who doesn't get notice?

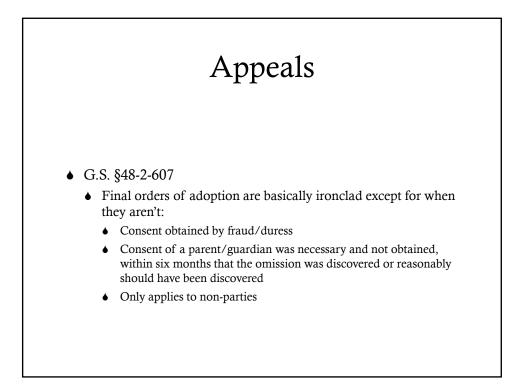
- Any man whose parental rights have been terminated
- Any man who has signed a Denial of Paternity affidavit (form DSS 5118)
- Any man who has been judicially determined not to be the father or another man has been judicially determined father
- Any man whose consent to the adoption is not required under G.S. 48-3-603(a)(9) or G.S. 48-2-206

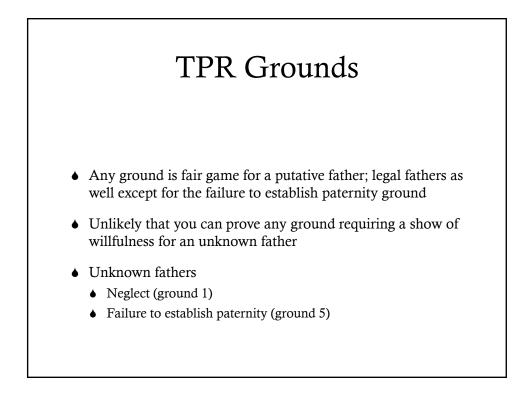


## Consent not required under §48-3-603:

- A man whose parental rights have been terminated
- A man described in 48-3-601(2) who has been judicially determined not to be the father or if another man has been judicially determined to be the father
- Any man who has executed relinquishments
- Any man who has executed a notarized statement denying paternity or disclaiming any interest in the minor
- Deceased parent or personal representative of the deceased
- An individual listed in 48-3-601 who has not executed a consent or relinquishment who has failed to respond to a notice of adoption proceeding within 30 days after service
- Conviction of crime that led to conception

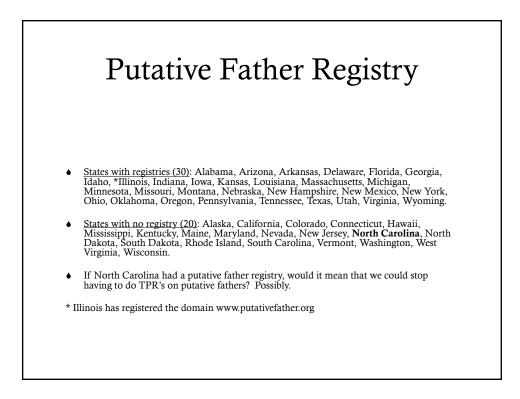








- Be as specific as possible as to the circumstances
  - See G.S. 7B-1105(d) "...and the contents of the notice which the court concludes is most likely to identify the juvenile to such unknown parent."
    - Example: "named by a woman known to you as Jane Smith aka Crayzy Jane, conceived in a white pickup truck on or about the 3<sup>rd</sup> of January 2012 in the Hardy's parking lot, Jacksonville North Carolina."



# N.C. Central Registry

- Was the Central Registry created as a way for fathers to defeat TPR ground number 5? What other purpose does it serve?
- Is it relevant to Adoption as it is never mentioned in Chapter 48?
- Is the Central Registry analogous to a Putative Father Registry?