

JUDICIAL NOTICE IN ABUSE, NEGLECT, DEPENDENCY, AND TPR CASES

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Judicial Notice

- ▣ In a TPR case, the DSS attorney asks the judge to take judicial notice of the prior proceedings in the abuse, neglect, and dependency case.
- ▣ The attorney for the parent makes a general objection to the taking of judicial notice of the materials.
- ▣ **What's a judge to do?**



Don't worry, be happy

The judge is presumed to
disregard
any incompetent evidence

Goals

- ▣ Understand the essential requirements of judicial notice
- ▣ Recognize the basic categories of evidence in prior proceedings and the rules governing their admissibility in later proceedings
- ▣ Appreciate the risks of relying on “judicially noticed” materials in later proceedings subject to the rules of evidence

What is a proper
subject of judicial notice?



A fact “not subject to reasonable dispute.”
N.C. Evid. R. 201(b)

What is the effect?

“In a civil action or proceeding,
the court shall instruct the jury to
accept as conclusive
any fact judicially noticed.”
Evidence Rule 201(g)

If you really want to be happy, ask . . .

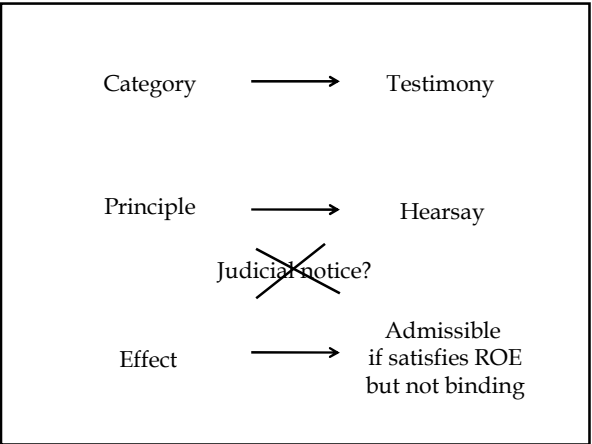
- ▣ What are the different aspects of prior proceedings that potentially could be considered?
- ▣ What are the applicable legal principles for each aspect?
- ▣ What is the impact of the prior information in the current proceeding?

The Four Components of Prior Proceedings

- ▣ Testimony
- ▣ Documentary evidence
 - including court reports
- ▣ Orders and other record entries
- ▣ Findings of fact and conclusions of law
 - also stipulations

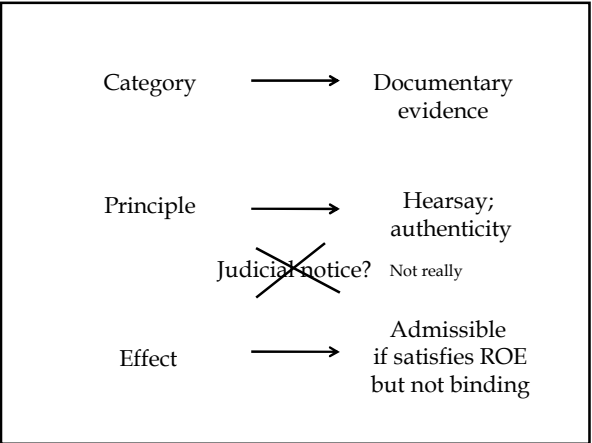
Testimony

- ▣ At a review hearing following an adjudication of neglect, social worker Jones testifies as follows:
 - Respondent failed to attend two of six required anger management classes.
 - Respondent told social worker Jones that he had failed to attend two of six required anger management classes.
- ▣ **At a TPR adjudication, may the court take judicial notice of the testimony?**



Documentary Evidence

- ▣ At a review hearing following an adjudication of neglect, the court receives into evidence a report stating that:
 - DSS determined that respondent failed to attend two of six required anger management classes.
 - Respondent told social worker Jones that he had failed to attend two of six required anger management classes.
- ▣ **At a TPR adjudication, may the court take judicial notice of the report and its contents?**



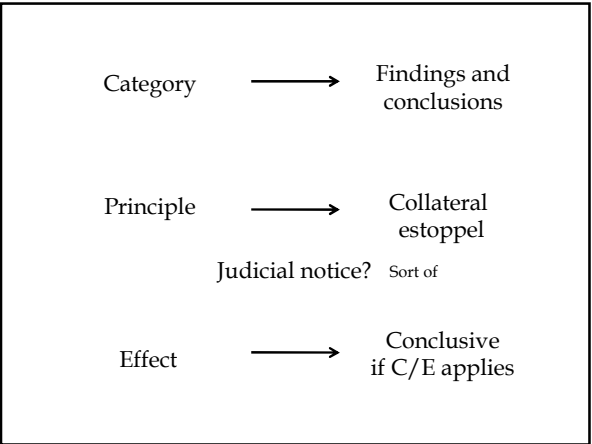
Orders and Other Record Entries

- ▣ At a review hearing following the adjudication of neglect, the court ordered the respondents to take additional parenting classes
- ▣ At a permanency planning hearing, the court changed the permanent plan from reunification to adoption.
- ▣ **At a TPR adjudication, may the court take judicial notice of the above orders?**

Category	→	Orders and other record entries
Principle	→	Judicial notice
Effect	→	Conclusive as to matters noticed

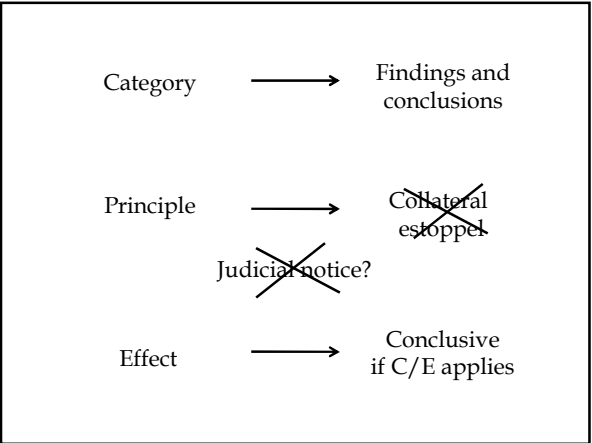
Findings and Conclusions

- ▣ At the adjudication hearing on the neglect allegations, the court found as follows:
 - Respondent father engaged in acts of domestic violence against respondent mother in their child's presence
 - Respondents father and mother created an injurious environment by engaging in domestic violence in their child's presence.
- ▣ **At a TPR adjudication, may the court take judicial notice of the above?**



Findings and Conclusions

- ▣ At a review hearing following the adjudication of neglect, the court finds based on the social worker's testimony and reports that
 - Respondent father failed to attend all required parenting classes.
 - Respondent father failed to comply with the disposition order.
- ▣ **At a TPR adjudication, may the court take judicial notice of the above?**



Findings and Conclusions

Prior findings and conclusions that
do not have collateral estoppel effect

ARE

generally inadmissible

BECAUSE

they are a form of hearsay

Findings and Conclusions (cont'd)

Prior stipulations and concessions

ARE

generally binding in later
proceedings

Summing Up

- ☐ Prior testimony
 - must satisfy a hearsay exception, and
 - if so, is admissible but not binding
- ☐ Documentary evidence
 - must satisfy hearsay, authenticity, and other evidence requirements, and
 - if so, is admissible but not binding
- ☐ Orders and other record entries
 - are subject to judicial notice, and
 - are conclusive as to that entry

Summing Up (cont'd)

- ▣ Findings and conclusions
 - must satisfy collateral estoppel requirements, and
 - if so, are conclusive as to that finding or conclusion
- ▣ Findings and conclusions that do not have collateral estoppel effect
 - must satisfy a hearsay exception, and
 - if so, are admissible but not binding
- ▣ Formal stipulations and concessions
 - are judicial admissions or subject to judicial estoppel, and
 - are ordinarily binding



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