



## Fathers: Legal, Putative, & Unknown

ABUSE, NEGLECT, DEPENDENCY ACTIONS

DSS Attorneys Conference, Spring 2015, School of Government, UNC –Chapel Hill

### 5 Questions



- ? Who do you name
- ? Who do you allege
- ? What do efforts to locate & identify look like
- ? How does that translate in court documents
- ? Why does it matter

## Q1: Why does it matter?

- **Purpose of juvenile code**

- Protect constitutional rights of juveniles & parents
- Respect family autonomy and juvenile's needs for safety, continuity, & permanence
- Provide standards for removal (when nec) and return of juveniles to their homes
- Prevent unnecessary or inappropriate separation of juveniles from their parents



## Definition

- **Reunification/Return Home**

- Placement of the juvenile in the home of either parent....

### • Protective services, 7B-300

...

- Counseling services to parents...
- “to be more adequate parents”
- “to preserve & stabilize family life”

## Nonsecure

### • **Criteria, -503(a)**

- court shall first consider release to juvenile’s parent, relative ...

### • **Placement, -505(a)(3), (b)**

- Any home, including relative home
- Shall place with relative who is willing and able ... unless court finds contrary to BIC

### • **Continued nonsecure, -506(h)**

- Required to address
  - ✦ identity & location of missing parent
  - ✦ establish paternity when at issue

## Adjudication

- **Status of child**
- **Dependency**
  - In re V.B., 768 S.E. 2d 867 (Feb. 17, 2015)
  - In re H.H., 767 S.E. 2d 347 (Dec. 2, 2014)

## Relative Placement Post-Adjudication

- **Disposition, -903(a)(2)**
  - Custody with relative
  - Before custody with DSS, first consider relative
- **Permanent Plan, -906.1(e)**
  - If not with parent and unlikely to be with parent, guardianship or custody with relative or other suitable person

## Permanent Plan

- **Reunification**

- -101(18b): reunification/return home
- -101(18): reasonable efforts
- -507: reasonable efforts and reunification
- -906.1(d), each review/PP hearing
  - ✦ Services offered to reunite
  - ✦ Whether efforts would be futile
  - ✦ When and if TPR should be considered
- -906.1(e), each PP hearing
  - ✦ If possible to place with parent w/in 6 months
  - ✦ If unlikely, consider guardianship/custody with other and what rights and responsibilities remain with parents

## Late Appearance

- **Evidence of changed conditions at PPH**

- In re A.E.C., 768 S.E.2d 166 (January 20, 2015) relies on...
- In re Eckard, 148 N.C. App. 541 (2002)
  - ✦ 4/21/99 petition & nonsecure custody order (removed from mom)
  - ✦ 5/25/99 adjudication of A/N/& D
  - ✦ 8/99 father identified via paternity testing and began visitation
  - ✦ Late appearance: should have been considered as placement as soon as testing showed him to be dad and court should have considered if father was candidate for custody rather than focus on timelines of permanency and BIC (bond to current placement)
  - ✦ Holding supports purpose of the Juvenile Code

## Ongoing Case Action

- **Waive reviews**
  - 906.1(k), automatic if custody with parent
- **Terminate jurisdiction**
  - Dismiss case at adjudication/disposition
  - -911 custody order

## Adoption

- **Legally Clear Child**
  - Relinquish, TPR, Consent
  - -906.1(f)(3), no TPR to be filed by DSS if DSS did not provide family with services when reasonable efforts required
  - In re A.E.C., 768 S.E. 2d 166 (January 20, 2015)

## And 7B tells you to

- **Names those statutes**

- -506

Efforts undertaken to establish paternity, if at issue in this case, include:

- -800.1

- -901

## Don't Forget Federal Law

- **42 USC 671(a)(29)**

- Within 30 days after removal of child, state shall exercise due diligence to identify and provide notice to designated relatives

- ✦ Adult grandparents

- ✦ Parents with custody of sibling

- ✦ Other adult relatives (including those suggested by parents)

- Notify

- ✦ child being or was removed

- ✦ options relatives have to participate in care/placement

- ✦ Requirements to become foster family home and additional supports/services available as foster home

## Q2: Who do you name

### • PARTY STATUS

- 401.1(b): juvenile's parent shall be a party unless...
- Petition shall contain name and last known address of each party, - 402
- What's missing?
  - ✦ Definition of parent
  - ✦ Parent in removal of party, -401.1(g)
- What about NC Admin Code or DSS Policy Manuals?
  - ✦ DSS must make diligent efforts to contact "absent" (noncustodial) parent re: allegations, level of involvement, relatives as resource. If unable to locate, must have documentation of efforts made to locate (Family Services Manual, Vol 1, Ch. VIII, Sec. 1408(II)(E)(2), p. 11)

## What Does It Mean?

- Provisional counsel **shall** be appointed for each parent named in the petition, -602(a)
- Summons **shall** issue to each party named, except juvenile, requiring them to appear for a hearing at a set date and time, - 406(a)



### Q3: Who do you allege and why?

- Goes to legal dad, putative dad, unknown dad and when is paternity at issue?
- Is it any known man who may have fathered child that mother discloses
  - Preview: for TPR, may need John Doe in the alternative

### Who do you serve?

- **Named parties**
- **Parents.... Who is that?**
- **In re Poole, 357 N.C. 151 (2003)**
  - Subject matter jurisdiction exists when one parent (mother) is properly served
  - Personal jurisdiction over mother
  - Father appeared, therefore, personal jurisdiction over father
  - Father to serve other parent raises due process issues for that parent but court may proceed with adjudication and disposition.

## What if you don't know what to do

- **Ask the court**
  - “The order may provide for specific efforts aimed at determining the identity and location of any missing parent, as well as specific efforts aimed at establishing paternity.”
    - ✦ -506(h)(1)
    - ✦ -901

## Q4: What do efforts look like?

- **Birth certificate**
- **Marriage certificates**
- **Paternity orders**
- **Child support orders**
- **DNA testing**
- **Family Tree**
- **What are diligent efforts re: publication? Did you follow those?**

## What can you do in court hearing?

- DSS worker testify under oath
- Question mother under oath
- Father named but whereabouts unknown, and appointed counsel, what are counsel's efforts
  - In re B.L.H, 767 S.E. 2d 905 (January 20, 2015)

## Q5: what do court documents look like?

- Order of what efforts need to be taken
- Amend petition to add party
  - Pursuant to 7B, not Rule 15
  - Amended petition not required in TPR, -1105(b)
- Serve summons
- Order establishing father
- Order finding man is not the father
- Removal of party

## Impact of Legal Dad Not Dad

- **Not a parent**
  - Remain a party?
  - Visitation?
  - Reunification services?
- **Caretaker?**
- **Appointed Counsel?**
- **Right to appeal?**
- **Impact on adoption...**
  - No TPR, notice or consent required


## Let's Apply it



## Questions from listserv

- Two children, A & B, mom relinquishes to both
- Child A birth certificate lists D as dad and he relinquished
- Child B has no dad listed on birth certificate. Mom names putative dad, who DSS finds. He acknowledges paternity of B and says he thinks he's A's dad too. He relinquishes to both A and B.
- Mom says there is possible 3<sup>rd</sup> man who could have fathered A... a man who raped her...she only knows his last name.
- Do you have to publish on putative dad for A? B?

- RM was married at the time of the birth of the child. Her husband was at the hospital. She said he wasn't the father, but his name is on the birth certificate. Several years later, he filed for child support. She said that he wasn't the father. The court found that he was and ordered her to pay child support. Now DSS has the 7 year old. RM wants a paternity test and has ID'd the bio dad.
- What to do?

- 
- Mom and husband have three kids. They have separated but are not yet divorced when mom becomes pregnant with child #4. Birth certificate says “husband’s name refused.” Mom and bio dad sign AOP at the hospital. Mom obtains absolute divorce after new baby is born. The Divorce Judgment identified three children born to mom and husband in the Findings.
  - Is this sufficient to exclude husband or is he still a party?