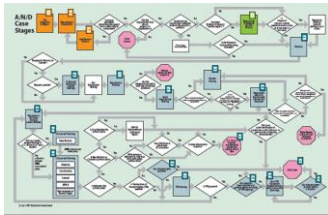


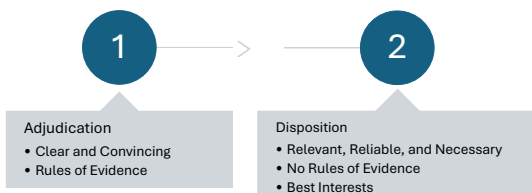
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Overview

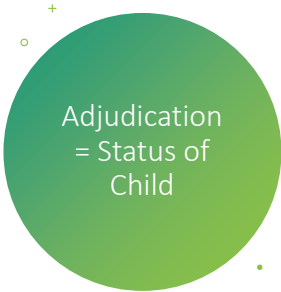


2

Different Rules of Evidence at Different Stages



3



- Abused (7B-101(1))
- Neglected (7B-101(15))
- Dependent (7B-101(9))

4

Opinions

Neglect	Abuse	Dependency
<ul style="list-style-type: none">• In re Montgomery, 311 NC 101 (1984)• In re M.C., 286 NC App 632 (2022)	<ul style="list-style-type: none">• In re A.B., 272 NC App 13 (2020)• In re K.W., 272 NC App 487 (2020)	<ul style="list-style-type: none">• In re A.B., 272 NC App 13 (2020)

5

More opinions

Not Culpability	Not Separate Adjudications	Can Be Unexplained
<ul style="list-style-type: none">• In re E.X.J., 191 NC App 34 (2008); affirmed per curiam 363 NC 9 (2009)• In re M.C., 286 NC App 632 (2022)• In re A.B., 272 NC App 13 (2020)• Cf In re K.L., 272 NC App 30 (2020) (abuse)	<ul style="list-style-type: none">• In re M.C., 286 NC App 632 (2022)	<ul style="list-style-type: none">• In re Y.Y.E.T., 205 NC App 120 (2010)• In re R.S., 254 NC App 678 (2017)• In re W.C.T., 280 NC App 17 (2021)• In re N.N. (NC App, Oct. 15, 2024)

6

In re L.N.H., 382 NC 582 (2022)

conditions underlying determination of whether a juvenile is an abused, neglected, or dependent juvenile are fixed at the time of the filing of the petition. This inquiry focuses on the **status** of the child at the time the petition is filed, not the post-petition actions of a party.

7

3 Muddy Issues

- "Post-Petition" Evidence
- "Cease" Reunification Efforts
- Parents Constitutional Rights



8

1.
Post-
Petition
Evidence



9

General Rule

Post-petition evidence not considered

In re L.N.H., 382 NC 582 (2022)

§ 7B-802. Conduct of hearing.

The adjudicatory hearing shall be a judicial process designed to adjudicate the existence or nonexistence of any of the conditions alleged in a petition. In the adjudicatory hearing, the court shall protect the rights of the juvenile and the juvenile's parent to assure due process of law. (1979, c. 815, s. 1; 1998-202, s. 6; 1999-456, s. 60.)

10

Exceptions

- Fixed and ongoing circumstances
 - Mental Health (In re A.J., 386 NC 409 (2024))
 - Paternity ? (In re L.N.H., 3382 NC 582 (2022))
- Neglect when period of separation
 - Substantial risk of future neglect based on historical facts of case (In re A.J., quoting In re K.J.D., 203 NC App 653 (2010))

11

What do you mean by
post-petition evidence?

12

Examples

- Evaluation that proves abuse alleged
- Compliance with a case plan
- Appearance of alternative placement
- Observed behavior in court
- Drug test results

13

Need Clarity

14

What's the Issue?

Was the child abused,
neglected, dependent
at the time the
petition was filed

Is the child abused,
neglected, dependent
at the time of the
adjudicatory hearing?

15

In re L.N.H.

conditions underlying determination of whether a juvenile is an abused, neglected, or dependent juvenile are **fixed** at the time of the filing of the petition. This inquiry focuses on the status of the child at the time the petition is filed, not the post-petition actions of a party.

16

Dependency Confusion

Here, the Court of Appeals held that "[t]he trial court erroneously based its adjudication of dependency on conditions existing at the time the petition was filed instead of the time of the adjudication." *In re L.N.H.*, at *7. The Court of Appeals

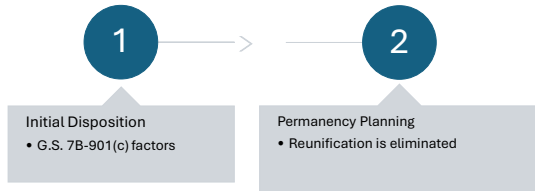
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In re A.J., 386 NC 409 (2024)

(2006), *aff'd per curiam*, 362 N.C. 172 (2008). The court "must consider the conditions as they exist at the time of the adjudication **as well as the risk of harm to the child from return to a parent**" and "look at the situation before the court at the time of the hearing when considering whether a juvenile is dependent." *In re F.S.*, 268 N.C. App. 34, 44, 46 (2019) (cleaned up).

18

2. Cease Reunification Efforts



19

G.S. 7B-901(c) Language

If the disposition order places a juvenile in DSS custody, "the court shall direct that reasonable efforts for reunification...shall not be required if the court makes writing findings of fact pertaining to any of the following...

20

In re B.L.M.-S., NC App (May 21, 2024)

- 7B-901 "does *not* authorize a court to order DSS to cease reunification efforts with a respondent"
- Changes to 7B-507
- Remand: conform to statutory language

• But, In re L.M.T., 367 NC 165 (2013); In re J.M., 384 NC 584 (2023)

21

3. Parent's Constitutional Rights

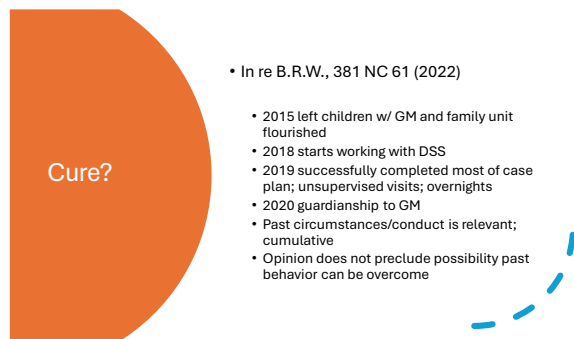
- When does determination need to be made?
- Can parent cure?
- When preserved for appeal?

22

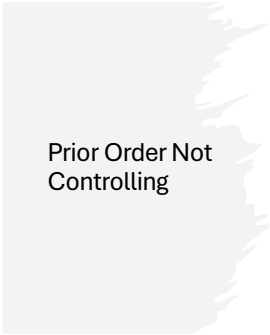
When?



23



24




In re T.S., III (Dec. 3rd)
• If 2021 order made finding, no collateral estoppel in later hearing

25

Waiver

In re J.N., 381 NC 131 (2022)
In re J.M., 384 NC 584 (2023)
In re J.O., 293 NC App 556 (2024)



Arguing against guardianship/custody or for reunification does not preserve



Need to make specific constitutional argument issue when have notice and opportunity to argue inappropriate on constitutional grounds

26



Try to remove the mud

27
