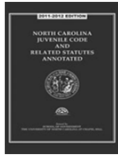


N.C. Juvenile Law and Fathers' Rights

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Juvenile Code

- uses the term "parent"
"father" – only in G.S. 7B-1111(a)(5)
(tpr of father of child born out of wedlock)
- "parent" = "parents" (G.S. 7B-101)
- does not distinguish
 - legal father
 - biological father
 - putative father
- contemplates uncertainty



At a **nonsecure custody** and **disposition** hearings the court must:

1. inquire about
 - a. identity and location of missing parent
 - b. whether paternity is at issue
2. make findings about
 - a. efforts to locate and serve missing parent
 - b. efforts to establish paternity

G.S. 7B-506(h), 7B-507, 7B-901

At a nonsecure custody and disposition hearings the court may:

“provide for” specific efforts to

- a. determine identity and location of missing parent
- b. establish paternity

G.S. 7B-506(h), 7B-901

G.S. 8-50.1 applies in juvenile cases

- If paternity is in issue, court must grant motion for paternity testing.

In re J.S.L. (N.C. App., Feb. 7, 2012)
(respondent who denied paternity in tpr action)

Test shows 98.9% probability that respondent J.B. is not the child's father. DSS sends copies of report to the court and parties. On the next court date the court should:

1. Dismiss the action
2. Continue to treat J.B. as a respondent
3. Dismiss J.B. as a party

Paternity Test Results

- Court may consider the results only if properly introduced into evidence.
 - Results create rebuttable presumption, which respondent must be allowed an opportunity to rebut.
- *In re L.D.B.*, 168 N.C. App. 206 (2005)
(due process required even when test showed 0% probability of paternity)
 - *Nash County DSS v. Beaman*, 126 N.C. App. 536 (1997)
(testimony rebutted presumption when test showed 99.96% probability of paternity)

“[H]aving properly been made a party to the proceedings, Mungo was entitled to an adequate opportunity to be heard . . . , unless and until the trial court either dismissed him as a party or dismissed the underlying petition.”

In re L.D.B., 168 N.C. App. 206 (2005) (tpr)

Rosero v. Blake, 357 N.C. 193 (2003).

Biological father’s parental interest is not less than the mother’s.

“General Assembly has continually enacted and modified legislation to establish legal ties binding illegitimate children to their biological fathers and to acknowledge the rights and privileges inherent in the relationship between father and child.”

How to Reconcile

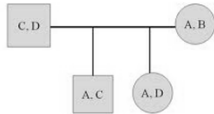
Rosero v. Blake, 357 N.C. 193 (2003)

and:

- In re Adoption of Byrd, 354 N.C. 188 (2001).
- In re Adoption of Baby Girl Anderson, 360 N.C. 271 (2006).
- A Child's Hope, LLC v. Doe, 178 N.C. App. 96 (2006).
- In re A.C.V., 203 N.C. App. 743 (2010).

**Assume we know who the father is.
What are his rights?**

Paternity Testing



In an abuse/neglect case, service of process on both parents is required:

1. always
2. never
3. only if both parents are in the home
4. service required only on parent(s) alleged to be responsible for the abuse/neglect

Juvenile Code

- "Parent" = "Parents"
- Summons must be issued to and served on the parent[s]
- "If the parent[s] . . . cannot be found by a diligent effort, the court may authorize service . . . by publication . . ."

G.S. 7B-406, 7B-407

In re Poole

151 N.C. App. 472 (2002) (Timmons-Goodson, J., dissenting)
adopted per curiam, 357 N.C. 151 (2003).

- Service on one parent is sufficient *for purposes of subject matter jurisdiction* (which is actually created when petition is filed)
- Issue = due process, not jurisdiction
- In *this* case, father's rights were not violated
- *Poole* is not permission to serve only one parent

Does Code sound different if *parent* is read as *parents*?

Someone who assumes custody of a child without a court order must

- notify the child's parent[s]
- advise the parent[s] of the right to be with the child
- release the child to the parent[s] if continued custody is not necessary

G.S. 7B-501

Throughout the proceeding:

Adjudication and disposition reversed where:

- father waived his right to counsel
- other parties appeared to forget he was a party
- parties failed to serve motions, notices, and other documents on the father

Rule 5, Rules of Civil Procedure
In re H.D.F., 197 N.C. App. 480 (2009).

Relative Preference:
Nonsecure Custody Order and Hearings

1. Is a relative willing and able to provide proper care and supervision in a safe home.
"Safe home" = child is not at substantial risk of physical or emotional abuse or neglect.
2. If yes, court must order placement with relative unless that would be contrary to child's best interests.

G.S. 7B-505, 7B-506(h)

Relative Preference:
Disposition

- Court must inquire about **efforts to identify and notify relatives**
- If placing child out of the home:
 1. Is a relative willing and able to provide proper care and supervision in a safe home?
 2. If yes, court must order placement with relative unless that would be contrary to child's best interests.

G.S. 7B-901, 7B-903(a)

Stricter Federal Funding Criteria
Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. Law 110-351)

- due diligence to identify and notify all adult relatives within 30 days of child's removal from parent
- exceptions: family violence or domestic violence

After disposition, the standard is "best interest" without regard to a relative preference.

1. True
2. False

In re L.L., 172 N.C. App. 689 (2005).

Permanent Plans

What is the relevance of

- **Petersen v. Rogers (1994)** and
- **Price v. Howard (1997)**

in juvenile cases?

1979

“Although the court found the appellant was a fit and proper person to have custody of the child, the test under the [Juvenile Code] as to where custody is placed is what best meets the needs of the child and what is in the child's best interests.”

In re Yow, 40 N.C. App. 688, 253 S.E.2d 647 (1979)

Brief Look at Chronology

1994	<i>Petersen</i> decided; quoted in <i>Bost v. Van Nortwick</i> (tpr)
1997	<i>Price v. Howard</i>
2000	<i>In re Huff</i> – (tpr)
2001	<i>In re Byrd</i> – (sup. ct.) (adoption) <i>In re Nesbitt</i> – (tpr)
2002	<i>In re Pittman</i> – (abuse/neglect) <i>In re Stratton</i> – (abuse/neglect) 2 unpublished cases
2003	3 unpublished cases

2004	<i>In re Shuler</i> – (adoption) <i>In re Rholetter</i> – (abuse/neglect)
2005	<i>In re T.K.</i> – (perm. planning) 2 unpublished cases
2007 - 2008	3 unpublished cases
2009	<i>In re B.G.</i> – (perm. planning) 2 unpublished cases
2010	<i>In re A.C.V.</i> – (tpr) 3 unpublished cases
2011	<i>Rodriguez</i> (dependency; custody) <i>In re D.M.</i> – (perm. planning) <i>In re T.P.</i> – (perm. planning) 3 unpublished cases
2012	1 unpublished case

In re T.K. (2005)

Affirmed change of plan to guardianship:

"[A]t this stage the best interests of the children, not the rights of the parents, are paramount."

- Dissent thought *Petersen* findings were required.
- Supreme court affirmed.

In re J.A.G. (2005)

No mention of *Petersen* or *Price*

"As there were no grounds to prolong J.A.G.'s removal from the custody of his 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."

In re B.G. (2) (2009)

Trial court found father was "non-offending" parent, but ordered joint custody to father and relatives.

COA held best interest test was not proper without finding that father was unfit or had acted inconsistently with constitutionally protected parental rights.

In re D.M. (2011)

Trial court awarded custody to grand-mother, visitation to father.

COA held that was error where trial court found neither parent unfit and made no findings or conclusions as to whether father had acted inconsistently with his constitutionally protected parental rights.

If child is removed from custody of mother, permanent plan becomes custody with father, and custody is awarded to father, are review hearings still required?

1. Yes
2. No
3. Depends on how long child has been with father

Review and Permanency Planning

G.S. 7B-906: Reviews no longer required if "custody is restored to a parent, guardian, custodian or caretaker."

G.S. 7B-907: Is it possible for the child to be returned home immediately or within 6 months?

Review and Permanency Planning

- G.S. 7B-906: Reviews no longer required if “custody is **RESTORED** to a parent, guardian, custodian or caretaker.”
- G.S. 7B-907: Is it possible for the child to be **RETURNED HOME** immediately or within 6 months?

In re J.M.D., ___ N.C. App. ___, 708 S.E.2d 167 (3/15/11)
In re J.M.D., ___ N.C. App. ___ (4/17/12) (unpublished)

What about “reasonable efforts”?

- “Reunify” implies once “unified”
- Are efforts required with noncustodial parent?
- Dicta in *In re D.M.*:
 - suggests efforts required only with parent from whom child was removed.

Juvenile Court Involvement Ends

1. To some extent, when review hearings are waived
2. When the court terminates jurisdiction
3. When the court enters a Ch. 50 custody order and terminates jurisdiction in the juvenile case

Once a person's paternity has been legally established:

His superior, constitutionally protected parental rights are clear.

Issue = Has he acted inconsistently with those rights?

Until then

Answers may not be the same in every context.
