

Verification of Petitions

[In re N.T.](#), 368 N.C. 705 502 (2016)

Held: Reversed Court of Appeals Opinion

- Procedural History/Facts:
 - 2012: The county department files a neglect petition that is signed by an authorized representative of the director. In the verification section after “signature of person authorized to administer oaths,” an illegible signature following the letter “C” appears. The section for “title” is left blank. Child is adjudicated neglected and placed in the custody of the county department.
 - 2013: The county department files a motion to terminate parental rights (TPR).
 - 2014: The TPR is granted and respondent mother appeals based on lack of subject matter jurisdiction arguing the underlying neglect petition was not properly verified as required by statute.
 - 2015: The NC Court of Appeals vacates the TPR based on an improper verification of the petition. Without a properly verified petition, the court lacked subject matter jurisdiction to hear the underlying neglect action. As a result, all orders entered in that action are void ab initio, including the order granting custody to the county department. Without a custody order, the county department lacked standing under G.S. 7B-1103 to initiate a termination of parental rights proceeding. The N.C. Supreme Court grants petition for discretionary review.
- Although subject matter jurisdiction may be raised at any time, there is a presumption that a court has jurisdiction when it acts on a matter. The respondent, who is raising subject matter jurisdiction, has the burden of proving there is no jurisdiction.
- Verification is addressed by G.S. 1A-1, Rule 11(b) and G.S. 1-148. Rule 11 requires an affidavit where the person verifies that the contents of the pleading are to their knowledge true or upon information and belief are believed to be true. G.S. 1-148 authorizes a judge, magistrate, clerk of court, notary public, or any officer competent to acknowledge deeds to verify a pleading. A public official acting in their official duty is presumed to act in accordance with the law, and the contesting party has the burden of overcoming the presumption.
- Respondent mother did not show that the petition, which appeared to be facially valid, was not verified before a person who was authorized to administer oaths. There was no evidence or allegations to overcome the presumption that the person who signed as “the person authorized to administer oaths” did not act in their official capacity.

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1-148. Verification before what officer.

Any officer competent to take the acknowledgment of deeds, and any judge or clerk of the General Court of Justice, notary public, in or out of the State, or magistrate, is competent to take affidavits for the verification of pleadings, in any court or county in the State, and for general purposes.

7A-292. Additional powers of magistrates.

(a) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

(1) To administer oaths.

...

(5) To take affidavits for the verification of pleadings.

Selected Statutes Addressing Petitions re: Abuse, Neglect, Dependency

7B-403. Receipt of reports; filing of petition.

(a) All reports concerning a juvenile alleged to be abused, neglected, or dependent shall be referred to the director of the department of social services for screening. Thereafter, if it is determined by the director that a report should be filed as a petition, the petition shall be drawn by the director, verified before an official authorized to administer oaths, and filed by the clerk, recording the date of filing.

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7B-404. Immediate need for petition when clerk's office is closed.

(a) When the office of the clerk is closed, a magistrate shall accept for filing the following:

(1) A petition alleging a juvenile to be abused, neglected, or dependent.

(2) A petition alleging the obstruction of or interference with an assessment required by G.S. 7B-302.

(b) The authority of the magistrate under this section is limited to emergency situations when a petition must be filed to obtain a nonsecure custody order or an order under G.S. 7B-303. Any petition accepted for filing under this section shall be delivered to the clerk's office for processing as soon as that office is open for business.

7B-405. Commencement of action.

An action is commenced by the filing of a petition in the clerk's office when that office is open or by the acceptance of a juvenile petition by a magistrate when the clerk's office is closed, which shall constitute filing.

Selected Statutes Re: Nonsecure Custody (Abuse, Neglect, Dependency)

7B-502. Authority to issue custody orders; delegation.

(a) In the case of any juvenile alleged to be within the jurisdiction of the court, the court may order that the juvenile be placed in nonsecure custody pursuant to criteria set out in G.S. 7B-503 when custody of the juvenile is necessary. The order for nonsecure custody may be entered ex parte. Unless the petition is being filed pursuant to G.S. 7B-404, telephonic communication that the department will be seeking nonsecure custody shall be given to counsel, or if unavailable, to a partner or employee at the attorney's office when any of the following occur:

- (1) The department has received written notification that a respondent has counsel for the juvenile matter.
- (2) The respondent is represented by counsel in a juvenile proceeding within the same county involving another juvenile of the respondent.

Notice is not required to provisional counsel appointed pursuant to G.S. 7B-602.

(b) Any district court judge shall have the authority to issue nonsecure custody orders pursuant to G.S. 7B-503. The chief district court judge may delegate the court's authority to persons other than district court judges by administrative order which shall be filed in the office of the clerk of superior court. The administrative order shall specify which persons shall be contacted for approval of a nonsecure custody order pursuant to G.S. 7B-503.

7B-508. Telephonic communication authorized.

All communications, notices, orders, authorizations, and requests authorized or required by G.S. 7B-501, 7B-503, and 7B-504 may be made by telephone when other means of communication are impractical. All written orders pursuant to telephonic communication shall bear the name and the title of the person communicating by telephone, the signature and the title of the official entering the order, and the hour and the date of the authorization.

7B-503. Criteria for nonsecure custody.

(a) When a request is made for nonsecure custody, the court shall first consider release of the juvenile to the juvenile's parent, relative, guardian, custodian, or other responsible adult. An order for nonsecure custody shall be made only when there is a reasonable factual basis to believe the matters alleged in the petition are true, and any of the following apply:

- (1) The juvenile has been abandoned.
- (2) The juvenile has suffered physical injury, sexual abuse, or serious emotional damage as defined by G.S. 7B-101(1)e.
- (3) The juvenile is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created the conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection.
- (4) The juvenile is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and the juvenile's parent, guardian,

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custodian, or caretaker is unwilling or unable to provide or consent to the medical treatment.

- (5) The parent, guardian, custodian, or caretaker consents to the nonsecure custody order.
- (6) The juvenile is a runaway and consents to nonsecure custody.

A juvenile alleged to be abused, neglected, or dependent shall be placed in nonsecure custody only when there is a reasonable factual basis to believe that there are no other reasonable means available to protect the juvenile. In no case shall a juvenile alleged to be abused, neglected, or dependent be placed in secure custody.

...

7B-504. Order for nonsecure custody.

The custody order shall be in writing and shall direct a law enforcement officer or other authorized person to take physical custody of the juvenile and to make due return on the order. A copy of the order shall be given to the juvenile's parent, guardian, custodian, or caretaker by the official executing the order.

An officer receiving an order for custody which is complete and regular on its face may execute it in accordance with its terms. If the court finds on the basis of the petition and request for nonsecure custody or the testimony of the petitioner that a less intrusive remedy is not available, the court may authorize a law enforcement officer to enter private property to take physical custody of the juvenile. If required by exigent circumstances of the case, the court may authorize a law enforcement officer to make a forcible entry at any hour. The officer is not required to inquire into the regularity or continued validity of the order and shall not incur criminal or civil liability for its due service.

§ 7B-505.1. Juvenile placed in nonsecure custody of a department of social services.

...

(b) When placing a juvenile in nonsecure custody of a county department of social services pursuant to G.S. 7B-502, the court may authorize the director to consent to a Child Medical Evaluation upon written findings that demonstrate the director's compelling interest in having the juvenile evaluated prior to the hearing required by G.S. 7B-506.

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7B-507. Juvenile placed in nonsecure custody of a department of social services.

(a) An order placing or continuing the placement of a juvenile in the nonsecure custody of a county department of social services:

- (1) Shall contain a finding that the juvenile's continuation in or return to the juvenile's own home would be contrary to the juvenile's health and safety.
- (2) Shall contain specific findings as to whether a county department of social services has made reasonable efforts to prevent the need for placement of the juvenile. In determining whether efforts to prevent the placement of the juvenile were reasonable, the juvenile's health and safety shall be the paramount

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concern. The court may find that efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile. A finding that reasonable efforts were not made by a county department of social services shall not preclude the entry of an order authorizing the juvenile's placement when the court finds that placement is necessary for the protection of the juvenile.

- (3) Repealed by Session Laws 2015-136, s. 7, effective October 1, 2015, and applicable to actions filed or pending on or after that date.
- (4) Shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the department is to provide or arrange for the foster care or other placement of the juvenile, unless after considering the department's recommendations, the court orders a specific placement the court finds to be in the juvenile's best interests.
- (5) May order services or other efforts aimed at returning the juvenile to a safe home.

7B-506. Hearing to determine need for continued nonsecure custody.

(a) No juvenile shall be held under a nonsecure custody order for more than seven calendar days without a hearing on the merits or a hearing to determine the need for continued custody. A hearing on nonsecure custody conducted under this subsection may be continued for up to 10 business days with the consent of the juvenile's parent, guardian, custodian, or caretaker and, if appointed, the juvenile's guardian ad litem. In addition, the court may require the consent of additional parties or may schedule the hearing on custody despite a party's consent to a continuance. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7B-502, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of district court in the city or county where the order was entered if such session precedes the expiration of the applicable time period set forth in this subsection: Provided, that if such session does not precede the expiration of the time period, the hearing may be conducted at another regularly scheduled session of district court in the district where the order was entered.

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7B-905.1. Visitation.

(a) An order that removes custody of a juvenile from a parent, guardian, or custodian or that continues the juvenile's placement outside the home shall provide for appropriate visitation as may be in the best interests of the juvenile consistent with the juvenile's health and safety, including no visitation. The court may specify in the order conditions under which visitation may be suspended.

(b) If the juvenile is placed or continued in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved or ordered by the court. The plan shall indicate the minimum frequency and length of visits and whether the visits shall be supervised. Unless the court orders otherwise, the director shall have discretion to determine who will supervise visits

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when supervision is required, to determine the location of visits, and to change the day and time of visits in response to scheduling conflicts, illness of the child or party, or extraordinary circumstances. ...

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Initial Nonsecure Custody Checklist for Magistrates When the Clerk's Office Is Closed

Preliminary Issues

___ The petition is signed by the county department director or authorized representative, is properly verified, and accepted by the magistrate.

Servicemembers Civil Relief Act (SCRA) (50 U.S.C. §§3931 - 3932)

___ Each respondent appeared in the case. No SCRA Affidavit is required.

___ A respondent has not appeared in the case but there is a declaration or allegations in the verified petition that address the non-appearing respondent's military status (see AOC-G-250).

___ The affidavit or verified petition shows the respondent is in the military. Note, an attorney must be appointed for that respondent. Make clerk of court aware.

___ If respondent is in the military, they have not requested a stay.

Person Authorized to Approve a Request for Nonsecure Custody

___ There is an administrative order filed in the clerk's office that authorizes a magistrate to approve a nonsecure custody order (G.S. 7B-502(b)).

___ There is not an administrative order filed in the clerk's office that authorizes a magistrate to approve a nonsecure custody order. Telephonic communication has been made between the magistrate and the district court judge or if applicable other person who is authorized to approve a nonsecure custody order as designated in an administrative order that is filed in the clerk's office. (G.S. 7B-502(a); 7B-508)

Required Inquiries and Determinations for Nonsecure Custody

All three of the following criteria must be met (See G.S. 7B-503).

___ There is a reasonable factual basis to believe that the matters alleged in the petition are true.

___ One or more of the six conditions specified in G.S. 7B-503(a) exist.

(1) The child has been abandoned.

(2) The child has suffered physical injury, sexual abuse, or serious emotional damage.

(3) The child is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created the conditions likely to cause

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injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection.

- (4) The child is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and the child's parent, guardian, custodian, or caretaker is unwilling or unable to provide or consent to the medical treatment.
- (5) The parent, guardian, custodian, or caretaker consents to the nonsecure custody order.
- (6) The child is a runaway and consents to nonsecure custody.

___ There are no other reasonable means available to protect the child.

The Indian Child Welfare Act (ICWA), Mandatory inquiry required under federal regulations

___ The child is not an Indian Child and the participants (including the attorney) before me do not have reason to know the child is an Indian Child. ICWA does not apply

___ The child is an Indian child. ICWA applies.

___ A participant (including the attorney) before me has reason to know the child is an Indian child. Treat proceeding as if ICWA applies until court determines otherwise.

- Indian child is defined at 25 USC § 1903(4). The child is
 - a member of a federally recognized Indian tribe or
 - eligible for membership in a federally recognized Indian tribe and is the biological child of a member of a federally recognized Indian tribe.
- Responses to the above inquiry should be part of the record. Make sure court is aware of the inquiry and responses.

Length of the Initial Order when Issued by a Magistrate (G.S. 7B-506(a))

- When an order has been entered by an official exercising the authority delegated to him/her through an administrative order that is filed with the clerk (G.S. 7B-502), a hearing to determine the need for continued nonsecure custody must be conducted on the next regularly scheduled session of district court in the city or county where the order was entered so long as that session is scheduled within seven calendar days. If the session will not be held within seven calendar days, the hearing on the need for continued nonsecure custody may be conducted at another regularly scheduled session of district court in the district where the order was entered.