

# Building a Record in Juvenile Cases:

The Foundation, The Framing & The Punchlist

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# Building a Record on Appeal: Pre-trial, During Trial, and Post Trial

## 1) Pretrial: The Foundation

- A. Pretrial Orders and/or Pretrial Conferences
- B. Stipulations
- C. Service and Notice Procedures

## 2) During Trial: The Framing

- A. Judicial Notice
- B. Res Judicata /Collateral Estoppel
- C. Use and follow the Rules of Evidence
- D. Testimony and findings on the record

## 3) Post Trial: The Punchlist

- A. Calendar timelines
- B. Review proposed record carefully
- C. Compare to court record
- D. Know what is required



# The Foundation: Pretrial Methods to Establish a Record

## Pretrial Orders and Conferences

- Pretrial orders and conferences can help to narrow issues and obtain stipulations in at least the following areas:
- Pretrial conferences can be with or without a judge and can be as simple as emails and/or phone calls between lawyers.
  1. Personal jurisdiction
  2. Service of process
  3. Subject matter jurisdiction
  4. Notice of hearing
  5. Venue

# The Foundation: Pretrial Methods to Establish a Record Stipulations

## What facts may be the subject of stipulations?

- Any material fact that has been in controversy between the parties may be established by stipulation. Estate of Carlsen v. Carlsen, 165 N.C. App. 674, 678, 599 S.E.2d 581, 584 (2004).
- A stipulation need not follow any particular form, but its terms must be sufficiently definite and certain as to form a basis for judicial decision and it is essential that the parties or those representing them assent to the stipulation. Id.
- Commonly stipulated facts: Facts establishing Subject Matter Jurisdiction, Personal Jurisdiction, Service of Process, Notice of Hearing, Venue, Authenticity of Exhibits, Qualifications of Experts.



# The Foundation: Pretrial Methods to Establish a Record

## Stipulations

### **Why are stipulations helpful in building a record?**

- The effect of a stipulation by the parties withdraws a particular fact from the realm of dispute.
- They create written findings that are undisputable on appeal.
- They can save court time by preventing the need to put on evidence related to the stipulated facts.

# The Foundation: Pretrial Methods to Establish a Record

## **Example stipulations:**

- That Jane Doe has been properly served and noticed regarding the termination of parental rights and the underlying matter.
- That Alamance County, North Carolina is the correct venue and forum for the hearing of this matter.
- That the Court has personal and subject matter jurisdiction regarding this matter and that the juvenile has resided in North Carolina for more than six months proceeding the filing of the action. There are no other cases pending regarding custody or visitation of this child.



# The Foundation: Pretrial Methods to Establish a Record

## Stipulations: Practice Tips

- Provide exhibits to opposing counsel ahead of time and negotiate having them admitted without objection.
- Provide the Vita or Resume of expert to opposing counsel in advance and request that the Vita or Resume be admitted to qualify the witness as an expert and that counsel consent to qualifying the witness as an expert.
- If you must have a hearing regarding expert qualifications, make a motion that the information obtained on voir dire be moved into substantive evidence.
- List stipulations, get all attorneys to sign, and file with clerk.

# The Foundation: Pretrial Methods to Establish a Record Service and Notice Procedures

- Establish tickler system for service and notice.
- !Remember!—A summons only “lives” for sixty (60) days. Service of dead summons is no service—even in DSS Cases. <sup>1</sup>
- Prior to the adjudication hearing and the termination hearing, review all summonses to make sure the correct people have been listed and served.
- If necessary, have a summons amended<sup>2</sup> or re-issued or dismiss the case and begin again.
- Be sure to issue and serve a summons on the juvenile when required.



# The Foundation: Pretrial Methods to Establish a Record

## Service and Notice Procedures

### When is a summons and service on a juvenile required?

- A summons must ALWAYS be issued and served on a juvenile when a *petition* to terminate parental rights is filed. See, N.C.G.S. § 7B-1106(a)(5) (2007).
- Statutory notice must be served on juveniles 12 years old and older (at time of filing) when a *motion* to terminate parental rights is filed. See, N.C.G.S. § 7B-1106.1(a)(6)(2007).
- Service of process on a juvenile may be on his/her GAL or GAL Attorney Advocate with consent of the GAL. See, In re J.B., 172 N.C. App. 1, 616 S.E.2d 264 (2005). <sup>1</sup>
- *Practice Tip*: **ALWAYS** issue summons or statutory notice to juvenile in TPRs, regardless of age, and serve on their GAL. <sup>2</sup>

# The Foundation: Pretrial Methods to Establish a Record

## Service and Notice Procedures

**When is a summons and service on a juvenile *NOT* required?**

- A summons and service on a juvenile is NOT required when filing a petition in an Abuse, Neglect or Dependency proceeding. See, N.C. Gen. Stat. §§ 406 and 407 (2007).



# The Foundation: Pretrial Methods to Establish a Record

## **!Don't Forget!**

- If an answer has been filed in a TPR, be sure to have hearing on the issues prior to beginning the evidence. See, N.C. Gen. Stat. §7B-1108(b)(2007).
- A brief hearing before the TPR hearing begins is sufficient. See, In re Taylor, 97 N.C. App. 57, 387 S.E.2d 230 (1990) and In the Matter of Peirce 53 N.C. App. 373, 281 S.E.2d 198 (1981).

# The Framing: Building the Record During Trial

## Res Judicata/Collateral Estoppel and Judicial Notice

Use findings from previous, unappealed orders to the fullest extent possible. How?

1. Res Judicata— "An issue that has been definitively settled by judicial decision" Blacks Law Dictionary, 7<sup>th</sup> Ed., Bryan A. Garner, Ed. (1999)
  - Elements: 1) An earlier decision on the same issue; 2) A final judgment on the merits; and 3) Involvement of the same parties
  - Examples: 1) The adjudication of a juvenile as abused, neglected, or dependent; and 2) That respondent parent abandoned the juvenile
  - AKA "Collateral Estoppel"
  - Res Judicata/Collateral Estoppel CAN NOT be established by findings in Permanency Planning or Review Orders. <sup>1</sup>



# The Framing: Building the Record During Trial

## Res Judicata/Collateral Estoppel and Judicial Notice

2. Judicial Notice <sup>1</sup>— "A judicially noticed fact must not be one subject to reasonable dispute in that it is...capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." N.C. Gen. Stat. § 8C-1, Rule 201(b)(2007).

# The Framing: Building the Record During Trial

## Res Judicata/Collateral Estoppel and Judicial Notice

How is Judicial Notice different from Res Judicata?

- Res Judicata applies to a litigated issue that has been finally ruled upon by a court; i.e., the fact that a juvenile is neglected.
- Judicial Notice applies to facts that are well known and undisputable; i.e., the children have been in DSS custody for 12 months; the adjudication hearing took place on June 1, 2008; Respondent Mother was not present for the hearing on March 2, 2008; and there have been five (5) review hearings in the case.



# The Framing: Building the Record During Trial

## Res Judicata/Collateral Estoppel and Judicial Notice

### Practice Tips:

1. Ask the Court to acknowledge prior court orders
2. Identify issues/facts from the prior court order(s) that can be subject to judicial notice. For example:
  - Attendance at prior hearings
  - Items/tasks ordered to be completed by parties
  - The change of a plan
  - Findings from prior hearings with same standard of proof and alignment of parties

# The Framing: Building the Record During Trial

## Getting Evidence in the Record

### Getting Exhibits into the Record

- Insure exhibits have been properly authenticated or stipulated to be authentic.
- Insure exhibits have been formally introduced and admitted into evidence.
- At the close of your evidence, review all items which have been placed into evidence by reciting exhibit number and title.



# The Framing: Building the Record During Trial

## Getting Evidence in the Record

- Even when oral testimony is not required by statute (i.e., permanency planning and review hearings) have social workers sworn and authenticate reports. See, In re J.S.R., 654 S.E.2d 833 (2008)(unpublished) <sup>1</sup>
- Work with social workers to make sure their reports contain all information required by review and permanency planning statutes.
- Draft specific findings of fact in court orders rather than simply incorporating court reports—and encourage judges to make oral findings on the record, especially in TPR hearings. See, In re Harton, 156 N.C. App. 655, 577 S.E.2d 334 (2003). <sup>2, 3</sup>

# The Framing: Building the Record During Trial

## Orders Entered Out of Term and Session

- If the judge decides to take the case under advisement and is going to issue the decision off the record, get attorneys to consent to the judge issuing the decision out of court.
- If you have a visiting judge, get attorneys to consent to have the judge sign the order out of term and out of session.

Rule 58 of North Carolina Rules of Civil Procedure



# Post Trial: The Punchlist

## The Record on Appeal

The record consists of the transcript of the oral proceedings, documents filed in district court and the exhibits.

Important Rules:

9, 11 and 12

North Carolina Rule of Appellate Procedure

# Post Trial: The Punchlist

The record SHALL contain:

1. Index
2. Statement identifying the judge, session and party appealing
3. Copy of summons with return or other paper showing jurisdiction
4. Copies of pleadings and any pre-trial order
5. The evidence necessary for an understanding of all errors assigned
6. Transcript of charge given to jury
7. Copies of the issues submitted and the verdict



# Post Trial: The Punchlist

8. Copy of notice of appeal, all orders establishing time limits, civil pauper forms, order settling record on appeal and verbatim transcript
9. Copies of all other papers filed and statement of all other proceedings in the trial court which are necessary to an understanding of all errors assigned unless they appear in the verbatim transcript of proceedings
10. Assignments of error
11. Statement that the record of proceedings was made with an electronic recording device
12. State that a supplement compiled pursuant to Rule 11c is filed with the record on appeal

# Post Trial: The Punchlist

## Tips:

- Review the record on appeal closely and compare with assignments of error
- Keep record in chronological order
- Make sure required items are redacted



# Post Trial: The Punchlist

## Inadvertently Omitted Items

What if you determine after settlement that something has been omitted?

- Rule 9(b)(5) allows any party to make a motion to correct error as to form or content. Prior to the filing of the record on appeal in the appellate court, such motions may be made by any party to the trial tribunal.

# Post Trial: The Punchlist

## Settling The Record on Appeal

- Within 10 days after receipt of the transcript, the appellant shall prepare and serve upon all other parties a proposed record on appeal
- Within 10 days after service of the proposed record on appeal, the appellee may serve approval of the proposed record on appeal, objections or amendments, or a proposed alternative record on appeal



# Post Trial: The Punchlist

## Settling The Record on Appeal

If the parties cannot agree to the settled record within thirty days after receipt of the transcript, each party shall file three legible copies of the following documents in the office of the Clerk of Court of Appeals within five days after the last day upon which the record can be settled by agreement:

- the appellant shall file his proposed record and
- the appellee shall file his objections, amendments or proposed alternative record on appeal

# Timeline for Appeals

Order Entered

30 days  
Notice of Appeal

35 days from date notice given  
Transcript

10 days from receiving transcript  
Record on Appeal

10 days  
Response to Record on Appeal

5 days from when response should have been received

5 days from agreement

5 days after 30th day if cannot agree

File Record on Appeal with Court

30 days from filing record on appeal