

U.S. Constitution

- "Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody and control of their children."
 - Troxel v. Granville, 530 US 57 (2000)

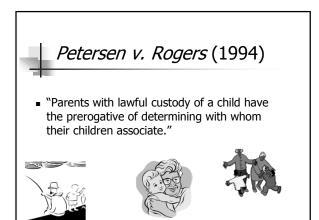
Nothing new ...

- This parental interest "is perhaps the oldest of the fundamental liberty interests" recognized by the U.S. Supreme Court
 - Troxel v. Granville



Petersen v. Rogers (1994)

 "Absent a finding that parents are unfit or have neglected the welfare of their children, the constitutionally-protected paramount right of parents to custody, care and control of their children must prevail."

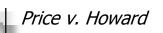


Price v. Howard (1997)

 When parents enjoy constitutionallyprotected status, "application of the 'best interest of the child standard' in a custody dispute with a non-parent would offend the Due Process Clause."

Price v. Howard (1997)

 "A parent's due process interest in the companionship, custody, care and control of a child is not absolute."



 Parent's protected interest "is a counterpart of the parental responsibilities the parent has assumed and is based on a presumption that he or she will act in the best interest of the child."



Price v. Howard • "Therefore, the parent may no longer enjoy a paramount status if his or her conduct is inconsistent with this presumption or if he or she fails to shoulder the responsibilities that are attendant to raising a child."

Price v. Howard

• "Unfitness, neglect, and abandonment clearly constitute conduct inconsistent with the protected status a parent may enjoy. Other types of conduct, which must be viewed on a case-by-case basis, can also rise to this level so as to be inconsistent with the protected status of natural parents."







- *Raynor v. Odom* (1996)
 - Substance abuse, failure to recognize child's developmental problems, left child with grandmother
- Sharp v. Sharp (1996)
 - Risk of harm to child when in mother's care, physical and emotional instability of mother, no financial support of child
- Davis v. McMillian (2002)
 - Determination of unfitness in earlier proceeding

Inconsistent Conduct "any past circumstance or conduct which could impact either the present or the future of the child is relevant."

Speagle v. Seitz, 354 NC 525(2001)



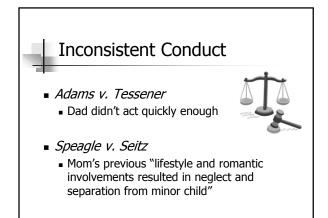
- Conclusion must be supported by clear and convincing evidence
 - Adams v. Tessener, 354 NC 57 (2001)

Inconsistent Conduct

- Price v. Howard
 - Voluntary, non-temporary relinquishment of physical custody
 - Compare
 - Penland v. Harris (no waiver)
 - Ellison v. Ramos (enough in pleading)
 - Grindstaff v. Byers (enough in pleading)
 - Perdue v. Fuqua (not enough in pleading)

Inconsistent Conduct

- Boseman v. Jarrell (NC 2010)
 - Creation of parent-like relationship; permanently ceding portion of exclusive authority to another
 - Compare
 - Mason v. Dwinnell (mom intended to waive)
 - Estroff v. Chatterjee (mom did not intend to waive)







- Owenby v. Young
 - DWI convictions not enough
- McDuffie v. Mitchell
 - Allegations of "estrangement" and limited visitation not enough