Chapter 6
Adjudication of Abuse, Neglect, or Dependency

6.1 Summary and Purpose of Adjudication

"Adjudication" refers both to the hearing at which the court determines the existence or nonexistence of the facts alleged in the petition, and to the court's action when it concludes as a matter of law that a child is an abused, neglected, or dependent juvenile. An adjudication is the court's determination of the child's status as abused, neglected, or dependent. It is not a determination of each individual parent's, guardian's, custodian's, or caretaker's culpability and is not an adjudication of the child's status as to a particular caregiver. *See In re E.X.J.*, 191 N.C. App. 34 (2008), *aff'd per curiam*, 363 N.C. 9 (2009); *In re Q.A.*, 245 N.C. App. 71, 74 (2016) and *In re A.L.T.*, 241 N.C. App. 443, 451 (2015) (both quoting *In re Montgomery*, 311 N.C. 101, 109 (1984)).

The petitioner – DSS – must prove the facts by clear and convincing evidence. The adjudication is a formal trial before a judge, and the rules of evidence apply. A consent order may also be entered, obviating the need for a full formal trial, if the requirements of G.S. 7B-801(b1) are satisfied. Consent orders must include findings of fact that are sufficient to support the conclusion of abuse, neglect, or dependency.

If the alleged facts are proved and the court concludes that they are sufficient to support an adjudication, the child is adjudicated abused, neglected, or dependent. The court may proceed to the dispositional phase of the case to determine the best way to address the family's needs. If the allegations are not proved by clear and convincing evidence, there is no adjudication. The court must dismiss the case with prejudice.

A stated purpose of the Juvenile Code (G.S. Chapter 7B) is to provide hearing procedures that assure fairness and equity and that protect the constitutional rights of juveniles and parents. G.S. 7B-100(1). The Juvenile Code specifically instructs the court to protect the rights of the child and the parent to assure due process at the adjudication hearing. G.S. 7B-802. An important aspect of assuring fairness and protecting rights is appropriately separating the adjudication and disposition phases of the case. While it is permissible for the two phases to take place in one court setting, the purposes, procedures, and standards applicable to the two phases are different.

This Chapter addresses the court's adjudication of the juvenile. All matters that are prerequisites or preliminary to an adjudication hearing are addressed elsewhere in this Manual, such as

- the filing of a proper petition alleging abuse, neglect, dependency (Chapters 5.3.A; 4.2);
- the summons and service of process (Chapters 5.3.B; 4.3; 4.4);
- jurisdiction (Chapter 3);
- appointment of counsel and guardians ad litem for parents (Chapters 2.4.D–F; 5.4.B);
- appointment of guardian ad litem and attorney advocate for child (Chapters 2.3.D; 5.4.C);
- orders for nonsecure custody and hearings on the need for continued nonsecure custody (Chapter 5.5; 5.6);
- discovery and access to information (Chapters 4.6; 14); and
- pre-adjudication hearing and other pretrial conferences (Chapter 5.7).

Dispositional hearings, outcomes, and orders are discussed in Chapter 7.

6.2 The Adjudication

A. Procedure for Adjudication

There are two procedural paths for an abuse, neglect, or dependency adjudication: (1) an adjudicatory hearing and (2) adjudication by consent. *In re R.L.G.*, 816 S.E.2d 914 (N.C. Ct. App. 2018); *In re J.S.C.*, 253 N.C. App. 291 (2017). An adjudicatory hearing involves a judicial process that determines the existence or nonexistence of any of the conditions alleged in the petition. G.S. 7B-802. Allegations in the petition must be proved by clear and convincing evidence. G.S. 7B-805. An adjudication by consent occurs in the absence of an adjudicatory hearing when all the parties have reached an agreement that is sanctioned by the court, and all the criteria of G.S. 7B-801(b1) are satisfied. *See In re R.L.G.*, 816 S.E.2d 914 (N.C. Ct. App. 2018); *In re J.S.C.*, 253 N.C. App. 291. See Section 6.5, below (discussing consent orders).

Most procedural aspects of an adjudication are governed by the Juvenile Code. In some circumstances, a specific Rule of Civil Procedure may apply when it does not conflict with the Juvenile Code and only to the extent that it advances the purposes of the Juvenile Code. *In re E.H.*, 227 N.C. App. 525 (2013); *In re L.O.K.*, 174 N.C. App. 426 (2005). See Chapter 4 (discussing procedures under the Juvenile Code and the applicability of the Rules of Civil Procedure to juvenile cases).

At the adjudication hearing, DSS is the petitioner with the burden of proof. *In re E.H.*, 227 N.C. App. 525. The respondents (parents, guardian, custodian, or caretaker) and the juvenile (usually through a GAL and attorney advocate) have the right to present evidence and cross-examine witnesses. The court may proceed with the hearing even if the respondents are not present. In those circumstances, an adjudication of abuse, neglect, or dependency cannot result from a default judgment or judgment on the pleadings. There must be a hearing where DSS presents evidence and proves its case. *See In re Shaw*, 152 N.C. App. 126 (2002) (default judgment and judgment on the pleadings not available for an adjudication); *see also In re I.D.*, 239 N.C. App. 172 (2015) (originally unpublished Feb. 3, 2015, but subsequently published) (reversing adjudication order and remanding for further proceedings as adjudication amounted to a judgment on the pleadings after the court accepted the verified petition as evidence and DSS put on no evidence at the adjudicatory hearing; immaterial that respondent did not object); *In re K.P.*, 249 N.C. App. 620 (2016) (reversing an adjudication and disposition order and vacating all orders based on the adjudication after determining the adjudication order did not result from a proper adjudicatory hearing or the G.S. 7B-801(b1) requirements for a valid consent adjudication order).

B. Timing

The adjudication hearing must be held within sixty days from the time the petition is filed unless the court orders that the hearing be continued. G.S. 7B-801(c).

Under G.S. 7B-803, continuances are permissible only

- for good cause, for as long as is reasonably required, to receive
  - additional evidence, reports, or assessments the court has requested or
  - other information needed in the best interests of the juvenile;
- to allow a reasonable time for the parties to conduct expeditious discovery; or
- in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile, but resolution of a pending criminal charge against a respondent arising out of the same transaction or occurrence as the juvenile petition may not be the sole extraordinary circumstance.

It is also important to be familiar with any local rules relating to continuances. See Chapter 4.5 (providing more detail and case law related to continuances and the consequences of delay).

Although the Juvenile Code sets forth a sequential hearing process, with an adjudication followed by the initial disposition, review, and permanency planning hearings, it does not prohibit the court from conducting the adjudication, dispositional, and permanency planning hearings on the same day. *In re C.P.*, 812 S.E.2d 188 (N.C. Ct. App. 2018).

C. Public Access to Hearing

Hearings in abuse, neglect, or dependency cases are open to the public even though the court records are withheld from public inspection. *See* G.S. 7B-801(a); 7B-2901(a). However, the court may determine to close to the public a hearing or part of a hearing. G.S. 7B-801(a), (b). If the juvenile requests that a hearing or part of a hearing be open, it must be open. G.S. 7B-801(b). As long as the juvenile does not request that the hearing or part of the hearing be open, the court considers the circumstances of the case and the following factors when deciding whether to close the hearing or part of the hearing:

- the nature of the allegations in the petition,
- the child's age and maturity,
- the benefit to the child of confidentiality,
- the benefit to the child of an open hearing,
- the extent to which the confidentiality of the juvenile's record pursuant to G.S. 7B-2901 (abuse, neglect, or dependency cases) and 132-1.4(l) (criminal investigations) will be compromised by an open hearing, and
- any other relevant factor.

G.S. 7B-801(a).

Even if a hearing is open, electronic media and still photography coverage of juvenile proceedings is prohibited by Rule 15 of the General Rules of Practice for the Superior and District Courts Supplemental to the Rules of Civil Procedure. Local rules should also be consulted on this issue.

D. Record of Proceedings

The hearing must be recorded by stenographic notes or electronic or mechanical means. G.S. 7B-806. Audio recording is the means typically used by courts. Recordings of abuse, neglect, or dependency court hearings must be reduced to writing only when a timely notice of appeal has been filed. G.S. 7B-806; 7B-2901(a). Recordings may be erased or destroyed upon written court order after the time for appeal has expired with no appeal having been filed or in accordance with the records retention schedule approved by the director of the Administrative Office of the Courts and the Department of Natural and Cultural Resources. G.S. 7B-2901(a); *see* G.S. 121-5(c). Note that the records retention policies may require that the recordings, which are considered part of the juvenile file maintained by the clerk, be kept longer.

Appellate cases have indicated that gaps in a recording or the accidental destruction of the tape recording is reversible error only if it results in prejudice. *See In re L.B.*, 184 N.C. App. 442 (2007) and cases cited therein. The fact that the recording is of poor quality or inadequate will matter only if the appellant shows specific error (as opposed to probable error) in the recording and that the appellant was prejudiced as a result of the recording problems. *See, e.g., In re L.O.K.*, 174 N.C. App. 426 (2005); *In re Howell*, 161 N.C. App. 650 (2003); *In re Bradshaw*, 160 N.C. App. 677 (2003).

Problems with the recording of a hearing present issues to be dealt with in settling the record on appeal pursuant to Rule 9 of the Rules of Appellate Procedure. When an adequate verbatim transcript is unavailable, there may be ways to reconstruct the testimony, and there is an expectation that an appellant will do everything possible to reconstruct the transcript. *See In re L.B.*, 184 N.C. App. 442 (2007) (rejecting respondent's contention that she was denied due process where electronic recordings were accidentally destroyed, finding that respondent did not do all that she could to reconstruct the transcript and did not show prejudice). For a discussion of appeals, see Chapter 12.

E. Petition Controls Scope of Adjudication

The court determines whether the conditions alleged in the petition exist. G.S. 7B-802. The conditions – a juvenile's abuse, neglect, or dependency as each term is statutorily defined – are the basis for the petition. *See In re M.G.*, 363 N.C. 570 (2009) (deciding, under former language of G.S. 7B-800, whether the amended petition changed the nature of the conditions alleged, specifically the condition of abuse and looked to all six [now eight] criteria in the definition of abuse).

In conducting the adjudication hearing, the court is required to protect the rights of the juvenile and the parent to assure due process. G.S. 7B-802. The court may consider only matters relating to the conditions alleged in the petition. *See* G.S. 7B-802; 7B-805; 7B-807(a) (referencing matters alleged in petition in relation to adjudication). *See also In re D.C.*, 183 N.C. App. 344 (2007) (holding that it was error for court to allow DSS to proceed on a theory of neglect and to adjudicate neglect when the petition alleged only dependency and the factual allegations did not put respondent on notice as to neglect). A petition is adequate

when the facts are sufficient to put the respondent on notice of an alleged condition. *In re K.B.*, 253 N.C. App. 423, 427 (2017) (petition alleging only that child was abused and neglected put respondent on notice that dependency would be at issue when (1) factual allegations attached to the petition encompassed language from the statutory definition of dependency by asserting that respondent "failed to provide proper supervision" and "was unable to provide an alternative placement resource for the child," and (2) an order entering stipulations for adjudication stated in the first sentence that the petition alleged abuse, neglect, and dependency); *In re L.T.R.*, 181 N.C. App. 376 (2007) (rejecting the stepfather's claim that the petition did not put him on notice that the child's bathing routine would be at issue because an attachment to the petition addressed an injury occurring during bathing and the stepfather did not object to evidence of child's bathing routine when it was offered at trial).

Generally, events that occur after the filing of the petition are not to be considered at adjudication because the issue at adjudication is whether the facts alleged in the petition are true. *See In re A.B.*, 179 N.C. App. 605, 609 (2006) ("post-petition evidence is admissible for consideration of the child's best interests in the dispositional hearing, but not an adjudication of neglect"). See also section 6.3.B, below (explaining exception and the separation of evidence for adjudication and disposition).

Practice Notes: If after a petition has been filed, DSS learns of additional incidents that were not included in the petition, DSS will need to seek permission of the court to amend the petition under G.S. 7B-800 to include a new condition and/or additional facts. The amendment will put the respondents on notice of the new allegations and/or conditions DSS seeks to prove. If DSS is unable to amend its petition, a second petition alleging the newly discovered incidents may need to be filed.

Regarding consent orders, when parties are negotiating to resolve a case by consent, they should exercise caution to avoid stipulations or agreements that do not accurately reflect the facts of the case or conditions in the petition. For example, if a petition alleges only neglect and the factual allegations relate only to neglect, a consent order adjudicating dependency is improper. Findings and conclusions in an order must be directly related to what is alleged in the petition and what the facts reflect. While parties may view amendment of a petition as a way to address the difference between what is alleged in the petition and what the parties want to agree to, the petition can be amended only with the court's approval. G.S. 7B-800. See Chapter 4.2.C (relating to amendments) and section 6.5, below (relating to consent orders).

6.3 Evidence and Proof

This section addresses evidentiary standards, burden of proof, and case law related to the sufficiency of evidence and findings in abuse, neglect, or dependency cases. Additional evidence topics such as hearsay, experts, child witnesses, judicial notice, and other matters related to the admissibility of evidence are addressed in Chapter 11.

A. Child's Status, Standard, and Burden of Proof

The allegations of the petition must be proved by clear and convincing evidence. G.S. 7B-805; *In re J.A.M.*, 822 S.E.2d 693 (N.C. S.Ct. 2019). Clear and convincing evidence is "stricter than a preponderance of the evidence, but less stringent than proof beyond a reasonable doubt and requires evidence which should fully convince." *In re H.N.D.*, 827 S.E.2d 329, 332 (N.C. Ct. App. 2019) (quoting *In re Mills*, 152 N.C. App. 1, 13 (2002)). DSS is the petitioner and has the burden of proof. *In re E.H.*, 227 N.C. App. 525 (2013); *see In re V.B.*, 239 N.C. App. 340 (2015).

The determination of whether a child is abused, neglected, or dependent is about the circumstances and conditions of the child, not the fault or culpability of the parent, guardian, custodian, or caretaker. *See In re Montgomery*, 311 N.C. 101 (1984); *see also In re Q.A.*, 245 N.C. App. 71, 74 (2016) and *In re A.L.T.*, 241 N.C. App. 443, 451 (2015) (both quoting *In re Montgomery*, 311 N.C. at 109). At adjudication, "the trial court is not required to determine the culpability of each parent as to the children." *In re E.X.J.*, 191 N.C. App. 34, 45 (2008), *aff'd per curiam*, 363 N.C. 9 (2009); *In re J.S.*, 182 N.C. App. 79 (2007). A child may be adjudicated as abused or neglected because of the circumstances created by one respondent only. *See In re A.L.T.*, 241 N.C. App. 443 (2015) (affirming adjudication of neglect based on an injurious environment related to findings about circumstances created by respondent father and holding the lack of findings in the adjudication order about the respondent mother's culpability in contributing to the child's neglect was immaterial). A child may also be adjudicated without there being a finding as to which respondent is culpable for the abuse or neglect. *See In re Y.Y.E.T.*, 205 N.C. App. 120 (2010) (finding that both respondent parents were jointly and individually responsible for their child's injuries where infant suffered non-accidental injuries while in the care of both parents, but a perpetrator could not be identified); *In re R.S.*, 254 N.C. App. 678 (2017) (affirming an adjudication of abuse that found both respondents, who were the sole caretakers of a pre-mobile infant, jointly and individually responsible for the child's serious and unexplained injuries); *In re L.Z.A.*, 249 N.C. App. 628, 638 (2016) (affirming adjudication of abuse and neglect of pre-mobile child with unexplained non-accidental injuries occurring while parents were the child's sole caretakers; trial court noting at disposition its "pause and concern as there has not been any identified perpetrator").

Note that at disposition, identifying the "offending parent" may be an issue for the court in determining whether reasonable efforts for reunification should cease and/or whether reunification is possible and in the child's best interest. *See In re Y.Y.E.T.*, 205 N.C. App. 120, 128 (at disposition, the court ordered parental capacity evaluations with the hope that they would identify who caused the child's injuries and why, which would allow the court to "determine whether reunification could occur with a non-offending parent or if issues could be rectified with an offending parent so that the child could be returned to her home"); *see also In re D.A.*, 811 S.E.2d 729, 733 (N.C. Ct. App. 2018) (vacating and remanding permanency planning order awarding custody to foster parents; stating "the court's findings are unclear of which parent or parents the court assigned responsibility" for the child's unexplained injuries, and "the trial court's findings do not explain how Respondent-father was culpable for [child's] injuries, unfit, or otherwise acted inconsistently with his

constitutionally protected status as a parent"). Identification of the offending parent, guardian, custodian, or caretaker is also required for placement on the "Responsible Individuals List" (RIL). See Chapter 5.2.B (discussing the RIL).

In two fairly recent published opinions, the court of appeals has also addressed a child's behaviors and a parent's response to those behaviors and has held the child's behaviors are not the determinative factor in deciding whether the child is abused or neglected. *In re F.C.D.*, 244 N.C. App. 243 (2015) (abuse adjudication affirmed; abuse definition regarding use of cruel or grossly inappropriate procedures to correct a child's behavior does not examine the child's behavior that the procedures and devices were meant to correct); *In re K.G.*, 817 S.E.2d 790, 792 (N.C. Ct. App. 2018) (reversing dependency adjudication; the court is not to look "to the juvenile's willful acts to determine a parent's ability to care for the [child]").

Resource: See Sara DePasquale, *When Does Delinquency Result in Abuse, Neglect, or Dependency?*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (May 28, 2019).

B. Evidentiary Standards

The rules of evidence in civil cases apply to adjudication hearings. G.S. 7B-804. In reaching an adjudication decision, the court considers only evidence that is relevant to a determination of the existence or nonexistence of the facts and conditions alleged in the petition. *See* G.S. 7B-802; 7B-807(a). Post-petition evidence should not be considered at the adjudication hearing. *In re A.B.*, 179 N.C. App. 605, 609 (2006) (stating "[p]ost-petition evidence is admissible for consideration of the child's best interest in the dispositional hearing, but not an adjudication of neglect"); *In re J.R.*, 243 N.C. App. 309, 315 (2015) (relying on *In re A.B.* when stating "[t]he fact that respondent-mother had just ten more days to stay at the Salvation Army at the time WCHS filed its petition does not alter our conclusion" that neglect was not proved).

The court of appeals has recognized limited exceptions to the prohibition of considering post-petition evidence at the adjudication. Evidence of a "fixed and ongoing circumstance" that is not a "discrete event or one-time occurrence" may be considered. *In re V.B.*, 239 N.C. App. 340, 344 (2015). In the case of *In re V.B.*, the trial court properly considered evidence that paternity had been established before the adjudication hearing but after the petition alleging dependency (in part based on the respondent father's failure to establish paternity) was filed because paternity was a fixed and ongoing circumstance that was extremely relevant to determining whether the child was dependent.

In cases where the child had been placed with an appropriate alternative caregiver prior to DSS involvement and a petition is filed alleging neglect, the court of appeals has treated these cases like those termination of parental rights cases that allege neglect when the child has not lived with the parent for a substantial period of time prior to the filing of the petition. See Chapter 9.11.A.4 (discussing neglect based on past neglect and likelihood of repetition of neglect). In these types of cases, the trial court looks at the past conditions and the probability of the repetition of neglect that poses a risk of harm to the child. The determinative factors are

the child's best interests and "the fitness of the parent to care for the child *at the time of the [adjudication] proceeding*." *In re K.J.D.*, 203 N.C. App. 653, 660 (2010) (emphasis in original) (citations omitted) (affirming adjudication of neglect; mother has not corrected the conditions that led to her placing the child with maternal grandmother); *In re H.L.*, 807 S.E.2d 685 (N.C. Ct. App. 2017) (affirming adjudication of neglect; child was placed with her adult sibling and parents did not correct conditions that required the child's safety placement; parents could not provide proper care); *In re C.C.*, 817 S.E.2d 894 (N.C. Ct. App. 2018) (affirming neglect adjudication; conditions leading to child's placement outside of her home were not corrected at the time of the adjudication hearing); *In re F.S.*, 835 S.E.2d 465 (N.C. Ct. App. 2019) (reversing neglect adjudication; no clear and convincing evidence of current circumstances or future probability of risk of harm to child if immediately returned to mother who had been engaging in services); *In re B.P.* 809 S.E.2d 914, 920 (N.C. Ct. App. 2018) (quoting *In re K.J.D.*; vacating neglect adjudication; there were no findings of risk of harm).

Ordinarily, an adjudication hearing is conducted and the court makes findings and conclusions related to adjudication before proceeding to a disposition hearing. Proceeding in this manner helps to ensure that the appropriate evidentiary standards are applied to the adjudication and disposition phases of the case – the standard at adjudication is clear, cogent and convincing evidence, and at disposition, it is the best interests of the child and placement is discretionary. *In re O.W.*, 164 N.C. App. 699 (2004). However, the Juvenile Code does not require two separate hearings and the appellate courts have held that it is not error for the trial court to consolidate the adjudication and disposition hearings if proper evidentiary standards and rules are applied. *In re O.W.*, 164 N.C. App. 699. If the hearings are consolidated, evidence that relates to facts occurring after the date of the petition (absent a recognized exception), or evidence relating to the needs and interests of the child or parents but not relevant to proving allegations of abuse, neglect, or dependency, may be considered only for the purpose of making dispositional determinations. Predisposition reports may not be submitted to or considered by the court until after adjudication. G.S. 7B-808(a).

Where failure to apply the appropriate evidentiary standards and rules to the separate phases of the case is asserted as error on appeal, appellate courts have refused to find error absent a showing that evidence was improperly considered. *See In re O.W.*, 164 N.C. App. 699. In a nonjury trial, if incompetent evidence is admitted and there is no showing that the judge acted on it, the trial court is presumed to have disregarded it. *See Powers v. Powers*, 130 N.C. App. 37 (1998) (presuming that the judge considered evidence related to post-petition occurrences, which had come in prior to the adjudication determination, only for dispositional purposes); *In re A.L.T.*, 241 N.C. App. 443 (2015) (trial court presumed to have disregarded hearsay statements at neglect adjudication hearing regarding father's inappropriate touching of child when trial court made no findings as to the hearsay evidence in its adjudication order and dismissed sexual abuse allegation against father; trial court was authorized to consider the hearsay evidence at dispositional pursuant to G.S. 7B-901(a)).

C. Evidence at Adjudication

1. Stipulations. Stipulations by a party may constitute evidence at adjudication that the court considers when making its conclusion of law. *See* G.S. 7B-807; *In re R.L.G.*, 816 S.E.2d 914

(N.C. Ct. App. 2018) (pursuant to G.S. 7B-807, factual stipulations may be used in support of an adjudication); *In re L.G.I.*, 227 N.C. App. 512 (2013) (affirming neglect adjudication after reviewing facts which included mother's stipulation to using illegal drugs during pregnancy and child testing positive for morphine at birth and additional evidence of those facts contained in admitted medical records and a court summary).

The Juvenile Code sets forth a specific procedure for how the court accepts stipulated adjudicatory facts. A record of specific stipulated adjudicatory facts must be made by either

- submitting to the court written stipulated facts that are signed by each party stipulating to them or
- reading the stipulated facts into the record, followed by an oral statement of agreement by each party stipulating to them.

G.S. 7B-807(a).

Parties stipulate to facts, not questions of law. *See* G.S. 7B-807(a); *In re R.L.G.*, 816 S.E.2d 914 (N.C. Ct. App. 2018) (determination of whether a juvenile is neglected is a conclusion of law; mother's "admission" that child was neglected was ineffective as support for an adjudication of neglect); *In re A.K.D.*, 227 N.C. App. 58 (2013) (holding that the parties' stipulation that the TPR ground of willful abandonment existed was an invalid stipulation to a conclusion of law). The court of appeals has stated "stipulations as to questions of law are generally held invalid and ineffective, and not binding upon the courts, either trial or appellate." *In re A.K.D.*, 227 N.C. App. at 60 (quoting *State v. Prush*, 185 N.C. App. 472, 480 (2007)).

Stipulations are binding admissions to the court, "preventing the party who agreed to the stipulation from introducing evidence to dispute it and relieving the other party of the necessity of producing evidence to establish" what is stipulated to. *In re A.K.D.*, 227 N.C. App. at 60 (quoting *Thomas v. Poole*, 54 N.C. App. 239, 241 (1981)). Facts stipulated to by a party are presumed to be supported by competent evidence and are binding on appeal. *In re G.T.*, 250 N.C. App. 50 (2016), *aff'd per curiam*, 370 N.C. 387 (2017). When construing a stipulation, the court must attempt to effectuate the intention of the stipulating party as to what facts are being stipulated to so as to avoid giving the stipulation the effect of admitting a fact the party intends to contest. *In re A.K.D.*, 227 N.C. App. 58; *In re I.S.*, 170 N.C. App. 78 (2005).

2. Findings of facts must meet statutory definition. A court's determination that a child is an abused, neglected, or dependent juvenile is a conclusion of law. At adjudication, the issue is whether the petitioner has presented clear and convincing evidence to support findings of fact from which the court can conclude that the child is abused, neglected, or dependent as alleged in the petition. However, it is not unusual for courts to refer to "evidence of abuse, neglect, or dependency" as shorthand for the same thing. The facts alleged in the petition and the evidence introduced to establish those facts must relate to the statutory meaning of the alleged status—abused, neglected, or dependent, as defined in G.S. 7B-101(1), (15), or (9). The statutory definitions are especially important given that they do not necessarily conform to

common perceptions of what constitutes abuse, neglect, or dependency. See Chapter 2.3.B. (discussing the statutory definitions and case law interpreting them).

3. Evidence of abuse, neglect, or dependency in other types of hearings. Abuse, neglect, or dependency are, or are part of, some grounds for termination of parental rights (TPR), so case law addressing evidence to prove abuse, neglect, or dependency sometimes arises from TPR proceedings. However, in the TPR context the court may consider factors that differ from those it considers in an abuse, neglect, or dependency adjudication hearing because the issue in a TPR case is the conduct of the parent while the issue in an underlying adjudication is the condition or status of the child. As a result, some case law concerning evidence to prove abuse, neglect, or dependency as grounds for a TPR may not be directly applicable to abuse, neglect, or dependency adjudications. Some TPR cases do provide guidance regarding whether circumstances meet the definition of abuse or neglect since the definitions are the same in both types of proceedings. *See In re K.J.D.*, 203 N.C. App. 653 (2010) (stating that it is appropriate in examining an adjudication of neglect to look to TPR cases addressing whether circumstances meet the definition of neglect since the definition of neglect is the same in both types of proceedings). See Chapter 9.11.A (discussing abuse and neglect grounds for TPR and cases considering those grounds).

D. Evidence to Establish Abuse

1. Definition of abuse. The Juvenile Code defines an abused juvenile as any juvenile less than 18 years of age

- who is found to be a minor victim of human trafficking under G.S. 14-43.15 or
- whose parent, guardian, custodian, or caretaker
  - inflicts or allows to be inflicted on the juvenile a serious physical injury by other than accidental means;
  - creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
  - uses or allows to be used on the juvenile cruel or grossly inappropriate procedures or devices to modify behavior;
  - commits, permits, or encourages the commission of a violation of laws involving sex and other crimes (the statute lists specific laws) by, with, or upon the juvenile;
  - commits or allows to be committed against the juvenile an offense involving human trafficking, involuntary servitude, or sexual servitude;
  - creates or allows to be created serious emotional damage to the juvenile (serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself, herself, or others); or
  - encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

G.S. 7B-101(1). See Chapter 2.3.B (discussing the definition of abuse and cases interpreting it).

2. Evidence related to abuse. Case law related to evidence for an adjudication of abuse is relatively limited, as compared to case law related to neglect. Since the definition of abuse specifies serious physical injury and grossly inappropriate procedures or devices to modify behavior, circumstances involving child maltreatment more often meet the definition of neglect, in the form of improper care, than abuse. Where a child suffers physical injuries such as bone fractures or brain trauma there may be little dispute about whether the injuries actually occurred or are serious enough to come within the definition of abuse if the circumstances are created by a parent, guardian, custodian, or caretaker. Other situations are less clear regarding what constitutes abuse. Some common issues related to abuse have been discussed in appellate cases.

(a) Corporal punishment or discipline. The definition of abuse does not explicitly reference corporal punishment or discipline. If an abuse allegation is based on the inappropriate or excessive use of such discipline by a parent, guardian, custodian, or caretaker, that discipline must satisfy one of the statutory criteria of the abuse definition and be proved by clear and convincing evidence.

Serious physical injury inflicted by non-accidental means: **G.S. 7B-101(1)(ii)a**. Appellate decisions examining the type of injuries sustained from corporal punishment have varied in determining what constitutes abuse. The child's age is taken into consideration. In one case, the court of appeals found that temporary bruising or temporary marks resulting from a spanking were insufficient to rise to the level of "serious injury" on a 13-year-old child. *In re C.B.*, 180 N.C. App. 221 (2006), *aff'd per curiam*, 361 N.C. 345 (2007). However, serious injury constituting abuse was found to have occurred where an almost 4-year-old child was hit with a brush, which left a dark, six-inch bruise on his thigh that lasted well over a week and caused the child to still experience sufficient discomfort to complain of pain several days later, and a doctor testified that it would have taken considerable force to cause such a bruise. *In re L.T.R.*, 181 N.C. App. 376 (2007). The court of appeals noted in *In re L.T.R.* that neither the statute nor case law requires that the injured child receive immediate medical attention to sustain a determination that the injury is serious.

Some cases involving an assessment of injuries resulting from physical discipline are examined in the context of neglect allegations, as opposed to abuse. Because neglect does not require a finding of serious physical injury or cruelty, the analysis is different, making it difficult to compare corporal punishment cases alleged as neglect versus those alleged as abuse. See section 6.3.E.2(f), below (discussing lack of proper discipline as neglect).

Use of cruel or grossly inappropriate procedures or devices to modify behavior: G.S. 7B-101(1)(ii)c. This definition of abuse addresses discipline without explicitly referring to the term. The first published appellate opinion that discussed this ground was in 2014. In the case *In re H.H.*, 237 N.C. App. 431 (2014), *overruled by implication in part on other grounds by In re B.O.A.*, 831 S.E.2d 305 (N.C. S.Ct. 2019), the petition alleged abuse under this prong of the abuse definition due to the mother's physical discipline of her 8-year-old son. The court of appeals determined that sufficient findings were made to support the adjudication, including that the mother struck the child five times with a belt,

leaving multiple bruises on the inside and outside of his legs that were still visible the next day, and the child described "a beating." In another published opinion, the court of appeals affirmed the adjudication of abuse based on the findings that the child was (1) forced to sleep outside on at least two cold nights in February, (2) bound to a tree, (3) required to conduct a "self-baptism" in a bathtub full of water, (4) ordered to pray while his caretaker held a firearm, (5) struck with a belt all over his body and (6) repeatedly told that he was possessed by a demon to the point that the child began to believe that was true. *In re F.C.D.*, 244 N.C. App. 243 (2015). The court of appeals has held that this definition of abuse focuses on the severity and brutality of the procedures and devices used by the parent, guardian, custodian, or caretaker and does not examine the child's behavior that the procedures and devices were meant to correct. *In re F.C.D.*, 244 N.C. App. 243.

Resources:

For a further discussion on discipline and abuse under the Juvenile Code, see

- Sara DePasquale, *Parental Discipline: When Is It Abuse and/or a Crime?*, UNC SCH. OF GOV'T: NORTH CAROLINA CRIMINAL LAW BLOG (Nov. 13, 2014).
- Sara DePasquale, *When Parental Discipline Goes Too Far, It's Child Abuse*, UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (May 25, 2016).

(b) Factitious Disorder Imposed on Another (previously, Munchausen Syndrome by Proxy). Findings of abuse were affirmed where three experts testified that the child was the probable victim of Munchausen syndrome by proxy, which involves a person deliberately causing injury or illness to another person and seeking medical attention for that person, often as a means of gaining attention. During her hospitalization, the child underwent numerous painful and invasive medical procedures to determine the source of symptoms reported by her mother, who one doctor believed had potentially induced the symptoms by either smothering or administering toxin to the child. *In re McCabe*, 157 N.C. App. 673 (2003); *see also In re Greene*, 152 N.C. App. 410 (2002) (affirming TPR on ground of abuse in case in which experts had diagnosed Munchausen syndrome by proxy).

(c) Serious emotional damage: G.S. 7B-101(1)(ii)e. Serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself, herself, or others. G.S. 7B-101(1)(ii)e. The statute does not require a formal psychiatric diagnosis of any of the psychological conditions set out in the statute. *In re A.M.*, 247 N.C. App. 672 (2016).

- Evidence of serious emotional damage due to the parents' long-standing, acrimonious marital dispute, resulting in chronic adjustment disorder and depression in their children, was sufficient to support a finding of emotional abuse and a conclusion that the children were abused juveniles. *Powers v. Powers*, 130 N.C. App. 37 (1998).
- Evidence of child's emotional withdrawal as a coping mechanism for the child's feelings of hopelessness and anxiety, arising from mother's continued foul, abusive language and maltreatment of child, was sufficient to support an adjudication of abuse based on serious emotional damage. *In re A.M.*, 247 N.C. App. 672.

(d) Commission of certain sex and other crimes by, with, or upon a child: G.S. 7B-101(1)(ii)d.

By a child. An older sibling who repeatedly sexually abused a younger sibling and the younger sibling victim were both abused juveniles (abuse includes a parent who permits or encourages the commission of certain sex crimes by, with, or upon a child). Evidence supported the findings of abuse by the older sibling, established that respondent parents were aware of the abuse based on the younger sibling's repeated disclosures to them over a period of two years as well as disclosures made to other family members, and showed that the older sibling had been adjudicated delinquent after admitting to multiple counts of second degree sexual offenses against the younger sibling. *In re M.A.E.*, 242 N.C. App. 312 (2015) (originally unpublished July 21, 2015, but subsequently published).

With or upon a child.

- Evidence was sufficient to establish abuse where the child had made statements that the father had asked the child to touch his penis, asked her to look at magazines with pictures of naked people, and put his hand on her crotch in bed; and in response to the trial court's question about what she saw when she was in the basement with the child and her father, the child's cousin made a drawing that depicted a man exposing himself. *In re Cogdill*, 137 N.C. App. 504 (2000).
- Evidence was sufficient to support a determination of abuse where the father grabbed the child from behind and fondled her breasts and on another occasion inappropriately touched her in the vaginal area. *In re M.G.*, 187 N.C. App. 536 (2007), *rev'd in part on other grounds*, 363 N.C. 570 (2009).

(e) Serious physical injury inflicted by non-accidental means: G.S. 7B-101(1)(ii)a. A child may be adjudicated abused when he or she sustains unexplained non-accidental injuries. *In re L.Z.A.*, 249 N.C. App. 628 (2016). An adult's exclusive custody of a child who suffers non-accidental injuries that were not self-inflicted can support an inference that the adult inflicted the injuries. *State v. Wilson*, 181 N.C. App. 540 (2007). An abuse adjudication may be based on non-accidental injuries without a finding of a pattern of abuse or the presence of risk factors. *In re L.Z.A.*, 249 N.C. App. 628. There is also no requirement to prove abuse beyond a reasonable doubt or to rule out "every remote possibility" of the cause of the injury. *In re L.Z.A.*, 249 N.C. App. at 638. While medical testimony that the child suffered a non-accidental injury may be presented, medical testimony is not required to find that injuries were not accidental. *In re S.G.*, 835 S.E.2d 479 (N.C. Ct. App. 2019). There is no minimum threshold for a serious injury as the determination is dependent on the facts of each case. *In re S.G.*, 835 S.E.2d 479.

Evidence was sufficient to find abuse based on serious physical injury inflicted by non-accidental means.

- Findings that a 3-year-old child had distinct patterned bruising on his forehead and upper eyelid, visible at least four days after the incident, supported the trial court's conclusion of a serious injury. While no medical expert explicitly testified that the

injuries occurred through non-accidental means, two medical professionals testified without objection that mother's explanation was inconsistent with the nature of the child's injuries and that the bruising was "definitely consistent with having been hit with a belt buckle", which supported the determination that the injuries were non-accidental. *In re S.G.*, 835 S.E.2d at 484.

- An abuse adjudication based on respondent inflicting or allowing to be inflicted serious physical injury, and by creating a substantial risk of serious physical injury, both by non-accidental means was supported by findings that (1) the child did not experience any substantial injuries when placed in residential care outside the home; (2) the child gave conflicting explanation for injuries sustained after discharge; (3) the extent of the child's injuries and the lack of explanation supported a conclusion of abuse based in part on respondents allowing the child to injure himself; and (4) the child's injuries arose from respondent's failure to maintain the child's prescribed medication, which respondent acknowledged caused behavior problems, and failure to provide adequate supervision of a child known to have significant mental health and behavioral issues. *In re K.B.*, 253 N.C. App. 423 (2017).
- An abuse adjudication was affirmed where there were findings of fact that the child was seen at a hospital for scratches, bruises, swelling, and a skull fracture; a pediatrician concluded that the skull fracture was caused by non-accidental means; the mother's explanations were inconsistent with the injuries; the injuries occurred during the dates the mother had physical custody of the child; and the mother failed to obtain medical attention for the child even though the injuries were obvious and severe. *In re T.H.T.*, 185 N.C. App. 337 (2007), *aff'd as modified on other grounds*, 362 N.C. 446 (2008).
- Non-accidental injury was established where an infant had multiple rib fractures that were several weeks old and in different stages of healing, the parents were the primary caretakers but had not sought medical attention for the child, and there was an undisputed finding that the injury would have caused the child to cry. *In re S.W.*, 187 N.C. App. 505 (2007).
- Evidence was sufficient to show non-accidental injury where doctors testified that the child had suffered a severe blow to the head resulting in extensive bleeding over the surface of the brain within a relatively short time before being brought to the hospital. Doctors could not specify exactly where or how the injury occurred, but three of four doctors testified that the injuries were likely non-accidental. *In re C.M.*, 198 N.C. App. 53 (2009). *See also In re L.Z.A.*, 249 N.C. App. 628 (2016) (abuse adjudication affirmed based on findings that showed pre-mobile infant, while in the sole care of her parents, suffered a skull fracture, subdural hematomas, and an arm fracture that expert witness determined were likely the result of non-accidental trauma).

Evidence was not sufficient to find abuse based on serious physical injury inflicted by non-accidental means.

- Evidence was not sufficient to support a conclusion that a child with unusual fractures had been abused and neglected where medical testimony from eight physicians ranged from conclusions that the child's injuries were due to shaken baby syndrome to "I don't know what happened to this child;" the child's regular pediatrician reported no

concerns or "red flags" for child abuse in her dealings with the child's family; there was no evidence that the child's parents were anything other than loving and caring, nor was there any evidence of marital problems between parents or any psychiatric condition that affected their ability to parent the child appropriately. *In re A.R.H.*, 177 N.C. App. 797, 800 (2006).

(f) Failure to prevent harm. Failure to prevent harm or allowing situations to occur that would tend to promote harm can be considered abuse. For example, where the mother knew of the father's violent and abusive nature and alcohol abuse, witnessed many incidents where the father would consume alcohol to excess and act out against her and the children, allowed the father to drive the children after he had consumed a large quantity of alcoholic beverages, and failed to take necessary steps to protect the children, the evidence was sufficient to support an adjudication of abuse in that the mother allowed to be created a substantial risk of serious physical injury to the children by other than accidental means. *In re M.G.*, 187 N.C. App. 536 (2007), *rev'd in part on other grounds*, 363 N.C. 570 (2009). *See also In re Y.Y.E.T.*, 205 N.C. App. 120 (2010) (holding that where non-accidental injuries occurred to infant while under the care of both parents and the perpetrator could not be identified, both parents were deemed responsible, either for directly causing the injury or for failing to prevent it); *In re Gwaltney*, 68 N.C. App. 686 (1984) (affirming adjudication of abuse and neglect where evidence showed that mother acquiesced in sexual abuse of the child). *Cf. In re D.A.*¸ 811 S.E.2d 729, 733 (N.C. Ct. App. 2018) (regarding disposition; permanency planning order awarded *de facto* permanent custody of child adjudicated abused and neglected to foster parents; trial court found that neither parent took responsibility or offered a plausible explanation for the child's injuries; declining to apply *In re Y.Y.E.T* and vacating custody award when there were no findings that child's injuries were non-accidental or that respondent parents were the sole caregivers when injuries were sustained, and the findings were unclear as to which parent or parents the court assigned responsibility).

E. Evidence to Establish Neglect

1. Definition of neglect. The Juvenile Code in G.S. 7B-101(15) defines a neglected juvenile as one who

- is found to be a minor victim of human trafficking under G.S. 14-43.15;
- does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker;
- has been abandoned;
- is not provided necessary medical or remedial care;
- lives in an environment injurious to the juvenile's welfare;
- has had his or her custody unlawfully transferred under G.S. 14-321.2 (effective for offenses committed on or after December 1, 2016); or
- has been placed for care or adoption in violation of the law.

In determining whether a juvenile is neglected, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or has been

subjected to abuse or neglect by an adult who regularly lives in the home. G.S. 7B-101(15).

The definition in G.S. 7B-101(15) pertains to the adjudication of a juvenile as neglected. The definition of "serious neglect" in G.S. 7B-101(19a) is not to be applied to the adjudication of a juvenile in an abuse, neglect, or dependency case. "Serious neglect" is used only in connection with the placement of an individual on the Responsible Individuals List. *In re J.M.*, 255 N.C. App. 483 (2017). For more on the Responsible Individuals List, see Chapter 5.2.B.

See Chapter 2.3.B (discussing the definition of neglect and cases interpreting the definition).

Some aspects of the definition of neglect are relatively vague, making it especially important for the court and parties to take into account community and cultural values as well as the purposes of the Juvenile Code when determining the meaning of phrases like "proper care [and] supervision", "necessary medical care", or "environment injurious to the juvenile's welfare". However, the statutory definition of neglect has been found to be constitutional and not void for vagueness. *See In re Moore*, 306 N.C. 394 (1982); *In re Huber*, 57 N.C. App. 453 (1982); *In re Biggers*, 50 N.C. App. 332 (1981). Note that these cases dealt with a previous, but similar, version of the definition.

Some of the case law related to what constitutes neglect is in the context of termination of parental rights (TPR) proceedings as opposed to proceedings on petitions alleging neglect. Appellate cases have distinguished neglect in the two types of proceedings, noting that in a TPR case, the child has usually been removed from the parent's home for a significant period of time, but an adjudication resulting from a petition alleging neglect typically occurs immediately after the child has been removed. *In re K.J.D.*, 203 N.C. App. 653 (2010). However, both types of proceedings use the definition of neglect found at G.S. 7B-101(15) and so the court "may look to cases arising in either context to determine if neglect has been demonstrated in the case." *In re K.J.D.*, 203 N.C. App. at 659. See Chapter 9.11.A relating to neglect in the context of TPR cases.

2. Evidence related to neglect. Appellate cases typically deal with a trial court's adjudication of neglect that is based on more than one aspect of the definition of neglect (e.g., a combination of lack of proper care, lack of proper supervision, and an injurious environment). In a neglect determination, the evidence must be reviewed on a case-by-case basis considering the totality of the evidence. *In re L.T.R.*, 181 N.C. App. 376 (2007). *See In re J.R.*, 243 N.C. App. 309 (2015).

The following cases highlight some aspects of neglect or factors contributing to neglect that have been discussed by appellate courts.

(a) Harm or risk of harm. Although not in the neglect statute, when evaluating evidence to establish neglect, the appellate courts have said that the evidence must show that a child suffers a physical, mental, or emotional impairment or is at substantial risk of such impairment as a result of the parent's, guardian's, custodian's, or caretaker's failure to provide proper care, supervision, discipline, or medical care, or as a result of the child

living in an injurious environment. *See In re J.A.M.*, 822 S.E.2d 693 (N.C. S.Ct 2019); *In re F.S.*, 835 S.E.2d 465 (N.C. Ct. App. 2019); *In re K.J.B.*, 248 N.C. App. 352 (2016); *In re J.R.*, 243 N.C. App. 309 (2015); *In re J.W.*, 241 N.C. App 44 (2015); *In re C.B.*, 245 N.C. App. 197 (2016). Actual harm is not required but rather a substantial risk of harm is sufficient. *In re D.B.J.*, 197 N.C. App. 752 (2009). Conduct that may cause or potentially cause injury to the child "may include alcohol or substance abuse by the parent, driving while impaired with a child as a passenger, or physical abuse or injury to a child inflicted by the parent…., exposing the child to acts of domestic violence, abuse of illegal substances, and threatening or abusive behavior toward social workers and police officers in the presence of the children." *In re D.B.J.*, 197 N.C. App. at 755.

When the evidence does not support such a finding, or a finding as to impairment or the risk of impairment is not made, a neglect adjudication is subject to reversal. *See In re B.P.*, 809 S.E.2d 914 (N.C. Ct. App. 2018) (vacating an adjudication of neglect when there was no finding of impairment or risk of impairment to the child and the findings made in the case, relating to mother's mental health, homelessness, and the removal of other children from her care, did not support a conclusion of neglect).

Under G.S. 7B-101(15), the trial court has some discretion in determining if a child is at risk for a particular type of harm given the age and environment in which the child lives. *In re A.L.T.*, 241 N.C. App. 443 (2015). A trial court's failure to make specific findings as to the harm or risk of harm does not require reversal where the evidence supports such findings. *See In re C.C.*, 817 S.E.2d 894 (N.C. Ct. App. 2018); *In re H.N.D.*, 364 N.C. 597, *rev'g per curiam for reasons stated in the dissent* 205 N.C. App. 702 (2010). Evidence that the parent loves or is concerned about his or her child will not necessarily prevent the court from making a determination that the child is neglected. *In re Montgomery*, 311 N.C. 101 (1984).

(b) Other children living in the home. Language in G.S. 7B-101(15) about the relevance of abuse or neglect of other children does not mandate a conclusion that a child is neglected when another child in the home has been abused or neglected. *See In re J.A.M.*, 822 S.E.2d 693, 698 (N.C. S.Ct. 2019) (a juvenile may not be adjudicated as neglected "solely based upon previous Department of Social Services involvement relating to other children", which in this case referred to termination of respondent mother's rights to six older children; adjudication of neglect affirmed based on findings supported by the evidence of present risk factors and evaluations of past adjudications of other children). The trial court has the discretion to determine the weight to be given to evidence related to abuse or neglect of other children. *See In re J.A.M.*, 822 S.E.2d 693; *In re S.G.*, 835 S.E.2d 479 (N.C. Ct. App. 2019); *In re A.S.*, 190 N.C. App. 679 (2008), *aff'd per curiam*, 363 N.C. 254 (2009). But, there must be evidence to prove that another child was in fact abused or neglected by an adult that regularly lives in the home of the child who is the subject of the neglect proceeding, or that another child died as a result of suspected abuse or neglect. *See In re K.J.B.*, 248 N.C. App. 352 (2016) (reversing adjudication of neglect after determining (1) there was no evidence regarding where another child of the mother's died or that the death was suspected to be from abuse or neglect as the evidence showed the child died of Sudden Infant Death Syndrome, and (2) there was no evidence

that respondent mother's rights to two of her other children were terminated because of abuse or neglect or that those children were abused or neglected).

Child who is the subject of the neglect proceeding is a newborn.

- When considering neglect of a newborn, the trial court's decision must be "predictive in nature" as it must assess, based on the historical facts of the case, whether there is a substantial risk of future abuse or neglect. *In re J.A.M.*, 822 S.E.2d 693, 698 (N.C. S.Ct. 2019) (affirming neglect adjudication of newborn).
- Appellate courts have not applied a literal interpretation of the language in G.S. 7B-101(15) that a child "lives in a home" where another child has died as a result of suspected abuse or neglect, or where another child has been abused or neglected by an adult who regularly lives in the home, with respect to newborns who are still in the hospital. Appellant courts have held that the abuse or neglect of siblings or other children in the home, including events that occurred prior to the birth of the newborn, is relevant in assessing the risk to a newborn. *See, e.g., In re A.S.*, 190 N.C. App. 679, *aff'd per curiam*, 363 N.C. 254; *In re A.B.*, 179 N.C. App. 605 (2006); *In re E.N.S.*, 164 N.C. App. 146 (2004).
- Reversible error was found where an adjudication that a newborn was neglected was based on a prior adjudication of a sibling, when the trial court relied solely on prior orders concerning the sibling. The only prior order that could have been properly considered was from a hearing occurring many months earlier, and there was no evidence as to the parents' progress since that time or whether they still denied knowing the cause of the sibling's injuries. *In re A.K.*, 178 N.C. App. 727 (2006).

Consideration of adjudication of one child based in part on another child's adjudication of abuse or neglect at the same adjudicatory hearing.

- When one child is adjudicated abused and neglected at the same hearing in which another child is alleged to be neglected, the trial court has the discretion to consider that adjudication relevant as an "other child in the home" who has been subjected to abuse and neglect. *See In re D.B.J.*, 197 N.C. App. 752 (2009) (conclusion that child was neglected was supported in part by findings that child's sister had been physically abused by an adult who regularly lived in the home). *See also In re C.M.*, 198 N.C. App. 53 (2009) (trial court was permitted, although not required, to conclude at the same hearing that daughter was neglected based on evidence that son was abused and neglected).
- Where a child with serious mental health issues was adjudicated neglected and dependent, the sibling of that child also was neglected when the mother of both children (1) allowed the sibling to be continually exposed to the erratic, troubling, and violent behavior of the child with mental health issues; (2) failed to obtain mental health services for the child in need of those services, which could have mitigated her behavior; and (3) showed no concern for the effect that the behavior of the child with mental health issues had on the sibling. *In re C.B.*, 245 N.C. App. 197 (2016).

Adjudication of neglect as to child who is the subject of the proceeding requires assessment of substantial risk of harm.

- "A court may not adjudicate a juvenile neglected solely based upon previous [DSS] involvement relating to other children… there must be current circumstances that present a risk to the juvenile." *In re J.A.M.*, 822 S.E.2d 693, 698 (N.C. S.Ct. 2019) (affirming neglect adjudication based on historical facts of case that included past adjudications of other children as well as other factors that indicated a present risk to the child).
- Failure to acknowledge responsibility for abuse or neglect of another child can contribute to a conclusion that there is a substantial risk of future abuse or neglect. *See In re N.G.*, 186 N.C. App. 1 (2007), *aff'd per curiam*, 362 N.C. 229 (2008).
- Adjudication of two children as neglected was not supported solely by a finding that another child was abused and neglected. Respondent parents denied responsibility for injuries to the one child, and mother would not agree to keep children from the father, preferring to be with him and have the children stay elsewhere. These findings supported the court's determination that that children were at risk of future harm if they remained with respondents. *In re S.G.*, 835 S.E.2d 479 (N.C. Ct. App. 2019).
- Where one child was adjudicated abused and neglected, the younger sibling was also neglected when she was exposed to her older sibling's abuse and neglect. The court of appeals stated "the exposure of a child to the 'infliction of injury by a parent to another child or parent, can be conduct causing or potentially causing injury' to that child." *In re F.C.D.*, 244 N.C. App. 243, 254 (2015) (citations omitted) (adjudication affirmed; younger sister's exposure to her brother's abuse was distressing and could cause fear and worry that the same would happen to her).

(c) Lack of proper care or supervision.

Evidence was not sufficient to find lack of proper care or supervision.

- An anonymous call to DSS reporting a naked 2-year-old child playing unsupervised in a driveway was not sufficient, standing alone, to constitute a report of neglect or warrant an investigation by DSS. *In re Stumbo*, 357 N.C. 279 (2003).
- A mother's lack of stable housing, causing frequent moves, did not impede her ability to care for and supervise her child or expose him to an injurious environment. *In re J.R.*, 243 N.C. App. 309 (2015).
- Evidence of the parents' habit of placing an infant on the sofa without surrounding him with pillows or other forms of restraint was not sufficient to establish neglect where there was also evidence that the infant was unable to roll over, was not mobile when placed on the sofa, had never missed any appointments with his pediatrician, was developing appropriately, and had no prior injuries (although other conduct on the part of the father was deemed abuse by the trial court). *In re J.A.G.*, 172 N.C. App. 708 (2005).
- Factual stipulations that mother did not insure child's regular school attendance, that child had missed twenty-five days and was tardy thirty-seven times during one school year, and had failed three core classes, were insufficient to support conclusion that

child was neglected, without findings (i) as to the reasons for the attendance and tardiness issues, or (ii) that the failure to pass core classes was directly related to the child's absences or to mother's failure to provide proper care, supervision, or discipline. *In re R.L.G.*, 816 S.E.2d 914 (N.C. Ct. App. 2018). *See also In re J.C.M.J.C.*, 834 S.E.2d 670 (N.C. Ct. App. 2019) (multiple absences from school, without findings as to the reasons or explaining the degree to which the children were academically behind, were insufficient to show the children were denied an education such that they were neglected).

Evidence was sufficient to find lack of proper care or supervision.

- Mother failed to provide proper care or supervision of a child with emotional difficulties and behavioral issues who sustained "a pattern of injuries [that] any conscientious parent would take into account" and which required more supervision than had been provided. *In re K.B.*, 253 N.C. App. 423, 431 (2017).
- Evidence that a mother had left a 16-month-old child alone in a motel room for more than thirty minutes and that the child was later found by a motel employee after a guest reported continuous crying was sufficient to support an adjudication of neglect. *In re D.C.*, 183 N.C. App. 344 (2007).
- Evidence that while in South Carolina a 9-year-old child shared a bed with two other children, including a 7-year-old male cousin who tried five times to kiss her or touch her private parts, was significant evidence that that child did not receive proper care or supervision, regardless of whether the incidents between the children rose to the level of sexual abuse. *In re T.N.G.*, 244 N.C. App. 398 (2015) (note that respondent father's argument that court could not consider events that occurred outside of North Carolina was rejected).
- Pre-mobile child who suffered a skull fracture, subdural hematomas, and an arm fracture while in the sole care of her parents, which expert witness determined were likely the result of non-accidental trauma, either did not receive proper care or supervision or lived in an injurious environment and suffered a physical impairment as a result. *In re L.Z.A.*, 249 N.C. App. 628 (2016).
- Where findings were that mother had previous problems with drugs and had previously injured the child while abusing drugs, was continuing to use drugs illegally, had hit and kicked the child, refused to cooperate with DSS, and had a friend-like relationship with child that seemed to contribute to the child's defiant behavior (child was diagnosed with oppositional defiant disorder), these findings supported the trial court's conclusion that the child was not receiving proper care and supervision and was living in an injurious environment. *In re J.D.R.*, 239 N.C. App. 63 (2015).
- Findings supported a neglect adjudication based on lack of supervision and substance abuse where mother had an opiate dependency impairing her ability to parent; child was locked out of his house when mother was home, requiring law enforcement assistance to regain access; mother screamed obscenities at DSS in front of children for forty-five minutes; children frequently missed school and mother did not respond to notices related to absences; and baby had not had routine immunizations and also had yeast infection, eczema, and cradle cap. *In re H.D.F.*, 197 N.C. App. 480 (2009).

- Lack of cleanliness or food have been found to be factors contributing to neglect. For example, lack of cleanliness was a primary factor in a finding of neglect where a disabled child who attended a special school was repeatedly coming to school in a "filthy condition" and other children made fun of him, the staff would have to bathe him, and he was not taught hygiene at home. *In re Safriet*, 112 N.C. App. 747 (1993). Finding that a child's home is clean or that the child is well-fed will not prevent a finding of neglect; where there is a finding of physical, mental, or emotional impairment, or risk of impairment, a child may be considered neglected. *See In re Thompson*, 64 N.C. App. 95 (1983).
- Failure to educate a child has been found to be lack of proper care in some circumstances. *See In re McMillan*, 30 N.C. App. 235 (1976) (affirming the determination of neglect where the parents did not send the children to school because school did not teach about Indian culture and heritage, and the parents failed to provide the children with an alternative education); *In re Devone*, 86 N.C. App. 57 (1987) (upholding determination that a child with a mental disability was neglected when the father refused to send the child to school to receive remedial education and special education classes were critical to the child's development and welfare). Note that G.S. 115C-378 describes a school principal's responsibilities in relation to children who are repeatedly absent and sets out circumstances in which a principal is required to notify the district attorney or DSS regarding unlawful absences.
- Evidence of a mother's struggles with parenting skills, domestic violence, anger management, mental illness and a failure to obtain treatment for the illness, as well as her unstable housing situation and history of leaving the child without proper supervision, was sufficient to support an adjudication of neglect because her failure to provide proper care and supervision placed the child at substantial risk of harm. *In re K.D.*, 178 N.C. App. 322 (2006).

(d) Child placed with alternative caregiver prior to DSS involvement. A parent's voluntary placement of their child with a caretaker does not automatically preclude an adjudication of neglect based on a lack of proper care or supervision. The court of appeals has treated these cases like those termination of parental rights cases that allege neglect when the child has not lived with the parent for a substantial period of time prior to the filing of the petition. See Chapter 9.11.A.4 (discussing neglect based on past neglect and likelihood of repetition of neglect). In these types of cases, the trial court looks at the past conditions that resulted in the parent placing the child with a caretaker before the petition alleging neglect has been filed and evidence of changed conditions in light of the probability of the repetition of neglect that poses a risk of harm to the child at the time of the adjudication hearing. *See In re K.J.D.*, 203 N.C. App. 653 (2010); *In re B.P.*, 809 S.E.2d 914 (N.C. Ct. App. 2018); *In re C.C.*, 817 S.E.2d 894 (N.C. Ct. App. 2018); *In re H.L.*, 807 S.E.2d 685 (N.C. Ct. App. 2017).

Evidence sufficient to find lack of proper care and supervision.

- On appeal, respondent mother argued that the child should not have been adjudicated neglected, because at the time of the petition the child was in a kinship placement where care was appropriate and the child was safe. The findings supported an

adjudication of neglect. The child was placed in kinship care due to both parents' inability to care for the child and this inability continued; the mother continued to engage in assaultive behavior; she had not completed counseling to address anger issues or sought treatment for her mental disorder; and the mother did not have stable housing or a job. The court concluded that the child would be endangered if the mother removed the child from the relative's home, which legally she could do. *In re K.J.D.*, 203 N.C. App. 653 (2010).

- Child placed in a voluntary kinship placement approved by DSS when petition was filed. Evidence was sufficient to support a finding that child would be at a substantial risk of impairment if she was returned to mother's care as conditions that led to the kinship placement, namely, mother's substance abuse and mental health issues and respondent father's incarceration, had not been corrected at the time of the adjudication hearing. *In re C.C.*, 817 S.E.2d 894 (N.C. Ct. App. 2018).
- Child was placed with her adult sibling pursuant to a safety plan with DSS when petition was filed. Supported findings established an altercation where the parents engaged in a tug of war with the child, that parents had failed multiple drug tests, and that child was placed with a safety resource due to parents' drug use. Trial court properly concluded that child was neglected as parents had failed to remedy the conditions that required child's placement pursuant to a safety plan, and failed to address their substance abuse issues while child was in safety placement, such that the parents were unable to provide child proper care. *In re H.L.*, 807 S.E.2d 685 (N.C. Ct. App. 2017).

Evidence not sufficient to find lack of proper care and supervision.

- Before petition was filed, mother placed child with caretakers, whose home was found appropriate by both DSS and the trial court. Mother made placement "on her own, without DSS's input" and child was in that placement when the petition was filed. Findings did not support mother's continuing inability to care for the child or an ultimate finding that the child would be at substantial risk of harm if removed from caretakers and returned to mother. Mother was receiving treatment for her mental health issues and child was in a placement mother arranged for during period of homelessness. *In re B.P.*, 809 S.E.2d 914, 920 (N.C. Ct. App. 2018) (adjudication of neglect vacated and remanded).
- Child was in a placement because of a previous neglect action that was ultimately reversed on appeal. After the mandate in that appeal, a new petition was filed and the child was adjudicated neglected. The court of appeal reversed the second adjudication as there was no clear and convincing evidence of current circumstances indicating a future probability of neglect based on a present risk to the child. Mother had a history of substance abuse and hospitalizations but was engaging in treatment and working with DSS on her plan (during the first neglect case while the appeal of that action was pending). *In re F.S.*, 835 S.E.2d 465 (N.C. Ct. App. 2019).

(e) Lack of necessary medical or remedial care.

Evidence was sufficient to find neglect based on a lack of necessary medical or remedial

care.

- Conclusion of neglect was supported by findings that mother failed to follow the discharge recommendations from a residential care placement to obtain a psychiatrist to manage the child's prescriptions. Mother's failure resulted in the child being without prescribed medication for two weeks, which could result in side effects for the child and which mother acknowledged caused behavior problems. *In re K.B.*, 253 N.C. App. 423 (2017).
- Neglect was established by evidence that the respondent mother delayed seeking medical treatment of significant injuries to her child for two days after the child was injured when left in the care of a person who was barred by a safety plan from having contact with the child. *In re L.C.*, 253 N.C. App. 67 (2017).
- A child was neglected when mother continuously failed to obtain meaningful mental health services for her child. Findings established that the child had serious mental health issues requiring five psychiatric hospitalizations over a period of four months, that the respondent mother minimized and denied the seriousness of the child's condition and at times exacerbated it, and that the mother refused to participate in discharge planning for the child. The child was at a substantial risk of physical, mental, and emotional impairment as a result of lack of medical care. *In re C.B.*, 245 N.C. App. 197 (2016).
- Neglect was established where findings of fact showed that respondents engaged in multiple acts of domestic violence including an incident resulting in an injury to the infant child, after which respondents did not seek medical treatment for the child. Mother also informed a social worker that the child had other serious health issues, but the mother had cancelled medical appointments for the child. *In re A.R.*, 227 N.C. App. 518 (2013).
- Neglect was established where children had never received any medical care, and their younger sister had suffered cardiac arrest as a result of starvation and had to be airlifted to the hospital. *In re S.H.*, 217 N.C. App. 140 (2011).
- Neglect was shown where the mother delayed seeking medical help to find the cause of serious bruising on much of child's body (found to be due to blood disorder) and delayed seeking help for disciplinary, behavioral, and developmental problems displayed by the children. *In re C.P.*, 181 N.C. App. 698 (2007). Similarly, the parent's failure to seek a recommended evaluation to determine whether a child was developing normally and to seek treatment if necessary supported a finding of neglect. *In re Thompson*, 64 N.C. App. 95 (1983).
- Not sending a child to therapeutic day care was considered to be a failure to provide necessary medical or remedial care (along with other circumstances contributing to a finding of neglect). *In re Cusson*, 43 N.C. App. 333 (1979).
- A finding of neglect was supported by evidence showing that the child had a severe speech defect that was treatable and that the mother refused to allow the child to receive the necessary medical and remedial care that would allow the child to develop to her full educational and emotional potential. *In re Huber*, 57 N.C. App. 453 (1982).
- A finding of neglect was supported by evidence that the children did not receive proper medical attention as they did not receive their immunizations or regular medical follow-up, and the 6-month-old infant had never been to a doctor (also

discussing lack of proper nutrition and failure to allow participation in available program that would provide for the children's adequate stimulation and socialization; adjudication was not based on value judgment of mother's socio-economic status). *In re Bell*, 107 N.C. App. 566 (1992).

Evidence was not sufficient to find neglect based on a lack of necessary medical or remedial care.

- Mother's failure to take child to "well care visits", without more, did not support an adjudication of neglect based on lack of medical care. *In re R.L.G.*, 816 S.E.2d 914 (N.C. Ct. App. 2018) (trial court made no findings as the actual numbers of visits missed, the reasons for missing visits, the medical conditions requiring the visits, or any adverse effects on the child's health arising from having missed the visits).

(f) Lack of proper discipline. A child who does not receive proper discipline may be a neglected juvenile. Neglect in this form may involve overly severe discipline that does not result in "serious physical injury" or constitute "cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior" within the statutory definition of abuse. Where a parent is using inappropriate discipline, the court may also find that the child is living in an environment injurious to the child's welfare. The variance in appellate analysis of corporal punishment and its impact on a child depends in part on whether the petition alleges the punishment as constituting abuse or neglect. See section 6.3.D.2(a), above (cases analyzing corporal punishment in the context of abuse allegations).

- Evidence contributing to the affirmation of an adjudication of neglect was the fact that the father had beaten a child with various instruments for disciplinary purposes resulting in pain for several days and sustained deep bruising and scarring. *In re S.H.*, 217 N.C. App. 140 (2011).
- Hitting children with a belt as a form of discipline, along with failing to fully comply with a mental health evaluation and resulting therapy and missing arranged visits with the children, was determined to be neglect. *In re A.J.M.*, 177 N.C. App. 745 (2006).
- Evidence was sufficient to withstand a motion to dismiss a neglect petition at the close of petitioner's evidence, where the evidence showed that an 8-year-old child had been left alone for three hours as a form of discipline; she had a cut on her lip and bruising on her face; mother's boyfriend (known for damaging a wall and car in anger) had spanked her and hit her face when she misbehaved; and the mother refused to cooperate with DSS. *In re Gleisner*, 141 N.C. App. 475 (2000) (remanding with instructions for trial court to make proper findings of fact and clear conclusions of law).
- A mother's actions resulting in bruises and other injuries were found to be inappropriately severe discipline establishing neglect. *In re Thompson*, 64 N.C. App. 95 (1983).

(g) Injurious environment: instability, substance abuse, and domestic violence. An injurious environment may be an environment that puts the child at substantial risk of

harm as well as one in which the child has been harmed. *In re Helms*, 127 N.C. App. 505 (1997); *In re Safriet*, 112 N.C. App. 747 (1993). When all children are subjected to the same circumstances, it is error to adjudicate some but not all of the children neglected based on an injurious environment. *In re Q.A.*, 245 N.C. App. 71 (2016) (when five siblings were without plumbing, electricity, food, and a home while in their grandmother's care, trial court erred when it found two siblings neglected but dismissed the petition as to three other siblings because placement with their father was an option).

Evidence considered when determining whether an injurious environment exists often overlaps with evidence of improper care, supervision, or discipline. *See In re J.C.M.J.C.*, 834 S.E.2d 670 (N.C. Ct. App. 2019) (findings describing respondents' refusal to communicate with DSS and their efforts to obstruct the DSS investigation did not support a conclusion of an injurious environment or improper care, supervision, or discipline); *In re B.P.*, 809 S.E.2d 914 (N.C. Ct. App. 2018) (findings and evidence in the case did not support a conclusion, at the time the petition was filed, that the child was living in an environment injurious to her welfare and was not receiving proper care and supervision); *In re D.L.W.*, 368 N.C. 835 (2016) (adjudication of neglect, as a statutory ground for termination of mother's parental rights, was based on domestic violence that put the children at risk, a lack of consistent and adequate housing, and the parent's inability to meet the minimal needs of the children).

Evidence was sufficient to find neglect based on an injurious environment.

- Child was neglected based on an injurious environment when trial court found that respondent mother failed to take responsibility for her role in the termination of her rights to six other children, denied the need for and thus refused services, and became involved with father of the child when she was aware of his history of domestic violence, even though domestic violence was one of the reasons for removal of her other children. *In re J.A.M.*, 822 S.E.2d 693 (N.C. S.Ct. 2019).
- Children were neglected when the trial court found the mother had taken out a protective order against the father for strangling her and attempting to rape her but she continued to be in contact with him, stated she could not care for the children and asked DSS to place them in foster care but often changed her mind about her children's placement, had a history of problems with her children requiring DSS intervention, behaved inappropriately during some visits with children, and had a history of drug abuse and mental health issues. *In re J.W.*, 241 N.C. App. 44 (2015).
- Findings of fact set out a longstanding and abusive relationship between respondent parents and sufficiently detailed the impact and potential harm father's violence toward mother had on their four children, all of whom were aware of the arguments and physical altercations. Adjudication that all four children were neglected was affirmed. *In re M.K.*, 241 N.C. App. 467 (2015).
- Neglect adjudication of two children was supported by findings that father, when angry, punched holes in walls, engaged in aggressive and violent behaviors in the home, and had struck each child at least once that caused older child to fear father. *In re A.L.T.*, 241 N.C. App. 443 (2015).

- The trial court's findings related to the parents' history of domestic violence and the negative impact of the violence on the children, along with a refusal to develop an in-home services agreement, were sufficient to support the conclusion that the children were neglected. *In re J.C.*, 235 N.C. App. 69 (2014), *rev'd in part per curiam on other grounds*, 368 N.C. 89 (2015).
- Evidence was sufficient to support an adjudication of neglect where respondent mother and her boyfriend had a physical altercation while mother was holding 1-month-old child which caused mother to fall and become injured (child was not injured); mother failed to report the incident to law enforcement when they were called to the scene; mother was being treated for bipolar disorder but did not believe her treatment was working. *In re A.N.L.*, 213 N.C. App. 266 (2011).
- Neglect adjudication supported by stipulated findings of fact that mother used controlled substances during pregnancy, which resulted in child being born with a rapid heartbeat and signs of withdrawal; that mother was belligerent and combative with hospital staff, refused to take her psychiatric medication, had infant removed from her, and was held on an involuntary commitment; and that father was at the hospital following child's birth despite being subject to a domestic violence protective order ordering no contact with mother after he stabbed her, dislocated her jaw, and held a gun on her. *In re G.T.*, 250 N.C. App. 50 (2016), *aff'd per curiam*, 370 N.C. 387 (2017).
- Findings that while in South Carolina, the 9-year-old child was present when adults used marijuana, had to share a bed with a 7-year-old male cousin who tried five times to kiss her or touch her private parts, and was sent to live in different homes with different adult caretakers without any determination by respondent father that the successive caretakers were fit, established that child was at a substantial risk of harm or impairment supporting neglect adjudication. *In re T.N.G.*, 244 N.C. App. 398 (2015) (father's argument that court could not consider events that occurred outside of North Carolina was rejected).
- Evidence of an inability to maintain a secure living situation where mother moved six times during four months and failed to maintain an environment free of drugs, violence, and attempted sexual assaults, supported a conclusion of neglect. *In re Helms*, 127 N.C. App. 505 (1997).
- Evidence of cocaine use during pregnancy, the newborn's positive cocaine test, the mother's refusal to sign a safety plan, and domestic violence between respondents was sufficient to support a conclusion of neglect of the newborn. *In re B.M.*, 183 N.C. App. 84 (2007).

Evidence was not sufficient to find neglect based on an injurious environment.

- Substance abuse by a parent may contribute to a finding of neglect but, without proof of an adverse impact on the child or a substantial risk of harm, is not sufficient itself to support a finding of neglect. *See In re F.S.*, 835 S.E.2d 465 (N.C. Ct. App. 2019); *In re J.C.M.J.C.*, 834 S.E.2d 670 (N.C. Ct. App. 2019); *In re K.J.B.*, 248 N.C. App. 352 (2016); *In re E.P.*, 183 N.C. App. 301, *aff'd per curiam*, 362 N.C. 82 (2007); *Powers v. Powers*, 130 N.C. App. 37 (1998); *In re McDonald*, 72 N.C. App. 234 (1984); *In re Phifer*, 67 N.C. App. 16 (1984).

- Evidence that mother had been hospitalized, or presented to a hospital, ten times for alcohol and substance abuse issues between September 2017 and February 2018, during which time the child was not in her care, did not support a finding of neglect based on an injurious environment. When child is not in mother's care, the trial court must assess and consider the probability of future neglect. Based on testimony from a DSS case supervisor that mother had entered treatment after petition was filed in March 2018, had since had eight negative drug screens, was compliant in her treatment, and was providing proof of her attendance at weekly NA and AA meetings, there was no evidence of current circumstances or a future probability that an immediate return would place the child in an injurious environment. *In re F.S.*, 835 S.E.2d 465 (N.C. Ct. App. 2019).
- A petition for neglect was filed after law enforcement had been called to a home where parents argued in the presence of their four children, the father left home taking the three older children with him, and mother obtained warrants charging father with assault by pointing a gun and communicating threats. The court of appeals affirmed the trial court's decision that DSS failed to prove that the children were neglected: the mother's statements were conflicting and she did not proceed with the case against the father, which the district attorney's office dismissed; the father was not in possession of a firearm when arrested; children had left with father voluntarily; and there was no evidence of domestic violence or that the children were put in danger. *In re H.M.*, 182 N.C. App. 308 (2007).

(h) Abandonment. A juvenile who has been abandoned is considered neglected. G.S. 7B-101(15). Abandonment has been described as "willful or intentional conduct" that "evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child," or a "refusal to perform the natural and legal obligations of parental care and support," including withholding "presence, . . . love, . . . [and] the opportunity to display filial affection." *Pratt v. Bishop*, 257 N.C. 486, 501 (1962); *see also In re Adoption of Searle*, 82 N.C. App. 273, 275 (1986); *In re Apa*, 59 N.C. App. 322, 325 (1982); *In re Stroud*, 38 N.C. App. 373 (1978). See generally Chapter 2.6.B.2 (discussing abandonment as a form of neglect). Most appellate cases address abandonment as a ground for termination of parental rights (TPR). To the extent that those cases discuss the definition of abandonment, they may be relevant to abandonment in the context of neglect. See Chapter 9.11.A.7 (cases discussing neglect by abandonment) and 9.11.G (cases discussing evidence to establish abandonment as a TPR ground).

F. Evidence to Establish Dependency

1. Definition of dependency. G.S 7B-101(9) defines a dependent juvenile as one in need of assistance or placement because

- the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision; or
- the juvenile's parent, guardian, or custodian is unable to provide for the child's care or supervision *and* lacks an appropriate alternative child care arrangement.

Note that caretaker is not included in this definition.

When dependency is based on the inability to provide care and supervision and a lack of appropriate alternative child care, both prongs of the definition must be satisfied, and the court must make findings about both prongs. *See In re F.S.,* 835 S.E.2d 465 (N.C. Ct. App. 2019); *In re C.P.*, 812 S.E.2d 188 (N.C. Ct. App. 2018); *In re H.L.*, 807 S.E.2d 685 (N.C. Ct. App. 2017) (reversing adjudication of dependency when order did not include a finding that the parents lacked an alternative child care arrangement and did not address care or supervision by a parent, guardian or custodian); *In re L.C.*, 253 N.C. App. 67 (2017) (vacating and remanding for findings of fact; trial court's failure to make findings addressing both prongs is reversible error; court failed to make findings of either prong).

2. Evidence related to dependency. Allegations of dependency are often combined with allegations of neglect and sometimes with abuse as well. Therefore, some appellate cases examining evidence related to dependency often discuss the totality of facts supporting dependency, neglect, and/or abuse. A few cases isolate discussions regarding facts supporting dependency. In one published opinion that related to neglect based on the child having been separated from the parent for a long period of time prior to the petition alleging neglect and dependency being filed, the court of appeals stated "the trial 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.,* 835 S.E.2d 465, 473 (N.C. Ct. App. 2019) (quoting *In re B.P.*, 809 S.E.2d 914, 920 (N.C. Ct. App. 2018) (which statement applied to neglect).

(a) Unable to provide care or supervision (first prong of G.S. 7B-101(9)(ii)).

Appellate court did not find lack of proper care or supervision.

- While acknowledging that chronic alcoholism may impair one's ability to parent, when the trial court made no finding about mother's present inability to supervise the child and evidence was that mother's last alcohol-related hospitalization was prior to the adjudication hearing and that she was presently compliant with her treatment and case plan, "evidence tend[ed] to show an ability or a capability" to parent. *In re F.S.,* 835 S.E.2d at 473.
- Allegations in the petition, taken as true, did not address either prong required for a dependency adjudication and instead "at best" established that the child was delinquent or undisciplined, matters that would be addressed in a pending juvenile delinquency case. *In re K.G.*, 817 S.E.2d 790, 792 (N.C. Ct. App. 2018) (trial court erred in denying respondents' Rule 12(b)(6) motion to dismiss the dependency petition, rejecting argument of DSS and GAL that respondents' failure "to rein in" the child's behavior made them unable to care for the child; court will not look "to the juvenile's willful acts to determine a parent's ability to care for the child").
- Although the statutory definition refers to the singular word "the parent, guardian, or custodian," a child is not dependent when there is one parent who can care for his or her child or make arrangements for appropriate alternative child care. *In re V.B.*, 239 N.C. App. 340 (2015) (reversing dependency adjudication where there were no allegations and no evidence of respondent father's ability to provide proper care or

supervision to the child). *See also* G.S. 7B-101 ("[t]he singular includes the plural…unless otherwise specified").

- An adjudication of dependency will be reversed when the petitioner fails to prove both parents are incapable of providing care for the child or arranging for appropriate alternative child care. *In re J.D.R.*, 239 N.C. App. 63 (2015) (reversing dependency adjudication because there was no evidence and finding of fact about the mother's lack of an appropriate alternative child care arrangement); *In re H.H.*, 237 N.C. App. 431 (2014) (reversing dependency adjudication when before petition was filed the children were living with their father as a result of mother leaving them with him; father was properly caring for the children), *overruled by implication in part on other grounds by In re B.O.A.*, 831 S.E.2d 305 (N.C. S.Ct. 2019); *In re J.A.G.*, 172 N.C. App. 708 (2005) (where an infant suffered head trauma while in the father's care, evidence was insufficient to adjudicate the infant dependent because the mother was capable of providing care and supervision).
- A dependency adjudication based solely on the trial judge's conversations in chambers with child was reversed as there was no evidence presented by petitioner or respondent addressing respondent's ability to provide care or supervision for the child. *In re T.N.G.*, 244 N.C. App. 398 (2015).
- Where the trial court did not find that the father was unable to care for the child and lacked an alternative child care arrangement, a finding that the child was conceived as a result of the father's commission of statutory rape was not sufficient to support a conclusion that the child was dependent. *In re J.L.*, 183 N.C. App. 126 (2007).

Appellate court found lack of proper care and supervision.

- Where the mother had severe psychological problems and the children had psychological problems, learning disabilities, and behavioral and other problems that were not being addressed by the mother and her significant other, the children were adjudicated dependent. *See In re T.B.*, 203 N.C. App. 497 (2010).
- A child was dependent when mother continuously failed to obtain meaningful mental health services for the child when the child was in her custody. Findings established that child had serious mental health issues requiring five psychiatric hospitalizations over a period of four months, and that mother minimized and denied the seriousness of the child's condition and at times exacerbated it and was unable to provide proper care and supervision to the child. *In re C.B.*, 245 N.C. App. 197 (2016).
- Where a child was repeatedly raped by the father, the father agreed to cease contact with her but moved back into home one week later, and the mother would not enforce DSS's safety plan to keep the father away from child, evidence was sufficient to support an adjudication that child was abused, neglected, and dependent. *In re K.W.*, 192 N.C. App. 646 (2008).

(b) Lacking alternative child care arrangement (second prong of G.S. 7B-101(9)(ii)).

An adjudication of dependency requires evidence and findings establishing that the parent does not have an appropriate alternative child care arrangement. *In re K.D.*, 178 N.C. App. 322 (2006); *In re P.M.*, 169 N.C. App. 423 (2005). An appropriate alternative child care

arrangement requires that a parent has taken some action to identify a viable caregiver. *In re C.B.*, 245 N.C. App. 197 (2016); *In re L.H.*, 210 N.C. App. 355 (2011). For a parent to have an alternative caregiver arrangement, "the parent must have taken some action to identify the alternative arrangement" and not merely have gone along with DSS's plan for the child. *In re B.P.*, 809 S.E.2d 914, 920 (N.C. Ct. App. 2018).

Appellate court found a lack of alternative child care arrangement.

- Mother lacked an appropriate alternative child care arrangement for child with serious mental health issues requiring five psychiatric hospitalizations over a period of four months. Mother failed to identify any viable placement alternative outside of placement in her home and refused to participate in and obstructed the development of a hospital discharge plan for the child. *In re C.B.*, 245 N.C. App. 197.
- Evidence was sufficient to support an adjudication of dependency where neither the mother nor the father was able to care for the children, the father's proposed alternate placement was with an aunt to whom he had not spoken in five years, and there was no evidence that the aunt was willing or able to care for the children. *In re D.J.D.*, 171 N.C. App. 230 (2005).
- Where the mother's significant other had been acting in a parental role for twelve or thirteen years, during which the children exhibited multiple problems and had needs that were not met, the significant other could not be considered an appropriate alternate child care arrangement. *In re T.B.*, 203 N.C. App. 497 (2010).
- In a private termination of parental rights case, the respondent mother could not claim that an alternative child care arrangement existed where an unrelated acquaintance had been awarded permanent custody of the child by the court because the acquaintance did not have custody at the respondent's request and the respondent had no ability to decide custody. *In re K.O.*, 223 N.C. App. 420 (2012).
- Where DSS failed to present any evidence on the lack of alternative child care at the adjudicatory hearing and the trial court made no findings as to alternative child care, the adjudication of dependency was reversed. *In re J.D.R.*, 239 N.C. App. 63 (2015); *see In re V.B.*, 239 N.C. App. 340 (2015).

Appellate court did not find a lack of alternative child care arrangement.

- Before petition was filed, mother placed child with caretakers, whose home was found appropriate by both DSS and the trial court. Mother made placement "on her own, without DSS's input" and child was in that placement when petition alleging dependency was filed. There was no lack of an appropriate alternative caregiver arrangement when mother had taken action to identify the caretakers and had not "merely acquiesced in DSS's plan" for the child. *In re B.P.*, 809 S.E.2d 914, 920 (N.C. Ct. App. 2018).

6.4 Adjudication Order

For further discussion of technical aspects of orders in juvenile proceedings, including timing and drafting of the order and proper findings of fact and conclusions of law, see Chapter 4.9.

AOC Form:
AOC-J-153, Juvenile Adjudication Order (Abuse/Neglect/Dependency) (Oct. 2013).

Resource: Janet Mason, *Drafting Good Court Orders in Juvenile Cases*, JUVENILE LAW BULLETIN No. 2013/02 (UNC School of Government, Sept. 2013).

A. General Requirements

The Juvenile Code requires that an adjudication order

- be in writing;
- contain appropriate findings of fact;
- contain appropriate conclusions of law; and
- be reduced to writing, signed, and filed with the clerk no later than thirty days following the completion of the hearing.

G.S. 7B-807(b). See Chapter 4.9.D (discussing the clerk's responsibility to schedule a special hearing when the order is not entered within thirty days from the completion of the adjudication hearing, as well as the appropriate remedy for untimely orders).

Practice Note: Just as it is permissible for more than one child to be named in a petition (when the children are from the same home and are brought to court for the same reason), one order may serve as the order in the case of each child named in the petition. If the findings or conclusions, or both, differ significantly from child to child, or if the adult respondents in each child's case are not the same, the entry of a separate order for each child may be preferable. Any order that is being entered in more than one child's case should clearly indicate which findings relate to which child and must include the file number for each child.

1. Condition not proved. If the allegations are not proved by clear and convincing evidence, the court must dismiss the petition with prejudice. If the child is in nonsecure custody, the child must be released to his or her parent, guardian, custodian, or caretaker. G.S. 7B-807(a). If the petition alleges more than one status (abuse, neglect, or dependency) and the court adjudicates one but not another, it must dismiss the allegation that is not proved. *See In re T.B.*, 203 N.C. App. 497 (2010) (holding that trial court erred when it adjudicated children dependent but purported to hold in abeyance its ruling on the neglect allegation, when nothing in the record indicated that a future adjudication hearing was to be scheduled).

2. Condition proved. An order that adjudicates a child to be abused, neglected, or dependent must state that the findings of fact are based on clear and convincing evidence. Failure to

state the standard of proof in the order is reversible error; however, there is no requirement as to how or where a recital of the clear and convincing standard should be included. *In re O.W.*, 164 N.C. App. 699, 702 (2004) (holding that the statement in the trial court's order that it "concludes through clear, cogent, and convincing evidence. . ." was acceptable).

B. Findings of Fact and Conclusions of Law

Findings of fact and conclusions of law must be stated in the order separately and specifically. Common issues on appeal include whether the evidence supports the findings of fact and whether the findings of fact support the court's conclusion of law that a child is abused, neglected, or dependent. The topic of what constitutes proper findings of fact and conclusions of law is addressed in detail in Chapter 4.9.B.

Appellate cases have pointed out that in an adjudication order, a conclusion of law that a juvenile is abused, neglected, or dependent is about the status of the child and should not be connected to whose actions resulted in the adjudication. The supreme court has said, "In determining whether a child is neglected, the determinative factors are the circumstances and conditions surrounding the child, not the fault or culpability of the parent." *In re M.A.W.*, 370 N.C. 149, 154 (2017) (quoting *In re Montgomery*, 311 N.C. 101, 109 (1984)); *In re A.L.T.*, 241 N.C. App. 443, 451 (2015) (quoting *In re Montgomery*). Other cases have said the same about adjudications of abuse and dependency – "By determining that a juvenile is abused, neglected or dependent, the court . . . determines the status of the juvenile so that his or her best interests may be ascertained." *In re B.M.*, 183 N.C. App. 84, 87 (2007). *See also In re A.S.*, 181 N.C. App. 706, 714 (2007) (Levinson, J., concurring in part and dissenting in part) (emphasis in original) (stating that it is "*unhelpful and confusing*" for conclusions of law regarding the status of the child to include language such as "as to" [father, mother, guardian] or "because" of [father, mother, guardian]); *In re J.S.*, 182 N.C. App. 79, 86 (2007) (stating "[t]he purpose of the adjudication and disposition proceedings should not be morphed on appeal into a question of culpability regarding the conduct of an individual parent. The question this Court must look at on review is whether the court made the proper determination in making findings and conclusions as to the status of the juvenile").

6.5 Consent Orders

An adjudication may result from a consent order in lieu of an adjudicatory hearing. *See* G.S. 7B-801(b1). A consent order is an agreement of all the parties, their decree, entered on the record and sanctioned by the court. *In re R.L.G.*, 816 S.E.2d 914 (N.C. Ct. App. 2018); *In re Thrift*, 137 N.C. App. 559 (2000). It is not a judicial determination representative of the court's judgment but is instead a record of the parties' agreement, which has been approved by the judge. *McRary v. McRary*, 228 N.C. 714 (1948).

The Juvenile Code allows the court to enter a consent adjudication order on a petition alleging abuse, neglect, or dependency only if

- all parties are present or represented by counsel who is present and authorized to consent;

- the child is represented by counsel; and
- the court makes sufficient findings of fact.

G.S. 7B-801(b1); *In re R.L.G.*, 816 S.E.2d 914 (N.C. Ct. App. 2018).

A consent order that conforms to statutory requirements operates as a judgment on the merits and acquires the status of a final judgment. *See In re Thrift*, 137 N.C. App. 559; *Buckingham v. Buckingham*, 134 N.C. App. 82 (1999). If the consent order does not meet the statutory requirements, it is not a valid order. *See In re K.P.*, 249 N.C. App. 620 (2016) (adjudication reversed where there was no adjudication hearing or valid consent order; the order did not contain findings that the parties stipulated to facts or consented to the adjudication; there was no draft consent order or evidence the parties reached a consent agreement); *In re Shaw*, 152 N.C. App. 126 (2002) (reversed and remanded for an adjudicatory hearing after holding the consent of one respondent in the absence of the other respondent's presence was insufficient to dispense with the need to hold an adjudicatory hearing).

Stipulations of fact are not consent orders. *See In re R.L.G.*, 816 S.E.2d at 917 (an adjudication order that "simply contained a stipulation by the parties as to certain facts" pursuant to G.S. 7B-807 was not a valid consent adjudication order under G.S. 7B-801(b1)). The court is not bound by an agreement of the parties where the evidence and facts support a different result. *In re L.G.I.*, 227 N.C. App. 512 (2013) (affirming adjudication of neglect and rejection of the parties' plan of reunification, where the parties had stipulated to facts supporting an adjudication and later the parties indicated that the agreement was contingent on DSS's working toward reunification; the requirements of a consent order had not been met but instead and at most respondent mother stipulated to certain facts).

When there is a proper consent, the adjudication part of a consent order must comply with all requirements for adjudication orders. See section 6.4, above. However, in the case of *In re J.S.C.*, 253 N.C. App. 291 (2017), the court of appeals held that there was no reversible error where a consent adjudication order of abuse and neglect, which was based entirely on stipulated facts, did not state that the adjudicatory findings were based on the clear and convincing evidentiary standard required by G.S. 7B-805. The opinion discussed how an adjudication by consent based entirely on stipulated facts is not an adjudication hearing and so G.S. 7B-805, which addresses the required quantum of proof in an adjudication hearing, does not apply since the court does not engage in the process of fact-finding. The opinion did not address the requirement under G.S. 7B-807(a) that if the court finds from the evidence, including stipulations by a party, that the allegations have been proved by clear and convincing evidence, it "shall so state" because the issue was not timely raised on appeal.

6.6 Consequences of Adjudication

A. Continued Jurisdiction and Authority for Disposition

An adjudication of abuse, neglect, or dependency enables the court to proceed to the dispositional phase of the case in which the court determines the needs of the child and

family and makes orders accordingly. An adjudication allows the court to continue exercising jurisdiction over the child and the respondents (if the respondents are properly served or have waived sufficiency of process and/or service of process) until the child reaches age 18 or is emancipated, is adopted, or until the court orders its jurisdiction terminated, whichever occurs first. *See* G.S. 7B-200; 7B-201(a); 48-2-102(b). See Chapter 3.1.C (discussing continuing and ending jurisdiction). Note that the court continues to have jurisdiction over placement review hearings of young adults participating in Foster Care 18−21. G.S. 7B-200(a)(5a); 7B-910.1 See Chapter 8.3 (discussing Foster Care 18−21).

B. Impact on Parents and Future Proceedings

An adjudication that a child is abused, neglected, or dependent allows the state to intervene in the constitutionally protected parent-child relationship. See Chapter 2.4.A (discussing the protection of parent-child relationships). An adjudication is a prerequisite to disposition, in which the court has the authority not only to remove the child from the home, but also to order the parents to take specific actions to address the causes of the adjudication and, if the child is removed from the home, the reasons for the removal. *See* G.S. 7B-903; 7B-904. See also Chapter 7.7 (relating to disposition and the court's authority over parents).

An adjudication may affect parents in future proceedings. An adjudication that a child is abused or neglected can contribute to a later adjudication that another child living in the same home is neglected because the Juvenile Code makes abuse or neglect of other children living in the home relevant to a determination of neglect. *See* G.S. 7B-101(15). See also section 6.3.E.2(b), above (discussing other children in the home). Also, evidence of an adjudication of abuse, neglect, or dependency can be introduced in a subsequent action to terminate the parents' rights (TPR). See Chapter 9.11.A.4 (discussing the grounds for TPR and the use of prior adjudications of abuse, neglect, or dependency in a TPR proceeding).

The doctrine of collateral estoppel precludes parties from retrying fully litigated issues that were decided in any prior determination and were necessary to the prior determination. *See In re F.S.*, 835 S.E.2d 465, 470-71 (N.C. Ct. App. 2019) (collateral and judicial estoppel precluded DSS from retrying the fully litigated issue that was decided in a proceeding initiated by petition; collateral estoppel did not preclude a "trial court's adjudication of facts from new allegations and events" that took place after entry of an adjudication order in the initial proceeding on 5/15/2017). So, a critical finding of fact in an adjudication order may be adopted by the court and may not be challenged in a subsequent action involving another child of the parent or in a later termination of parental rights action. *See In re N.G.*, 186 N.C. App. 1 (2007), *aff'd per curiam*, 362 N.C. 229 (2008); *In re Wheeler*, 87 N.C. App. 189 (1987). See Chapter 11.7.D.2 (discussing the doctrine of collateral estoppel).

Courts have recognized that an adjudication may have "collateral consequences" that can affect the parent regardless of the dispositional outcome of the case in which the adjudication occurred. In the case *In re A.K.*, 360 N.C. 449 (2006), the North Carolina Supreme Court reversed the court of appeals' dismissal of an appeal as moot. The appeal had been deemed moot because custody of the child was returned to the parent before the court of appeals considered the parent's appeal of an order adjudicating the child neglected and placing the

child in DSS custody. The supreme court held that the appeal was not moot because a "neglect adjudication can reasonably result in collateral legal consequences." *In re A.K.*, 360 N.C. at 459 (discussing the potential impact of the adjudication on future proceedings as well as the social stigma involved for the parents in having their child adjudicated abused, neglected, or dependent).