

Chapter 6

Adjudication of Abuse, Neglect, or Dependency¹

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¹ Source for some content for this Chapter is from KELLA W. HATCHER, N.C. ADMIN. OFFICE OF THE COURTS, [NORTH CAROLINA GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL](#) (2007).

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).

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. 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.

If all parties are present, or are represented by counsel who is present and authorized to consent, a consent order can be entered and a full formal trial is not required; however, the court still must make findings of fact sufficient to support the order.

This Chapter addresses the adjudication hearing only. All matters that are prerequisites or preliminary to the 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 J.S.C.*, ___ N.C. App. ___, 800 S.E.2d 126 (2017). An adjudicatory hearing involves a judicial process that determines the existence or nonexistence of any of the conditions alleged in the petition and requires the allegations in the petition to be proved by clear and convincing evidence. G.S. 7B-802. An adjudication by consent occurs in the absence of an adjudicatory hearing and requires that the criteria of G.S. 7B-801(b1) be satisfied. *In re J.S.C.*, ___ N.C. App. ___, 800 S.E.2d 126.

Most procedural aspects of an adjudication are governed by the Juvenile Code. In some circumstances a specific Rule of Civil Procedure applies when it does not conflict with the Juvenile Code and to the extent that it advances the purposes of the Juvenile Code. *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 (2013). 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.*, ___ N.C. App. ___, 790 S.E.2d 744 (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). However, the court may enter a consent judgment when *all* parties are present or are represented by counsel who is present and authorized to consent. See section 6.5, below (discussing requirements for consent orders).

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).

C. Public Access to Hearing

The beginning assumption is that 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). If the juvenile requests that a hearing or part of a hearing be open, it must be open. G.S. 7B-801(b). However, the court may determine to close to the public a particular hearing or part of a hearing. G.S. 7B-801(a), (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(1) (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 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 Content of Adjudication

The court determines whether the conditions alleged in the petition exist. G.S. 7B-802. The conditions are the basis for the petition: a juvenile's abuse, neglect, or dependency as each term is defined by the statute. *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 seven] 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.*, ___ N.C. App. ___, ___, 801 S.E.2d 160, 164 (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).

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 Pittman*, 149 N.C. App. 756 (2003). 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). 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.*, ___ N.C. App. ___, 802 S.E.2d 169 (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.*, ___ N.C. App. ___, ___, 792 S.E.2d 160, 169 (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 be eliminated and/or whether reunification is possible. *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”). 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).

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, so post-petition evidence should not be considered at the adjudication hearing. *See* G.S. 7B-802; 7B-807(a); *In re A.B.*, 179 N.C. App. 605 (2006); *In re J.R.*, ___ N.C. App. ___, 778 S.E.2d 441 (2015). The court of appeals has recognized an exception to the prohibition of considering post-petition evidence when the evidence reflects a “fixed and ongoing circumstance” that is not a “discrete event or one-time occurrence.” *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.

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. 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 (2004). If the hearings are consolidated, evidence that relates to facts occurring after the date of the petition, 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 in its dispositional order 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 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 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 held “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.*, ___ N.C. App. ___, 791 S.E.2d 274 (2016), *aff'd per curiam*, ___ N.C. ___, 808 S.E.2d 142 (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. 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. The statutory definitions and case law interpreting them are discussed in detail in Chapter 2.3.B.

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 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 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)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(e), 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)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), the petition alleged abuse based on G.S. 7B-101(1)c. 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.*, ___ N.C. App. ___, 780 S.E.2d 214 (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.*, ___ N.C. App. ___, 780 S.E.2d 214.

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).
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(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)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)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.*, ___ N.C. App. ___, 786 S.E.2d 772 (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.*, ___ N.C. App. ___, 786 S.E.2d 772.

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

By a child. An older sibling who repeatedly sexually abused a younger sibling and the younger sibling victim were both abused juveniles under G.S. 7B-101(1)d. (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)a. A child may be adjudicated abused when he or she sustains unexplained non-accidental injuries. *In re L.Z.A.*, ___ N.C. App. ___, 792 S.E.2d 160 (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.*, ___ N.C. App. ___, 792 S.E.2d 160. 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.*, ___ N.C. App. at ___, 792 S.E.2d at 168.

- 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.*, ___ N.C. App. ___, 801 S.E.2d 160 (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.*, ___ N.C. App. ___, 792 S.E.2d 160 (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 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).

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

- 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 been 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.*, ___ N.C. App. ___, 804 S.E.2d 830, *review allowed*, ___ N.C. App. ___, 807 S.E.2d 146, *and* ___ N.C. ___, 807 S.E.2d 564 (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.*, ___ N.C. App. ___, 778 S.E.2d 441 (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. 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 K.J.B.*, ___ N.C. App. ___, 797 S.E.2d 516 (2016); *In re J.R.*, ___ N.C. App. ___, 778 S.E.2d 441 (2015); *In re J.W.*, 241 N.C. App. 44 (2015); *In re C.B.*, ___ N.C. App. ___, 783 S.E.2d 206 (2016); *In re D.B.J.*, 197 N.C. App. 752 (2009); *In re Padgett*, 156 N.C. App. 644 (2003); *In re Thompson*, 64 N.C. App. 95 (1983). 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 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 the Juvenile Code 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. 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 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.*, ___ N.C. App. ___, 797 S.E.2d 516 (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).
- Appellate courts have not interpreted 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 literally 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).
 - When considering the abuse or neglect of another child in the home when determining whether the child who is the subject of the proceeding is neglected, the trial court must assess whether there is a substantial risk of future abuse or neglect of a child in that home based on the historical facts of the case. *See In re J.C.B.*, 233 N.C. App. 641 (2014); *In re S.H.*, 217 N.C. App. 140 (2011); *In re D.B.J.*, 197 N.C. App. 752 (2009); *In re P.M.*, 169 N.C. App. 423 (2005). This same analysis is applicable when the

- juvenile alleged to be neglected has never resided in the parent's home (as in the case of a newborn still in the hospital). *In re A.S.*, 190 N.C. App. 679, *aff'd per curiam*, 363 N.C. 254; *In re G.T.*, ___ N.C. App. ___, 791 S.E.2d 274 (2016), *aff'd per curiam*, ___ N.C. ___, 808 S.E.2d 142 (2017).
- 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.*, ___ N.C. App. ___, 783 S.E.2d 206 (2016).
 - 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).
 - 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).
 - 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).
 - Where a child's sibling had been adjudicated abused and neglected because the mother's live-in boyfriend had pled guilty to several felony sex offenses against the sibling, and the mother was indicted for felony child abuse of the sibling, evidence supported the finding of an injurious environment to establish neglect as to another child. *In re D.S.A.*, 181 N.C. App. 715 (2007).
 - Where three siblings witnessed a slow deterioration of their younger sister's health as a result of their parents' failure to seek and obtain medical treatments for her, the abuse and neglect of their younger sister was properly considered (in combination with other evidence) by the trial court in concluding that the three children were neglected. *In re S.H.*, 217 N.C. App. 140 (2011).
 - Child lived in an injurious environment and was at risk of harm as demonstrated by evidence that showed she witnessed and was exposed to her older sibling's abuse, which was distressing to her and could cause fear and worry that the same would happen to her. *In re F.C.D.*, ___ N.C. App. ___, 780 S.E.2d 214 (2015).

(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.*, ___ N.C. App. ___, 778 S.E.2d 441 (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).

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.*, ___ N.C. App. ___, ___, 801 S.E.2d 160, 166 (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.*, ___ N.C. App. ___, 781 S.E.2d 93 (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.*, ___ N.C. App. ___, 792 S.E.2d 160 (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 who was mentally disabled 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).
- 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 court disagreed, analyzing the situation as analogous to termination of parental rights cases based on neglect in which a child has not lived with the parent for a period of time, finding that evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect should be considered. Here, the findings supporting an adjudication of neglect were sufficient: 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).

(d) 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.*, ___ N.C. App. ___, 801 S.E.2d 160 (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.*, ___ N.C. App. ___, 800 S.E.2d 82 (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.*, ___ N.C. App. ___, 783 S.E.2d 206 (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).

(e) 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 “grossly cruel or inappropriate means to correct 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. Note that 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 found 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).

(f) 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.*, ___ N.C. App. ___, 781 S.E.2d 862 (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). The finding of an injurious environment often overlaps with a finding of improper care, supervision, or discipline. *See 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).

The court of appeals found neglect in the following cases.

- 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.*, ___ N.C. App. ___, 791 S.E.2d 274 (2016), *aff'd per curiam*, ___ N.C. ___, 808 S.E.2d 142 (2017).
- Where findings were that respondent grew and consumed marijuana in the child's

- home, engaged in domestic violence in the child's presence, choked the child's mother to unconsciousness while the mother was pregnant with the child, and insulted and raised his voice to social workers, the findings were sufficient to support the conclusion that the child lived in an injurious environment and was neglected. *In re W.V.*, 204 N.C. App. 290 (2010).
- 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.*, ___ N.C. App. ___, 781 S.E.2d 93 (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 sufficient to establish neglect based on the child's exposure to domestic violence. Respondent mother had a prior abusive relationship; respondent had a current abusive relationship and an inability to abide by safety agreements designed to insulate her child from domestic violence; child had experienced physical abuse by respondent and her boyfriend; DSS observed bruising on child; and child displayed aggressive, volatile behavior after coming into DSS custody. *In re T.M.*, 180 N.C. App. 539 (2006).
 - Evidence that the mother tested positive for marijuana use on the day the child was born, that another child had been adjudicated abused and neglected, that the mother was unemployed, and that her whereabouts were unknown at the time the petition was filed were sufficient to support an adjudication of neglect. *In re M.J.G.*, 168 N.C. App. 638 (2005).
 - Evidence was sufficient to support an adjudication of neglect where mother kept the child in a filthy room, would leave home for several days at a time, would sleep for long periods of time with the child in the bed and not awaken when the child cried, came home drunk or under the influence of drugs, and did not complete her substance abuse treatment program. *In re E.C.*, 174 N.C. App. 517 (2005).

The court of appeals did not find neglect in the following cases.

- Order was reversed when only findings supporting neglect based on an injurious environment pertained to the parents' history of domestic violence with other partners or family members, which had resulted in mother's rights to six children being terminated in 2014 and father's child being removed from his custody in 2012. The last documented domestic violence incident for each parent occurred at least forty-

two months before the birth in 2016 of the child who was the subject of the neglect adjudication. While there was no evidence that the parents had remedied issues which gave rise to prior injurious environments, petitioner DSS did not meet its burden of proof and presented no evidence of concerns about a current injurious environment; there was no evidence or findings as to domestic violence between the parents; and no findings that the child suffered from or was at substantial risk of a physical, mental, or emotional impairment, from living in mother's home. *In re J.A.M.*, ___ N.C. App. ___, 795 S.E.2d 262 (2016), *temporary stay allowed*, 794 S.E.2d 804, *review allowed*, 799 S.E.2d 617 (2017) (oral argument scheduled Jan. 9, 2018).

- 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 K.J.B.*, ___ N.C. App. ___, 797 S.E.2d 516 (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).
- 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).

(g) 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.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 C.B.*, ___ N.C. App. ___, 783 S.E.2d 206 (2016); *In re T.N.G.*, ___ N.C. App. ___, 781 S.E.2d 93 (2015); *In re L.C.*, ___ N.C. App. ___, 800 S.E.2d 82 (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.

(a) No care or supervision by a parent, guardian, or custodian.

- 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); *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).
- 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.*, ___ N.C. App. ___, 783 S.E.2d 206 (2016).
- 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.*, ___ N.C. App. ___, 781 S.E.2d 93 (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).
 - 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 alternate child care arrangement. 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.*, ___ N.C. App. ___, 783 S.E.2d 206 (2016); *In re L.H.*, 210 N.C. App. 355 (2011).

- 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).
- 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.*, ___ N.C. App. ___, 783 S.E.2d 206.
- 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).

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 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 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 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).

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.*, ___ N.C. App. ___, 790 S.E.2d 744 (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, and 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.*, ___ N.C. App. ___, 800 S.E.2d 126 (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. 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).