

# Chapter 6

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1. Source for some content in this chapter: KELLA W. HATCHER, N.C. ADMIN. OFFICE OF THE COURTS, [NORTH CAROLINA GUARDIAN AD LITEM ATTORNEY PRACTICE MANUAL](#) (2002).

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### 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. 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 proven and the court concludes that they are sufficient to support an adjudication, the child is adjudicated abused, neglected, or dependent and 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 proven by clear and convincing evidence, there can be no adjudication and the court must dismiss the case.

A stated purpose of the Juvenile Code 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 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 *supra* in Chapter 5 and elsewhere in this manual. These include:

- the filing of a proper petition alleging abuse, neglect, dependency (*supra* §§ 5.3.A; 4.2);
- the summons and service of process (*supra* §§ 5.3.B; 4.3; 4.4);
- jurisdiction (*supra* chapter 3);
- appointment of counsel and guardians ad litem for parents (*supra* §§ 2.5.F; 5.4.B);
- appointment of guardian ad litem and attorney advocate for child (*supra* §§ 5.4.C; 2.3);
- orders for nonsecure custody and hearings on the need for continued nonsecure custody (*supra* §§ 5.5; 5.6);
- discovery and access to information (*supra* §§ 4.6; 2.7); and
- pre-adjudication hearing and other pre-trial conferences (*supra* § 5.7).

## 6.2 The Adjudication Hearing

### A. Timing

**1. Within 60 days.** The adjudication hearing must be held within 60 days from the time the petition is filed unless the court orders that it be held later, as described below. G.S. 7B-801(c).

**2. Continuances.** The court may hold the hearing outside the 60-day time limit if it finds that grounds for a continuance exist. 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.

However, 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 for granting a continuance.

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

### B. Procedure

Most procedural aspects of an adjudication hearing are governed by the Juvenile Code, but in some circumstances the Rules of Civil Procedure apply. When the Juvenile Code provides a specific procedure, that procedure prevails over the Rules of Civil Procedure. Otherwise, the Rules may apply when they do not conflict with the Juvenile Code and to the extent that they advance the purposes of the Code. *In re L.O.K.*, 174 N.C. App. 426 (2005). *See supra* § 4.1 (providing detail related to the applicability of the Rules of Civil Procedure to juvenile cases).

### C. Participants and Public Access to Hearing

At adjudication, DSS is the petitioner with the burden of proof, and 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 an adjudication hearing even if only one parent has been served, although efforts to serve the other parent should continue. *See In re Poole*, 357 N.C. 151 (2003), *rev'g per curiam for the reasons stated in the dissent*, 151 N.C. App. 472 (2002). When a parent has been served, it is critical that the parent be given notice of all hearings and be served with all documents filed in the case, even if the parent is not represented by counsel and does not

attend every hearing. *In re H.D.F.*, 197 N.C. App. 480 (2009) (requiring that all papers and notices be served on the father even though he waived his right to counsel and did not attend all hearings). If proper notice has been given, the court may proceed with the hearing even if the parents are not present. However, DSS still must present evidence and prove its case. The court may not adjudicate based on the petition alone (*see infra* § 6.2.F.), and may enter a consent judgment only when all parties are present or are represented by counsel who is present and authorized to consent. See *infra* § 6.5, discussing requirements for consent orders.

The beginning assumption is that hearings in juvenile cases are open to the public, and if the juvenile requests that a hearing or part of a hearing be open, it must be open. G.S. 7B-801(b). Otherwise, the court may determine whether a particular hearing or part of a hearing should be closed to the public after considering the circumstances of the case and the following factors:

- 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 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 juvenile court hearings may be reduced to writing only when notice of appeal has been filed, and recordings may be erased only pursuant to court order after the time for appeal has expired with no appeal having been filed. G.S. 7B-2901(a). However, Administrative Office of the Courts 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 means of reconstructing 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).

### E. Scope of Hearing and Amendment of the Petition

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 (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 did not put respondent on notice as to a neglect allegation); *In re L.T.R.*, 181 N.C. App. 376 (2007) (rejecting the father’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 father did not object to evidence of child’s bathing routine when it was offered at trial). In addition, 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 (2006). *See also infra* § 6.3.B (explaining the separation of evidence for adjudication and disposition). At the conclusion of the hearing, the court must adjudicate the existence or nonexistence of any conditions alleged in the petition. G.S. 7B-802.

Where parties or the court seek to consider matters outside the scope of the petition, DSS may seek to amend or supplement the petition to broaden or change its scope. Under the Juvenile Code, the court in its discretion may permit amendment of a petition, but must direct how the amended petition must be served and specify the time a party has to prepare after the amendment. G.S. 7B-800. *See supra* § 4.2.D (discussing amendments in juvenile cases).

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**Practice Note:** A particular problem occurs when parties attempt to “negotiate” or “stipulate” to amend the petition to reflect a status or allegations that are not supported by the evidence. *See infra* practice note in § 6.5 below (explaining problems created by this situation).

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### F. No Default Judgment

An adjudication of abuse, neglect, or dependency cannot result from a default judgment or judgment on the pleadings. In the absence of a properly entered consent order, the Juvenile

Code requires a hearing. *See In re I.D.*, \_\_\_ N.C. App. \_\_\_, 769 S.E.2d 846 (2015); *In re Shaw*, 152 N.C. App. 126 (2002); *In re Thrift*, 137 N.C. App. 559 (2000).

## G. Stipulations

Stipulations by a party may constitute evidence at adjudication. A record of specific stipulated adjudicatory facts must be made by either:

- submitting to the court written stipulated facts, 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). 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 from the necessity of producing evidence to establish” what is stipulated to. *In re A.K.D.*, \_\_\_ N.C. App. \_\_\_, 745 S.E.2d 7, 9 (2013) (quoting *Thomas v. Poole*, 54 N.C. App. 239 (1981)). When construing a stipulation, the court must attempt to effectuate the intention of the stipulating party. However, stipulations as to questions of law are invalid and not binding on the courts. *In re A.K.D.*, *Id.* (citations omitted) (holding that the parties' stipulation that the TPR ground of willful abandonment existed was an invalid stipulation to a conclusion of law).

## 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, and dependency cases. Other evidence topics such as hearsay, experts, child witnesses, judicial notice, and other matters related to the admissibility of evidence are addressed *infra* in Chapter 11, Evidence.

### A. Standard and Burden of Proof

The allegations of the petition must be proven 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.

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. *See In re Montgomery*, 311 N.C. 101 (1984); *In re S.H.*, 217 N.C. App. 140 (2011); *In re J.S.*, 182 N.C. App. 79 (2007). However, identifying the perpetrator of abuse (or in some cases neglect) may be a goal of DSS or an issue for the court in determining whether reunification is possible. *See In re Y.Y.E.T.*, 205 N.C. App. 120 (2010) (finding that both parents were jointly and individually responsible for their child’s injuries where infant suffered non-accidental injuries while in the care of both parents, DSS and the court sought to determine which parent was the perpetrator, but a perpetrator could not be identified).

## 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 must consider only evidence that is relevant to a determination of the existence or nonexistence of the facts and conditions alleged in the petition. *See In re A.B.*, 179 N.C. App. 605 (2006). The prohibition of considering post-petition evidence was not applicable when it is evidence that paternity has been established after a petition was filed but before the adjudication hearing. *In re V.B.*, \_\_\_ N.C. App. \_\_\_, 768 S.E.2d 867 (2015). In a dependency action, the petitioner failed to allege in the petition or present evidence that the father was unable to provide or arrange for the care and supervision of the child. The court of appeals reasoned that paternity was a fixed and ongoing circumstance that was extremely relevant to determining whether the child was dependent. *Id.*

Stipulations as to adjudicatory facts may be made but must be properly recorded as described *supra*, § 6.2.G. G.S. 7B-807(a).

See *infra* Chapter 11, Evidence, for detailed information on evidence issues in juvenile proceedings.

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, appellate courts have indicated that it is not error for the court to combine the adjudication and disposition hearings if proper evidentiary standards and rules are applied. *See In re O.W.*, 164 N.C. App. 699 (2004). If the hearings are combined, 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).

## C. Evidence at Adjudication

**1. 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. The statutory definitions are especially important given the fact that they do not necessarily conform to common perceptions of what constitutes abuse, neglect, or dependency. These definitions and case law interpreting them are discussed in detail *supra* at § 2.6.

**2. Evidence of abuse, neglect, and dependency in other types of hearings.** Abuse, neglect, and dependency are, or are part of, some grounds for termination of parental rights, 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 different from those it considers in an original 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 of the child. Therefore, some case law concerning evidence to prove abuse, neglect, or dependency as grounds for TPR may not be directly applicable to original abuse, neglect, or dependency adjudications. However, 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 supra* § 2.6.B.7 (discussing the difference between an original adjudication of neglect and neglect as a ground for TPR); *infra* § 9.11.A (citing case law discussing abuse and neglect grounds for TPR).

#### D. Evidence to Establish Abuse

**1. Definition of abuse.** *See supra* § 2.6.A (discussing the definition of abuse and cases interpreting the definition). 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 cruel or grossly inappropriate 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 child 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).

**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 caused by a parent, guardian, custodian, or caretaker. Other situations are less clear regarding what constitutes abuse. Some key issues related to abuse have been discussed in appellate cases.

**(a) Serious injury, corporal punishment, and cruelty.** Appellate decisions examining the type of injuries sustained from corporal punishment have varied in determining what constitutes abuse. 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” to fit within the definition of abuse. *See In re C.B.*, 180 N.C. App. 221 (2006). However, serious injury constituting abuse was found to have occurred where an almost four-year-old child whose stepfather had hit him with a brush had a dark, six-inch bruise on his thigh that lasted well over a week, a doctor testified that it would have taken considerable force to cause such a bruise, and the child was still experiencing sufficient discomfort to complain of pain several days later. *In re L.T.R.*, 181 N.C. App. 376 (2007). In this case the court noted that neither the statute nor case law requires that the injured child receive medical attention to sustain a determination that the injury is serious. In the case *In re H.H.*, \_\_\_ N.C. App. \_\_\_ 767 S.E.2d 347 (2014), the petition alleged physical discipline as cruelty under the third prong of the abuse definition and did not allege serious injury under the first prong of the definition. The court of appeals determined that sufficient findings supporting an adjudication of abuse were made where the mother struck her eight year-old 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 it as “a beating.”

Some cases involving an assessment of injuries sustained 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 also infra* § 6.3.E.2.d (discussing inappropriate discipline as neglect).

**(b) Munchausen syndrome by proxy (Note: The DSM 5 Replaced Munchausen Syndrome with Factitious Disorder by Proxy).** Findings of abuse were affirmed where three experts testified that the child was the probable victim of Munchausen syndrome by proxy (MSP), 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) Emotional damage.** 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. *Powers v. Powers*, 130 N.C. App. 37 (1998).
- (d) Sexual acts.** 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) Nonaccidental injuries.** An adult's exclusive custody of a child who suffers nonaccidental 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 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 nonaccidental 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).
  - Nonaccidental 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 nonaccidental 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).

- 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 (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, she witnessed many incidents where the father would consume alcohol to excess and act out against her and the children, she allowed the father to drive the children after he had consumed a large quantity of alcoholic beverages, and she 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 nonaccidental 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.** *See supra* § 2.6.B (discussing the definition of neglect and cases interpreting the definition). 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; 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).

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.” See *supra* § 1.2 for a discussion of these purposes. 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.]

**2. Evidence related to neglect.** When evaluating evidence to establish neglect, appellate courts have said that the evidence must show that a child’s physical, mental, or emotional condition is impaired or is in danger of becoming impaired as a result of the failure of his or her parent, guardian, or custodian to exercise the degree of care consistent with the normative standards imposed on parents by society. See *In re J.W. and K.M.*, \_\_ N.C. App \_\_, \_\_ S.E.2d \_\_ (May 5, 2015); *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). A trial court’s failure to make specific findings as to impairment or risk of harm does not require reversal where the evidence supports such findings. See *In re H.N.D.*, 364 N.C. 597 (2010) (adopting dissenting opinion in 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).

Much of the case law related to what constitutes neglect is in the context of termination of parental rights proceedings as opposed to proceedings on petitions alleging neglect. Appellate cases have distinguished neglect in the two types of proceedings, noting that parental rights may not be terminated for threatened future harm, but DSS may obtain temporary custody of a child when there is a risk of neglect in the future. *In re K.J.D.*, 203 N.C. App. 653 (2010) (citing *In re Evans*, 81 N.C. App. 449 (1986)). To the extent that TPR cases address the definition of neglect, they may be relevant to neglect adjudications. See *supra* § 6.3.C.2 for additional explanation of the applicability of TPR cases and *infra* § 9.11.A relating to neglect in the context of TPR cases.

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

**(a) Other children living in the home.** Language in the 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).

- Appellate courts have not interpreted the language in the definition “lives in the home” literally with respect to newborns who are still in the hospital, finding 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 (2008), *aff'd per curiam*, 363 N.C. 254 (2009); *In re A.B.*, 179 N.C. App. 605 (2006); *In re E.N.S.*, 164 N.C. App. 146 (2004); *In re McLean*, 135 N.C. App. 387 (1999) (decided under prior law).
- In considering the abuse or neglect of another child in the home when determining whether a child 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.*, \_\_\_ N.C. App. \_\_\_, 757 S.E.2d 487 (2014); *In re S.H.*, \_\_\_ N.C. App. \_\_\_, 719 S.E.2d 157 (2011); *In re D.B.J.*, 197 N.C. App. 752 (2009); *In re P.M.*, 169 N.C. App. 423 (2005); *In re McLean*, 135 N.C. App. 387 (1999) (decided under prior law). 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 (2008), *aff'd per curiam*, 363 N.C. 254 (2009).
  - 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. *In re D.B.J.*, 197 N.C. App. 752 (2009). *See also In re C.M.*, 198 N.C. App. 53 (2009).
  - 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 siblings had been adjudicated abused and neglected because the mother's live-in boyfriend had pled guilty to several felony sex offenses against them, and the mother was indicted for felony child abuse, evidence supported the finding of an injurious environment to establish neglect. *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.*, \_\_\_ N.C. App. \_\_\_, 719 S.E.2d 157 (2011).

**(b) Lack of proper care and supervision.**

- An anonymous call to DSS reporting a naked two-year-old 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).
- Evidence that a mother had left a 16-month-old child alone in a motel room for more than 30 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).

- 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.*, \_\_\_ N.C. App. \_\_\_, 768 S.E.2d 172 (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 45 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).
- 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).
- 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, 101 (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 mentally handicapped child was neglected where 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 TPR 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).

**(c) Lack of necessary medical or remedial care.**

- 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.*, \_\_\_ N.C. App. \_\_\_, 742 S.E.2d 629 (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.* \_\_\_ N.C. App. \_\_\_, 719 S.E.2d 157 (2011).
- Neglect was shown where the mother delayed in 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 in 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 were being denied the opportunity to participate in free day care, which the social worker believed was necessary for their "adequate stimulation and socialization," and instead were being kept at home where they did not receive proper medical care, supervision, or nutrition.

*In re Bell*, 107 N.C. App. 566 (1992).

- In a criminal case, the court looked to the Juvenile Code definition of neglect in affirming a conviction for contributing to the neglect of a minor, in the case of a father who failed to provide a child with necessary medication. *State v. Harper*, 72 N.C. App. 471 (1985).

**(d) 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 supra* § 6.3.D.2(a) (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.* \_\_\_ N.C. App. \_\_\_, 719 S.E.2d 157 (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 eight-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; her 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).

**(e) 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). The finding of an injurious environment often overlaps with a finding of improper care, supervision, or discipline.

- The court of appeals upheld the trial court’s finding of neglect where 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. and K.M.*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (May 5, 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.*, \_\_\_ N.C. App. \_\_\_, 760 S.E.2d 778 (2014).
  - Evidence was sufficient to support an adjudication of neglect where respondent mother and her boyfriend had a physical altercation while mother was holding one-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).
  - Substance abuse by a parent may contribute to a finding of neglect but, without proof of an adverse impact on the child, is not sufficient itself to support a finding of neglect. *See In re E.P.*, 183 N.C. App. 301 (2007), *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).
  - 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 child was in vitro, 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).
  - 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).
  - 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).
  - 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 abuse; 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 a finding 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).

**(f) 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 (1986); *In re Apa*, 59 N.C. App. 322 (1982); *In re Stroud*, 38 N.C. App. 373 (1978). *See generally supra* § 2.6.B.2 (relating to the definition of abandonment as neglect). Most appellate cases addressing abandonment are in the context of abandonment as a ground for termination of parental rights context. To the extent that those cases discuss the definition of abandonment, they may be relevant to abandonment in the context of neglect. *See infra* § 9.11.G (cases discussing evidence to establish abandonment as a TPR ground).

## F. Evidence to Establish Dependency

**1. Definition of dependency.** A dependent juvenile is 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. G.S. 7B-101(9).

Both prongs of this definition must be met.

**2. Evidence related to dependency.** Allegations of dependency are often combined with allegations of neglect and sometimes with abuse as well. Therefore, appellate cases examining evidence related to dependency often discuss the totality of facts supporting dependency and neglect (and/or abuse), and few cases isolate discussions regarding facts supporting dependency.

*See infra* § 6.5, practice note (discussing the importance of stipulations reflecting actual facts—for example, not stipulating to dependency instead of neglect when the facts do not support dependency).

**(a) No capable parent, guardian, or custodian.**

- A child is not dependent when there is one parent who can care for his/her child or make arrangements for appropriate alternative child care. An adjudication of dependency will be reversed where 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.*, \_\_\_ N.C. App. \_\_\_, 768 S.E.2d 172 (2015); *In re V.B.*, \_\_\_ N.C. App. \_\_\_, 768 S.E.2d 867 (2015).
- 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).
- 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. *In re J.A.G.*, 172 N.C. App. 708 (2005).
- 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).

- Where DSS failed to present any evidence on lacking alternative child care at the hearing and the trial court made no findings as to alternative child care, the adjudication of dependency was reversed. *In re J.D.R.*, \_\_\_ N.C. App. \_\_\_, 768 S.E.2d 172 (2015); *see also In re V.B.*, \_\_\_ N.C. App. \_\_\_, 768 S.E.2d 867 (2015).
- 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 12 or 13 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 TPR case, the 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 mother had no ability to decide custody. *In re K.O.*, \_\_\_ N.C. App. \_\_\_, 735 S.E.2d 369 (2012).

## 6.4 Adjudication Order

### A. General Requirements

**Note:** For further discussion of technical aspects of orders in juvenile court, including timing and drafting of the order, proper findings of fact and conclusions of law, see *supra* § 4.9.

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**Tool:** 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, September, 2013).

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If the allegations are not proven by clear and convincing evidence, the court must dismiss the petition with prejudice and release a child who is in nonsecure custody to his or her parent, guardian, or custodian. 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 proven. 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).

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 (2004) (holding that the statement in the trial court's order that it "concludes through clear, cogent, and convincing evidence. . ." was acceptable).

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 30 days following the completion of the hearing.

G.S. 7B-807(b). *See also supra* § 4.9.D (discussing the clerk’s responsibility to schedule a special hearing when the order is not entered within 30 days, as well as the appropriate remedy for untimely orders).

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**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 children and must include the file number for each child.

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## 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 *supra*, § 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). 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) (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 (2007).

## 6.5 Consent Orders

The Juvenile Code allows the court to enter a consent 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).

The adjudication part of a consent order must comply with all requirements for adjudication orders. *See supra* § 6.4 (relating to adjudication orders).

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 (2000); *Buckingham v. Buckingham*, 134 N.C. App. 82 (1999). Where the requirements of a consent order are not met, the court is not bound to honor an agreement made among the parties. The court of appeals upheld the trial court's order adjudicating neglect and rejecting a plan of reunification, where the parties had stipulated to facts supporting an adjudication and the DSS attorney indicated later that the agreement was contingent on DSS's working toward reunification. The court held that the requirements of a consent order had not been met and at most there were stipulations as to certain facts. *In re L.G.I.* \_\_ N.C. App. \_\_, 742 S.E.2d 832 (2013).

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**Practice Note:** When parties negotiate in an attempt 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 the allegations 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 supra* § 4.2.D (relating to amendments).

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## 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 parents (if parents are properly served) until the child reaches age 18 or is emancipated, or until the court orders termination of jurisdiction, whichever occurs first. *See* G.S. 7B-200, 7B-201.

### B. Impact on Parents and Future Proceedings

An adjudication that a child is abused, neglected, or dependent essentially allows the state to intervene in the constitutionally protected parent-child relationship. *See supra* § 2.5.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-904. *See also infra* § 7.5 (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 supra* § 6.3.E.2.a (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. *See infra* § 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 also infra* § 9.10.B.2 (discussing collateral estoppel in TPR); § 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 from an order adjudicating the child to be 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.” *Id.* 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). *See also In re Hatley*, 291 N.C. 693 (1977) (holding that an involuntary commitment order results in collateral consequences).