

## Case and Legislative Update Abuse, Neglect, Dependency & TPR

Whitney Fairbanks  
Janet Mason  
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## 2009 Legislation



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## Juvenile Code Changes

1. confidentiality and discovery
2. venue
3. review hearings
4. termination of parental rights
  - summons and notice
  - GAL and counsel for parent
  - pretrial hearings



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Definition of "Abused Juvenile"

G.S. 7B-101(1)d.

- 1. Rape of child by adult offender (G.S. 14-27.2A)
- 2. Sexual offense with child by adult offender (G.S. 14-27.4A)




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Confidentiality

G.S. 7B-302 and 7B-2901(b)

- 1. access to DSS information by juvenile & GAL
- 2. release by judge in civil action
  - DSS must have notice and opportunity to be heard
  - information must be relevant, necessary, and otherwise unavailable
  - DSS may release for in camera review
- 3. release by judge in criminal/delinquency case
  - judge must review in camera




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Discovery and Information Sharing

G.S. 7B-700

- 1. DSS may share relevant information
- 2. chief judge may adopt local rules or administrative order for discovery and information sharing among parties
- 3. any party may file motion for discovery or request that discovery be denied, restricted, or deferred
- 4. exception for GAL information – *unless* local rule or administrative order provides otherwise




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“Venue”

1. venue
2. parties
3. custody
4. services
5. costs



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Venue & Inter-County Coordination  
S.L. 2009-311

County ACounty B



Communication



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Venue


1. timing
2. notice
3. criteria
  
4. contents of order
  - parties
  - custody
  - services
  - costs
5. clerks' duties

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**Review, Permanency Planning,  
Post-TPR Hearings**

1. DSS option for notice to foster or pre-adoptive parent
2. What is in the juvenile file after filing of
  - adoption petition?
  - final order of adoption?

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**Termination of Parental Rights**  
(effective May 27, 2009)

1. child is a party
2. no summons or notice to child
3. if child has GAL, all papers must be served
  - on GAL or attorney advocate
  - per Rule 5

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**Termination of Parental Rights**  
(effective May 27, 2009)

1. GAL for parent
  - “per Rule 17”
2. counsel for parent
3. special hearing no longer required
4. pretrial hearing required, but may be joined with adjudication

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**Termination of Parental Rights  
Parent's Counsel**

1. parent's counsel in abuse/neglect/dependency case continues
2. provisional counsel for unrepresented parent until first hearing after parent is served

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**Adoption by Grandparent**  
(effective June 26, 2009)

If child has lived with grandparent for two years, report to court required only if

1. child's consent is being waived,
2. child has revoked consent, or
3. child is eligible for adoption assistance

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**Delinquent and Undisciplined Juveniles**

1. in Subchapter II, repeats duty to report cause to suspect abuse, neglect, dependency
2. person or agency given nonsecure custody must be given copy of petition and order
3. custody to DSS at disposition permitted only if director has notice and opportunity to be heard

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Recent Court Decisions



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Subject Matter Jurisdiction



and

The Summons

**In re K.J.L.**

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Getting to *K.J.L.*

1. Statute required summons to child in TPR
2. Court of Appeals
  - child not named in caption  
*In re C.T.* (2007)
  - summons not issued to child  
*In re K.A.D.* (2007)  
*In re I.D.G.* (2008)  
*In re I.T.P.-L.* (2008)
  - child named in caption; child's GAL served  
*In re N.C.H.* (2008)  
*In re S.L.T.* (2009)

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*In re J.T.*  
N.C. Supreme Court (Feb. 2009)

- reversed,
- overruled, or
- disapproved reasoning

1. Key question: Was a valid summons issued?
2. If yes, defects affect only personal jurisdiction.
3. Child's GAL, by participating, waived any defect.




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*In re K.J.L.*  
N.C. Supreme Court (June 18, 2009)

TPR appeal:

1. court of appeals
  - summons in neglect case not dated or signed
  - order giving DSS custody was void
  - DSS lacked standing
2. supreme court
  - summons related only to personal jurisdiction
  - parents waived defect by coming to court and stipulating to neglect




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*J.T.*

- “[W]here no summons is issued, the court acquires jurisdiction over neither the parties nor the subject matter . . .”

*K.J.L.*

- That language “could be interpreted to mean the failure to issue a summons defeats subject matter jurisdiction.”
- “We disavow such an interpretation.”




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**Expiration of Summons**

*In re N.E.L.* (court of appeals, 6/2/09)

- action discontinued → no jurisdiction

(supreme court, 8/27/09)

- remanded for reconsideration in light of *K.J.L.*
- no effect on subject matter jurisdiction

*In re J.D.L.* (court of appeals, 8/18/09)

- expiration of summons did not affect subject matter jurisdiction

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**Where does K.J.L. leave us?**

In abuse, neglect, dependency, and TPR (initiated by petition):

1. summons required (but not for child)
2. issuance and service of summons may be waived
3. if not waived, court may lack personal jurisdiction

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Lack of standing always → lack of jurisdiction

*In re B.O.*

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**Procedure: Amendments**

1. TPR

- error for trial court to allow amendment to conform to the evidence
  - *In re B.L.H.*, May, 2008
  
- amendment of petition did not constitute the filing of a new action
  - *In re M.M.*, October, 2009

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**Procedures: Amendments**

2. Adjudication

- not error to allow amendment to add factual allegations of sexual abuse when petition already alleged abuse
  - *In re M.G.*, August, 2009

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**Parents' Rights: Notice**

*In re H.D.F.* , June, 2009

- reversal required where notice of key events in case was not given to father whose attorney had withdrawn

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**Parents' Rights: Visitation**

*In re C.M.*, July 7, 2009

- trial court erred by failing to address visitation in order that removed custody from parents

*In re K.C.*, September, 2009

- despite trial court's failure to address visitation in order, respondent could not assert error in outcome that she had sought




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**Parents' Rights: Custody**




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*In re J.B.*  
June, 2009

Findings were insufficient to:

- create or modify a Ch. 50 custody order,
- terminate jurisdiction in juvenile case, or
- award custody to non-parent

Without findings necessary to override it, a parent's paramount rights as a parent exist in juvenile case.




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*In re B.G.*  
June, 2009

Findings were insufficient to apply “best interest” standard and award custody to non-parent.

There was no showing that the parent:

- was unfit,
- had neglected the child, or
- had acted inconsistently with his constitutionally protected rights as a parent




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*In re J.V.*  
July, 2009

1. Permanency planning / guardianship order reversed, where order did not address:
  - “Is it possible for the child to return home within 6 months?”
2. “finding” that child’s return home would be contrary to her health, safety, welfare, and best interest was really a conclusion of law




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Adjudication Issues

1. Adjudication of other child at same hearing.
2. Evidence that injury “non-accidental”

*In re C.M.*  
Also see *In re D.B.J.*




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**Sufficiency of Evidence**

1. *In re H.D.F.*
  - written reports admitted in evidence without objection can be proper basis for findings

Termination Cases

2. *In re M.D.*
  - abandonment
  - “clear, cogent, and convincing”
3. *In re S.C.H.*
  - “year in care” ground
  - evidence of ground that was not alleged

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**Sufficiency of Findings**

1. *In re S.C.R.*
  - neglect
  - putative father’s failure to take steps
2. *In re T.P.*
  - specificity of findings

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**Evidence of “Substantiation”**

*State v. Giddens* –

Are there implications for allegations and evidence of “substantiations” in juvenile cases?

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Appeal




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Timing of Notice of Appeal


*In re S.F.*

Notice of appeal may be given:

- after court renders judgment but before written order is entered, or
- within 30 days after entry of the written order

*In re K.C. (not tpr)*

- notice of appeal from only the adjudication order is not effective and amended notice of appeal must be timely




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*In re K.C.*  
September, 2009

11.13.08 → juveniles adjudicated

11.20.08 → disposition order entered

12.15.08 → respondent files notice of appeal from adjudication order

1.30.09 → respondent files amended notice




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**Jurisdiction during appeal**  
*In re K.L.*

- TPR order appealed
- Issue = failure to issue summons in neglect case
- In neglect case, trial court allowed DSS motion to amend summons

**G.S. 7B-1003:**

- during appeal of TPR order, court may only enter temporary orders affecting child's custody or placement



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**Jurisdiction during appeal**  
*In re C.N.C.B.*

- after notice of appeal was given, court lacked jurisdiction to "correct" its order to add a critical finding of fact
- Rule 60(a) allows correction of clerical errors until appeal is docketed in court of appeals



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