

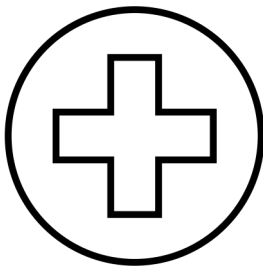
Child Welfare Legislative and Case Update Part II

UNC School of Government
DSS Attorneys Conference
Summer 2021



1

S693 continued



Mental Health Treatment at Hospital (effective if/when passes)

- In DSS custody and presents at hospital for MH treatment
- DSS contact LME/MCO
- LME/MCO provide care coordination and arrange for assessment w/in 5 business days
 - If recommend foster care or Level I group home, DSS provide w/in 5 business days
 - If recommend care requiring prior authorization, LME/MCO authorize and identify w/in 5 business days and assign care coordinator; DSS place w/in 5 business days and transport
 - If unable, DSS contact Rapid Response Team at DHHS to coordinate response to address immediate needs of juvenile

2

Emergency Motion in A/N/D action (effective Jan. 1, 2022 if passes)



If provisions not met

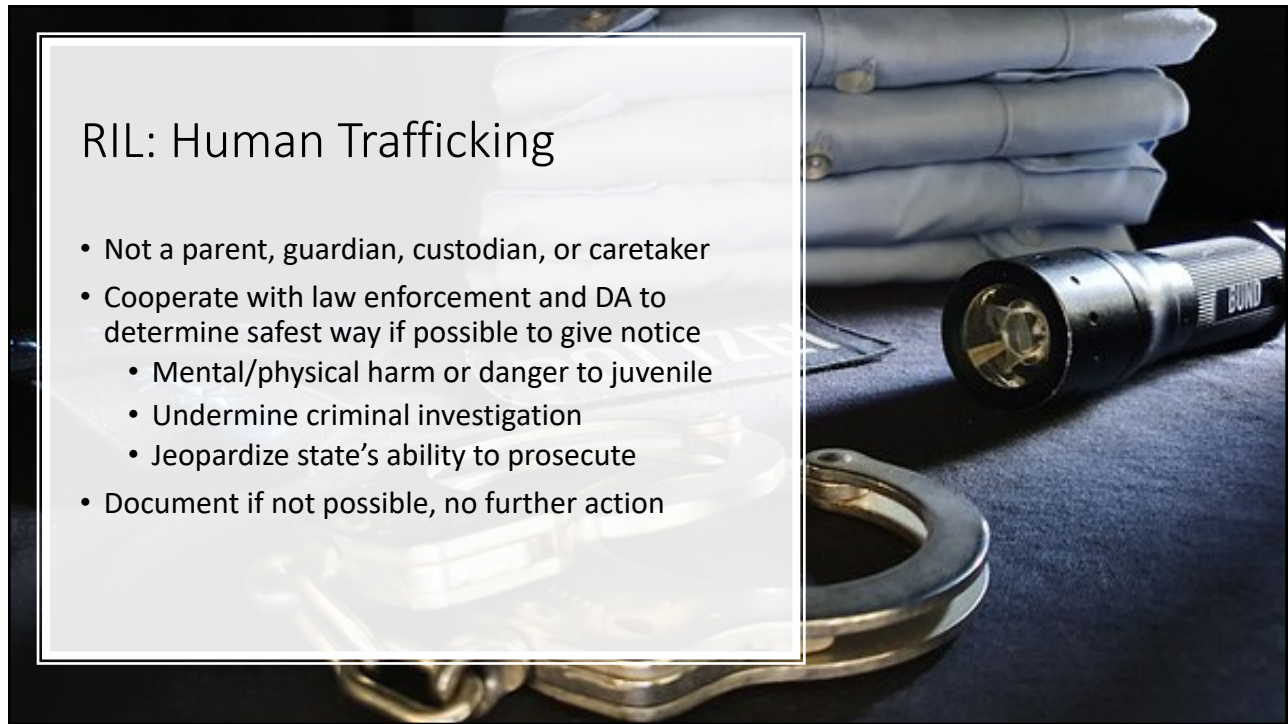
- Any party, DHHS, hospital, LME/MCO standing to file re: continued stay at hospital
- Burden on petitioner, clear and convincing evidence provisions not met
- Heard w/in 5 business days
- May order
 - responsible party to act
 - Placement per recommendations of assessment
 - Completion of assessment and placement per recommendations
 - Any appropriate relief
- Reviews every 30 days until no longer at hospital

3

TPR: Standing

Person the juvenile has
been continuously residing
with for 18 months

4




RIL: Human Trafficking

- Not a parent, guardian, custodian, or caretaker
- Cooperate with law enforcement and DA to determine safest way if possible to give notice
 - Mental/physical harm or danger to juvenile
 - Undermine criminal investigation
 - Jeopardize state’s ability to prosecute
- Document if not possible, no further action

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| | |
|---|---|
| <p>H769: Foster Parents Bill of Rights (effective if & when it becomes law)</p> | No Private Cause of Action |
| | Treat with dignity, respect, trust |
| | Receive information about responsibilities and access to services |
| | Valued member of child’s team and participate in court |
| | Reasonable notice re: removal of child and referral to resources re: loss of child when reunify |
| | Request change in licensing workers |
| | Reasonable and prudent parent standard |
| | Clear expectations and boundaries re: shared parenting agreement |
| And a lot more | |

6



- Limits surrender to health care providers, first responder, DSS worker
- Confidentiality provisions re: parent's identity
- DHHS create information for dissemination
- Not an A/N/D case!

Infant Safe Surrender: New Article
5A (H473)
(effective Oct. 1 if passes)

7

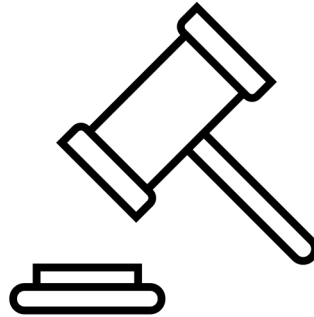
DSS

| | |
|--|--|
| <div style="background-color: #4CAF50; color: white; padding: 5px; text-align: center; font-weight: bold;">Obtains custody w/o court order</div> <ul style="list-style-type: none"> • May obtain an ex parte order • Custody to non-surrendering parent if known and no cause to suspect A/N/D | <div style="background-color: #4CAF50; color: white; padding: 5px; text-align: center; font-weight: bold;">Response</div> <ul style="list-style-type: none"> • Medical provider: 7 days, no signs of abuse or neglect • Notify law enforcement • Non-surrendering parent • Genetic marker testing if necessary • Initiate TPR after 60 days |
|--|--|

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Required Court Action

- Notice by publication w/in 14 days of surrender
- If TPR, preliminary hearing on safely surrendered infant
- If surrendering parent seeks to regain custody, neglect – regular case
- If non-surrendering parent cause to suspect, A/N/D – regular case w/o surrendering parent involvement



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S207: Juvenile Delinquency Minimum Age Dec. 1 (if passes)






- 6-9 y.o.
- Child consultation services to juvenile and parent, guardian, custodian by juvenile court counselor
 - Parent must attend and may be directed to parenting classes
 - Referrals for evaluations and treatment
 - Assist with funding
 - Work collaboratively with DSS = Child and Family Team
- Max of 6 months (approval by chief court counselor for 3 more)
- Cause to suspect A/N/D = DSS report
- Parent refuse and risk of A/N/D = DSS report

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Stay Updated on What Passes!



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Moratorium on Aging Out of the Foster Care 18-21 Program – Get the Word Out!

This entry was contributed by Sara DePasquale on May 13, 2021 at 8:14 am and is filed under Child Welfare Law.

The last 14 months have encompassed a year like no other because of COVID-19. As a country, we have experienced unimaginable loss of life. In our own communities and lives, we have transitioned to a new normal – one that feels more like a sci fi movie plot than our actual reality. But, reality it has been. Thankfully, we appear to be slowly moving our way back to what was once familiar. As we live in this pandemic, laws responding to the impact of COVID 19 have been passed by Congress and our own state. At the end of December 2020, Congress passed a COVID relief bill – the Consolidated Appropriations Act. There are components of that Act that have been heavily reported on – the stimulus checks and unemployment benefits for example.

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Suspending Visitation
In re K.M. (p. 3 + blog)




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7B-905.1 Requirements

Minimum frequency, duration, and level of supervision

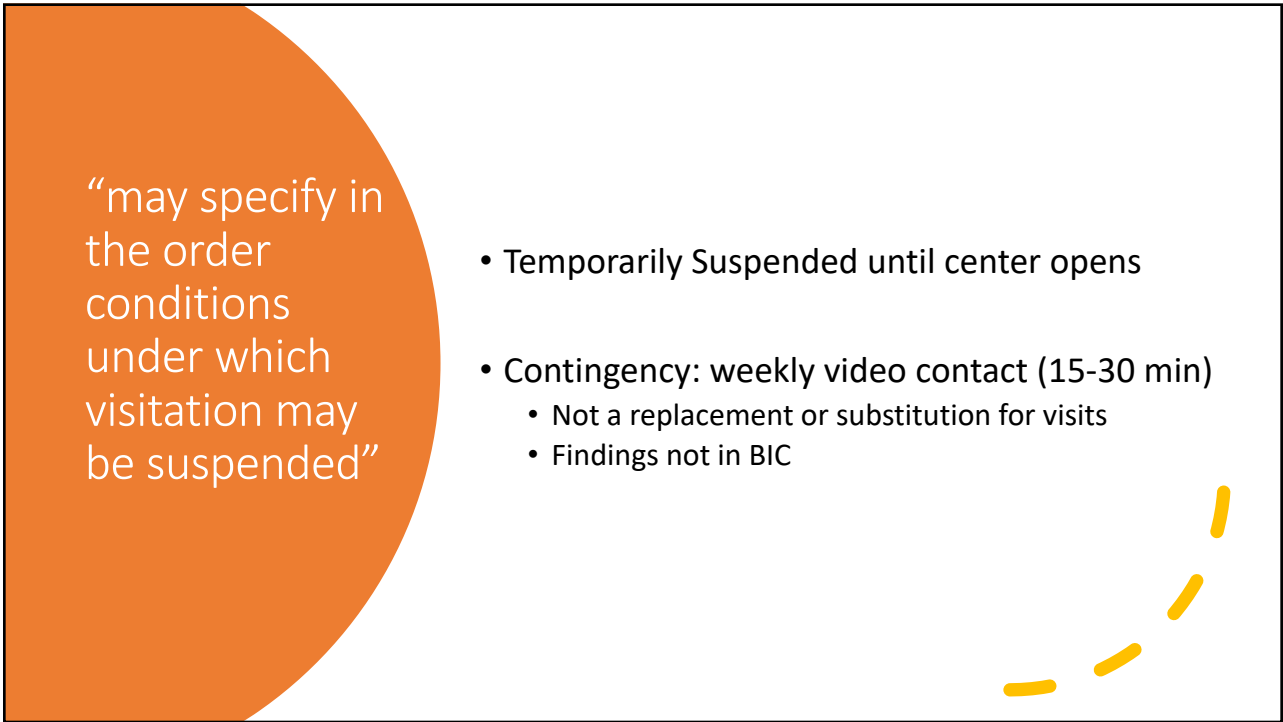
- 2/month for 2 hours at supervised visitation facility
- Level of supervision
 - Trained professionals otherwise risk of harm to child, inconsistent with health and safety, and contrary to BIC
 - Eyes and ears on



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“may specify in the order conditions under which visitation may be suspended”

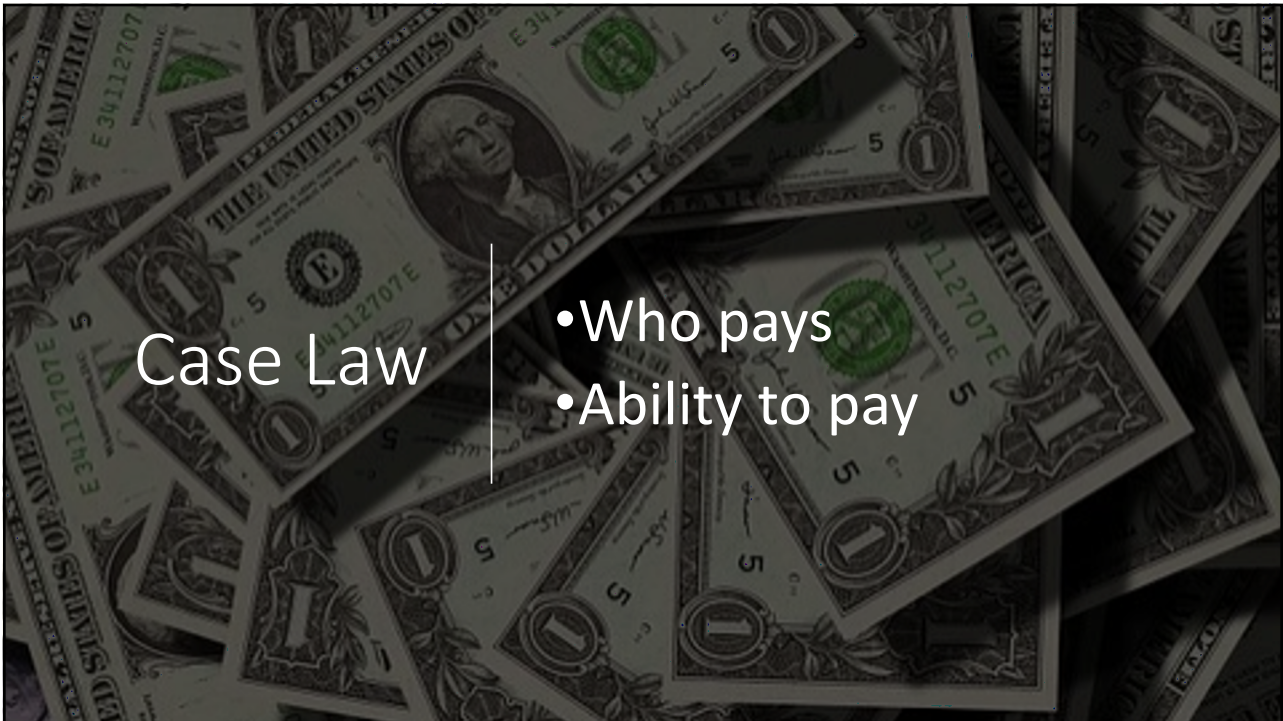
- Temporarily Suspended until center opens
- Contingency: weekly video contact (15-30 min)
 - Not a replacement or substitution for visits
 - Findings not in BIC



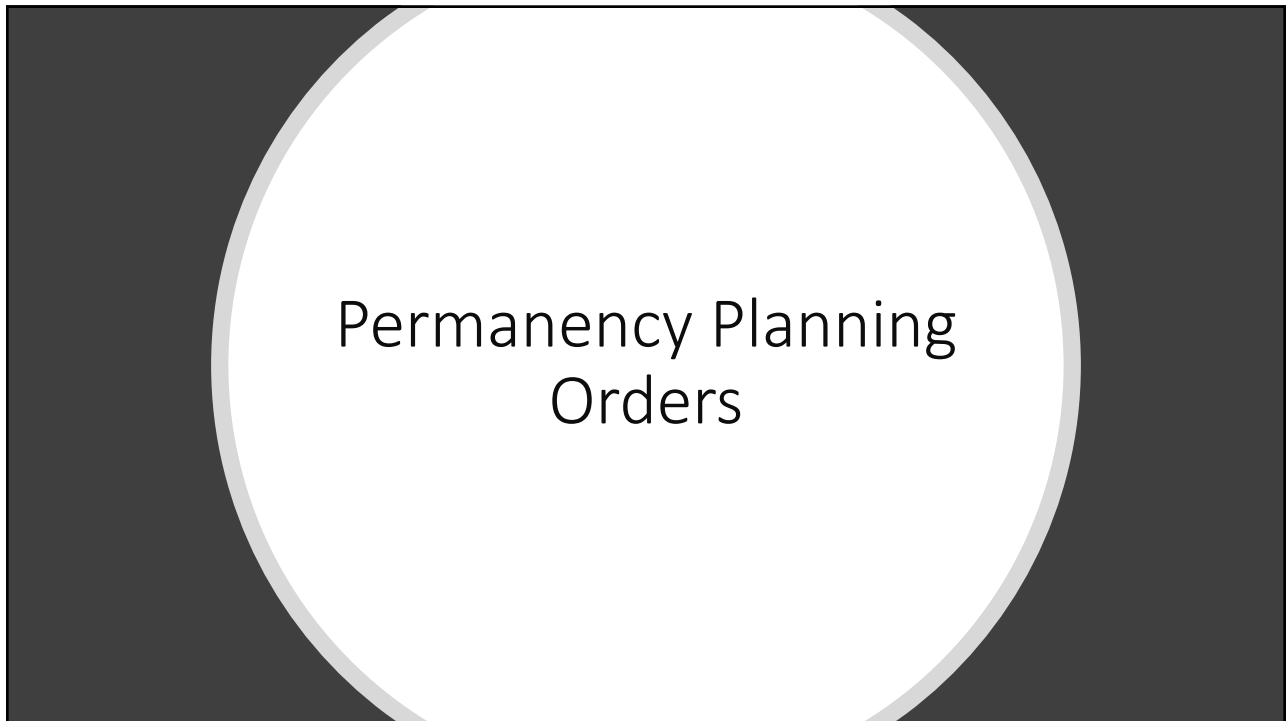
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Case Law

- Who pays
- Ability to pay



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Permanency Planning Orders

17

In re K.P. (p. 4)
Custody to grandparents = Achieved Plan

What findings are required?


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Dissent !

Achieved permanent plan
G.S. 7B-906.2(b), (d)
Verification

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Acting inconsistently with parental rights In re I.K. (p. 4)

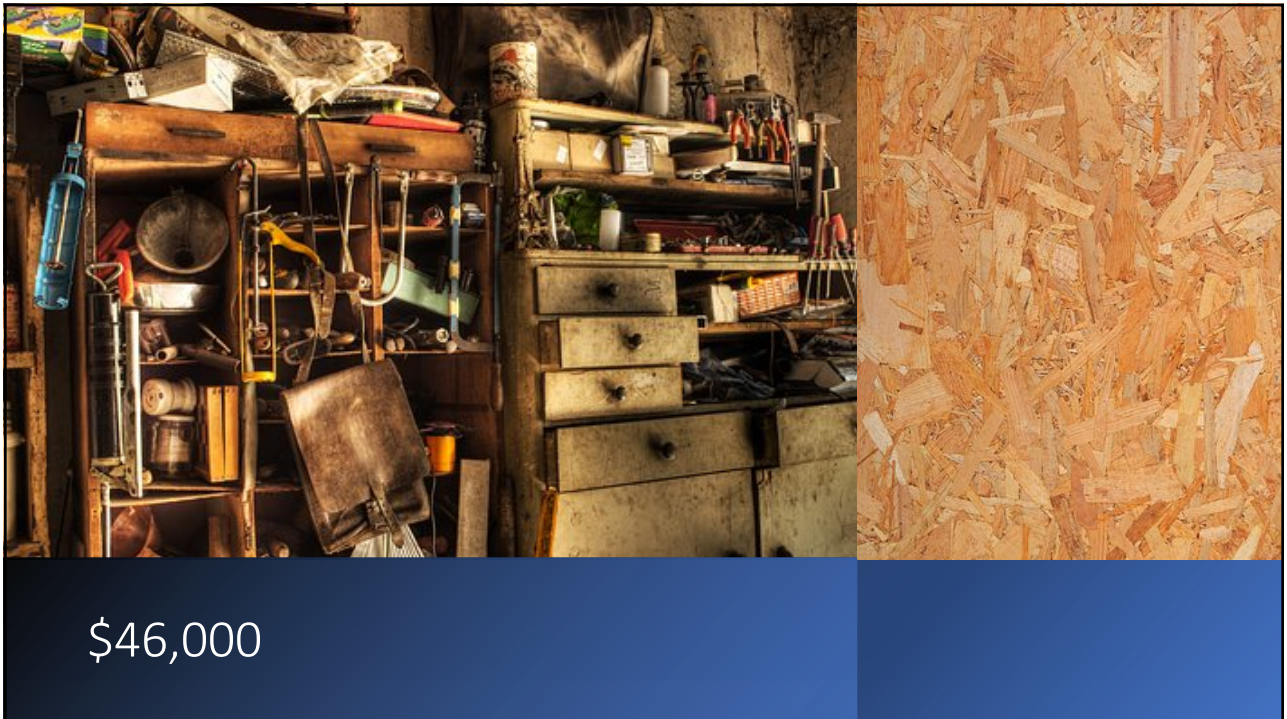


CLEAR AND CONVINCING EVIDENCE CUMULATIVE EVIDENCE NO BRIGHT-LINE RULE

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23

Dissent



Financial constraints
(e.g., poor housing conditions)
“Low Bar”

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Guardianship: Verification In re B.H. (p. 6)



Understand Legal
Significance



Will Have Adequate
Resources

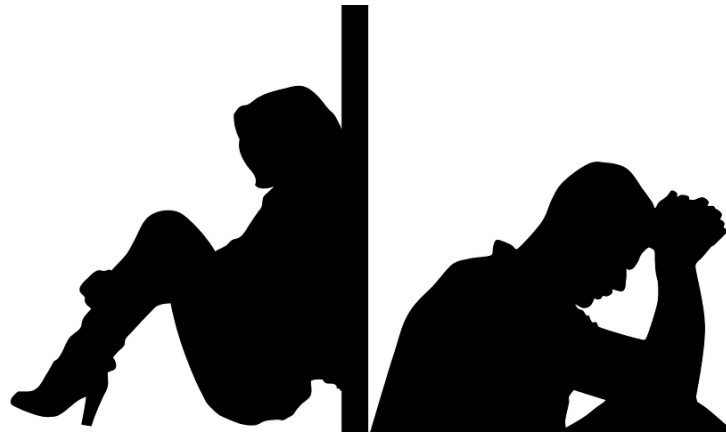
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Understand legal significance

Competent evidence

- SW Testimony
- Court summary
- Home Study
- Testimony of guardian (“WE”)

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Termination of parental Rights

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Attorney for
Respondent
Parent

In re T.A.M.
(p. 6)

- Motion to Withdraw

- Parent not present
- Inquiry of attorney
- Notice to client
- Fact specific

- Overburdened Courts:

- Not required to track down party

- Purpose Balanced

- Permanence in reasonable period of time
- BIC when conflict with parents interests

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DISSENT
(4-3)
In re K.M.W

- Motion to Withdraw
 - Ensure reasonable notice to client attempted
 - Ensure efforts to make sure client understood and protect right to counsel
- Knowing and Voluntary Waiver, 7B-1101.1(a1)
 - Court inquiry & findings
 - vs Forfeit (egregious dilatory or abusive conduct)
 - INQUIRY re: desire to proceed pro se
- Purpose:
 - Assure fairness and equity
 - Protect constitutional rights
 - Avoid unnecessary separation

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Reasonable
Cost of Care:
7B-1111(a)(3)

In re J.E.E.R.
(p. 11)

6 consecutive months

Physically and financially
able to do so

Willfully failed to pay

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Reasonable cost

¶ 14 The “‘cost of care’ refers to the amount it costs the Department of Social Services to care for the child, namely, foster care.” *In re Montgomery*, 311 N.C. at 113. “A parent is required to pay that portion of the cost of foster care for the child that is fair, just and equitable based upon the parent’s ability or means to pay. . . . The requirement applies irrespective of the parent’s wealth or poverty.” *In re Clark*, 303 N.C. 592, 604 (1981).

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Best Interests
In re E.S.
(p.13)

- 12 y.o.
- Bond with parent
- Relative placement



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On the Civil Side

 **The TPR Dispositional Stage, the Juvenile’s Best Interests, and the N.C. Supreme Court**

This entry was contributed by Sara DePasquale on May 7, 2021 at 7:11 am and is filed under Child Welfare Law.







Since January 1, 2019, termination of parental rights (TPR) orders are appealed directly to the North Carolina Supreme Court. In August 2019, the Supreme Court published its first appellate opinions under this new TPR appellate procedure. Between August 2019 and today, the Supreme Court has decided 134 TPR opinions, all of which are published. Each of those published opinions from our state’s highest court established or reinforced a precedent. Perhaps because of that, new and old arguments have been raised before the Supreme Court in those TPR appeals. This post focuses on what the Supreme Court has held when addressing the dispositional stage of the TPR.

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Caution!

A Minor's Consent to Adoption: Where and in What Proceeding Is It Waived?

This entry was contributed by Sara DePasquale on March 5, 2021 at 4:55 pm and is filed under Adoptions.

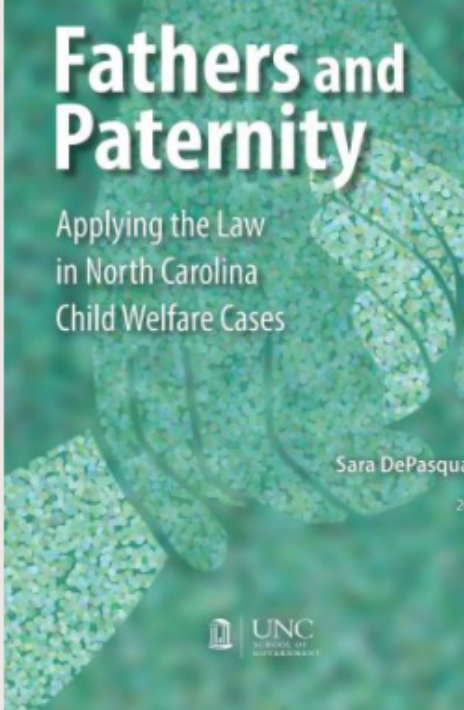
North Carolina adoption laws are codified in G.S. Chapter 48. I find it to be one of the more difficult Chapters to navigate because it consists of interrelated Articles and Parts. As you get familiar with the Chapter, the procedures and requirements become less challenging to piece together. It is imperative to know these procedures because "the law governing adoptions in North Carolina is wholly statutory."

Boseman v. Jarrell, 364 N.C. 537, 542 (2010).

Under North Carolina adoption laws, before an adoption of an unemancipated minor may be granted, certain consents must be obtained. See G.S. 48-3-601 through -603. One required consent is from the minor adoptee if they are 12 years old or older. G.S. 48-3-601(1). However, that minor's consent may be waived when the court issues an order based upon a finding that it is not in the minor's best interests to require their consent. G.S. 48-3-603(b)(2).

What court has jurisdiction to enter the order waiving the minor adoptee's consent?

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Paternity = Substantive Right

Lex Loci

- VA v. NC
- artificial insemination Law

Lex Foci

Warren Cty DSS ex rel Glenn v. Garrelts (p. 14)

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See You Next Time in Person!

