

Dispositions: Comparing Custody to Guardianship
Social Services Attorneys Conference, Summer 2016

By: Sara DePasquale, UNC School of Government

| Custody | Guardianship |
|---|---|
| 7B-903(a)(4); 7B-911 | 7B-903(a)(5); 7B-600 |
| 7B-101(8): “custodian – the person or agency that has been awarded legal custody of a juvenile by a court” | <ul style="list-style-type: none"> • No statutory definition in 7B, duties authorized in 7B-600 • 42 U.S.C. § 675(7): “legal guardianship” means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decisionmaking. The term ‘legal guardian’ means the caretaker in such a relationship.” |
| <p>Party Status: Custodian: 7B-401.1(d); Guardian: -401.1(c); -600(b) If custodian or guardian when A/N/D petition filed, “shall be a party” If custody or guardianship is designated as permanent plan, automatically a party to the action [<i>see also</i> 7B-200(b)(iii)]</p> <p>Standing to Intervene: 7B-401.1(h)</p> <p>Removal as a party: 7B-401.1(g)</p> <p>If the court finds the person does not have legal rights that may be affected by the action and his/her continuation as a party is not necessary to meet the child’s needs</p> | |
| <p>Dispositional option: initial, review, and permanent plan [7B-903(a)(4), (5); -906.1(i)] Verification: person understands the legal significance and has adequate resources to care for the child 7B-906.1(j); <i>see also</i> -903(a)(4) custody; -600(c) guardianship; <i>In re L.M.</i>, 767 S.E.2d 430 (2014)</p> | |
| <p>Court may order parent to pay a reasonable some of the child’s cost of care if court finds the parent is able to do so: 7B-904(d)</p> | |

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| <p>Visitation ordered pursuant to 7B-905.1(c) If court retains jurisdiction, motion to modify visitation made pursuant to -905.1(d)</p> | |
| <p>Review/Permanency Planning Hearings</p> <ul style="list-style-type: none">• Notice of review and permanency planning hearings provided to custodian [7B-906.1(b)(v)] and guardian [-906.1(b)(iii)]• Even if not a party, court may consider information from the custodian or guardian [-906.1(c)]• Court may order hearings waived, held at periods longer than 6 month intervals, or written reports be submitted to the court if the court finds by clear, cogent, and convincing evidence all 5 criteria in -906.1(n)<ul style="list-style-type: none">○ Failure to make findings on all 5 criteria is reversible error [<i>In re</i> P.A., 772 S.E. 2d 240 (2015)] | |
| <p>Permanent Plan: 7B-906.2</p> <ul style="list-style-type: none">• Return Home/Reunification: Placement in the home of either parent or in the home of the guardian or custodian from whose home the child was removed by court order [7B-101(18b)]• Reasonable Efforts: diligent use of preventive or reunification services by a DSS when the juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home within a reasonable period of time; if court determines juvenile not to be returned home, then the diligent and timely use of permanency planning services by DSS to develop and implement a permanent plan [7B-101(18)] <p>If permanent plan is custody or guardianship to a non-parent, court must make findings that parent is unfit, has neglected child, or has acted inconsistently with his/her parental rights [<i>In re</i> B.G., 197 N.C. App. 570 (2009); <i>In re</i> A.C., ___ N.C. App. ___ (May 16, 2016)]</p> | |
| <p>TPR not required when primary permanent plan is guardianship or custody: 7B-906.1(f)(1)</p> | |

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| <p>7B-911 Allows Court to Terminate Jurisdiction with Chapter 50 Order Ch. 50 civil custody order survives termination of juvenile court jurisdiction [7B-200(b)(1)]</p> <p>Court may retain jurisdiction with waived permanency planning hearings [7B-906.1(k)]</p> | <p>Must retain jurisdiction. Otherwise, legal status of parties reverts to pre-petition status and court lacks authority to modify or enforce guardianship order [7B-200(b)]</p> <p><i>Note</i>, DSS remains a party until court terminates its jurisdiction, 7B-401.1(a)</p> |
| <p>7B-911 If no action exists, 7B-911 order initiates the Ch. 50 action; court designates parties and caption</p> <p>If existing action exists, 7B-911 custody order is filed in existing Ch. 50 action, resolves any pending claims, and modifies the existing Ch. 50 order. New party joined/caption made if applicable</p> <p>7B-911(c)(2) Required Findings Failure to do so is reversible error, <i>In re J.D.R.</i>, 768 N.C. App. 172 (2015):</p> <ul style="list-style-type: none"> • No need for continued state intervention • if custody is not with a parent or person who the child was living with when the A/N/D petition was filed, at least 6 months have passed since the court determined the child's placement with the person getting custody is the permanent plan <p>Additional Ch. 50 Findings Required [-911(c)(1)]</p> <p>Joint Custody permitted [50-13.2(b)]</p> | |

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| <p>2 separate orders are not required; “The trial court may enter one order for placement in both the juvenile file and the civil file as long as the order is sufficient to support termination of juvenile court jurisdiction and modification of custody” <i>In re A.S.</i>, 182 N.C. App. 139, 142 (2007)</p> | |
| <p>7B does not define or specify authority/duties of custodian</p> <p>Legal Custody: “the right and responsibility to make decisions with important and long-term implications for a child’s best interests and welfare” <i>Hall v. Hall</i>, 188 N.C. App. 527 (2008)</p> <p>Physical Custody: “physical care and supervision of a child” [G.S. 50A-102(14)]</p> <p>Consent to marriage of 16 or 17 year old: G.S. 51-2(a1)(2) “by a person having legal custody or serving as a guardian of the underage child”</p> <p>School Enrollment: G.S. 115C-366 Attend where child is domiciled or exception applies (which includes child living with adult who is domiciled in school district as result of being abandoned, abused, or neglected by the parent or legal guardian). Domicile is not defined under G.S. 115C <i>but see, Graham v. Mock</i>, 143 N.C. App. 315, 318 (2001) a domicile is someone’s permanent, established home, which is distinguishable from a temporary, although actual, place of residence.</p> <p>Medical Care: G.S. 90-21.1 Physician may treat child with consent of “any person acting as</p> | <p>Statutory Authority, 7B-600(a)</p> <ul style="list-style-type: none"> • Operate under court supervision and may be required to file reports • Care, custody and control of child • May arrange suitable placement for child and represent child in court proceedings • May consent, in place of parent, to juvenile’s marriage, military enlistment, school enrollment, medical care <i>Note,</i> school enrollment also authorized by G.S. 115-366 and 10 U.S.C. §505 authorizes military enlistment of 17 y.o. with the written consent of a parent or guardian who is entitled to child’s custody and control. <p>What does not appear to be included?</p> <ul style="list-style-type: none"> • Financial matters: Guardian of the Estate may be needed via Ch. 35A • Consent to adoption (G.S. 48-1-101(8) limits definition of guardian to Ch. 35A guardian) • Appointment of a standby guardian under G.S. 35A-1373; <i>See</i> 35A-1371 (clerk has no jurisdiction when district court has assumed jurisdiction over the child under a Ch. 50 or A/N/D proceeding) |

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| <p>guardian, or any person standing in loco parentis to said child.” <i>See G.S. 90-21.4 Immunity of physician, references “Parent, legal guardian, person standing in loco parentis, or a legal custodian other than a parent when granted specific authority in a custody order to consent to medical or psychiatric treatment.”</i></p> | |
| <p>Ch. 50: Motion filed in Ch. 50 action [7B-911(b)] Requires a substantial change in circumstances, G.S. 50-13.7</p> <ul style="list-style-type: none"> • Parents not entitled to court appointed counsel • Child’s GAL is not reappointed • DSS is not a party <p>Mandatory mediation unless waived for good cause, which includes allegation of the child’s abuse or neglect... [G.S. 50-13.1(b), (c)]</p> <p>7B-903(a)(4) order, motion under -906.1 or -1000 May modify or vacate based on either</p> <ul style="list-style-type: none"> • Substantial change in circumstances OR • The needs of the juvenile <p><i>See In re A.C., ___ N.C. App. ___ (May 16, 2016)</i></p> <ul style="list-style-type: none"> • Parents may obtain court appointed counsel [-602(a)] • Child’s GAL may be reappointed [-601] • DSS continues to be a party [-401.1(a)] <p>Mediation is discretionary, 7B-202</p> | <p>Termination of Guardianship Grounds When Designated as Permanent Plan: 7B-600(b); -1000</p> <ul style="list-style-type: none"> • Relationship between guardian and child is no longer in BIC • Guardian is unfit • Guardian has neglected duties • Guardian is unwilling or unable to continue <p>This criteria does not apply to guardianship appointment that is not the permanent plan (i.e., at initial disposition or a review). <i>See In re J.D.C., 174 N.C. App. 157 (2005)</i></p> <p>When motion filed, court may order DSS to investigate and file report and testify; GAL for child appointed and notified of pending motion [7B-600(b)]; parents entitled to counsel [-602(a)]</p> <p>Mediation is discretionary, 7B-202</p> <p>Automatically ends when juvenile is 18 or emancipated [7B-600(a)]</p> |
| <p>Standing to File TPR; Depends on 2 year time period, not legal status; a person with whom the child has resided for a continuous period of 2 years more preceding the filing of the petition or motion [7B-1103(a)(5)]</p> | <p>Standing to file TPR, 7B-1103(a)(2)</p> |