

P. Relationship between Chapter 50 custody and Chapter 7B abuse and neglect proceedings.

1. Juvenile proceedings and civil actions pending or filed on or after October 1, 2005. [2005 N.C. Sess. Laws 320]

a) When a juvenile proceeding for abuse, neglect or dependency and a civil custody action are pending at the same time for the same child, the civil custody action is automatically stayed, unless the juvenile court judge consolidates the actions or dissolves the stay. [G.S. § 7B-200(c)(1); G.S. § 50-13.1(i)] The court in the juvenile proceeding may proceed in the juvenile proceeding while the civil custody action remains stayed or may dissolve the stay of the civil custody action and stay the juvenile proceeding pending a resolution of the civil custody action. [G.S. § 7B-200(d)]

b) If conflicting orders for the same child are entered in a juvenile proceeding for abuse, neglect or dependency and a civil custody action, the order in the juvenile proceeding controls as long as the juvenile court continues to exercise jurisdiction in the juvenile proceeding. [G.S. § 7B-200(c)(2)]

c) Notwithstanding G.S. § 50-13.5(f) [venue provision in Chapter 50 child custody or support proceeding], the court in a juvenile proceeding may order that any civil action or claim for custody filed in the district be consolidated with the juvenile proceeding. [G.S. § 7B-200(d)]

d) If a civil action or claim for custody of the juvenile is filed in another district, the court in the juvenile proceeding, for good cause and after consulting with the court in the other district, may:

(1) Order that the civil action or claim for custody be transferred to the county in which the juvenile proceeding is filed:
or

(2) Order a change of venue in the juvenile proceeding and transfer the juvenile proceeding to the county in which the civil action or claim is filed. [G.S. § 7B-200(d)]

e) A court in a juvenile proceeding may enter a permanent custody order under Chapter 50 and terminate the court's jurisdiction in the juvenile proceeding. [G.S. § 7B-911(a)]

(1) The statute requires entry of the order in two files:

(a) In the existing Chapter 50 file if one exists or in a newly created Chapter 50 file; and

(b) In the juvenile file. [G.S. § 7B-911(b) and (c)(2)]

(2) The same order can be used for both the juvenile file and the civil file as long as the order is sufficient to justify termination of the juvenile court's jurisdiction and sufficiently supports the

action taken in the custody case. [*In re A.S. and S.S.*, 182 N.C.App. 139, 641 S.E.2d 400 (2007) (trial court is not required to enter two different orders).]

(3) The custody order must set out findings and conclusions that support entry of an initial custody order or modification of an existing custody order, and must otherwise meet the requirements for an order under Chapter 50. [G.S. § 7B-911(c)(1)]

(a) An order modifying custody was sufficient when it incorporated a previous adjudication order, setting out stepfather's inappropriate discipline of the children, and included additional findings as to the children's behavioral problems and counseling provided by the father. [*In re A.S. and S.S.*, 182 N.C.App. 139, 641 S.E.2d 400 (2007).]

(4) All future proceedings to modify or enforce the custody order will take place within the Chapter 50 file and will be treated as any other civil custody proceeding.

2. Case law before passage of 2005 N.C. Sess. Laws 320.

a) The appellate courts have held that a custody claim pursuant to G.S. § 50-13 may be filed and adjudicated within an abuse and neglect proceeding. [*See In re Shue*, 311 N.C. 586, 319 S.E.2d 567 (1984) (father could have filed a motion in the cause seeking "permanent" custody pursuant to G.S. § 50-13.1); *In re O'Neal*, 140 N.C.App. 254, 535 S.E.2d 620 (2000) (grandparents' custody claim).]

b) If both a juvenile case and a chapter 50 custody claim are pending in the same judicial district, consolidation pursuant to Rule 42(a) of the Rules of Civil Procedure is appropriate. [*See, e.g., Oxendine v. Catawba County Dep't of Social Services*, 303 N.C. 699, 281 S.E.2d 370 (1981) (consolidation of adoption proceeding and Chapter 50 custody proceeding would have been appropriate but for procedural error, as both actions involved related issues of fact and law).]

c) In *Sharp v. Sharp*, 124 N.C.App. 357, 477 S.E.2d 258 (1996), the court of appeals held that grandparents had standing to file a chapter 50 custody claim alleging unfitness of the child's mother. The court rejected mother's contention that the grandparents could raise issues of potential harm to the children only in a juvenile proceeding.

Q. Relationship between Chapter 50 custody claims and adoption proceedings.

1. In *Griffin v. Griffin*, 118 N.C.App. 400, 456 S.E.2d 329 (1995), the court held that the entry of an interlocutory decree of adoption by the clerk of superior court divested the district court of jurisdiction to adjudicate a custody claim filed pursuant to G.S. § 50-13.1, even though the custody proceeding was filed first. The court based the decision on the fact that the adoption proceeding would determine a "permanent" placement for the child and on the fact that the jurisdiction of superior court "supersedes" that of the district court. [*See also In re*

Adoption of Searle, 74 N.C.App. 61, 327 S.E.2d 315 (1985) (trial court properly declined to hear a motion to modify in a custody case because an adoption proceeding was pending in superior court.)] However, the adoption statutes have been amended since *Griffin*. [See Chapter 48, effective July 1, 1996.] Adoption appeals are now district court proceedings rather than superior court proceedings, calling into question the holding of *Griffin*.

2. A final order of adoption probably voids any existing custody order concerning the adopted child. [See *Griffin v. Griffin*, 118 N.C.App. 400, 456 S.E.2d 329 (1995).]

3. In *Oxendine v. Catawba County Dep't of Social Services*, 303 N.C. 699, 281 S.E.2d 370 (1981), the court held that foster parents had no standing to institute a custody proceeding pursuant to G.S. § 50-13.1 after mother had surrendered the child to DSS for adoptive placement and father had given consent for DSS to place child for adoption. The court held that the statute in effect at the time (G.S. § 48-9.1) gave custody to DSS. [But cf. *Francis v. Durham County Dep't of Social Services*, 41 N.C.App. 444, 255 S.E.2d 263 (1979) (where father was deceased and mother had surrendered child to DSS for adoptive placement, trial court did not err in adjudicating custody claim filed by grandfather pursuant to G.S. § 50-13.1).]

4. Since 1996, adoption statutes have provided that during the pendency of an adoption proceeding, custody of a child is with the potential adoptive parent in a direct placement adoption [G.S. § 48-3-501], and with the agency in a placement by an agency [G.S. § 48-3-502], “unless the [district] court orders otherwise.”

5. If a custody case and an adoption proceeding are pending in the same judicial district, consolidation pursuant to Rule 42(a) of the Rules of Civil Procedure is appropriate. [See *Oxendine v. Catawba County Dep't of Social Services*, 303 N.C. 699, 281 S.E.2d 370 (1981) (consolidation of adoption proceeding and juvenile proceeding would have been appropriate but for procedural error, as both actions involved related issues of fact and law).]

R. Relationship between custody and proceedings under Chapter 50B.

1. Effect of a temporary custody order entered in a 50B proceeding.
 - a) When the trial court makes a temporary custody determination under Chapter 50B, the issue of custody may be heard de novo under Chapter 50. [G.S. § 50B-3(a1)(4); *Doyle v. Doyle*, 176 N.C.App. 547, 626 S.E.2d 845 (2006).]
 - b) A trial court in a Chapter 50 proceeding is not bound by any finding regarding custody made in a temporary custody order under Chapter 50B. [See G.S. § 50B-3(a1)(4)]
 - c) However, collateral estoppel prevented a trial court from relitigating in a custody action the issue of domestic violence that had been litigated and resolved in an earlier 50B proceeding. [See *Doyle v. Doyle*, 176 N.C.App. 547, 626 S.E.2d 845 (2006) (trial judge in custody

matter erred by making findings with respect to an incident of domestic violence that contradicted findings made by another judge in an earlier 50B proceeding between the parties); and *Simms v. Simms*, __ N.C.App. __, 673 S.E.2d 753 (2009) (where judge in 50B case found insufficient evidence to support 50B order against defendant, trial judge in custody case erred by finding that defendant did commit an act of domestic violence).]

d) For more on temporary custody orders entered in a 50B proceeding, *see* Bench Book, Vol. 1, *Domestic Violence*, Chapter 7.

2. Domestic violence must be considered when trial court is determining best interests. *See* section III.B.4 on page 37.