

THE CONSTITUTIONAL
FRAMEWORK OF PARENTS'
RIGHTS IN ABUSE, NEGLECT
AND DEPENDENCY CASES

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The Fourteenth Amendment

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



The Fourteenth Amendment

Meyer v. Nebraska, 262 U.S. 390 (1923). "[w]ithout doubt" the fourteenth amendment "denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and, generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

Troxel v. Granville, 530 U.S. 57, 65-66 (2000)
"The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court."



North Carolina Cases

- *In re Yow*, 40 N.C. App. 688 (1979)
- *Petersen v. Rogers*, 337 N.C. 397 (1994)
- *Price v. Howard* 346 N.C. 68 (1997)

- The state may interfere with the parent-child relationship only when the parent is unfit or has acted inconsistently with the parent's constitutionally protected interest.

What is Unfit?

"[A] natural parent has forfeited his or her constitutionally protected status [upon a] finding of any one of the grounds in N.C.G.S. § 7B-1111."
Owenby v. Young , 357 N.C. 142 (2003)

What are Actions Inconsistent with Protected Status as a Parent?

"There is no bright line rule to determine what conduct on the part of a natural parent will result in a forfeiture of the constitutionally protected status and trigger application of a "best interest" analysis."
Penland v. Harris, 135 N.C. App. 359 (1999)

What are Actions Inconsistent with Protected Status as a Parent?

1. Actions of Putative Fathers
2. Actions of Co-Respondent
3. Voluntary Relinquishment of Custody
4. Creation of Parent-Like Relationship with a Non-Biological Person

Fathers

- *In re Byrd*, 354 N.C. 188 (2001)
- *In re A.C.V.*, 203 N.C. App. 473 (2010)
- *In re S.D.W.*, 367 N.C. 386 (2014)
- *In re Adoption of B.J.R.*, 238 N.C. App. 308 (2014)

Actions of Co-Respondent

- *In re J.A.G.*, 172 N.C. App. 708 (2005)
- *In re B.G.*, 191 N.C. App. 399 (2008) (unpublished)
- *In re B.G. (2)* 197 N.C. App. 570 (2009)

Voluntary Relinquishment of Custody

- *Brewer v. Brewer*, 139 N.C. App. 222 (2000)
- *Sides v. Ikner*, 222 N.C. App. 538 (2012)
- *In re A.C.*, ___ N.C. App. ___ (May 17, 2016)
- *Weideman v. Shelton*, ___ N.C. App. ___ (June 7, 2016)

Creation of Parent-Like Relationship with a Non-Biological Person

- *Mason v Dwinell*, 190 N.C. App. 209 (2008)

Actions Inconsistent with Protected Status as a Parent – When to Address?

In re D.M., 211 N.C. App. 382 (2011) (holding in a dependency case that where neither parent had been found to be unfit and there was no finding that the father acted inconsistently with his constitutional rights as a parent, the trial court erred in awarding **permanent** custody of the child to the grandmother).

In re B.S., 225 N.C. App. 654 (2013) “Therefore, because the trial court was not making a permanent custody determination, its finding of fact at disposition that respondent was unfit and had acted inconsistently with his constitutionally protected parental rights was both unnecessary and improper at that stage of the proceedings.”

In re T.P., 217 N.C. App. 181 (2011) (refusing to consider respondent's argument that trial court erred in applying the best interest standard, because respondent did not raise this objection at trial and constitutional issues not raised and addressed at trial will not be considered for the first time on appeal).

Bottom line: React, don't act.

Actions Inconsistent with Protected Status as a Parent – When to Address?

- Sufficient Findings
 - *In re C.M.*, ___ N.C. App. ___ (May 3, 2016) (unpublished)
 "In the present case, the district court's written order makes no reference whatsoever to Respondent-father's constitutionally protected status as a parent, let alone whether he has acted inconsistently with that status or is otherwise unfit to serve as a parent to Claire."
 - *In re P.W.*, ___ N.C. App. ___, 702 S.E.2d 554 (2010) (unpublished).
 Without proper findings in the 19 March 2010 order, the trial court's past adjudication of neglect alone was not sufficient to support the application of the best interest test in removing P.W. from the "care, custody and control" of Respondent-Mother.
- Standard of Proof
 - *In re E.M.*, ___ N.C. App. ___ (August 16, 2016)
 Absent an indication that the [district] court applied the clear and convincing standard, we must vacate this portion of the PPR order and remand for entry of a new finding of fact that makes clear the standard of proof applied by the district court in determining whether Respondent's actions have been inconsistent with her constitutionally-protected status as Eddie's parent.

Procedural Due Process.

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Procedural Due Process

- Right to Receive Notice of Proceedings
- Right to Participate in Hearings
- Right to an Appropriate Standard of Proof in Hearings
- Right to Counsel

Right to Receive Notice of Proceedings

- *In re Poole*, 151 N.C. App. 472 (2002) (Timmons-Goodson, J., dissenting), adopted per curiam, 357 N.C. 151 (2003)
- *In re H.D.F.*, 197 N.C. App. 480 (2009)

Right to Participate in Hearings

- *In re Murphy*, 105 N.C. App. 651, aff'd, 332 N.C. 663 (1992)
- *In re Quevedo*, 106 N.C. App. 574 (1992)

Right to an Appropriate Standard of Proof in Hearings

- *Santosky v. Kramer*, 455 U.S. 745 (1982).
- *Adams v. Tessener*, 354 N.C. 57, 550 S.E.2d 499 (2001)

Right to Counsel

- N.C. Gen. Stat. §§ 7B-602 and 7B-1101.1
- Effective Assistance of Counsel
 - In re T.D.***, ___ N.C. App. ___ (July 19, 2016)
- Withdrawal of Counsel
 - In re D.E.G.***, 228 N.C. App. 381 (2013)
- Waiver of Counsel
 - In re J.R.***, ___ N.C. App. ___ (November 1, 2016)
- Forfeiture of Counsel
 - State v. Montgomery***, 138 N.C. App. 521 (2000)
