

## Trial Court Jurisdiction during Appeals in Juvenile Cases



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## Abuse, Neglect, Dependency, TPR by Motion G.S. 7B-1003(a), (b)

1. enforce the order (unless stayed)
2. exercise jurisdiction, except TPR
3. enter order affecting child's custody or placement

Exception: appellate court orders otherwise.



## TPR by Petition G.S. 7B-1003(a), (c)

1. enforce the order (unless stayed)
  2. enter *temporary* order affecting child's custody or placement
- omits "continue exercising jurisdiction"
  - inserts "temporary"



## *In re K.L.*

196 N.C. App. 272 (2009)

1. abuse/neglect case
2. tpr petition  
tpr ordered  
tpr order appealed
3. motion to amend summons in abuse/neglect case
4. appeal of order granting motion



## *In re K.L.*

Court of Appeals reversed

1. TPR: court may enter only temporary orders affecting child's custody or placement, even in underlying case.
2. GS 7B-1003(b) & (c) limit court's authority based on traditional need to protect children during appeals.
3. The 2005 amendments did not expand jurisdiction, but further limited it by taking away jurisdiction in TPR proceedings during appeal.

## Unpublished Opinions before and after *K.L.*

### Affirmed orders granting

- guardianship to foster parent during appeal of adjudication / disposition (*I.N.B.*, 2008)
- guardianship to relative during appeal of TPR (*D.S.A.*, 2009)



An order placing (or continuing) child in foster care must:

1. schedule review hearing
2. address visitation
3. include G.S. 7B-507 findings:
  - "contrary to welfare"
  - reasonable efforts (past and future)
  - placement responsibility



During appeal, trial court may not:

- proceed in a TPR
- allow amendment of summons in underlying case
- rule on Rule 60(a) motion that affects substance of the order [*C.N.C.B.*]

For Rule 60(b) motion, the court may conduct hearing and indicate how it *would* rule if appeal were not pending [*L.H.*]

Pending before N.C. Supreme Court

"Did the trial court possess subject matter jurisdiction to terminate parental rights when the motion in the cause was filed during the pendency of an appeal?"

*In re M.I.W.*



After order is affirmed,

- court may modify to reflect change in circumstances
- if ex parte, court must notify parties to show cause why that order should be vacated or altered



After remand, the trial court

- may conduct a new hearing only after the appellate decision is certified
- must carry out appellate court's mandate



Delinquent and Undisciplined Juvenile Cases  
G.S. 7B-2605

Pending an appeal,

- juvenile must be released (with or without conditions)
- unless court enters temporary order
  1. affecting juvenile's custody / placement and
  2. stating compelling reasons for doing so

Compelling Reasons  
G.S. 7B-2605

- may not include refusal to admit offense
- might include
  - brutality of offense
  - juvenile's refusal to cooperate with services
- can support placement in YDC, treatment facility, DSS custody, etc.



What if the juvenile is on probation?

Court of appeals assumed that

1. probation order remained in effect
2. probation ended after one year unless extended
3. trial court could have extended it

"The trial court properly found that it was without authority to stay the dispositional order pending the juvenile's appeal."  
*In re S.R.S.*, 180 N.C. App. 151 (2006).

During appeal, trial court may not:

- transfer case to another county
- correct an order
- conduct a disposition hearing  
*In re Rikard*
- allow the State to amend the petition  
*In re B.D.W.*
- modify or vacate a disposition order  
*In re T.P. (unpub)*



After an order is affirmed  
G.S. 7B-2605

- trial court may modify to reflect juvenile's adjustment or changed circumstances
- if modification is ex parte, court must notify parties to show cause why it should be vacated or altered



After remand, the trial court

- may conduct a new hearing only after the appellate decision is certified
- must carry out appellate court's mandate

