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Termination of Parental Rights

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Termination of Parental Rights

See full outline in Benchbook

- I. Statutory Authority –
 - A. Juvenile Code, G.S. Chapter 7B
 - 1. Abused, Neglected, and Dependent Juveniles
 - **Article 11: Termination of Parental Rights**
 - 2. Undisciplined Juveniles, Delinquent Juveniles
 - 3. Juvenile Records
 - 4. Parental Authority; Emancipation
 - 5. Placement of Juveniles
 - B. Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), G.S. Chapter 50A
 - C. Rules of Civil Procedure, G.S. Chapter 1A
 - D. Rules of Evidence, G.S. Chapter 8C
 - E. Adoption Law, G.S. Chapter 48
 - F. Federal child welfare laws that influence but do not apply directly (ASFA), or that are effectively incorporated by reference (ICWA, MEPA)
- II. Nature of Proceedings and Relationship to Earlier Action
 - A. An action to terminate a parent’s right is a civil action in district (juvenile) court, which may be initiated
 - 1. by petition or
 - 2. by motion in the cause in a pending abuse, neglect, or dependency proceeding.
 - B. An existing juvenile file may include documents reflecting
 - 1. petition and summons in abuse, neglect, or dependency case
 - 2. nonsecure custody order(s)
 - 3. adjudication
 - 4. disposition
 - 5. review and permanency planning hearings
 - C. In an abuse, neglect or dependency case, the summons must notify the parent that after proper notice, a hearing, and adjudication of a ground specified in G.S. 7B-1111, an order terminating the parent’s rights may be entered in the case. [G.S. 7B-406(b)(4)e.]

D. When a child is in DSS custody, the court may order that reunification efforts are not necessary or shall cease, if the court finds that the parent's rights to another child have been terminated involuntarily by a court of competent jurisdiction. [G.S. 7B-507(b)(3)]

E. At every review hearing, if relevant, the court must consider and make written findings about when and whether termination of parental rights should be considered. [G.S. 7B-906(c)(8)]

F. At a permanency planning hearing, **IF**

1. the juvenile is in DSS custody (or placement responsibility) and has been placed outside the home for 12 of the most recent 22 months; or
2. a court has determined that the parent has
 - a. abandoned the child or
 - b. committed murder or voluntary manslaughter of another child of the parent; or
 - c. aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent,

THEN, DSS must initiate a proceeding to terminate the parent's rights,

UNLESS:

- (1) the permanent plan for the juvenile is guardianship or custody with a relative or other suitable person; or
- (2) the court makes specific findings why filing a termination petition is not in the child's best interests; or
- (3) DSS has not provided the child's family with services DSS deems necessary, when reasonable efforts are still required to enable the child's return home.

[G.S. 7B-907(d)]

G. If a proceeding to terminate parental rights is necessary in order to achieve the permanent plan for a juvenile, DSS must file a termination petition within 60 days after the permanency planning hearing, unless the court makes written findings why the petition cannot be filed within 60 days, in which case the court must specify the time frame within which a petition to terminate parental rights must be filed. [G.S. 7B-907(e)]

H. If the child is in the custody of DSS or an adoption agency after a parent's rights are terminated, the court must conduct a post-termination of parental rights review within 6 months and every 6 months thereafter, until the child is the subject of a final order of adoption. [G.S. 7B-908]

III. Stages

- A. Initiation by petition or motion
- B. If required, preliminary hearing on unknown parent [G.S. 7B-1105]
- C. Issuance and service of
 - 1. summons (if petition), or
 - 2. notice (if motion)
- D. Pre-hearing motions and/or special hearing to determine issues if respondent files answer or response [G.S. 7B-1108(b)]
- E. Adjudication: Has petitioner or movant proved by clear and convincing evidence that a ground for terminating the parent's rights exists?
- F. Disposition: If one or more grounds have been adjudicated, is termination of the parent's rights in the child's best interest?
- G. Entry of order
 - 1. dismissing the petition or motion, or
 - 2. terminating the parent's rights and
 - a. recognizing DSS (or other agency's) exclusive placement authority, and scheduling post-termination review, or
 - b. if child was not in agency custody when petition or motion was filed, making custody determination based on best interest

IV. Grounds

- A. The parent has abused or neglected the juvenile.
 - 1. A prior adjudication is relevant but not sufficient.
 - 2. Petitioner/movant must show either
 - a. continuing (current) neglect or
 - b. likelihood that the child would be neglected if returned to the home.
- B. The parent has willfully left the child in foster care or placement outside the home for more than 12 months without showing to the court's satisfaction that the parent has made reasonable progress under the circumstances in correcting conditions that led to the child's removal.
 - 1. "willful"
 - 2. "placement"
 - 3. "reasonable"
 - 4. "progress"

C. Non-support

1. Child has been placed in custody for a continuous period of 6 months preceding filing of the petition or motion, and the parent has willfully failed for that period to pay a reasonable portion of the cost of the child's care although able to do so.
2. One parent has custody pursuant to a court order or an agreement, and the other parent has willfully failed without justification to pay for the child's care, support, and education as required by the court order or agreement, for one year or more preceding filing of the petition or motion.

D. The father of a child born out of wedlock did none of the following before the filing of the petition or motion:

1. establish paternity judicially or by affidavit filed in a central registry maintained by DHHS (court must inquire of DHHS as to whether an affidavit has been filed and incorporate the certified reply into the case record); or
2. legitimate the child or file a legitimation petition; or
3. legitimate the child by marriage to the child's mother; or
4. provide substantial financial support or consistent care with respect to the child and mother.

E. The parent is incapable of providing for the child's proper care and supervision and lacks an appropriate alternative child care arrangement, so that the child is a dependent juvenile, and there is a reasonable probability that the parent's incapability will continue for the foreseeable future. Incapability may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the child.

F. The parent has willfully abandoned the child for 6 consecutive months (or has voluntarily abandoned an infant pursuant to the "safe surrender" law for at least 60 consecutive days) immediately before the filing of the petition or motion.

G. The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home; or has committed murder or voluntary manslaughter of the other parent of the child.

H. The parent's rights with respect to another child have been judicially terminated involuntarily and the parent lacks the ability or willingness to establish a safe home.

I. A relinquishment or consent to adoption in N.C. is irrevocable, the adoption proceeding is to be filed in another jurisdiction that requires a termination of parental rights, and the parent does not contest the termination.

V. Effect of Order Terminating a Parent's Rights

- A. An order terminating parental rights completely and permanently severs all rights and obligations of the parent to the child and the child to the parent, except
 - 1. the child's inheritance rights do not terminate until a final order of adoption, and
 - 2. the parent's liability for child support arrears remains.
- B. A parent whose rights have been terminated no longer has any constitutionally protected interest in the child, does not have standing to seek custody of the child, is not entitled to notice of adoption proceedings, and may not object to or participate in an adoption proceeding.
- C. For purposes of post-termination review hearings, a parent whose rights have been terminated is not a party unless
 - 1. an appeal of the termination order is pending, and
 - 2. a court has stayed the termination order pending the appeal.
- D. Termination of a parent's rights to one child may
 - 1. be a basis for the court's ceasing reunification efforts with respect to another child of the parent, or
 - 2. be grounds for terminating the parent's rights to another child if the parent lacks the ability or willingness to establish a safe home for that child.
- E. After termination of parental rights the child's custody is determined as follows:
 - 1. If the child was in the custody of DSS or another agency when the petition or motion was filed,
 - a. that agency acquires all rights for placement of the child, including the right to consent to adoption, that the agency acquires when a parent relinquishes a child to the agency for adoption, and
 - b. the court must conduct post-termination of parental rights reviews every 6 months until a final order of adoption is entered.
 - 2. If the child was not in agency custody when the petition or motion was filed, the court determines best interest and places the child in the custody of the petitioner or movant, some other suitable person, or a county DSS or other agency.

VI. Common Questions on Appeal

- A. Subject matter jurisdiction
- B. Personal jurisdiction
- C. Sufficiency of evidence
- D. Sufficiency of findings
- E. Completeness of order
- F. Evidence and procedure

