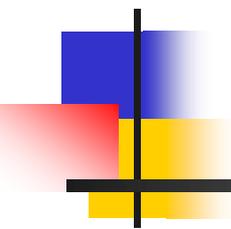
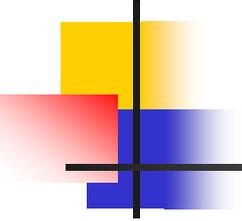


Termination of Parental Rights



Janet Mason
School of Government
June 24, 2009

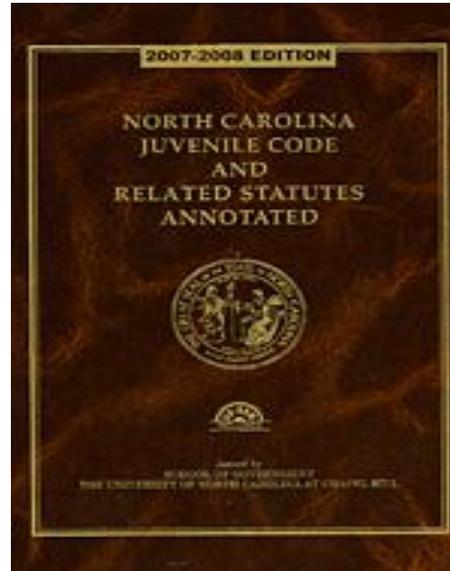


Termination of Parental Rights

- I. Legal authority
- II. Nature of proceeding
- III. Stages: filing through disposition
- IV. Grounds
- V. Orders and issues on appeal

N.C. Juvenile Code

Art. 11, GS Ch. 7B



UCCJEA

Rules of Civil Procedure

Appellate Cases

Adoption Law

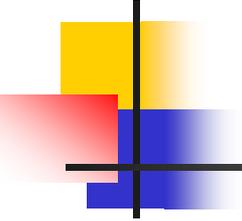
Rules of Evidence

[Federal Laws]



Civil action in juvenile (district) court

- Does not require preceding abuse, neglect, or dependency case
- If there is a prior juvenile case,
 - tpr is never required
 - but court may be required to consider whether tpr should be considered
 - tpr may be new case or same case
 - parts of underlying file may be relevant



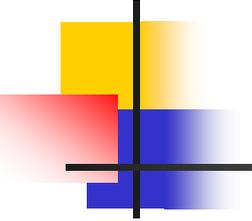
▶ Mary

- Jack 6 (John might be father)
- Jill 3 (Bill is father)

A. Initiation

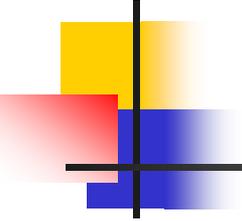


- petition in juvenile court or
- motion in pending juvenile case



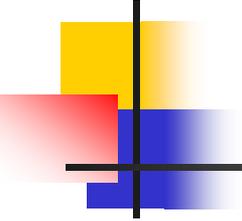
Private termination, initiated by

- a. one parent against other parent
- b. anyone with whom child has lived for 2 years
- c. anyone who has filed a petition to adopt
- d. child's guardian of the person



DSS case, initiated by

- a. DSS with custody in juvenile case
- b. child's GAL in juvenile case
- c. DSS or adoption agency after relinquishment
- d. anyone with whom child has lived for 2 years
- e. anyone who has filed a petition to adopt



Both petition and motion

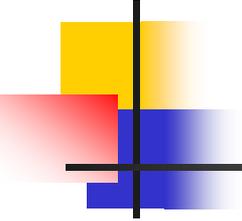
- may be filed by anyone with standing
- must be verified
- file # same as any underlying case
- UCCJEA information or affidavit required
- any custody order must attached

Petition

- ▶ summons
- ▶ new action
- ▶ new counsel; child's GAL continues
- ▶ answer
- ▶ Rule 4 service

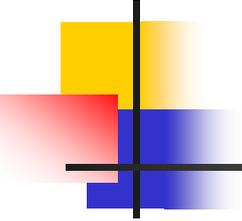
Motion

- ▶ notice
- ▶ existing case
- ▶ counsel and GAL continue
- ▶ response
- ▶ Rule 5 service, unless Rule 4 required



Initiation Errors

1. filing as counterclaim in domestic case
2. no verification
3. lack of standing
4. failing to attach custody order
5. failing to include UCCJEA information
6. insufficient allegations



First 3 deprive court of jurisdiction:

- 1. filing as counterclaim in domestic case**
- 2. no verification**
- 3. lack of standing**
4. failing to attach custody order
5. failing to include UCCJEA information
6. insufficient allegations

B. Unknown Parent

Birth Certificate

This Certifies

That _____ DENISON BAKER HANSEN _____ sex Male

was born to _____ VIRGINIA MATILDA HANSEN _____ and _____

JOHN DENISON HANSEN _____ or Monday _____ at _____
(Day of Week)

2013 _____ 25th _____ day of September _____ 19 61

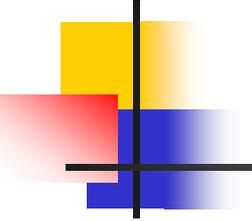
at _____ United States Army Hospital, Sams, USAMEDJ, APO 943 _____
(Name and Location of Hospital)

IN WITNESS WHEREOF the attending Physician has hereunto set his hand and the said Hospital has caused this Certificate to be signed by its duly authorized officer and its official seal to be hereunto affixed.

Clarence D. Snider _____ *William E. Cable* _____
Signature of Attending Physician Signature of Administrator
CLARENCE D. SNIDER, CAPT, MC WILLY M. E. CABLE, CAPT, MSC
USAM, USAMEDJ, APO 943 Chief Registrar, Division
Typed Name and Title Typed Name and Title

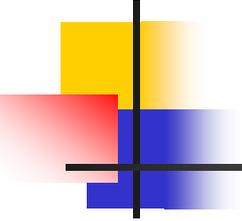
OFFICIAL SEAL
US ARMY
SAMS, APO 943

Preliminary hearing required.



Petition to terminate rights of unknown parent

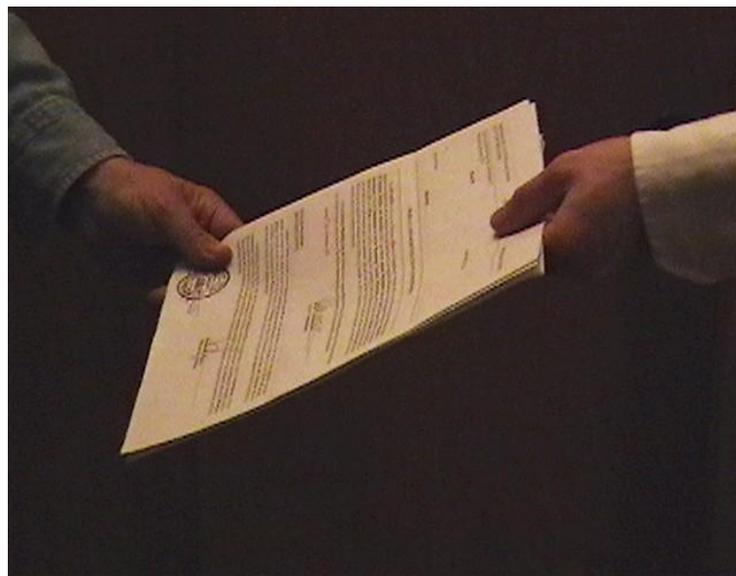
- hearing within 10 days (or next term)
- may order investigation, appoint GAL
- must either
 1. make findings about identity, or
 2. order service on unknown parent and specify counties for publication



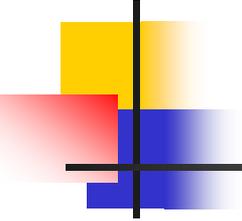
Paternity Issues

- multiple possible fathers
 - both legal and putative fathers
 - possible father who signs denial, consent, or relinquishment
-
- need to satisfy requirements for clearing child for adoption

C. Service and Process



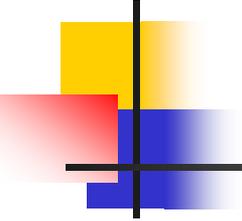
May affect ~~subject matter and/or~~
personal jurisdiction



TPR initiated by petition

1. Issuance of proper summons required
2. No summons to juvenile required
(as of 5/27/09)
3. Rule 4 service required
4. Defects in summons or service relate to personal jurisdiction and may be waived





TPR initiated by motion requires notice – not summons

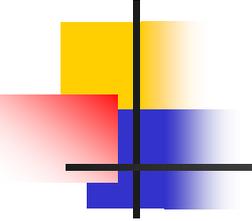
Rule 5 service is sufficient,
except, Rule 4 service require if:

1. in neglect case, party
 - not served with summons, or
 - served by publication without notice that rights could be terminated; or
2. more than 2 years since original neglect action; or
3. court orders Rule 4 service.

D. Motions – Special Hearing



Identify and address any jurisdictional issues early.

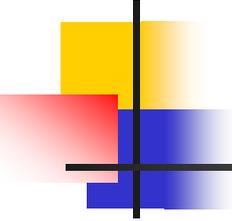


“Special hearing”

- similar to pretrial conference
- may be waived

Expect motions related to

- continuances
- discovery
- funds for expert
- guardian ad litem



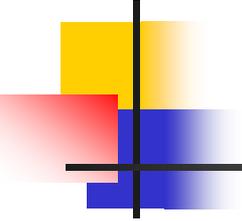
Subject Matter Jurisdiction Checklist

1. verification
2. standing – agency has custody
3. court has
 - exclusive continuing jurisdiction, or
 - jurisdiction to enter initial custody order, or
 - jurisdiction to modify another state's order
4. child resides in NC or is in agency custody or NC has exclusive continuing jurisdiction
5. no appeal in underlying case

E. Adjudication

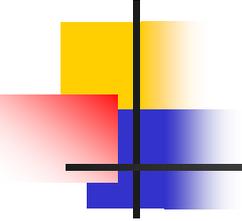


Must hold hearing within 90 days after petition or motion filed.



Adjudication Hearing

1. Continuance past 90 days requires written order
2. Familiarity with case does not require recusal
3. Must inquire of parent about counsel
4. Must have some hearing and some live testimony



Evidence Issue

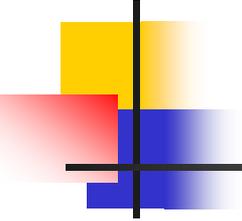
Admissibility of case file or earlier orders

1. judicial notice, or
2. collateral estoppel
may preclude relitigation of issues that were
 - fully litigated and
 - necessary to prior determination.

E. Grounds



Must be proved by clear, cogent, and convincing evidence.

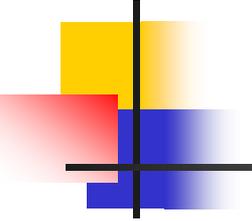


The parent has abused or neglected the child.

“Neglect” may be

1. current neglect, or
2. prior neglect and

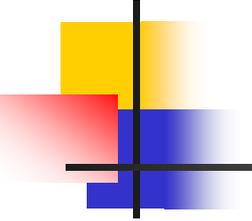
likelihood of repetition of neglect if child were returned to the parent.



The parent has willfully left the child in foster care or other placement

- for more than 12 months
- without reasonable progress under the circumstances
- in correcting conditions that led to removal.

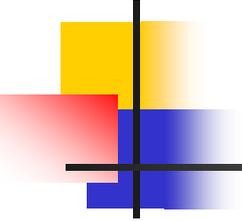
Poverty may not be basis for termination.



The parent has willfully left the child in foster care or other placement

- for more than 12 months (after court-ordered placement)
- without reasonable progress under the circumstances
- in correcting conditions that led to removal.

Poverty may not be basis for termination.



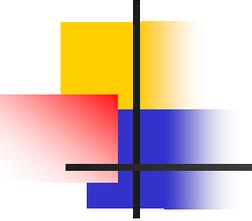
Non-support

1. Willful failure to pay

- reasonable portion of cost of care
- for child in placement
- for 6 months before tpr filed

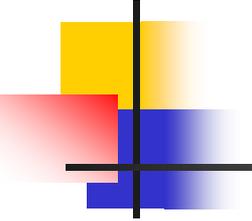
2. Failure to comply with

- support provisions of court order or custody agreement
- for a year before tpr filed



Putative father, before tpr filed, failed to

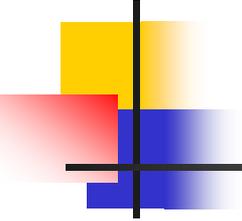
1. establish paternity judicially or by affidavit filed with DHHS
2. legitimate child or file petition to legitimate
3. legitimate child by marrying mother
4. provide substantial financial support or consistent care with respect to child and mother



The parent is incapable of providing proper care and supervision, such that the child is “dependent,” and

1. reasonable probability that incapability will continue for foreseeable future, and
2. parent lacks appropriate alternative child care arrangement.

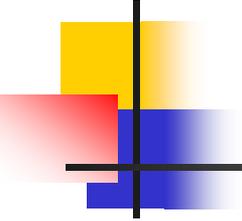
Incapability may be due to any cause or condition that renders parent unable or unavailable to parent.



Abandonment

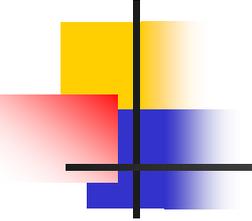
The parent has

1. willfully abandoned child for 6 months immediately before tpr filed, or
2. voluntarily abandoned an infant under 'safe surrender' provisions for at least 60 days before tpr filed.



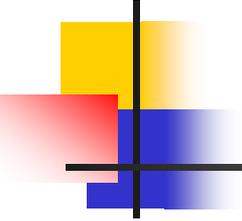
The conduct of a parent who abandons a child

“evinces a settled purpose and a willful intent to forego all parental duties and obligations and to relinquish all parental claims to the child.”

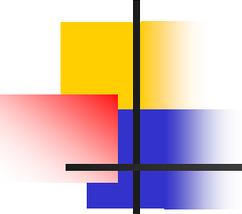


Other grounds –

- Parent committed a criminal offense listed in statute. (Proof may be of offense elements or of conviction or plea.)
- Parent's rights to another child have been terminated, and parent lacks ability or willingness to establish a safe home.
- Parent relinquished child or consented to adoption, but other state requires tpr for adoption.



If no ground is proved by clear, cogent and convincing evidence, court must dismiss the petition or motion.



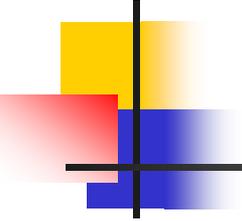
Adjudication Order

- must be entered within 30 days
- must state “clear, cogent, and convincing”
- findings should
 1. be specific
 2. relate to the evidence
 3. avoid reciting evidence
 4. incorporate sparingly if at all
 5. support the alleged ground

Disposition

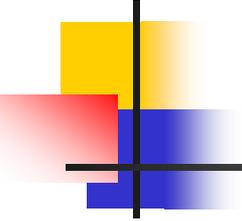
These are not reasons to terminate:

- Petitioner proved a ground by clear and convincing evidence.
- Federal law (ASFA) requires termination when child has been in foster care this long.
- The court determined at last hearing that permanent plan is termination.
- Parent's actions are inconsistent with his constitutionally protected parental rights.



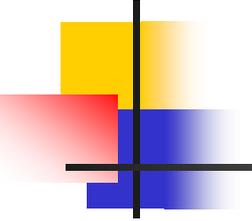
Disposition

1. Existence of a ground never requires termination
2. Whether to terminate is in court's discretion
3. No burden of proof
4. Court must consider “best interest” factors



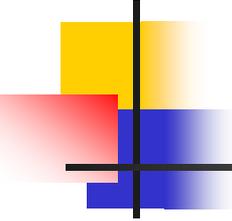
Is termination in child's best interest, considering:

1. child's age
2. likelihood of adoption
3. whether tpr will help achieve permanent plan
4. bond between child and parent
5. quality of child's relationship with proposed adoptive parent, guardian, other
6. any other relevant consideration



After terminating parental rights,

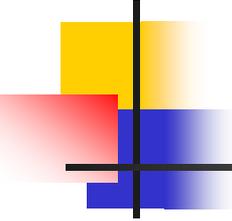
- If child was in agency custody when action initiated, agency has exclusive placement authority
- Only if child was not in agency custody does court apply best interest standard to determine custody or placement



Effect of Termination

Parent loses:

1. legal status as child's parent
2. right to give or withhold consent to adoption
3. standing to seek custody
4. right to inherit from child
5. duty to pay support prospectively
6. but not liability for child support arrears



Common issues on appeal include

- subject matter jurisdiction
- personal jurisdiction
- sufficiency of evidence
- sufficiency of findings
- procedure
- abuse of discretion