

District Court Judges Conference
June 22, 2011
Wrightsville Beach, NC

**“Best Interest”
in Juvenile Court**

| Subchapter I of the Juvenile Code uses the term “best interest” 49 times. | |
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| <p>abuse/neglect/dependency</p> <ul style="list-style-type: none"> • purpose • nonsecure custody • reasonable efforts • appointment of guardian • guardian ad litem • continuances • venue • disposition • authority over parents • review, permanency planning hearings • modification • disposition pending and after appeal | <p>termination of parental rights</p> <ul style="list-style-type: none"> • purpose • guardian ad litem • continuances • disposition • post-tpr placement in non-agency case • post-tpr hearing |

Applicability of “Best Interest” Standard

What is the relevance of

- **Petersen v. Rogers (1994)** and
- **Price v. Howard (1997)**

in juvenile cases?

| Brief Look at Chronology | |
|--------------------------|--|
| 1994 | <i>Petersen</i> decided; quoted in <i>Bost v. Van Nortwick</i> (tpr) |
| 1997 | <i>Price v. Howard</i> |
| 2000 | <i>In re Huff</i> – (tpr) |
| 2001 | <i>In re Byrd</i> – (sup. ct.) (adoption) <i>In re Nesbitt</i> – (tpr) |
| 2002 | <i>In re Pittman</i> – (abuse/neglect) <i>In re Stratton</i> – (abuse/neglect) 2 unpublished cases |
| 2003 | 3 unpublished cases |

| | |
|------|--|
| 2004 | <i>In re Shuler</i> – (adoption) <i>In re Rholetter</i> – (abuse/neglect) |
| 2005 | <i>In re T.K.</i> – (perm. planning) 2 unpublished cases |
| 2007 | 2 unpublished cases |
| 2008 | 1 unpublished case |
| 2009 | <i>In re B.G.</i> – (perm. planning) 2 unpublished cases |
| 2010 | <i>In re A.C.V.</i> – (tpr) 3 unpublished cases |
| 2011 | <i>Rodriguez</i> (dependency; custody) <i>In re D.M.</i> – (perm. planning) 1 unpublished case |

| 1. Nick – Nonsecure Custody | |
|-----------------------------|---|
| a. | Return Nick to father and dismiss petition |
| b. | Dissolve nonsecure custody; send Nick home with father; schedule adjudication hearing |
| c. | Leave Nick in nonsecure custody with DSS; schedule next nonsecure custody hearing |
| d. | Place Nick in nonsecure custody with father and schedule next nonsecure custody hearing |
| e. | Something else |

§ 7B-503. Criteria for Nonsecure Custody

1. First consider release to parent, relative, . . .
2. Reasonable factual basis to believe
 - a. allegations in petition are true,
 - b. no other reasonable means to protect child, and
 - abandonment;
 - physical injury or sexual abuse (or substantial risk);
 - need for medical treatment and parent unwilling/ unable to provide or consent to it;
 - parent’s consent; or
 - child’s consents if a runaway.

§ 7B-505. Place of nonsecure custody.

Nonsecure custody may be with

1. DSS or
2. a person designated in the order

for placement in:

- a DSS foster home/facility; or
- any home, including a relative's home, approved by the court and designated in the order.

**Relative Preference
(§ 7B-505)**

Court must first consider whether a relative is willing and able to provide proper care and supervision in a safe home.

Court shall order placement with the relative unless the court finds the placement would be contrary to the child’s best interests.

2. Tina and Tyrone - Disposition

- a. Place children in DSS custody
- b. Place children in DSS custody; direct that placement be with local grandmother or aunt
- c. Place children in DSS custody; order DSS to obtain home study of father's home through ICPC
- d. Place children in custody of their father
- e. Something else

Disposition

§ 7B-901 – parents may present evidence and advise the court about disposition they believe is in child's best interest.

§ 7B-903 – court may combine any dispositional alternatives when court finds them to be in child's best interest.

§ 7B-600 – in any case when the court finds it would be in the child's best interest, the court may appoint a guardian of the person for the child.

Is adjudication of abuse or neglect sufficient to trigger the "best interest" standard?

In re Stratton (2002). Once it has been determined that a parent is unfit or has neglected his child, the parent loses his decision-making ability as of right.

In re Rholetter (2004). Concerns about mother's home were not sufficient to rebut constitutional presumption that the mother was fit and proper.

In re J.A.G. (2005). Where there were no grounds to prolong child's removal from his mother's custody, trial court abused its discretion in concluding it was in the child's best interest that custody remain with DSS.

3. Gina – Permanency Planning

- a. GAL – custody to grandmother; visitation to father
- b. DSS – joint custody to father and grandmother; primary physical custody with grandmother
- c. Father – full custody to father
- d. Mother – name grandmother as guardian
- e. None of the above

Permanency Planning

§ G.S. 7B-907 –

- Court must consider whether it is possible for child to return home immediately or within six months and, if not, why it is not in the child's best interests to return home.
- Court may appoint a guardian of the person or make any disposition authorized by G.S. 7B-903, including placing child in custody of either parent or a suitable relative, found by the court to be in the child's best interest.

- **In re T.K.** (2005). Affirmed change of plan to guardianship. “[A]t this stage the best interests of the children, not the rights of the parents, are paramount.” Dissent thought *Petersen* findings were required. Supreme court affirmed.
- **In re B.G. (2)** (2009). Trial court found that father was “non-offending” parent, but ordered joint custody to father and relative and physical custody to relative. COA held that best interest test was not proper without finding that father was unfit or had acted inconsistently with constitutionally protected parental rights.
- **In re D.M.** (2011). Trial court awarded custody to grandmother and visitation to father. COA held that was error where trial court found neither parent was unfit and made no findings or conclusions as to whether father had acted inconsistently with his constitutionally protected parental rights.

4.A. Nick – Custody under G.S. 7B-911
 Could the court award joint legal custody to mom, dad, and grandmother with primary legal custody to grandmother?

1. Yes
2. Probably
3. Probably not
4. No

4.B. Nick – Custody under G.S. 7B-911
 Could the court award primary custody to father and visitation to grandmother?

1. Yes
2. Probably
3. Probably not
4. No

Custody under G.S. 7B-911

- Civil order must include findings and conclusions that would support entry or modification of custody order under Ch. 50.
- Unless custody is to parent or person from whose custody child was removed, juvenile order must find that at least 6 months have passed since custody to this person was made the permanent plan.

Civil Custody after Juvenile Adjudication

- **Rodriguez v. Rodriguez** (2011). Dependency adjudication was relevant but not sufficient to show that the mother had acted inconsistently with her parental status.

5. Termination of Parental Rights

- a. **Larry** (failure to pay child support)
- b. **Marvin** (failure to establish paternity, etc.)
- c. **Jamal** (termination of rights to another child and inability to establish a safe home)
- d. **all three** fathers
- e. **none** of the fathers
- f. **two** but not all three of the fathers

Termination of Parental Rights / Adoption

- **In re Nesbit** (2001). In TPR emphasizes best interest is proper consideration only after finding of unfitness.
- **Adoption of Byrd** (2001). Putative father's consent to adoption was not required. Two justices dissented, based on *Petersen and Price*.
- **Rosero v. Blake** (2003). Affirmed custody to natural father, holding that biological father's parental interest is not less than the mother's.
- **Adoption of Shuler** (2004). Biological father's consent not required. Putative father's failure to satisfy any of the statutory requirements would render his consent to the adoption unnecessary. Citing *Byrd*.

Termination of Parental Rights / Adoption

Owenby v. Young (2003).
 In custody action against child’s father, grandmother failed to establish that father was unfit or had acted inconsistently with his constitutionally protected parental status.

Dicta: There are at least two methods a court may use to find that a natural parent has forfeited his/her constitutionally protected status.

1. parental conduct inconsistent with the protected status;
2. G.S. 7B-1111 sets forth nine grounds upon which a court may terminate parental rights. The finding of any one of these is sufficient to order termination. This statutory procedure is not the subject of the present case.

Termination of Parental Rights / Adoption

- **In re D.D.H.** (2005) (unpublished). In TPR appeal, respondent cited *Owenby* for proposition that alcohol abuse alone was not sufficient to terminate parental rights.

In a footnote, the COA noted that *Owenby* involved a custody dispute between a father and grandmother, and that Supreme Court, after briefly discussing G.S. 7B-1111, said “This statutory procedure is not the subject of the present case.”

Therefore, the court of appeals concluded that *Owenby* was inapplicable to the TPR case.

Termination of Parental Rights / Adoption

In re A.C.V (2010). *Owenby* and *A Child’s Hope* controlled in TPR of putative father’s rights.

Adjudication of any TPR ground removed constitutionally protected status and justified application of best interest standard.

Court pointed to underlying tension between constitutional rights of putative fathers and G.S. 7B-1111 as appellate courts have interpreted it.

Court said it was difficult to conclude that father’s constitutional rights were assured, especially in light of protections offered to parents in abuse, neglect, and dependency cases.
