

District Court Judges Summer Conference  
Child Welfare Case Update  
October 6, 2015- June 7, 2016)

By Sara DePasquale,  
School of Government,  
UNC-Chapel Hill

**Contents**

Abuse/Neglect/Dependency..... 4

    Verification of Petition: Subject Matter Jurisdiction ..... 4

        In re N.T.,..... 4

Caretaker: Stepparent..... 4

    In re M.S. .... 4

Adjudication: Findings of Fact ..... 4

    In re C.B..... 4

Abuse: Cruel or Grossly Inappropriate Procedures to Modify Behavior..... 5

    In re F.C.D. .... 5

Abuse: Serious Emotional Damage ..... 5

    In re A.M..... 5

Neglect: Child with Significant Mental Illness..... 6

    In re C.B..... 6

Neglect: Injurious Environment..... 6

    In re F.C.D ..... 6

Neglect: Harm to Child..... 6

    In re J.R..... 6

Neglect: Out-of-State Acts..... 7

    In re T.N.G..... 7

Neglect: Child’s Circumstances..... 7

    In re Q.A ..... 7

Dependency: Placement of Child with Serious Mental Health Condition..... 8

    In re C.B..... 8

Dependency: Proper care or Supervision..... 8

    In re T.N.G..... 8

Disposition: Evidence/Reports..... 8

    In re J.H..... 8

Disposition: Visitation ..... 8

In re J.H.....	8
Disposition: Child Support .....	8
In re A.M.....	8
Disposition: Authority to Order Services.....	9
In re T.N.G.,.....	9
Review Order: Custody to Non-Parent .....	9
In re A.C.....	9
Disposition: Guardianship .....	11
In re J.H.....	11
Disposition: Waive Review Hearing.....	11
In re J.H.....	11
Ineffective Assistance of Counsel (IAC) .....	11
In re C.B.....	11
Appeal: Standing.....	11
In re C.A.D.....	11
In re M.S .....	12
Responsible Individual List (RIL) .....	12
In re F.C.D .....	12
Termination of Parental Rights (TPR).....	12
District Court Jurisdiction.....	12
In re A.L.....	12
Subject Matter Jurisdiction: G.S. 7B-1101 .....	12
In re M.C.....	12
Hearing: Two Stages.....	13
In re S.Z.H.....	13
Grounds: Hearsay Evidence.....	13
In re C.R.B .....	13
Grounds: Findings.....	14
In re A.B.....	14
Grounds: Neglect .....	14
In re C.L.S.....	14
In re E.L.E.....	14

Grounds: Willfully Leave in Foster Care for 12+months w/o Making Reasonable Progress to Correct Conditions .....	14
In re E.L.E.....	14
Grounds: Failure to Pay Reasonable Portion of Cost of Care.....	15
In re A.L.....	15
Grounds: Abandonment .....	15
In re S.Z.H.....	15
Disposition: Best Interests .....	16
In re C.A.D.....	16
Delay in Entry of Order .....	16
In re S.Z.H.....	16
Oral Rendition vs. Entry of Judgment .....	16
In re O.D.S. ....	16
Findings: Remand Instructions .....	17
In re A.B.....	17
UCCJEA .....	18
No Home State.....	18
In re T.N.G.....	18
Modification Jurisdiction (G.S. 50A-203) .....	18
In re J.H.....	18
Civil Case Related to Child Welfare.....	19
Custody to Non-Parent, Acting Inconsistently with Parental Rights.....	19
Weideman v. Shelton v. Wise.....	19
Criminal Cases Related to Child Welfare .....	21
Felony Child Abuse, Serious Bodily Injury.....	21
State v. Bohannon .....	21
Misdemeanor Child Abuse: Substantial Risk of Physical Harm .....	21
State v. Watkins .....	21

## Abuse/Neglect/Dependency

### Verification of Petition: Subject Matter Jurisdiction

In re N.T., \_\_\_ N.C. \_\_\_, 782 S.E.2d 502 (2016)

**Held: Reversed Court of Appeals Opinion**

- Procedural History/Facts:
  - 2012: The county department files a neglect petition that is signed by an authorized representative of the director. In the verification section after “signature of person authorized to administer oaths,” an illegible signature following the letter “C” appears. The section for “title” is left blank. Child is adjudicated neglected and placed in the custody of the county department.
  - 2013: The county department files a motion to terminate parental rights (TPR).
  - 2014: The TPR is granted and respondent mother appeals based on lack of subject matter jurisdiction arguing the neglect petition was not properly verified as required by statute.
  - 2015: The NC Court of Appeals vacates the TPR, and the N.C. Supreme Court grants petition for discretionary review.
- Although subject matter jurisdiction may be raised at any time, there is a presumption that a court has jurisdiction when it acts on a matter. The respondent, who is raising subject matter jurisdiction, has the burden of proving there is no jurisdiction.
- Verification is addressed by G.S. 1A-1, Rule 11(b) and G.S. 1-148. Rule 11 requires an affidavit where the person verifies that the contents of the pleading are to his or her knowledge true or upon information and belief are believed to be true. G.S. 1-148 authorizes a judge, magistrate, clerk of court, notary public, or any officer competent to acknowledge deeds to verify a pleading. A public official acting in his or her official duty is presumed to act in accordance with the law, and the contesting party has the burden of overcoming the presumption.
- Respondent mother did not show that the petition, which appeared to be facially valid, was not verified before a person who was authorized to administer oaths. There was no evidence or allegations to overcome the presumption that the person who signed as “the person authorized to administer oaths” did not act in his or her official capacity.

### Caretaker: Stepparent

In re M.S., \_\_\_ N.C. App. \_\_\_ (April 19, 2016)

**Held: Appeal Dismissed**

- The respondent is a stepparent, which is distinguishable from a parent under both the Juvenile Code and adoption statutes. The definition of “caretaker” found at GS. 7B-101(3) explicitly includes a “stepparent” and distinguishes a stepparent from a parent. A stepparent is also distinguished from a legal parent by G.S. 48-1-101(18). Without evidence that a stepparent has either adopted the child and become the child’s parent or has been awarded custody of the child through a court order and become the child’s custodian as defined by G.S. 7B-101(8), a stepparent is a caretaker.

### Adjudication: Findings of Fact

In re C.B., \_\_\_ N.C. App. \_\_\_, 783 S.E.2d 206 (2016)

**Held: Affirmed**

**There is a dissent**

- Findings of fact that were challenged by the respondent mother were supported by clear and convincing competent evidence in the record. The evidence included testimony from the child welfare social workers and for some of the challenged findings, respondent mother’s own testimony.
- Unchallenged findings are binding on appeal. Some of the findings that were challenged by the respondent mother were supported by additional unchallenged findings of fact made by the court.

### **Abuse: Cruel or Grossly Inappropriate Procedures to Modify Behavior**

**In re F.C.D.**, \_\_\_ N.C. App. \_\_\_, 780 S.E.2d 214 (2015)

**Held: Affirmed**

- The findings are supported by competent evidence and support the conclusion that the child was abused.
- A juvenile is abused when his or her parent, guardian, custodian, or caretaker uses or allows to be used upon him or her cruel or grossly inappropriate procedures or devices to modify his or her behavior. G.S. 7B-101(1)(c). This definition focuses on the severity and brutality of the procedures and devices that are used by the parent, guardian, custodian, or caretaker and does not examine the child’s behavior that the procedures or devices were meant to correct.
- The following procedures constitute abuse: forcing the child to sleep outside on at least two cold nights in February, binding the child to a tree, ordering the child to pray while the caretaker held a firearm, requiring the child to conduct a self-baptism in a bathtub of water, striking the child with a belt all over his body, and telling the child he was possessed by a demon such that the child began to believe it was true.

### **Abuse: Serious Emotional Damage**

**In re A.M.**, \_\_\_ N.C. App. \_\_\_ (June 7, 2016)

**Held: Affirmed in part; Remanded in part**

- The definition of abuse includes “[a]ny juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker . . . [c]reates or allows to be created serious emotional damage to the juvenile... evidenced by a juvenile’s severe anxiety, depression, withdrawal, or aggressive behavior toward [herself] or others.” G.S. 7B-101(1)(e). The statute does not require a formal psychiatric diagnosis.
- Findings that the mother’s foul and abusive language created a toxic environment and that 16 year old A.M. felt hopeless about DSS’ involvement and helpless that anyone could help her or help her mother change her mother’s behavior, had anxiety, and that her coping method was to withdraw supported the court’s conclusion that the child was abused. The written findings do not need to quote the language of the statute (e.g., “serious emotional damage”) but must address the statute’s concerns, which these findings do.
- Remand for findings based on evidence in the record of the 6 year old’s serious emotional damage. Evidence includes the testimony of a licensed psychologist that the child’s defiant behavior is related to the mother’s lack of structure or guidance, inconsistent discipline, and inability to be attuned to the child’s emotional needs. The testimony addressed the mother’s demeaning and offensive language that created a toxic environment where the child was subjected to chronic and acute verbal assaults that were part of this child’s normal everyday life.

## Neglect: Child with Significant Mental Illness

In re C.B., \_\_\_ N.C. App. \_\_\_, 783 S.E.2d 206 (2016)

**Held: Affirmed**

**There is a dissent based on a parent's constitutional right to choose a different course of medical treatment for her child than what is recommended by the medical provider and preferred by DSS**

- The court's ultimate finding that the child was neglected was supported by the multiple court findings of fact that demonstrated the 10-year old child had significant mental health issues resulting in multiple psychiatric hospitalizations in a short period of time; the mother minimized and denied the seriousness of the child's condition; the mother continuously failed to obtain meaningful mental health treatment for her daughter and exacerbated her daughter's condition; and the child was at substantial risk of a physical, mental, or emotional impairment as a result.
- Although a parent has a paramount constitutional right to care, custody, and control over her child, that right is not absolute and does not include neglecting her child's welfare. In this case, the parent was unjustified in her unwillingness or inability to obtain meaningful medical care for her child who was experience a serious illness. The failure to obtain medical treatment constitutes neglect.
- The sibling of the child with a severe mental illness is also a neglected juvenile based on the following findings of fact: the respondent mother allowed her daughter to be continually exposed to her sibling's erratic and violent behavior, and the child was directly and negatively affected by each of the incidents she was exposed to; respondent mother was not concerned about the effect the exposure was having on her daughter; and respondent mother failed take efforts to mitigate the sibling's behavior by obtaining meaningful medical services for the sibling. The court noted the definition of neglect includes the relevance of whether the juvenile lives in a home where another juvenile has been subjected to neglect.

## Neglect: Injurious Environment

In re F.C.D., \_\_\_ N.C. App. \_\_\_, 780 S.E.2d 214 (2015)

**Held: Affirmed**

- The findings are supported by competent evidence and support the conclusion that the child was neglected.
- G.S. 7B-101(15) includes in the definition of neglect that it is relevant whether the juvenile lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home. This definition gives the court some discretion in determining if the child is at risk for a particular kind of harm based on the child's age and living environment.
- An injurious environment may include a home that exposes a child to witnessing another child's abuse and neglect even when the child who is the witness is not physically harmed him/herself. Evidence that the child's witnessing her brother's abuse and neglect would be distressing for her and could cause fear and worry that something like that might happen to her supports the court's adjudication of neglect.

## Neglect: Harm to Child

In re J.R., \_\_\_ N.C. App. \_\_\_, 778 S.E.2d 441 (2015)

**Held: Reversed**

- The findings are not supported by competent evidence and also do not support the conclusion that the child was neglected.
- An adjudication of neglect requires that the failure to provide proper care, supervision, or discipline results in the child experiencing some physical, mental, or emotional impairment or substantial risk of such impairment. Neglect also requires a parent, guardian, custodian, or caretaker to engage in “either severe or dangerous conduct or a pattern of conduct either causing injury or potentially causing injury to the juvenile.”
- A court should look at the totality of the evidence when determining if the child is neglected. The mother’s lack of stable housing, causing frequent moves, did not impede her ability to care for and supervise her child nor did it expose her child to an environment injurious to his welfare. The child’s contact with his father at a public bus stop and on the public bus was also not neglect even though it was a violation of the safety agreement signed by both the respondent mother and father and a violation of the father’s probation resulting from his conviction of taking indecent liberties with a minor. There was no evidence that this single contact harmed the child or created a risk of harm to the child.

## Neglect: Out-of-State Acts

**In re T.N.G.**, \_\_\_ N.C. App. \_\_\_, 781 S.E.2d 93 (2015)

### **Held: Affirmed**

- Acts that occurred in South Carolina may be considered by the North Carolina trial court when determining whether the child was neglected. It was undisputed the child was left in SC, “was shifted among various adults whose relationship to the child was increasingly attenuated” and was eventually left with her father’s half-brother’s stepmother’s mother-in-law, who was 78 years old.
- Evidence that the 9-year-old child shared a bed with two other children, one of whom was her 7-year-old male cousin, who tried five times to kiss or touch her private parts, supports the conclusion that the child did not receive proper care or supervision from a parent.
- Additional evidence that the child was present when adults were using marijuana and that she was passed around from one adult’s home to another without her parent determining if these adults were fit caretakers supports the conclusion that she was at substantial risk of harm or impairment.

## Neglect: Child’s Circumstances

**In re Q.A.**, \_\_\_ N.C. App. \_\_\_, 781 S.E.2d 862 (2016)

### **Held: Reversed & Vacated in Part; Remanded**

- Neglect is based on the circumstances and conditions surrounding a child, not the fault of a parent. When five siblings are subjected to the same circumstances (lack of plumbing, electricity, food, and a home while in the care of their grandmother), they are all living in an injurious environment and are neglected. The court erred in adjudicating two siblings neglected (mother unavailable and father incarcerated) but dismissed the action as to the other three siblings because placement with their father was an option.
- Disposition is required after an adjudication. Availability of parent is a factor to consider at disposition when determining placement and continued jurisdiction in juvenile action.

## Dependency: Placement of Child with Serious Mental Health Condition

**In re C.B.**, \_\_\_ N.C. App. \_\_\_, 783 S.E.2d 206 (2016)

**Held: Affirmed**

**There is a dissent based on a parent's constitutional right to choose a different course of medical treatment for her child than what is recommended by the medical provider and preferred by DSS**

- A child is dependent when her parent (guardian or custodian) (1) is unable to provide for her care or supervision and (2) lacks an appropriate alternative child care arrangement. The findings of fact that show the 10-year old child had significant mental health issues resulting in multiple psychiatric hospitalizations in a short period of time; respondent mother refused to participate in and obstructed the development of an appropriate hospital discharge plan for her daughter; respondent mother failed to obtain any meaningful mental health services for her daughter when her daughter was in her custody; and respondent mother failed to identify any viable placement alternatives outside of the mother's home support the court's determination that the child was dependent.

## Dependency: Proper care or Supervision

**In re T.N.G.**, \_\_\_ N.C. App. \_\_\_, 781 S.E.2d 93 (2015)

**Held: Reversed**

- The order did not contain any findings and there is no indication in the record of evidence addressing the respondents' ability to provide care or supervision to the child.

## Disposition: Evidence/Reports

**In re J.H.**, \_\_\_ N.C. App. \_\_\_, 780 S.E.2d 228 (2015)

- The Rules of Evidence do not apply to a disposition hearing. A report may be submitted to and considered by the court without a formal proffer and admission into evidence as exhibits. When reports are received by the court, a party must object to the court's consideration of the report at the hearing in order to preserve the issue of the court's consideration of the report for an appeal.

## Disposition: Visitation

**In re J.H.**, \_\_\_ N.C. App. \_\_\_, 780 S.E.2d 228 (2015)

**Held: Remanded**

- An order that awards the mother monthly visitation in North Carolina to be supervised by the maternal grandparents at a location of their choice does not comply with G.S. 7B-905.1. Although the order establishes the frequency and level of supervision for the visits, it fails to establish the length of the visit, which is also required by the statute.

## Disposition: Child Support

**In re A.M.**, \_\_\_ N.C. App. \_\_\_ (June 7, 2016)

**Held: Remand in part**

- G.S. 7B-904(d) authorizes a court to order a parent to pay a reasonable amount of child support when custody of the child is ordered to someone other than the parent. The court must find the parent is able to pay support, and if so, the court orders an amount of child support determined by G.S. 50-13.4, which requires findings of fact and conclusions of law that address the child's reasonable needs and the parent's ability to pay.
- The court's order that the parents "arrange to provide child support for the benefit of their children" does not comply with G.S. 7B-904(d). Remanded for findings that address the respondent mother's income, ability to work, and ability to pay; the reasonable needs of the children; and the amount of child support.

### Disposition: Authority to Order Services

**In re T.N.G.**, \_\_\_ N.C. App. \_\_\_, 781 S.E.2d 93 (2015)

**Held: Affirmed**

- The court had the authority under G.S. 7B-904 to order the respondent father to maintain stable employment and obtain a domestic violence assessment. The addendum to the petition alleging neglect stated in part that the respondent reported he is unemployed and unable to care for his daughter and DSS has concerns about the respondent parents admitted domestic violence history. The evidence at the hearing established a nexus between the circumstances that led to the child's removal from her father's custody and the court's dispositional order.

### Review Order: Custody to Non-Parent

**In re A.C.**, \_\_\_ N.C. App. \_\_\_ (May 17, 2016)

**Held: Affirmed**

- Facts and Timeline re: Respondent Mother
  - 5/2012 mother agrees to kinship placement of 5-month old child with maternal aunt.
  - 8/2012 petition alleging neglect is filed (without request for nonsecure as child is still living with maternal aunt).
  - 3/2013 child is adjudicated neglected and initial disposition grants legal custody to mother and placement with maternal aunt.
  - 11/2013 first review hearing is held and court renders order of sole legal and physical custody of child to mother (order is entered on 1/24/2014). Because placement is with a parent, further 7B-906.1 hearings are waived, but the court retains jurisdiction rather than enter Ch. 50 custody order pursuant to G.S. 7B-911.
  - 11/2013-12/2014 child remains in care of maternal aunt.
  - 12/2014 mother picks up child from day care using January 2014 court order awarding her custody and refuses to return the child to the maternal aunt.
  - 1/2015 maternal aunt files a motion to intervene as a caretaker (granted), to reopen, and for custody based on a substantial change in circumstances since the January 2014 order.
  - 7/2015 court enters a review order granting maternal aunt sole legal and physical custody and schedules a permanency planning hearing for November 2015. Respondent mother appeals.
- Constitutional Rights

- A parent has a paramount constitutional right to custody and control of his or her child. The government may only take a child away from a parent upon a showing, supported by clear and convincing evidence, that the parent is unfit or has acted inconsistently with his or her constitutionally protected status. This standard applies to both civil custody (Ch. 50) and abuse, neglect, and dependency (Ch. 7B) proceedings.
- There is no bright line test when determining if a parent has acted inconsistently with his or her parental rights. Instead, a court employs a case by case analysis. The court looks to the parent's conduct and intentions. In this case the mother acted inconsistently with her parental rights when she voluntarily allowed her child to continuously remain in the maternal aunt's custody for 13 months after obtaining legal and physical custody of her daughter. The mother did not voice any agreement or expectation that the situation would be temporary but instead created a situation that "induced the [maternal aunt and child] to flourish as a family unit in a relationship of love and duty with no expectation that it would be terminated." For 13 months, the mother failed to bear any responsibility for her child. She did not make any effort to take custody of her daughter, develop a plan to transition custody to her, provide any legal mechanism for the maternal aunt to authorize medical or educational care for the child, only sporadically visited with the child, failed to regularly call the maternal aunt or child, and failed to provide any financial support despite having an ability to do so and a court order to pay child support. It was reasonable for the court to infer that the mother intended to presume the natural consequences of her actions. Despite her refusal to agree to the maternal aunt's appointment as guardian, the mother's actions showed she had no meaningful intention that custody with the maternal aunt would be temporary. Her objection to the maternal aunt becoming guardian did not evince an intention that the mother would assume her responsibilities as a parent.
- If the court finds a parent has acted inconsistently with his or her parental rights, it must move to the best interests of the child standard when determining custody. The court does not need to also find the parent is unfit. Because the court found this mother acted inconsistently with her parental rights, the court of appeals declined to address the mother's appeal of the trial court's conclusion that she was unfit.
- Modification of Custody Order
  - The Juvenile Code (G.S. 7B-1000) authorizes a modification of an order based on a change in circumstances OR the needs of the juvenile.
  - In this case, the intervenor sought a modification based on substantial change of circumstances. The burden is on the moving party to prove changes have occurred or come to light since the order sought to be modified was entered. But, a court may consider events that occurred prior to the entry of the order when considering historical facts as part of its determination of whether a change of circumstances has occurred.
  - The evidence and court's findings supported its conclusion that there was a substantial change in circumstances that affected the child's general welfare and best interests since the entry of the review order. The mother abdicated her parental role for 13 months after the order that granted her custody was entered. Then the mother removed the child from the only home she had known and kept her from having contact with her caregiver and other extended family members until the court ordered the mother to allow for contact through a visitation schedule. The mother's actions adversely affected the child, who

experienced behavior changes and a resulting diagnosis of an adjustment disorder. The court may consider evidence of the child’s mental health and behavior up to the time of the hearing on the motion, rather than up to the date the petition was filed.

## Disposition: Guardianship

**In re J.H.**, \_\_\_ N.C. App. \_\_\_, 780 S.E.2d 228 (2015)

### **Held: Remanded**

- The court must make independent findings that the prospective guardians have adequate financial resources to provide for the child. Findings that the prospective guardians met the child’s well-being needs, had guardianship of the child’s sibling, and that the child had no current financial or material needs are insufficient to support a finding that the prospective guardians have adequate financial resources.
- The court must verify the guardians are aware of the legal significance of a guardianship.
- For a permanent plan that considers custody or guardianship to a non-parent, the court must address whether the parent is unfit or has acted inconsistently with his/her parental rights.

## Disposition: Waive Review Hearing

**In re J.H.**, \_\_\_ N.C. App. \_\_\_, 780 S.E.2d 228 (2015)

### **Held: Remanded**

- The court must make findings of each of the five factors set forth in G.S. 7B-906.1(n) to waive further permanency planning hearings. Failure to do so is reversible error. There were no findings for three of the five factors.

## Ineffective Assistance of Counsel (IAC)

**In re C.B.**, \_\_\_ N.C. App. \_\_\_, 783 S.E.2d 206 (2016)

### **Held: Affirmed**

#### **There is a dissent based on an insufficient record to determine the issue**

- A successful ineffective assistance of counsel claim requires a parent to show (1) the attorney’s performance was deficient, and (2) the deficient performance was so serious that it deprived the parent of a fair hearing. Respondent mother claimed IAC because her attorney did not review her daughter’s medical records or subpoena the hospital social worker and psychiatrist. Respondent mother failed to meet her burden to prove IAC as the attorney’s conduct did not fall below an objective standard of reasonableness and there was not a reasonable probability that there would have been a different result. DSS presented “overwhelming” evidence to support the adjudications of both children.

## Appeal: Standing

**In re C.A.D.**, \_\_\_ N.C. App. \_\_\_ (May 17, 2016)

### **Held: Affirmed**

- Respondent mother appealed a permanency planning order that changed the permanent plan from reunification with the mother and maternal grandparents to adoption concurrent with custody with approved caretakers. The mother’s argument is that the court should have placed the children with their maternal grandparents, who were also respondents in the action. An order may be appealed by an “aggrieved party,” which is “one whose rights have been directly and injuriously

affected by the action of the court.” The mother does not have standing to argue an injury to the maternal grandparents, who did not appeal the court’s permanency planning order.

**In re M.S.**, \_\_\_ N.C. App. \_\_\_ (April 19, 2016)

**Held: Appeal Dismissed**

- G.S. 7B-1002 limits who has standing to take an appeal of an order entered in an abuse, neglect, or dependency proceeding, and a caretaker does not have standing.
- Because standing is jurisdictional in nature, and the respondent caretaker, who is a stepparent, has not proved he has standing as a parent (via adoption) or a custodian (via a court order of custody) to appeal the adjudication and disposition order, he is not a proper party to appeal. The appeal is dismissed.

## Responsible Individual List (RIL)

**In re F.C.D.**, \_\_\_ N.C. App. \_\_\_, 780 S.E.2d 214 (2015)

**Held: Affirmed**

- The RIL hearing was heard with the juvenile adjudicatory hearing regarding abuse and neglect. The respondent was not deprived of her right in the RIL hearing to represent herself or retain her own attorney when her court appointed attorney in the juvenile abuse and neglect action represented her on both matters.
- Respondent mother allowed the child’s caretaker (an adult who lived in the household) to use cruel or grossly inappropriate devices or procedures to modify her son’s behavior. Allowing such use satisfies the definition of abuse at G.S. 7B-101(1)(c). Respondent mother’s name was appropriately placed on the RIL.

## Termination of Parental Rights (TPR)

### District Court Jurisdiction

**In re A.L.**, \_\_\_ N.C. App. \_\_\_, 781 S.E.2d 856 (2016)

**Held: Affirmed**

- Even when a department had custody of a child as a result of a properly executed relinquishment, the district court did not have jurisdiction to issue custody review orders after DSS voluntarily dismissed a petition alleging neglect and dependency. Any custody review orders entered after the petition was dismissed were void.
- The district court acquired jurisdiction when a petition to terminate parental rights was filed by a person or agency with standing. The department had standing to initiate this new action based on the mother’s relinquishment of custody of the child to the department (G.S. 7B-1103(a)(4)).

### Subject Matter Jurisdiction: G.S. 7B-1101

**In re M.C.**, \_\_\_ N.C. App. \_\_\_, 781 S.E.2d 70 (2015)

**Held: Vacated**

- Subject matter jurisdiction for a termination of parental rights (TPR) requires compliance with both G.S. 7B-1101 and the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) found in G.S. Chapter 50A.
- G.S. 7B-1101 requires that the child resides in, is found in, or is in the legal or actual custody of a county department or licensed child-placing agency in the judicial district at the time the TPR petition or motion is filed. If a child does not fall under one of these criteria, the court does not have subject matter jurisdiction under G.S. 7B-1101. In this case, the petitioner had custody of the two children who are the subject of this action. The children have resided with their mother/the petitioner in Washington state since 2007, and the children were not found in North Carolina when the petition was filed. The district court did not have subject matter jurisdiction over the TPR action.
- Although the respondent appealed the orders based on the UCCJEA, the court may sua sponte review the issue of subject matter jurisdiction de novo at any time. The UCCJEA addresses a state's jurisdiction to enter child custody orders; it does not address venue within the state.

## Hearing: Two Stages

**In re S.Z.H.**, \_\_\_ N.C. App. \_\_\_ (May 3, 2016)

### **Held: Reversed**

- A termination of parental rights (TPR) hearing consists of two stages: adjudication of a ground, and disposition based on the best interests of the child. To ensure a parent's constitutional rights to his child are not violated by basing a TPR solely on the child's best interests, the court must conduct two separate inquiries – adjudication first, then disposition -- even when the two stages are held in the same hearing.

## Grounds: Hearsay Evidence

**In re C.R.B.**, \_\_\_ N.C. App. \_\_\_, 781 S.E.2d 846 (2016)

### **Held: Affirmed**

- Over respondent mother's hearsay objection, the DSS social worker testified to events based upon a DSS report that included information about the case prior to this specific social worker's involvement with the family. Findings of fact to support the court's conclusion that the mother willfully left the children in foster care for more than 12 months without showing reasonable progress to correct the conditions that led to the children's removal (G.S. 7B-1111(a)(2)) were based on the social worker's testimony. That testimony relied in part on the DSS report. The testimony was not hearsay as it fell under the business record exception to hearsay codified at G.S. 8C-1, Rule 803(6).
- At hearing, a foundation for the business record exception must be made by a person familiar with the records and system under which the business record is made but is not required to be authenticated by the person who made the actual business record. The social worker testimony satisfied the foundation requirement for the business record exception. Her testimony regarding what was in the record was admissible.

## Grounds: Findings

**In re A.B.**, \_\_\_ N.C. App. \_\_\_, 781 S.E.2d 685 (2016)

### Held: Affirmed

- All findings of fact for an adjudicatory hearing must be supported by clear, cogent, and convincing evidence (G.S. 7B-1109). Although the order did not state *all* the findings were made by clear, cogent, and convincing evidence, the trial court used the correct standard when it orally indicated the standard it was applying (clear, cogent, and convincing evidence), had one of the 70 findings state the appropriate standard, and did not have any other contradictory standard contained in the order.
- It was not error for the court to find “the Department of Social services has substantially proven the facts that were alleged in paragraphs a-k of the termination of parental rights petition by clear, cogent, and convincing evidence.” Citing *In re J.W.*, \_\_\_ N.C. App. \_\_\_, 772 S.E. 2d 249 (2015), it is not necessarily reversible error for a trial court’s findings of fact to mirror the wording of a party’s pleading. Although one finding of fact includes the language of the petition, there were a total of 70 findings of fact, making it clear that the trial court made an independent determination of the facts and did not merely recite the allegations in the petition.

## Grounds: Neglect

**In re C.L.S.**, \_\_\_ N.C.App. \_\_\_, 781 S.E.2d 680 (2016)

### Held: Affirmed

#### There is a dissent

- *Citing* previous published opinions, “incarceration alone ... does not negate a father’s neglect of his child.” A parent can show an interest in his child’s welfare despite being incarcerated.
- There was sufficient evidence provided through the DSS social worker that the father neglected C.L.S. by failing to provide love, support, affection, and personal contact to the child from the time paternity was established up to the termination hearing. Specifically, after the father’s paternity was adjudicated, he stated he did not want to pursue reunification. Later, he expressed an interest in reunification but failed to attend appointments with the social worker. After being incarcerated, he failed to sign the case plan, meet the child, or provide financial support for the child.

**In re E.L.E.**, \_\_\_ N.C. App. \_\_\_, 778 S.E.2d 445 (2015)

### Held: Reversed

- A termination of parental rights based on neglect requires a finding about the probability of the repetition of neglect when the child has not been in the parent’s custody for a significant period of time before the TPR hearing. Without this finding the court may not terminate a parent’s rights on the ground of neglect set forth at G.S. 7B-1111(a)(1).

## Grounds: Willfully Leave in Foster Care for 12+months w/o Making Reasonable Progress to Correct Conditions

**In re E.L.E.**, \_\_\_ N.C. App. \_\_\_, 778 S.E.2d 445 (2015)

### Held: Reversed

- A mother’s termination of parental rights cannot be based on G.S. 7B-1111(a)(3) [for a continuous period of six months before the filing of the TPR petition, a parent has willfully failed

to a reasonable portion of the cost of a child's care when the child has been placed in the custody of a county department, licensed child caring institution, or foster home] when the child is in the custody of relatives pursuant to a civil custody order. Although the child was initially placed in the petitioner's home as part of an abuse, neglect, and dependency case, seven months before the TPR petition was filed, the juvenile court terminated its jurisdiction after entering a civil custody order that granted custody to the petitioners. The petitioners, who are the child's great aunt and uncle, are not a foster home as defined by G.S. 131D-10.2. Because they had legal custody of the child, the definition of foster home that requires the child's placement in the home by a child placing agency was not met. Because they are related to the child by blood, the petitioners do not meet the other criteria of a foster home, which is to provide full-time foster care for two or more children who are unrelated to the adult members of the household.

### Grounds: Failure to Pay Reasonable Portion of Cost of Care

**In re A.L.**, \_\_\_ N.C. App. \_\_\_, 781 S.E.2d 856 (2016)

**Held: Affirmed**

- By operation of law (G.S. 48-3-703), the department acquired custody of the child upon the mother's executed relinquishment to the department. As a result, the child is placed in the custody of a county department of social services. One ground to terminate parental rights is based on a parent's failure to pay a reasonable portion of the cost of care for a juvenile placed in the custody of a county department when the parent is physically and financially able to do so. G.S. 7B-1111(a)(3).
- The evidence supports the court's findings that the father had an ability to pay a reasonable amount of child support and that he failed to do so. There was a child support order. He signed a memorandum of agreement that he had an ability to pay. There was evidence he was employed as a mechanic and a truck driver. He only made two payments in three years and they were made in connection with contempt proceedings brought against him.

### Grounds: Abandonment

**In re S.Z.H.**, \_\_\_ N.C. App. \_\_\_ (May 3, 2016)

**Held: Reversed**

- For a TPR based on willful abandonment that occurs during the statutory required 6 month period preceding the filing of the action, petitioner must "show more than a failure of the parent to live up to his/her obligations as a parent in an appropriate fashion; *the findings must clearly show that the parent's actions are wholly inconsistent with a desire to maintain custody of the child,*" which is "a purposeful, deliberative and manifest willful determination to forego all parental duties and relinquish all parental claims to the child" (emphasis supplied, citing *In re S.R.G.*, 195 N.C. App. 79, 84-88 (1986)). The findings do not support the conclusion of abandonment.
- When testimony from both the petitioner and respondent show that the respondent called the child during the first half of the relevant 6 month time period for the ground of abandonment found at G.S. 7B-1111(a)(7) and the respondent asked petitioner if he could see the child on her birthday, which was also during the relevant 6 month period, there is no clear, cogent, and convincing evidence to support the court's findings that the respondent failed to maintain communication showing his love, care, and concern for the child.

- Although not raised by the respondent, the court of appeals identified the petition's failure to put the respondent on adequate notice of the grounds of abandonment. The petition did not include the word "abandon" or any variation of the term (e.g., "surrender," "relinquish") or include the statutory citation for the ground.

## Disposition: Best Interests

**In re C.A.D.**, \_\_\_ N.C. App. \_\_\_ (May 17, 2016)

### **Held: Affirmed**

- After finding a ground to terminate parental rights (in this case, neglect), the court must determine if termination of parental rights is in the child's best interests and consider factors specified in G.S. 7B-1110(a). Although the court may consider the availability of a relative for placement, it is not required to do so under the designated factors. Whether a relative is available is not determinative of the child's best interests.
- The court considered the six statutory factors and placement with the maternal grandparents and determined the child's best interests were not served by the grandparents, who created an injurious environment for the children resulting in their adjudication as neglected and dependent. There was no abuse of discretion in concluding it was in the children's best interests to terminate the respondent mother's rights to assist in the achievement of the children's permanent plan of adoption.

## Delay in Entry of Order

**In re S.Z.H.**, \_\_\_ N.C. App. \_\_\_ (May 3, 2016)

### **Held: Reversed**

- A TPR order shall be entered no later than 30 days after the completion of the hearing. If the order is not timely entered, the clerk shall schedule a subsequent hearing at the first session of court scheduled for juvenile matters after the 30 day period expires so that there may be an explanation as to the delay and the ability to obtain needed clarification for the order. The order should be entered within 10 days of this subsequent hearing. G.S. 7B-1109(e), -1110(a). In this case the court violated the time period when the hearing concluded on January 26, 2015 but did not enter the TPR order until July 23, 2015. A party may petition for a writ of mandamus when this time period is not met. "In almost all cases, delay is directly contrary to the best interests of the children, which is the 'polar star' of the North Carolina Juvenile Code."

## Oral Rendition vs. Entry of Judgment

**In re O.D.S.**, \_\_\_ N.C. App. \_\_\_ (June 7, 2016)

### **Held: Affirmed**

- **Facts:** A county department filed a petition to terminate respondent father's parental rights alleging two grounds: neglect and dependency. At the conclusion of the adjudicatory portion of the hearing, the court made an oral statement that the county department proved neglect existed but the court failed to address the ground of dependency in an apparent omission. At disposition, the court found that the termination of respondent father's parental rights was in the child's best interests. In its written order, the court included both alleged grounds (neglect and dependency)

existed. Respondent father appealed arguing that the court's written order had to conform with its oral rendition, which addressed neglect only.

- The trial court was not precluded from basing its termination of parental rights on the ground of dependency when that ground was not addressed in the court's oral rendition of grounds made in open court. Looking to G.S. 7B-1109 and G.S. 1A-1, Rule 52, a trial court is required to enter a judgment that includes findings of fact, conclusions of law, and a determination of the existence or nonexistence of every ground alleged in a petition or motion to terminate parental rights. Neither statute requires the court to make an oral rendition of its judgment.
- Since Rule 58 of the NC Rules of Civil Procedure was amended in 1994, an entry of a judgment requires that the order be (1) in writing, (2) signed by the judge, and (3) filed with the clerk. The written order, and not the oral rendition, is what controls. *Citing Morris v. Southeastern Orthopedics Sports Med. & Shoulder Ctr.*, 199 N.C. App. 425, 433 (2009), a trial court's announcement of a judgment in open court is "the mere rendering of judgment, and is subject to change before 'entry of judgment,' [and]... the trial court can consider evidence presented following the oral rendering of the judgment in order to better inform its subsequent written judgment."
- Prior to this 1994 amendment, an order could be entered, and therefore, in effect when the clerk made a notation of the oral rendition made in open court. After that official entry, a written judgment that conformed with the terms of the oral rendition would follow. An entry of a judgment based on an oral rendition has not been permitted in civil actions since the 1994 amendment to Rule 58. Previous opinions that relied on the pre-1994 version of Rule 58 are not controlling when determining what must be included in a written order.
- Previous opinions holding that a notice of appeal of an oral rendition of a judgment does not vest jurisdiction with the appellate court until a written judgment conforming with the oral rendition is entered pursuant to Rule 58 is an issue of appellate jurisdiction and does not limit what a court may include in its written order. For appellate purposes, if the written judgment does not conform with the oral rendition, the appellant must file a written notice of appeal of the written judgment even if an written notice of appeal was filed after the oral judgment was rendered.

## Findings: Remand Instructions

**In re A.B.**, \_\_\_ N.C. App. \_\_\_, 781 S.E.2d 685 (2016)

### **Held: Affirmed**

- When the appellate court remands an order that was appealed to the trial court with specific direction to make its order internally consistent, the remand requires the trial court to make new findings and omit other findings. These changes would contradict findings the trial court had orally rendered for inclusion in the first order.
- When applied in context, the direction on remand for the trial court to "clarify" its findings of fact and conclusions of law required the trial court to make whatever changes necessary to make the order internally consistent. This would result in significant changes from the first order that was internally inconsistent.
- When a remand allows for a trial court to exercise discretion in determining if it will receive additional evidence, the trial court is not obligated to consider new evidence. Even with the passage of time, the determination of whether to hear new evidence is left with the trial court, and in this case, no motion was made for the court to hear new evidence, and respondent failed to

show how the court abused its discretion by not hearing new evidence before entering a new order.

## UCCJEA

### No Home State

**In re T.N.G.**, \_\_\_ N.C. App. \_\_\_, 781 S.E.2d 93 (2015)

**Held: Subject Matter Jurisdiction Existed**

- Timeline:
  - From birth in 2005 until November 2013, the child resided in North Carolina.
  - Father brought child to South Carolina in November 2013 and left her there with his half-brother, who then gave the child to his stepmother, who in May 2015 gave the child to her mother-in-law.
  - September 2014, the child's paternal grandparents were contacted by the last person child was left with, and the paternal grandparents picked up the child and brought her back to live with them in North Carolina.
  - October 2014, the paternal grandparents made a report to the county DSS, who filed a petition alleging neglect and dependency.
  - The mother and paternal grandparents lived in North Carolina from child's birth through the date the petition was filed; and with the exception of a ten month period, the child and her father resided in North Carolina.
  - At a hearing in October 2014 to address the respondent father's motion to dismiss for lack of subject matter jurisdiction under the UCCJEA, the court found it had temporary emergency jurisdiction under the UCCJEA. Six months after the petition was filed, the child was adjudicated neglected and dependent. Respondent father appeals.
- North Carolina had initial child custody jurisdiction under the UCCJEA, G.S. 7B-201(a)(2). NC was not the home state under G.S. 50A-102(7) when the petition was filed because the child had only been back in NC for a few weeks (versus six months). Although SC had been the child's home state within six months before the petition was filed, no parent or person acting as a parent resided in SC when the petition was filed as required by G.S. 7B-201(a)(1). Neither state was the home state at the time the petition was filed. NC had "significant connection jurisdiction" because:
  - the child, both her parents, and the paternal grandparents who were acting as her parent all have a significant connection to NC and
  - there is substantial evidence of the child's care, protection, training, and personal relationships available in NC.

### Modification Jurisdiction (G.S. 50A-203)

**In re J.H.**, \_\_\_ N.C. App. \_\_\_, 780 S.E.2d 228 (2015)

**Held: Vacate and remand**

Timeline:

- April 2013, child born in NC and lives in NC
- November 22, 2013, mother and child move to TX, father remains in NC
- January 29, 2014, Texas custody order, sole custody to mother, father not yet established

paternity. This order is not in the court of appeals record so it is unclear if the TX court exercised temporary emergency jurisdiction, exclusive continuing jurisdiction, or acted in substantial conformity with the UCCJEA.

- February 20, 2014, mother and child return to NC
  - March 7, 2014, DSS files A/N/D petition in NC, nonsecure custody granted to DSS, and child placed with maternal grandparents
  - June 19, 2014, adjudication (neglected and dependent) and disposition order
  - September 2, 2014, review order
  - February 23, 2015 permanent planning order of guardianship to maternal grandparents and the court finds the mother resided in TX since the inception of the case
- Texas issued an initial custody order, requiring NC to have either modification jurisdiction (G.S. 50A-203) or temporary emergency jurisdiction (G.S. 50A-204).
  - NC did not have modification jurisdiction because only one of the two jurisdictional requirements was met. The requirement that NC have jurisdiction to make an initial custody determination was met because NC was child's home state six months before the A/N/D action was commenced in March, since the child lived in NC from his birth in April 2013 until November 22, 2013. The second requirement that TX determines that it no longer has exclusive continuing jurisdiction or NC would be a more convenient forum, or neither parent nor the child presently reside in TX was not met. The court found the mother resided in TX. The NC court never communicated with the TX court for the TX to determine if it had continuing exclusive jurisdiction.
  - Under G.S. 50A-204, NC had temporary emergency jurisdiction to enter the nonsecure custody order because the child was present in NC and the order was necessary to protect the child who is subjected to mistreatment or abuse. However, the NC court did not communicate with the TX court or specify in the order the time period for the temporary order. The adjudication, disposition, review, and permanency planning orders are vacated.
  - Remanded for the NC trial court to examine the Texas order and determine if TX exercised temporary emergency jurisdiction, exclusive continuing jurisdiction, or jurisdiction in substantial conformity with the UCCJEA when issuing its January 2014 order. Depending on the trial court's determination of how the TX court exercised jurisdiction, the NC court must communicate with the TX court. If NC determines it does not have subject matter jurisdiction, it must dismiss the petition.

## Civil Case Related to Child Welfare

### Custody to Non-Parent, Acting Inconsistently with Parental Rights

**Weideman v. Shelton v. Wise**, \_\_\_ N.C. App. \_\_\_ (June 7, 2016)

**Held: Affirmed**

- **Facts:** Chris is the child at issue in this custody case. Shelton is his mother, and Weideman is his maternal grandmother. Wise was Weideman's domestic partner, who helped raised Shelton. Chris was born in December of 2006, when Shelton was residing with Weideman (her mother) and Wise. Although she initially cared for Chris, she asked for their help because of her depression and other mental health issues that caused her to act erratically. Shelton self-medicated with drugs and alcohol. In August 2007, Weideman and Wise

contacted an attorney to draft a legal “guardianship appointment,” which was subsequently executed by all 3 parties. However, an addendum was added to reflect Shelton’s intent that the guardianship appointment be temporary. Shelton lived in the household off and on until 2009 when Wise banned her from the house. Later in 2009, Wise and Weideman separated, and Chris shared his time between the two residences. Shelton saw Chris when he was with Weideman although Wise attempted to ban her from seeing Chris even when he was with Weideman and informed Shelton that she had no rights to him. In 2011, Shelton was in therapy, on the correct medication regime, found secure housing, and was sober. Although she saw Chris when he was with Weideman and attempted to assert parental control during those visits, she and Weideman agreed that Weideman should have custody, and a consent custody order was entered in 2012. Weideman prohibited Wise from having contact with Chris, and Wise filed a motion to intervene (which was granted), a motion to set aside the custody order (which was denied), and a motion for custody and visitation (which was denied). Wise appealed.

- Wise, the non-parent, failed to establish by clear and convincing evidence that Shelton, the mother, acted inconsistently with her protected parental status to care, custody, and control of her child. The mother never intended to permanently cede her parental rights to a non-parent. Instead, she made a temporary arrangement as evidenced by the addendum to the guardianship appointment that explicitly stated it was temporary and by remaining involved in her son’s life. The transcript of the custody hearing also reflected the mother’s intention that the custody arrangement be temporary as it would allow her to continue to be an active participant in her son’s life and provide her the opportunity to assert her role as his parent to a progressively greater degree. Unlike Wise, Weideman allowed for contact between Shelton and Chris and allowed Shelton to assert parental control, so custody to Weideman allowed Shelton to see her son and prevented Wise from prohibiting Shelton from seeing her son. These actions are inconsistent with the mother’s protected parental status.
- Wise, the non-parent, cannot simultaneously intentionally prevent the mother from having a relationship with her son and argue that the mother has failed to shoulder her burden to care for her son.

## Criminal Cases Related to Child Welfare

### Felony Child Abuse, Serious Bodily Injury

**State v. Bohannon**, \_\_\_ N.C. App. \_\_\_ (June 7, 2016)

**Held: No Error**

- To prove felonious child abuse inflicting serious bodily injury, the State must prove (1) the defendant is the child's parent, (2) the child was younger than 16, and (3) the defendant intentionally and without justification or excuse inflicted serious bodily injury. In this case, the disputed issue was whether the Defendant inflicted serious bodily injury (as opposed to a lesser offense that involves serious physical injury) on his 3 month old child who suffered from subarachnoid hemorrhages.
- Serious bodily injury is defined at G.S. 14-318.4(d)(1) as “[b]odily injury that creates a substantial risk of death or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.” In determining if there is a substantial risk of death, “the age and particular vulnerability of a minor victim must factor into this analysis.”
- In viewing the evidence most favorable to the State, defendant's motion to dismiss was not improperly denied as there was sufficient evidence to submit to the jury the question of whether the child suffered serious bodily injury. Three expert witnesses who treated the child testified about the impact of bleeding on an infant's developing brain, and how it could be life-threatening and would require monitoring for dangerous side effects that could arise as the brain continues to develop.

### Misdemeanor Child Abuse: Substantial Risk of Physical Harm

**State v. Watkins**, \_\_\_ N.C. App. \_\_\_ (May 3, 2016)

**Held: No Error**

- Misdemeanor child abuse involves a child younger than 16 years old and a parent who through non-accidental means inflicts, allows to be inflicted, or creates a substantial risk of physical injury to his or her child (G.S. 14-318.2(a)).
- The court did not err when denying defendant's motion to dismiss as the state introduced substantial evidence that Defendant created a “substantial risk of physical injury” to her 18-month child through an officer's testimony that Defendant left her child in her car for over 6 minutes, was unable to observe her car during the 6+ minutes, and had turned the car off and had a window partially rolled down when it was 18 degrees outside with snow and sleet accumulating.
- Defendant's reliance on findings of fact that supported conclusions of neglect in juvenile proceedings (7B actions) illustrate some circumstances that can create a substantial risk of harm to a child but are not determinative on the jury, who decided whether in this case the Defendant created substantial risk of physical injury to her child.