

TPR:
GROUNDS & DISPOSITION

Hearing, -1109

90 days

- of filing petition/motion
- if good cause to receive additional evidence, discovery, or other information that is in BIC , continue for up to 90 days
- More than that requires finding of extraordinary circumstances

Adjudicatory Order

30 days

- Clear, cogent, and convincing
- Rules of Evidence apply
- No appeal from adjudication order only

Grounds: G.S 7B-1111(a)

Over what period of time?

Includes circumstances AT TIME of adjudication hearing

Name those grounds!

Abandonment

The parent has

- abandoned the child (as a form of neglect);
- willfully abandoned the child for 6 months immediately before TPR was filed; or
- within first 7 days of child's life, voluntarily abandoned child in a "safe surrender," and at least 60 days have passed.

Define Abandonment

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

Abuse or Neglect

- Current, or
- prior neglect and likely repetition if child were returned to parent

A prior adjudication is admissible but not sufficient

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

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

Poverty may not be basis for termination.

Define Willful

- Willfulness is established when the respondent had the ability to show reasonable progress, but was unwilling to make the effort. In re Nesbitt, 147 N.C. App. 349, 360, 555 S.E.2d 659, 666 (2001)
- Parent's refusal to obtain treatment for alcoholism constituted willful failure to correct conditions that had led to removal of child from home, Nolen, 117 N.C.App. 693, 453 S.E.2d 220 (1995)
- General lack of involvement with child over two year period, In re Bluebird, 105 N.C.App. 42, 411 S.E.2d 820 (1992)
- Respondent initially participated in programs designed to improve her circumstances, but later "largely abandoned these efforts"; her visits with her daughter were "infrequent"; and the social worker had a difficult time reaching her, In re Bishop, 92 N.C.App. 662, 375 S.E.2d 676 (1989)

Poverty

- The trial court however, expressed concern that Ms. Nesbitt had paid the last two months rent with money from her income tax returns but failed to provide a plan for paying future rent. While we acknowledge this as a legitimate concern, we also recognize that making ends meet from month to month is not unusual for many families particularly those who live in poverty. However, we do not find this a legitimate basis upon which to terminate parental rights.

Poverty: Check your biases

- Because parents subject to termination proceedings are often poor, uneducated, or members of minority groups, such proceedings are often vulnerable to judgments based on cultural or class bias.
- *Santosky v. Kramer, referring to Smith v. Organization of Foster Families, 431 U.S. 816 (1977)*

NonSupport

Willful failure to pay

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

Willful failure to comply with

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

The parent is incapable of providing proper care and supervision, and

- the child is “dependent,” and
- there is a reasonable probability that the incapability will continue for the foreseeable future, and
- the parent lacks an appropriate alternative child care arrangement.

Incapability may be due to any “cause or condition that renders the parent unable or unavailable to parent” the child.

Issues You May See

- Constitutional right to choose alternate caregiver
- Not limited to substance abuse or mental illness
- Incarceration

Unwed Fathers

- Prior to filing, NOT:
 - Filed affidavit of paternity
 - Legitimated child
 - 49-10, -12.1 or filed petition
 - Married mother
 - Provided financial support/care for juvenile and mother
 - Established paternity through 49-14, 110-132, 130A-101, 130A-118 or other judicial proceeding

Other Grounds

The parent has committed a specified crime.

Child's conception resulted from a sex offense under G.S. Chapter 14 for which the parent has been convicted.

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

N.C. consent or relinquishment for adoption does not satisfy law in another state where an adoption is filed.

of grounds

- Must have one
- But decide them all!

Parker: section 8

3. What grounds do you think might be alleged; which do you think can be proved by c,c,c?

Parker: Angel and Mr. Winkler

- Neglect?
- Dependency?
- Willful abandonment?

Disposition: -1110

- BEST INTERESTS OF THE CHILD
- rules of evidence relaxed: “relevant, reliable and necessary”
- must enter order within 30 days with FINDINGS & CONCLUSIONS

Hot Topic

- Consideration vs. Written Finding

1. Age
2. Likelihood of adoption
3. Will TPR aid in accomplishing permanent plan
4. Bond between juvenile and parent
5. Quality of relationship between juvenile and proposed placement provider
6. Any relevant consideration

Order, - 1110(b)

- Set forth facts and conclusions why not BIC

Parker: what factors would you consider?

TPR Order

1. enter within 30 days
2. okay to delegate drafting
3. distinguish findings and conclusions
4. state "clear, cogent, and convincing"
5. do not "recite" evidence
6. incorporate sparingly if at all
7. be clear about which ground(s)
8. address all grounds that were alleged

Appeals (G.S. 7B-1001-1004)

- The order is not automatically stayed (-1003)
- Pending appeal, the court may enter only temporary orders affecting custody or placement of child (in underlying case) (-1003)
- Appeal of cease and TPR (-1001(5))

Common Issues on Appeal

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