

Special Issues in Parent Representation

Juvenile Law Update



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Categories of Issues

- Subject Matter Jurisdiction
- Procedure
- Evidence
- Infants



Subject Matter Jurisdiction

Can the judge do that?

- Answer is always “no” if court does not have subject matter jurisdiction
- Issue may be raised at any time
- Lack of jurisdiction in underlying case may deprive DSS of standing to file tpr




What might deprive court of subject matter jurisdiction?

1. No valid summons issued to parent in abuse/neglect/dependency case (K.J.L., 8/19/08)
 - Issuance of summons to child is not required in abuse, neglect, dependency case (M.G.)



2. Discontinuance of action when summons expires and no extension or alias and pluries

- Issuance of new summons begins new action and reinvokes jurisdiction (D.B.)


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3. No summons issued to child in tpr
- Distinguish issuance and service
 - Is issuance to GAL sufficient?
 - What does “referencing” juvenile mean?

(I.D.G.), (K.A.D.), (S.F.), (A.F.H-G.),
(J.T.), (J.A.P.)



4. Failure to initiate action properly

- If nonsecure custody order issued before petition filed, court acquires jurisdiction when petition is filed (A.S.)
- May not initiate TPR as counterclaim in civil action (S.D.W.)



5. Failure to verify pleading when statute requires verification (C.M.H.), (T.R.P., N.C. Sup. Ct, 2006)

6. Lack of standing

- Verification not by director or authorized representative (D.D.F.)
- In tpr, order giving DSS custody was invalid (K.J.L)



7. Non-compliance with UCCJEA

- N.C. not child's home state
- Another state has exclusive continuing jurisdiction
 - Exception = temporary emergency jurisdiction
- Lack of evidence from which court could find it has jurisdiction


(M.G.), (E.X.J.), (T.J.D.W.)



8. In tpr, child not in district when petition/motion filed (G.S. 7B-1101)

- Child's presence not required if
 - child in custody of agency in the district, or
 - court has exclusive continuing jurisdiction under UCCJEA

(H.L.A.D.)



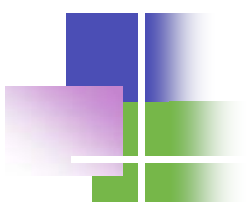
9. TPR initiated by motion when court was not “exercising jurisdiction over” the parent in an abuse, neglect, or dependency proceeding.

(G.S. 7B-1102; no cases)



Procedure

1. Amendment to petition may not “change the nature of the conditions upon which the petition is based.”
(G.S. 7B-800), (M.G.)
2. Court may not allow amendment of pleadings to conform to evidence
(B.L.H., with dissent)

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3. Court could consolidate
 - a. adjudication of abuse/neglect petition
 - b. adjudication of tpr motion
 - c. disposition in both cases

(R.B.B.)



4. Court may enter Ch. 50 order only

a. at or after disposition


b. after Ch. 50 findings & conclusions

c. after finding:


i. no need for continued intervention

ii. six months since court determined permanent plan (except for parent or person from whom child was taken)

(T.H.T.)

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5. A crowded docket is not an 'extraordinary circumstance' warranting continuance under G.S. 7B-803 (R.L)
 6. Party may give notice of appeal between time judgment is rendered and time judgment is entered
 7. In tpr failure to serve notice of appeal on GAL was reversible error (since not waived)

(J.L.)


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8. In tpr, GAL may not sign notice of appeal in place of respondent
 - Role of GAL does not include exercising rights on behalf of respondent (L.B.)
 9. Court may be required to conduct hearing and exercise discretion re whether parent needs a GAL (M.H.B., 8/19/08)




Evidence

1. Collateral estoppel precludes relitigation of issues only if they were
 - a. fully litigated and
 - b. necessary to prior determination.


(N.G.)

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2. Res judicata may bar a second action after a dismissal
 - a. if issues are identical, and
 - b. dismissal was a “final judgment on the merits” (I.J.)

 3. At adjudication testimony from other hearings admissible only if properly introduced (J.M.)

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4. When injuries unexplained, fact of being sole or primary care provider is relevant (S.W.)
 5. Medical records, even if within a hearsay exception, require proper foundation. (T.M.)
 6. Rules of Evidence may not be superseded by local rules (T.M.)

Infants

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1. Evidence supported
 - a. neglect adjudication
 - b. futility of reunification efforts
 - c. cessation of visitation

Findings were supported by

- prior tpr = collateral estoppel
- extensive social worker testimony
- Dr. Cooper testimony


(N.G.)



2. Evidence supported neglect adjudication of newborn

- DSS and GAL reports provided substantive evidence
- DSS asked court to take judicial notice of other children's files
- Respondent did not object to either form of evidence


(A.S.)



Same case (A.S.) was remanded for dispositional findings/conclusions because disposition was unclear

The court had

- incorporated whole reports
- found statements in reports true
- adopted recommendations in reports



3. No error where court at initial disposition

- found “aggravated circumstances”
- found reunification efforts would be futile and should cease
- continued custody with DSS
- refused to place child with grandparents

(B.W.) (See also S.W. and R.B.B.)



Red Flags

- “As to” language
- Visitation in discretion of DSS or any other party
- Terminating reviews when court awards custody or guardianship
- Judicial notice
- Any reliance on prior orders involving lesser standard of proof
- Any order “closing” a case