



Child Welfare Case Update

By Sara DePasquale



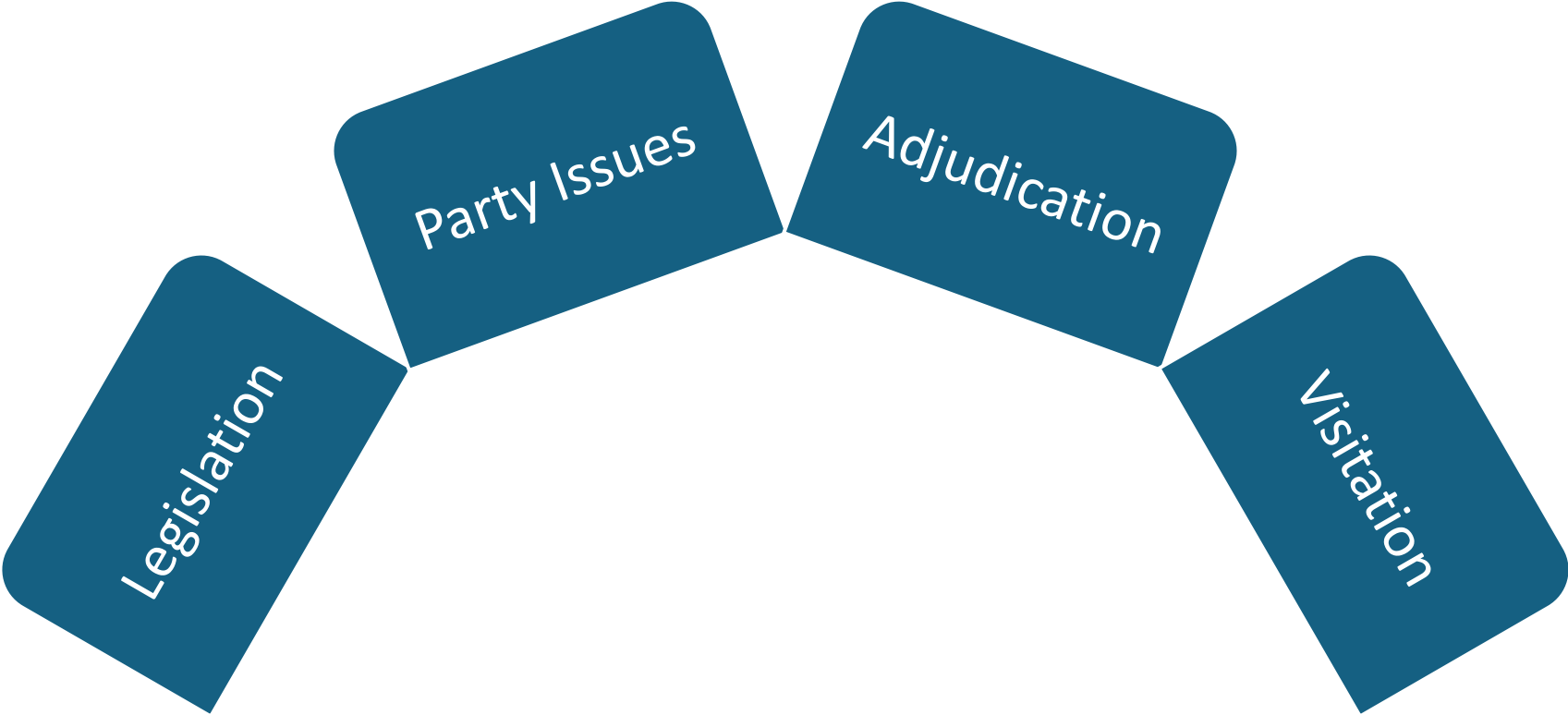
Thank you for joining

Sara and
Jeremy

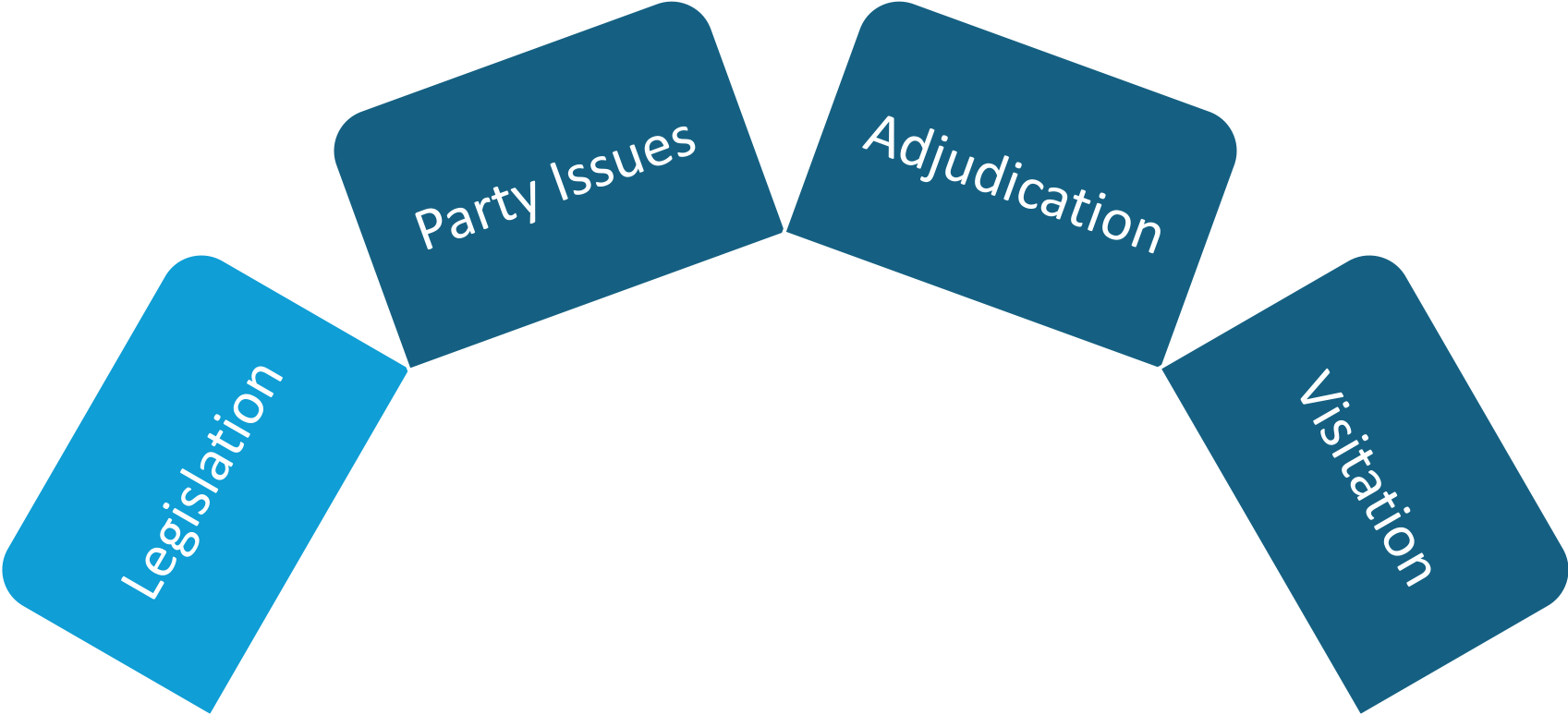
when they exchange
their wedding vows

1 p.m. on Friday
October 11, 2024

Today's Topics

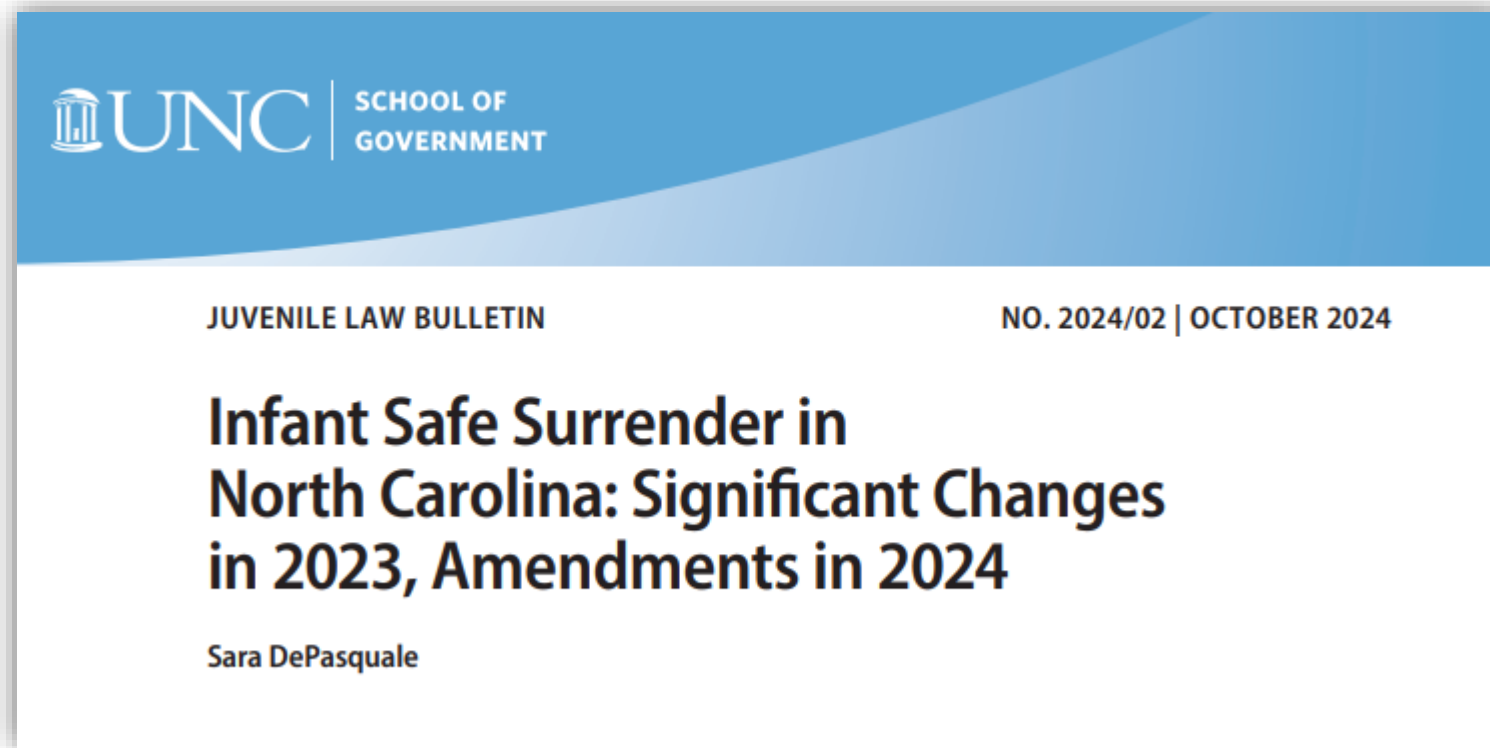


Today's Topics



Legislative Update

- Infant Safe Surrender: ex parte order after *initiation* of publication



Grandparents

July 8, 2024

A/N/D Intervention

7B-401.1(e1)

- Both parents deceased
- 1 parent deceased,
other unknown or TPR



Payments to Unlicensed Placements

Relatives of child in DSS custody

2023

2024

Half siblings placed in home regardless of relationship with caregiver

Safe Babies Court

New Article 5B, Ch. 7B

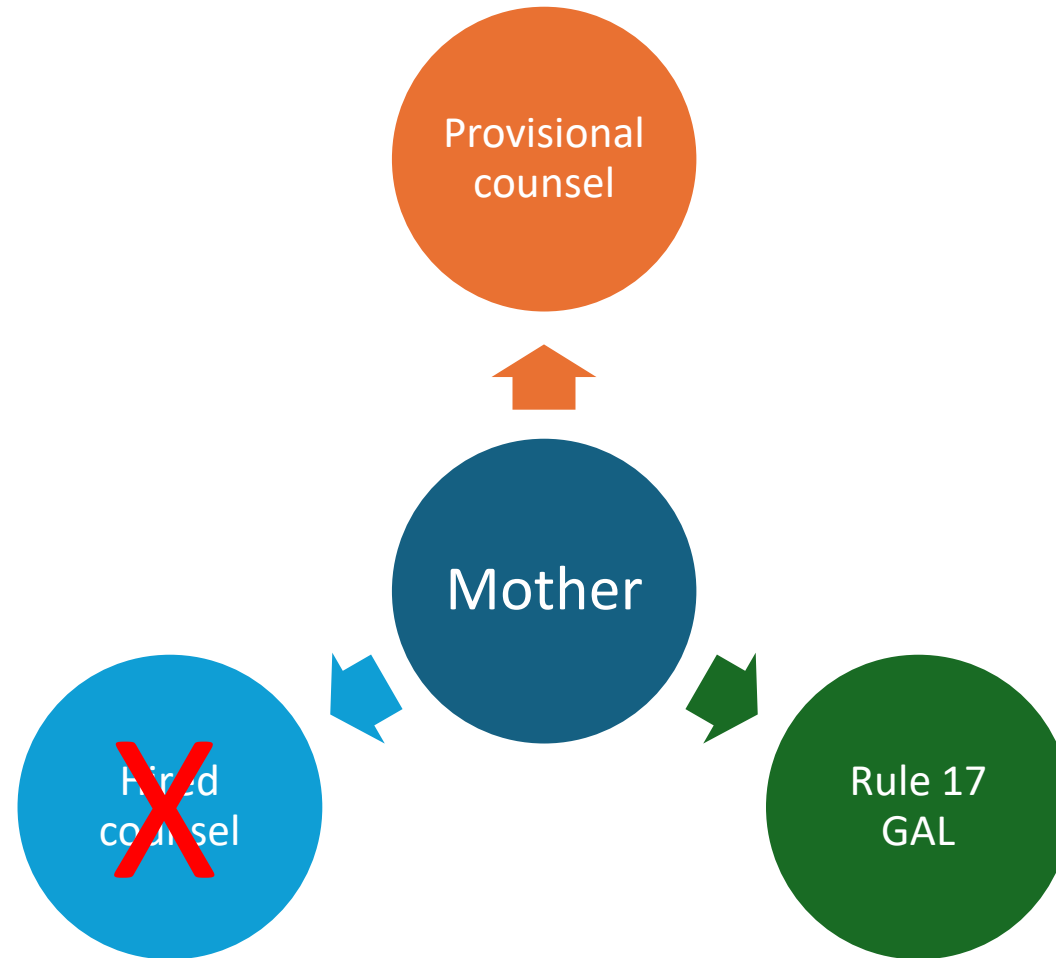


Today's Topics



Parent Counsel

In re A.K. (p.2)



Parent's Right to Hire Counsel

- Licensed + RPC (not local rules + experience)
- Court's inherent authority not unlimited

A Respondent Parent's Right to Retain Counsel: Lessons from a New Court of Appeals Decision, *In re A.K.*

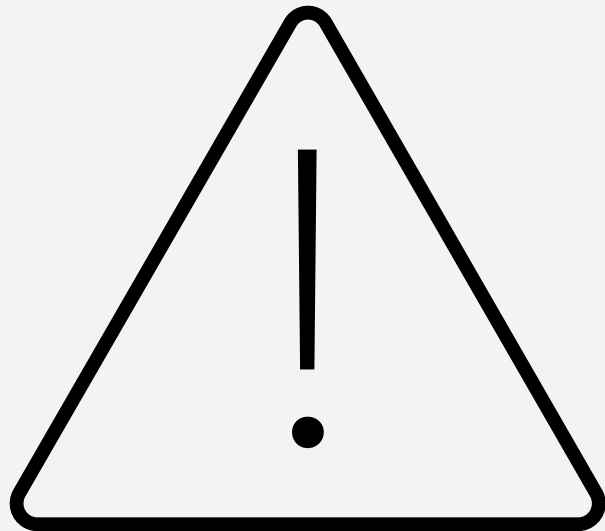
This entry was contributed by Timothy Heinle on August 21, 2024 at 9:18 am and is filed under Child Welfare Law.



A recent decision by the North Carolina Court of Appeals considers the right of a respondent parent in a juvenile abuse, neglect, or dependency (AND) proceeding to hire counsel of their own choosing and what standards, if any, a retained attorney must meet to be allowed to represent a parent. *In re A.K.*, ___ N.C. App. ___ (August 6, 2024). The case also includes discussion of the procedures for appointing a Rule 17 guardian ad litem to a respondent parent – an issue I will explore in a later post. This post focuses on what the opinion in *A.K.* does – and does not – tell us about a parent's right to hire counsel.

A Parent's Right to Counsel, Generally

When an AND petition or a petition to terminate parental rights (TPR) is filed, the juvenile's parent has a statutory right to counsel, absent certain exceptions. See G.S. 7B-602(a); 7B-1101.1(a). Provisional counsel must be appointed for each parent named in the petition but must be dismissed at the first hearing if one of these statutory factors applies: the parent fails to appear at the hearing, the parent has retained private counsel, the parent is not indigent, or the parent knowingly and voluntarily waives their right to counsel. G.S. 7B-602(a)(a1); 7B-1101.1(a)(a1). If none of the statutory factors are satisfied, the court must confirm the appointed counsel. G.S. 7B-602(a); 7B-1101.1(a).



Rule 17 GAL

- Notice
- Opportunity to be heard
- Incompetency (35A-1101(7))
- Findings

Cultural Issues



A Second Look at *In re A.K.*, Addressing Cultural Issues in A/N/D Cases



This entry was contributed by Sara DePasquale on September 6, 2024 at 7:48 am and is filed under Child Welfare Law.



The North Carolina Court of Appeals in *In re A.K.*, ___ N.C. App. ___ (Aug. 6, 2024) addressed a parent's right to be represented by a privately retained attorney of their choosing in an abuse, neglect, and dependency (A/N/D) action. See Timothy Heinle's post discussing that issue [here](#). The opinion also discusses issues related to the mother's and child's culture – their religion and language. This post explores those aspects of the opinion.



Who Are the Families and Children that Are Involved in Child Welfare?

Over the course of calendar year 2023, 15,885 children in North Carolina were in the custody of a county department of social services (DSS). Statistics identify the race of those children. The majority of children in DSS custody (56.3%) were white. Almost one out of three children (29.23%) were black. The remaining children were Hispanic (8.59%), Native American (3%), or "other race" (11.48%). See Child Welfare Statistics [here](#). There are, of course, other aspects of culture such as religion and national origin that are not identified in these statistics. Yet, we know that families from all races, ethnicities, religions, socioeconomic status, and more are involved in North Carolina's child welfare system.

Removal of Party

In re E.E. (p. 4)



7B-401.1(g)

Findings

- No legal rights affected by removal
 - DSS custody
- Continuation as party not necessary to meet juvenile's needs
 - \$ support for GM
 - Sexual abuse, criminal charges, DVPO



What's odd about this
appeal?

Today's Topics



Collateral Estoppel

In re A.D.H. (p. 5)

CH. 50

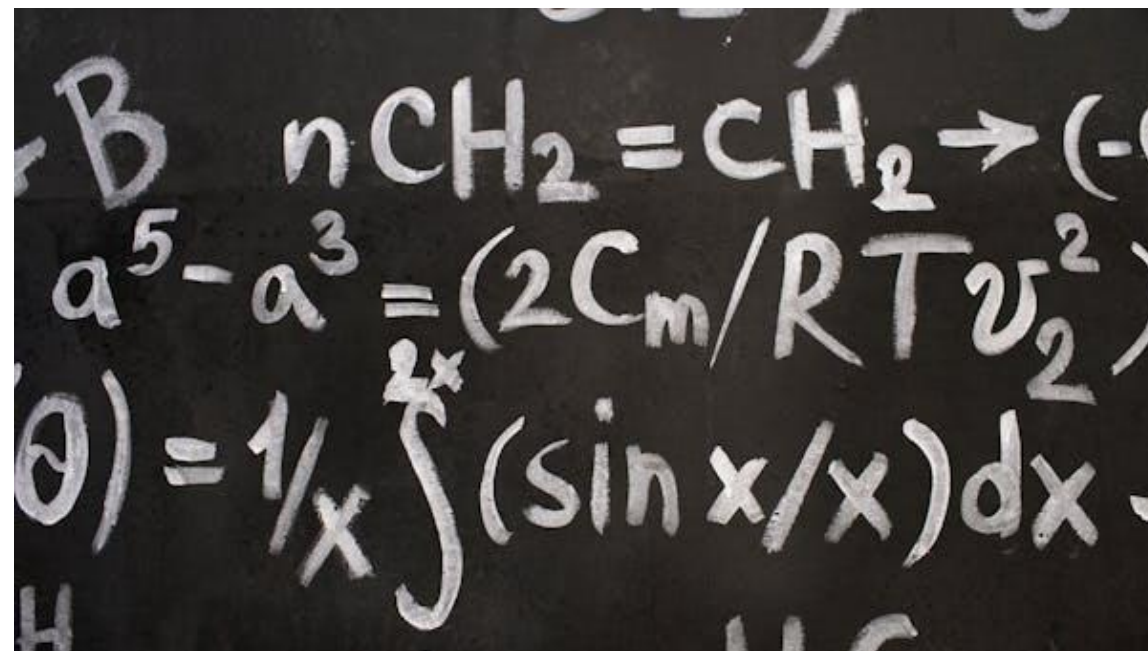
- Father did not sexually abuse daughter

Collateral Estoppel

- Not proved under lower standard or same standard



- Dismissal not ok, new allegations after orders



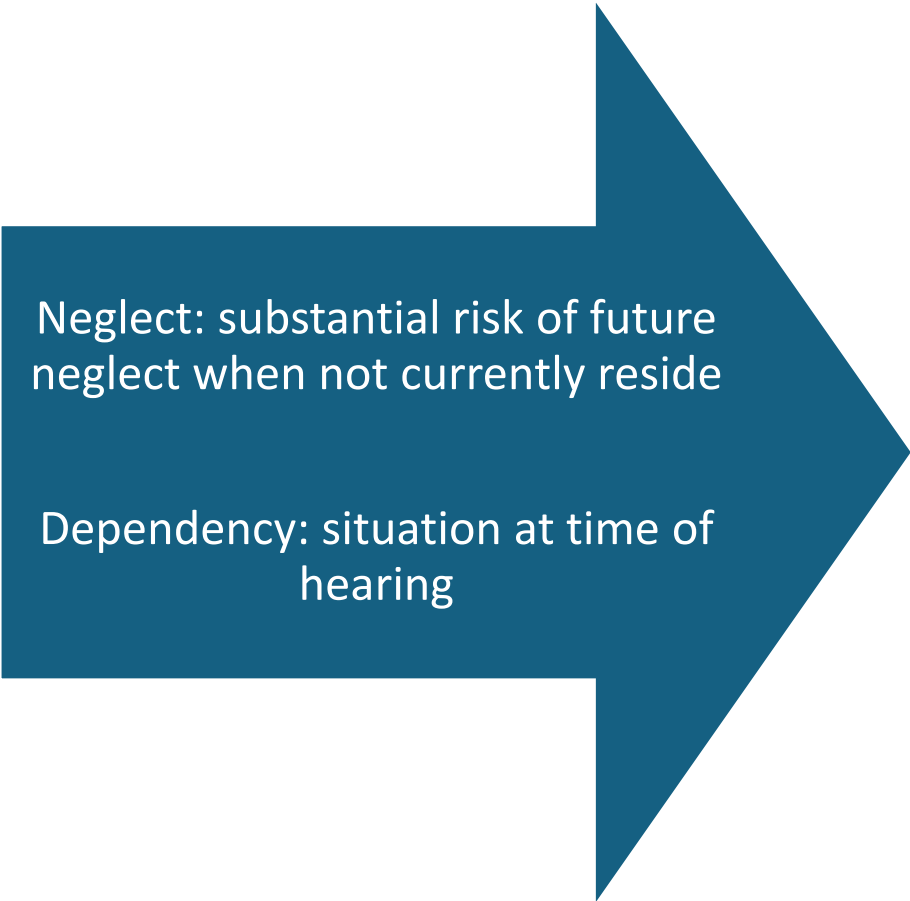
Evidence

In re A.J. (p. 6)



L.N.H.

No post-petition evidence



Neglect: substantial risk of future neglect when not currently reside

Dependency: situation at time of hearing

Mental Illness

1

Court observed
hostile behavior

2

Not follow case plan

3

Need expert
testimony or
admissible
documentary
evidence Dx

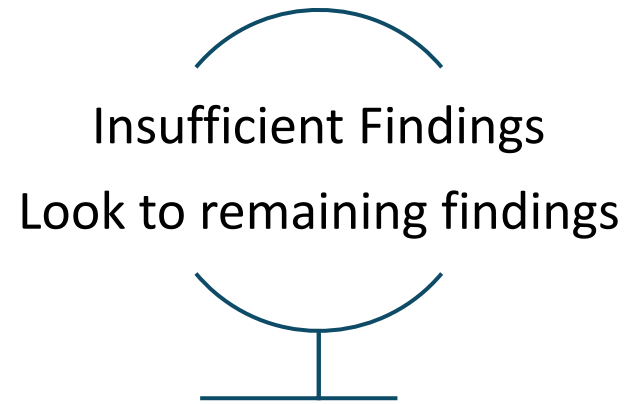
In re K.C. (p. 9) “Fixed and ongoing circumstance”

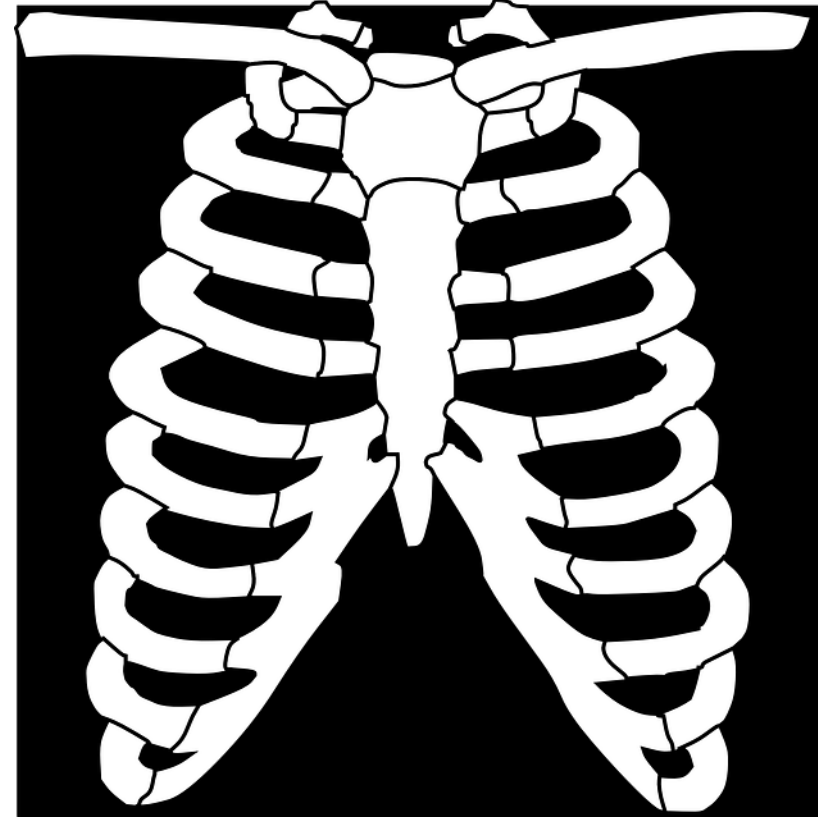


- Does evidence support harm based on behavior alleged in petition



Appellate Review





Abuse

Conflicting Expert Testimony

In re E.H. (p. 8) (Stayed 7/15/24)

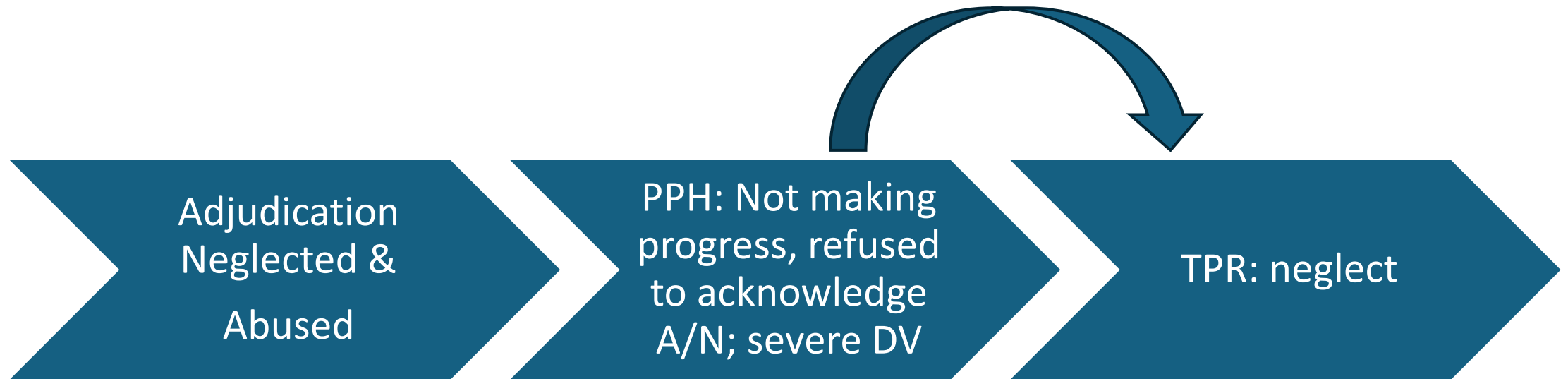
Neglected: Sibling (p. 11)

- Sole caretakers of infant
- Nonaccidental injuries
- No explanation
- Married parents
- Pending criminal charges



Judicial Notice

In re B.A.J. (p. 16)



V Amendment

- Pending felony child abuse charges
- Not a shield or sword
- Inference may be taken



Today's Topics

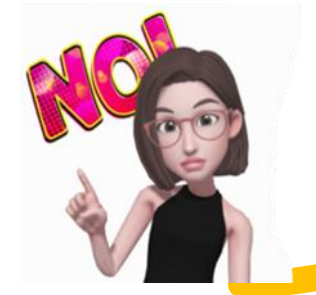
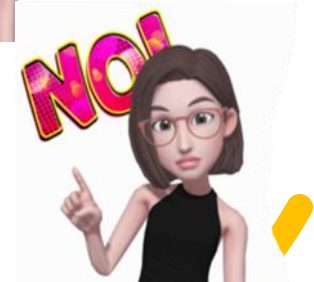
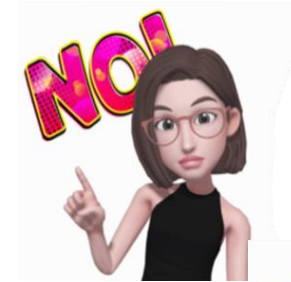



No Visitation
In re A.J.L.H. (p. 12)

COA
(on remand)
Back to NCSC

- Factors:
 - DSS history
 - Other children removed – is it related to this child's removal
 - Failed/minimally participate in case plan
 - Not consistently attend visits
 - Relinquishment

- Constitutional Rights – **NEW**
- Clear, cogent, convincing evidence
- Each Child and Parent





Contrary to
child's best
interests

FINDINGS



Forfeited
their right
to visitation



Gotta Go
Get
Married!

