


Child Welfare Case Update

A photograph of a dark brown and white dog sitting on a beige and red striped couch. The dog is wearing a clear plastic cone collar (E-collar) around its neck. The dog's head is turned slightly to the left. The couch has a textured fabric with horizontal stripes. In the background, there is a patterned rug and a wooden table.

Sara DePasquale
UNC School of Government



Guest Appearances: the Key



Today's Topics

- Jurisdiction
 - Representation
 - Neglect
 - Dispositions
 - A/N/D Appeals
 - TPR Adjudication
-

UCCJEA

In re R.G. (p. 31)



May 2019: Dad moves
Sept. 2019: Custody act, joint custody



Nov. 2018:
Adopted by mom & dad

Dec. 2021, DSS petition/NSC
2022 mom contests SMJ

What's Required?

Is This Sufficient?



Modification Jurisdiction

- Order from other state preferred but not expressly required
- Docket entry ok (In re T.R.); Letter is analogous
- Letter has substantive attributes of order
 - Facts
 - Conclusion re: SMJ
 - Indicia of veracity and officiality (stationary, facts, judge's signature)



7B-1101: Jurisdiction

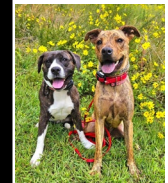
In re M.A.C. (p. 21)

- “Found in”
- “Resides in”



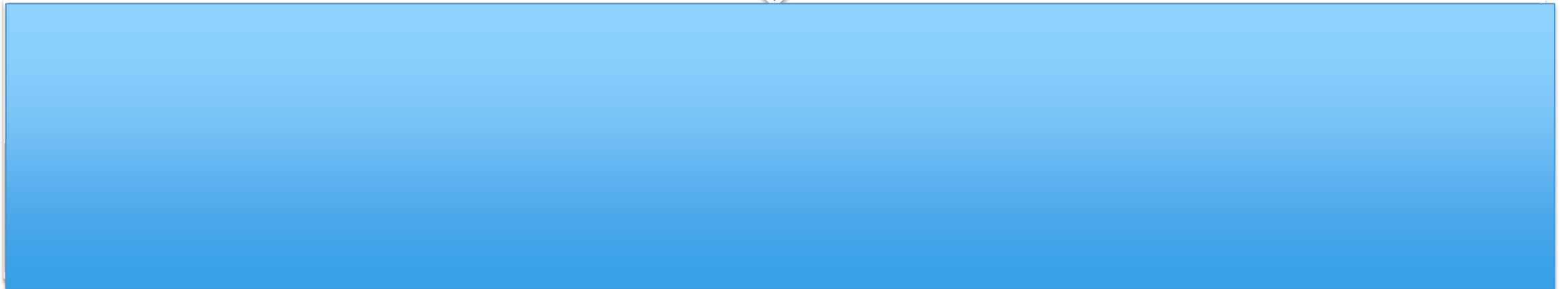
TPR
Petition

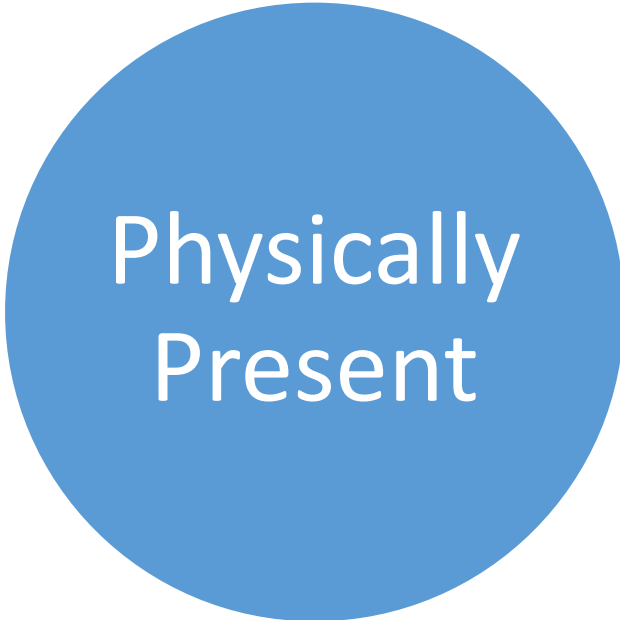
Children reside w/
GP in Columbus
and present in
Harnett County
when petition
filed



Presumption of rightful jurisdiction

Verified petition with allegation of presence





Terminate Jurisdiction

In re K.C. (p. 17)

Adjudication

- Dismissed with prejudice

Rule 59-60

- Granted
- Transcript of forensic interview provided

Order

- Adjudicated children neglected


Appeal

- Did the court have subject matter jurisdiction to hear the Rule 59-60?



No

- 7B-201
- Rule 59-60 does not claw back jurisdiction
- Appeal



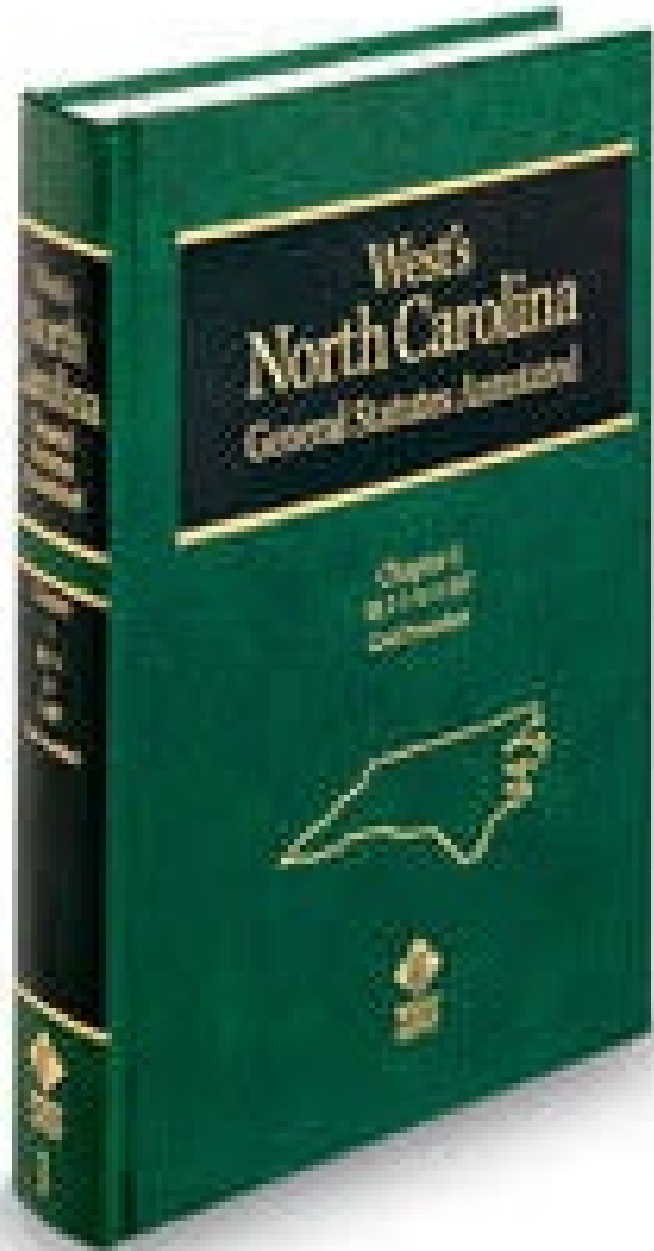
Today's Topics

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G.S. 7B-601
In re M.G.B. (p. 3)





GAL for Child: Duties

- Investigate facts, needs, resources, court orders executed
- Facilitate settlement
- Offer evidence
- Explore dispositional options
- Report when needs not met
- Protect and promote best interests

Performance

- Before removal, communicate with GM
- Monthly
 - Visits with children
 - Calls with foster parents
- Review DSS reports
 - Doc of grandmother's + visits
- Reports at each hearing
 - Health and well-being
 - Education
 - Relationship with placement & each other
 - Wishes

CHECKLIST



Preservation for appeal

- Automatic: contrary to statutory mandate that requires
 - Specific act
 - Specific courtroom proceedings judge directs
 - 7B-601: GAL appointment
 - Trial court appoints
 - Duties are directed to GAL
-

Forfeiture of Counsel

In re D.T.P. (p. 23)



Parents Forfeited Their Right to Court-Appointed Counsel in TPR: What Is the Law for Attorney Representation of Parents in A/N/D and TPR Actions?

This entry was contributed by Sara DePasquale on December 6, 2023 at 5:55 pm and is filed under Child Welfare Law.



North Carolina law requires that parents in abuse, neglect, dependency (A/N/D) and termination of parental rights (TPR) cases receive court-appointed counsel if they are indigent. G.S. [7B-602](#); [7B-1101.1](#). Parents also have a right to knowingly and voluntarily waive their statutory right to counsel. *Id.* The question of whether a parent may forfeit their right to counsel in a juvenile proceeding based on their behaviors had not been answered until recently. Three appellate opinions address the issue and answer that question. Parents can and have forfeited their statutory right to court-appointed counsel. To get to forfeiture, you first need to understand the rules related to a parent's statutory right to court-appointed counsel.

Take-Aways




IT IS POSSIBLE



SEPARATE HEARING AND
ORDER



FINDINGS

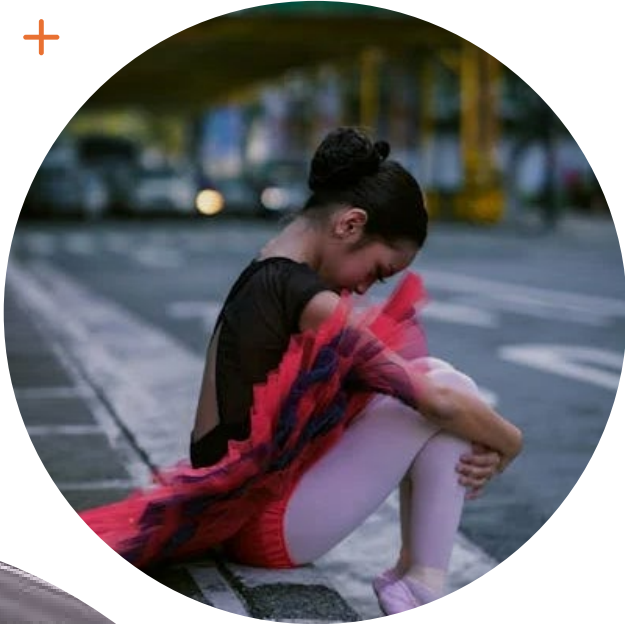


Today's Topics

- Jurisdiction
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-



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Neglect: Single Act

- In re A.H. (p. 4)
 - Distinguish Stumbo, HP, and V.M.
 - Below normative standards of care
 - Findings are key
 - Totality of evidence



○



Today's Topics

- Jurisdiction
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 - **Dispositions**
 - A/N/D Appeals
 - TPR Adjudication
-

Initial Disposition

In re B.L.M.-S (p. 9-11)

7B-901(c) – chronic physical abuse

2 m.o.

2 rib fractures

Findings = dad's admissions

Chronic





Discretion of trial
court

Not recommended by DSS

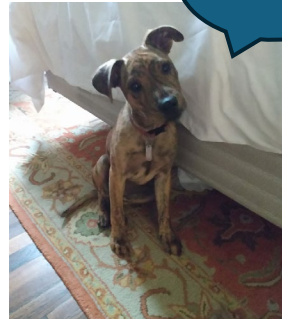
Statutory authority

Reasonable
efforts not
required

USE THIS
LANGUAGE IN
DECRETAL PORTION
OF ORDER

to
cease
etc

?



Order No Contact



7B-904: steps to remedy conditions led to removal

Guardianship Ordered

In re J.O. (p. 11, 13)

No ICWA findings clear and convincing evidence

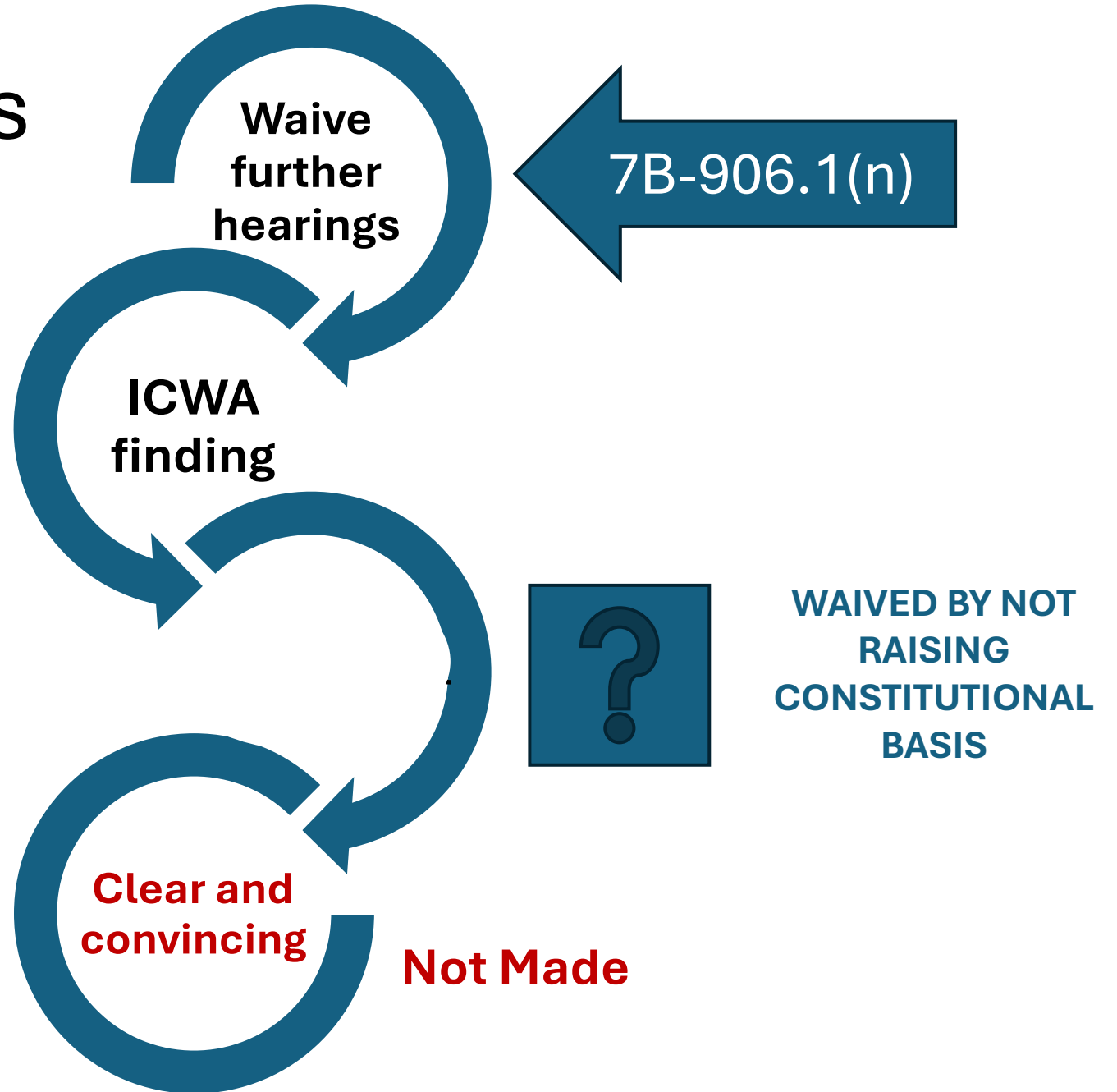
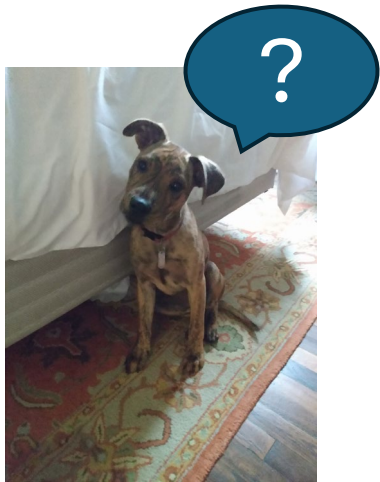
- QEW, serious emotional or physical damage to child

25 USC 1912
25 CFR 23.121 - .122

In re E.G.M., 230 N.C. App. 196 (2013)

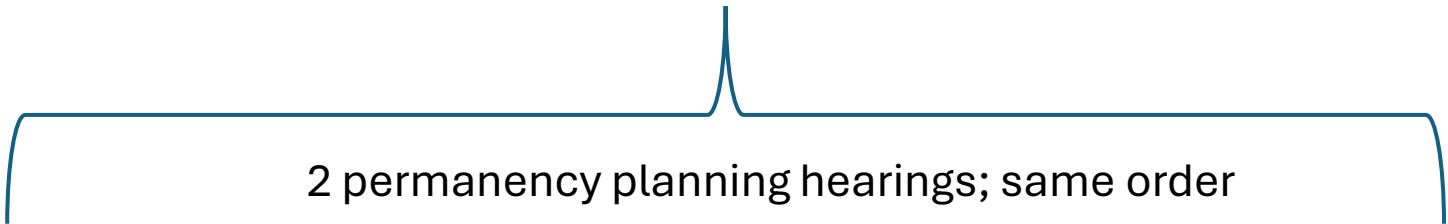


Need not address



ICPC

In re K.B. (p. 11)



2 permanency planning hearings; same order

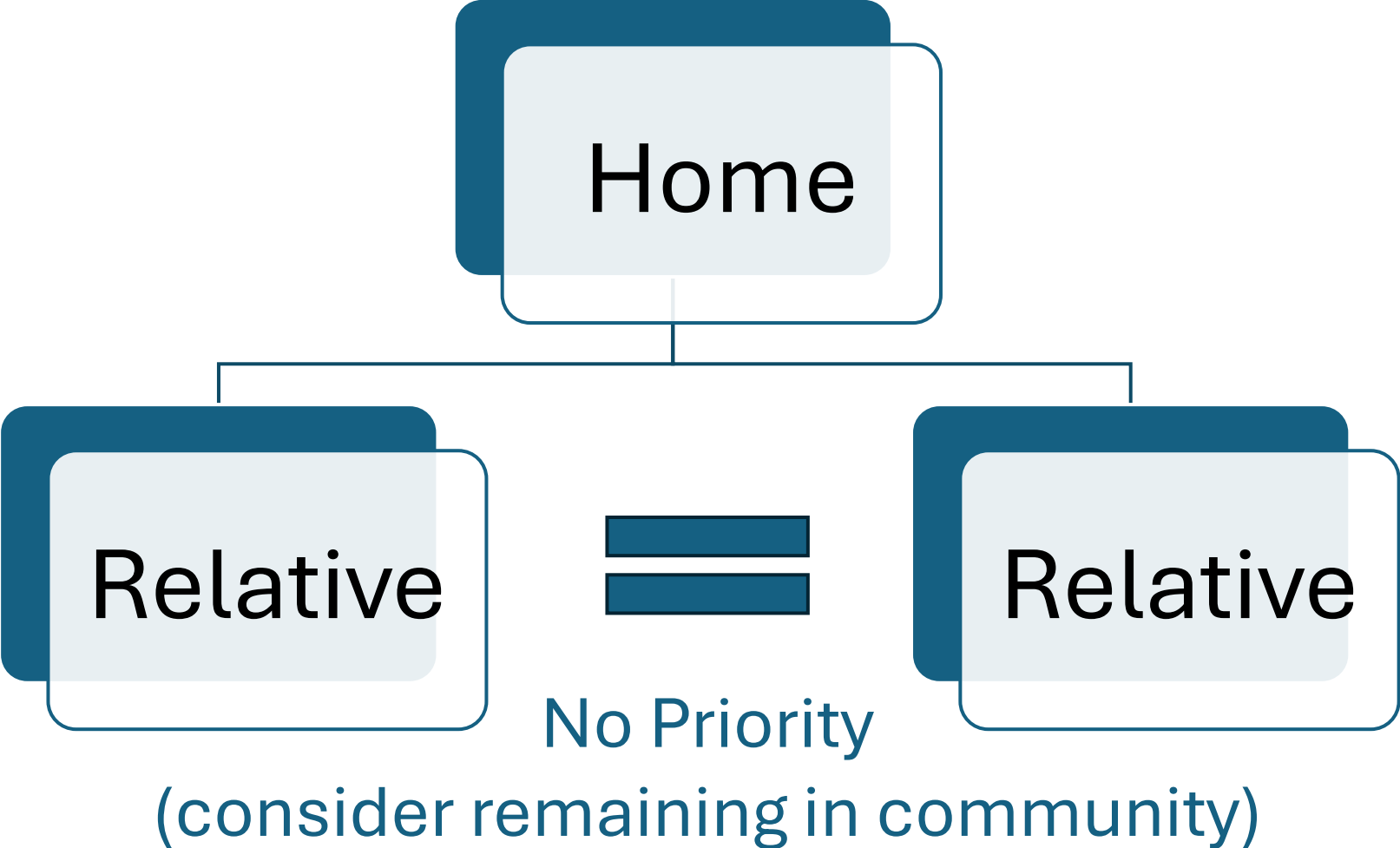
2019:
Placed with great
aunt in NC

DSS ordered to
assess GM in GA;
starts

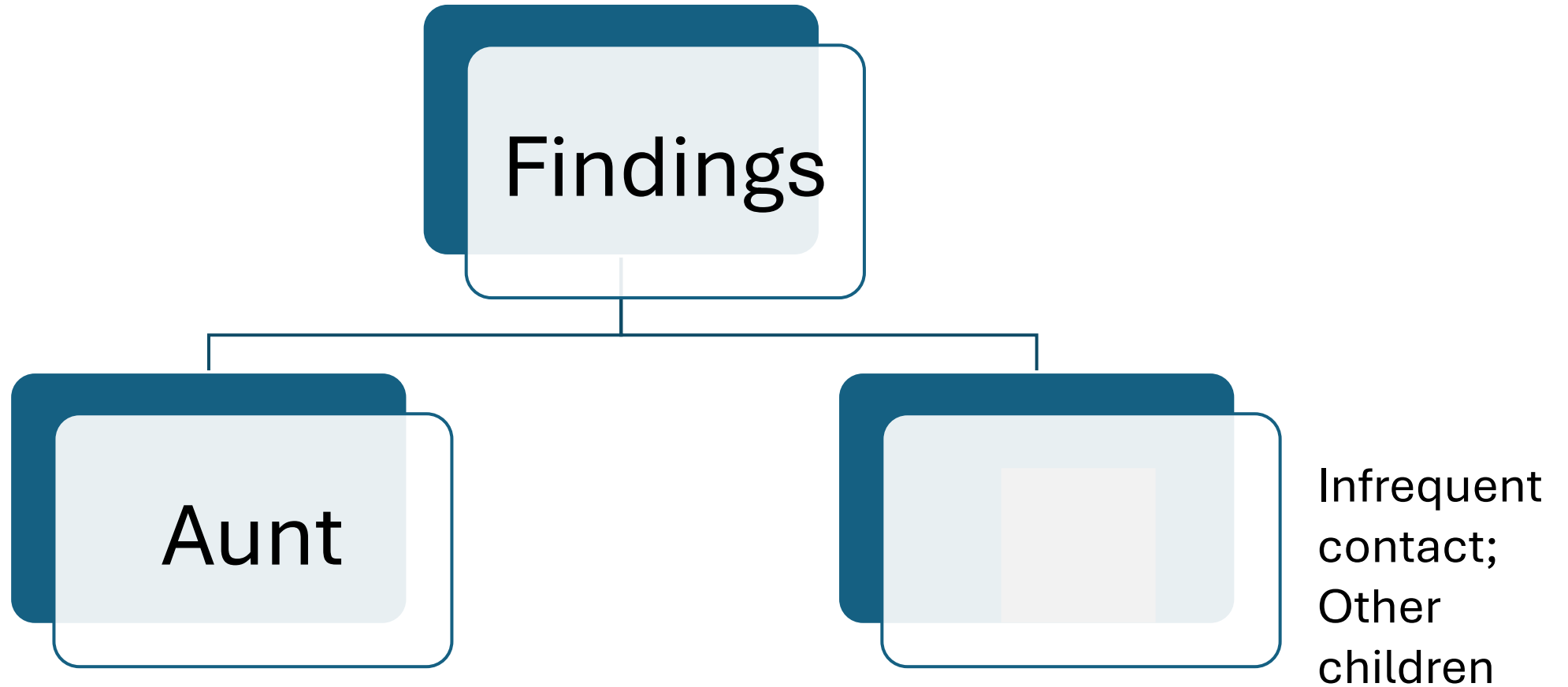
Nov. 2021:
Home study sent;
never completed

Guardianship
to Aunt

Abuse of discretion review



Did Not Have to Wait



Child's Best Interests Met

DSS unjustifiably delayed; show cause option

3 years



2019:

DSS ordered to
assess GM in GA;
starts

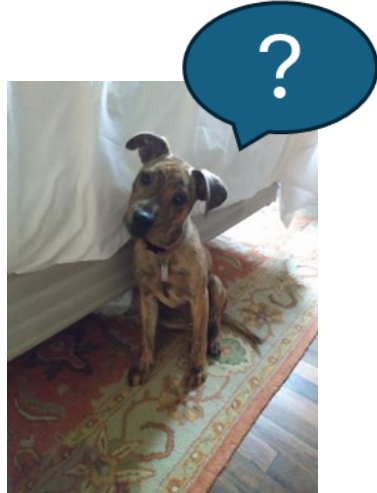
Nov. 2021:
Home study sent


2022:
Guardianship
to Aunt; ICPC
not completed

A black outline map of the United States, including the contiguous 48 states, Alaska, and the Hawaiian Islands. The map is centered on the page.

ICPC applies to out of state relatives

Does Not Consider Type of “Placement”





Today's Topics

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-

7B-1001: Appealable Orders

Absence of jurisdiction

In effect determinations action and prevents judgment which appeal might be taken

Adjudication and initial disposition

Change legal custody (not a NSC)

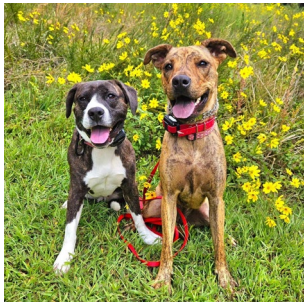
PPO eliminate reunification

TPR grant/deny

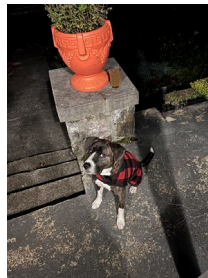
Which Orders Can Be Appealed

In re R.G. (p. 19)

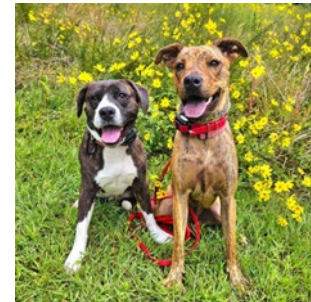
Initial disposition
order relieves DSS
of reunification
efforts




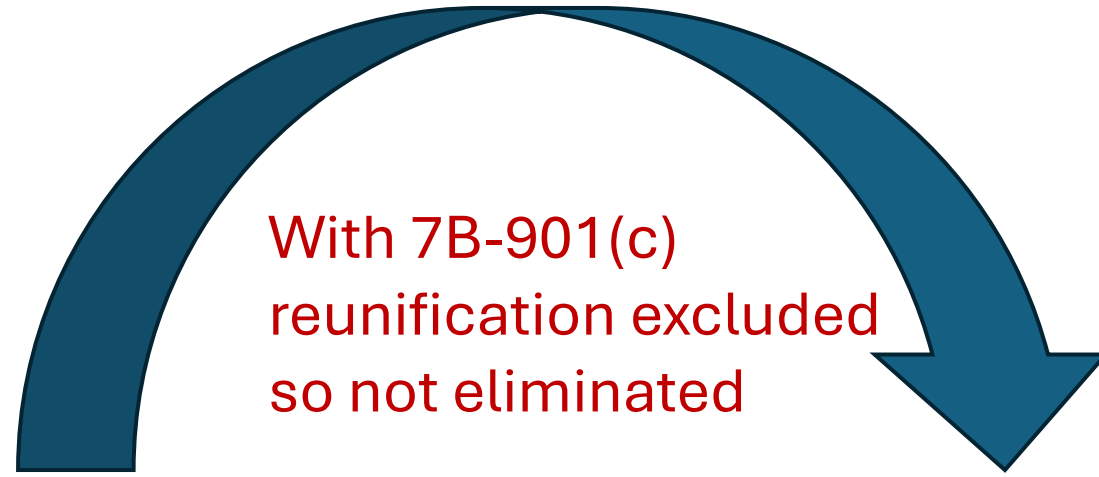
First PPO:
concurrent plans
guardianship and
custody to relative



Second PPO:
guardianship
ordered to
grandmother




How?



Initial disposition
order relieves DSS
of reunification
efforts

First PPO:
concurrent plans
guardianship and
custody to relative



7B-1002: Standing to Appeal

Juvenile

DSS

Parent, guardian, custodian who is nonprevailing party


Party seeking but denied TPR

Caretaker

In re L.C. (p.20) (Stayed by NCSC)

- “Father”
- Paternity
- Dismissed





Today's Topics

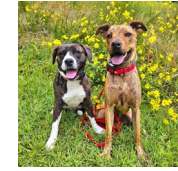
- Jurisdiction
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-

TPR: 7B-1111(a)(11)

In re N.J.R.C. (p. 29)



Taking Indecent Liberties with Children



Purpose of
arousing or
gratifying
sexual
desire

§ 14-202.1. Taking indecent liberties with children.

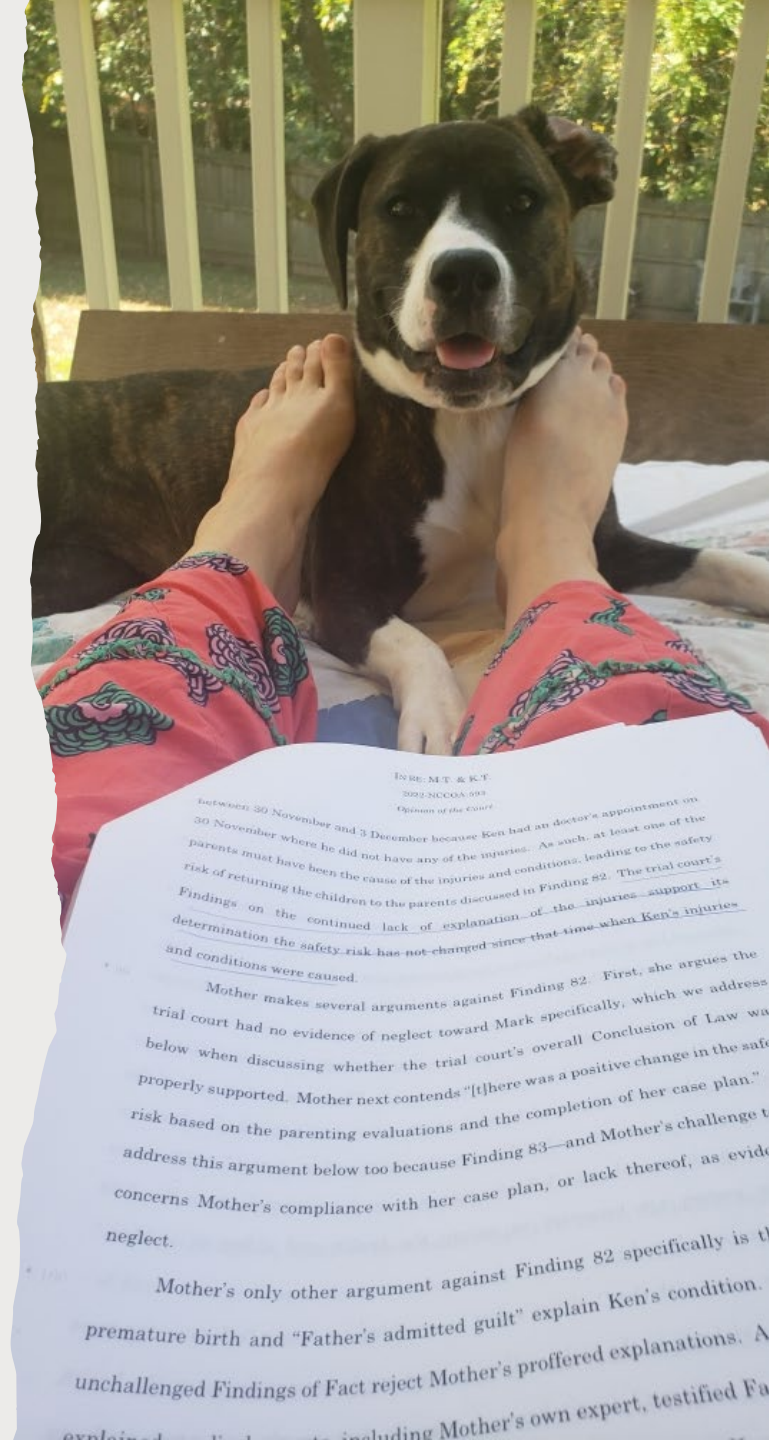
- (a) A person is guilty of taking indecent liberties with children if, being 16 years of age or more and at least five years older than the child in question, he either:
- (1) Willfully takes or attempts to take any immoral, improper, or indecent liberties with any child of either sex under the age of 16 years for the purpose of arousing or gratifying sexual desire; or
 - (2) Willfully commits or attempts to commit any lewd or lascivious act upon or with the body or any part or member of the body of any child of either sex under the age of 16 years.

§ 14-208.6(5): Definition, [Sexually Violent Offense](#) 14-202.1



The End

See you in October



IN RE: M.T. & K.T.
2022-NC004-004
Opinion of the Court

between 30 November and 3 December because Ken had an doctor's appointment on 30 November where he did not have any of the injuries. As such, at least one of the parents must have been the cause of the injuries and conditions, leading to the safety risk of returning the children to the parents discussed in Finding 82. The trial court's Findings on the continued lack of explanation of the injuries support its determination the safety risk has not changed since that time when Ken's injuries and conditions were caused.

Mother makes several arguments against Finding 82. First, she argues the trial court had no evidence of neglect toward Mark specifically, which we address below when discussing whether the trial court's overall Conclusion of Law was properly supported. Mother next contends "[t]here was a positive change in the safety risk based on the parenting evaluations and the completion of her case plan." We address this argument below too because Finding 83—and Mother's challenge to it—concerns Mother's compliance with her case plan, or lack thereof, as evidence of neglect.

Mother's only other argument against Finding 82 specifically is that Ken's premature birth and "Father's admitted guilt" explain Ken's condition. The unchallenged Findings of Fact reject Mother's proffered explanations. As explained in the findings, including Mother's own expert, testified that