

# **Social Services Attorneys Summer Conference**

July 21, 2011

Atlantic Beach, NC

## **JUVENILE LAW UPDATE**



**UNC**  
SCHOOL OF  
GOVERNMENT

# Child's Guardian ad Litem (J.H.K.)

## N.C. Supreme Court (6/16/11):

- Presence of child's GAL at TPR hearing is not always required.
- Representation of child through GAL Program involves team approach.

## See also *In re A.N.L.* (7/5/11):

- No GAL at adjudication/disposition
- DV basis for abuse/neglect adjudication



# Permanency Planning – G.S. 7B-907 (J.M.D.)

- “Return home” means return to the home from which the child was removed.
- G.S. 7B-907(b) applies when custody is given to *the other* parent.

## Role of trial court upon remand

- taking more evidence is in trial court’s discretion
- must carry out mandate of appellate court (even if “respectfully disagree”)



# Permanency Planning: Parental Status (D.M.)

Permanent custody to grandmother was improper without finding / concluding that parents

- were unfit or
- had acted inconsistently with constitutionally protected status.

Also:

- must make reasonable efforts findings about both parents, when child removed from both
- cannot delegate visitation terms to treatment team





# Applicability of *Petersen* and *Price* in Juvenile Cases

- **In re B.G. (2)** (2009). Trial court found father was “non-offending” parent, but ordered joint custody to father and relatives. COA: Best interest test not proper without finding parents unfit or acted inconsistently with constitutionally protected parental rights.
- **In re B.G. (1)**. Cannot raise issue for first time on appeal. Also, **J.W.** (7/5/11) (unpublished).
- **In re A.C.V** (2010). In TPR of putative father’s rights **Owenby** and **A Child’s Hope** controlled. Adjudication of any ground removed constitutionally protected status and justified application of **best interest** standard.

# Converting to Civil Custody Order (J.M.D.)

Order that case be transferred to domestic court on proper motion by a party was invalid.

## **G.S. 7B-911: Civil custody order**

1. findings & conclusions
  - sufficient to create or modify civil order
  - *if custody to non-parent*, special findings by clear and convincing evidence
2. parties and caption
3. venue
4. filing fee (if new case)



# Converting to Civil Custody Order

## G.S. 7B-911

**Order terminating juvenile court jurisdiction must find:**

1. no need for continued state intervention
2. six months since placement was made the permanent plan, unless child in custody of
  - parent or
  - person with whom child lived when petition was filed





# Consolidation of Civil and Juvenile Cases (N.T.S.)

- G.S. 7B-200(d) allows consolidation
- Need clarity about type of order being entered
- Here, temporary order for custody to father was interlocutory and not appealable

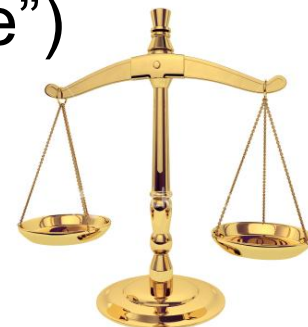


# Juvenile Followed by Civil Jurisdiction

(Rodriguez v. Rodriguez)

- Court of Appeals inferring that trial court terminated jurisdiction
  - children returned to mother's custody
  - DSS and GAL "relieved" from case
- In civil custody action, prior adjudication of dependency was not sufficient to establish unfitness.

(Adjudication "relevant but not determinative")



# TPR: Waiver of Right to Counsel (P.D.R.)

Court must determine

1. that respondent

- has been clearly advised of right to counsel;
- understands consequences of waiver; and
- comprehends nature of the petition, proceedings, and meaning of termination of her rights.

*(based on G.S. 15A-1242)*

2. whether respondent has basic competence to present a defense without aid of counsel



## TPR: Incapability Ground (L.H.)

- Parent who merely consented to placement arranged by DSS did not have a “suitable alternative arrangement.”

## TPR: Jurisdiction during Appeal (L.H.)

- During appeal of TPR, trial court
  - could conduct hearing and determine how it *would* rule on a Rule 60 motion;
  - could not conduct a new disposition hearing.



# U.S. Supreme Court Review of *Camreta v. Greene*, 588 F.3d 1011 (9<sup>th</sup> Cir. 2010)

Does interview of suspected child abuse victim require one of the following:

- warrant
- court order
- parental consent
- exigent circumstances

**Appeal dismissed as moot.  
131 S.Ct. 2020 (May 26, 2011)**



# 2011 Legislation

S.L. 2011-295 (H 382), effective Oct. 1, 2011

1. consent order if attorney present and authorized
2. stipulations written or on the record
3. paternity and relative inquiries at disposition
4. timely entry of disposition order
5. “placement responsibility” clarified
6. PP hearing schedule clarified
7. standard for changing guardianship
8. service of motion in tpr (SL 2011-332)
9. Rule 5 service (SL 2011-332)
10. mailing of tpr hearing notices



# 2011 Legislation

**S.L. 2011-295 (H 382), effective Oct. 1, 2011**

11. extension of time for answer or response
12. diligent search / no GAL for unknown parent
13. evidence at tpr adjudication
14. evidence and findings at tpr disposition
15. court's authority post-tpr
16. selection of adoptive parents
17. reinstatement of parental rights
18. set aside paternity / child support  
(SL 2011-328)



# “Abuse, Neglect, Dependency, and Termination of Parental Rights Proceedings in North Carolina”



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