


# **Termination of Parental Rights**



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**Jurisdiction and  
Procedure  
August 22, 2003**



# Sample Facts

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- Parents divorced in Utah in 1999
- Mom was awarded custody of the child
- Mom and child moved to N.C. in 2001
- Mom files petition to terminate Dad's rights so new husband can adopt



# Can N.C. exercise jurisdiction if:

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1. Dad moved to N.C. in 2001 to be near the child?
2. Dad has lived in Hawaii since 2001?
3. Dad still lives in Utah?

What if mom and child have lived in N.C. only 4 months?



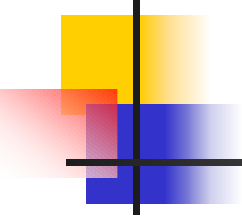
# Subject Matter Jurisdiction

Can this court act in this matter?

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Juvenile Code says

- district court has exclusive jurisdiction,
- to hear and determine any tpr motion or petition,
- relating to any juvenile who resides in, is found in, or is in the custody of a DSS or licensed child-placing agency in the district
- when the petition or motion is filed.



# Uniform Child Custody Jurisdiction and Enforcement Act (G.S. Ch. 50A)

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- Juvenile Code also says

- TPR statute may not be used to circumvent the UCCJEA
- Court must find it would have jurisdiction to make a child custody determination under G.S. 50A-201, -203, or -204.

- UCCJEA defines “child-custody proceeding” to include proceeding to terminate parental rights.



## Court should find it has:

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- jurisdiction to enter an initial child-custody determination? (50A-201) or
- jurisdiction to modify a child-custody determination? (50A-203) or
- temporary emergency jurisdiction? (50A-204)



# Bases for Initial Child Custody Determination

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1. N.C. is child's home state.
2. Another state waives jurisdiction & N.C. has significant connection & substantial evidence.
3. All states with jurisdiction decline to exercise it on basis that N.C. is more appropriate.
4. No court of any other state would have jurisdiction.



# Exclusive Continuing Jurisdiction

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State that exercises jurisdiction properly under UCCJEA has exclusive continuing jurisdiction unless:

- That state finds (1) child does not have substantial connection with the state and (2) substantial evidence is not available in the state; or
- That state's or N.C. court determines that no party presently resides in the other state.





# NC Has Jurisdiction to Modify other State's Custody Determination

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## ONLY IF

N.C. has jurisdiction to make initial child custody determination and

1. Other state's court determines it no longer has exclusive continuing jurisdiction or that N.C. is more convenient forum; or
2. Court of either state determines that neither child, a parent, nor person acting as a parent presently resides in that state.



# Temporary Emergency Jurisdiction

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- Not likely to become a factor in a termination proceeding
- In regular juvenile proceeding, may authorize court to enter nonsecure custody order, but not adjudication or disposition



# Personal Jurisdiction

Can this court act in relation to this person?

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## Requires

- statutory basis
- notice
- “fairness”

Is the “fairness” component satisfied in actions to terminate rights of an out-of-state parent?



# Does “Fairness” Require Minimum Contacts?

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In re Trueman: Minimum contacts required.

Answer raised issue of lack of personal jurisdiction.  
Trial court denied motion to dismiss. COA reversed.

In re Finnican: Minimum contacts required.

Rule 60 Motion later to set aside tpr. Trial court  
denied. COA reversed.

In re Dixon: Trial court dismissed for lack of personal  
jurisdiction over out-of-state Dad. COA reversed,  
holding minimum contacts not required when child  
illegitimate and Dad had no involvement with child.



# Are Trueman, Finnican, & Dixon still good law?

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- G.S. 50A-201(c): “Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.”
- Other state courts (e.g., Alaska and Wisconsin supreme courts) have held that termination proceedings are covered by “status” exception to minimum contacts requirement.



# Petition or Motion

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- Both may be filed by any person with standing
- Both must contain information set out in G.S. 7B-1104 (contents of petition/motion)
- Both (probably) should have information or affidavit required by G.S. 50A-209
- They must be served on (almost) the same people
- Same time to respond



# PETITION

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# MOTION

- Requires summons
  - New file and file number
  - New appointment of counsel and GAL
  - Respondent files Answer
- Requires notice
  - Part of existing juvenile case
  - Counsel and GAL continue unless court orders otherwise
  - Respondent files Response



# Service of Process

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- Petition/summons require Rule 4 service
- Motion/notice: Rule 5 service okay unless
  - Person was not served originally with summons
  - Person was served by publication that did not include proper notice
  - Two years have elapsed since “original action”
  - The court orders Rule 4 service





# Service under G.S. 1A-1, Rule 5

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- Deliver to party
- Deliver to party's attorney, leave at office with partner or employee, or send by confirmed fax
- Mail to party at last known address
- If no address is known, file it with clerk of court



# Service by Publication

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In re Pawley (N.C.App. 2/19/02)  
(Unpublished)

“Defect in service by publication is jurisdictional, rendering any judgment or order obtained thereby void.”  
(citing older published opinions)



# Attempts to Serve Personally

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Due Diligence: Petitioner must use all resources reasonably available in attempting to locate respondent.

Affidavit must set out circumstances warranting use of service by publication.



# Where to Publish

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## Rule 4(j1):

- Qualified newspaper circulated in area where party to be served is believed by the serving party to be located, or
- If no reliable information about where party is located, newspaper circulated in county where the action is pending.

## Rule 4(j3)

# Service in Foreign Country

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- Any internationally agreed method reasonably calculated to give notice (such as Hague Convention on Service Abroad) or, if not prohibited by such an agreement:
  - Manner prescribed by law of foreign country
  - As directed by foreign authority in response to letter rogatory or letter of request
  - Personal delivery, mail with receipt, or other means directed by court and not prohibited.



# Do Not Assume that U.S. Rules Apply in Other Countries

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- Must look at specific country.
- See U.S. State Department Web Site:  
<http://travel.state.gov/>
  - Scroll to end and click “Judicial Assistance”
  - Site will have numerous links relating to Service Abroad



# Rules of Civil Procedure

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Apply in termination proceedings unless:

- Article 11 of Chapter 7B has different specific provisions, or
- Court of Appeals or Supreme Court has said a particular rule does not apply.



# Hearing: Unknown Parent

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- Within 10 days of filing of petition (or at next term of court)
- Court may order investigation and appoint guardian ad litem
- Court either makes findings about identity or orders service on unknown parent and specifies counties where publication must occur





# Hearing To Determine Issues

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- Only if answer is filed
- Petitioner/respondent must give at least 10 and not more than 30 days notice
- Described only as special hearing to determine the issues raised by the petition or motion and answer or response



# Adjudication Hearing

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- Within 90 days after petition filed (unless court orders otherwise)
- Continuance past 90 days requires written order
- Court must inquire of parent re counsel
- Must have some hearing even if no answer is filed and party doesn't appear



# Issues at Adjudication

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- Judge's familiarity with case does not require recusal
- Malfunction of recording equipment will require parties to reconstruct the record if case is appealed
- Parent's right to be present is not absolute



# Adjudication Order

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- Order must state the “clear, cogent, and convincing” standard
- Findings should
  1. Be specific and complete
  2. Relate to the evidence
  3. Avoid reciting evidence
  4. Incorporate sparingly if at all
  5. Support the ground



# Disposition

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- Establishment of ground never requires termination
- Whether to terminate is in court's discretion
- No burden of proof, but safest to act like you have a burden of proof
- Order is “entered” only when signed by the judge and filed with the clerk



# Final Question

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Is termination of parental rights necessary in order to \_\_\_\_\_?