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Abuse/Neglect/Dependency

Verification of Petition: Subject Matter Jurisdiction

In re N.T., ___ N.C. ___, 782 S.E.2d 502 (2016)

Held: Reversed Court of Appeals Opinion

- Procedural History/Facts:
 - 2012: The county department files a neglect petition that is signed by an authorized representative of the director. In the verification section after “signature of person authorized to administer oaths,” an illegible signature following the letter “C” appears. The section for “title” is left blank. Child is adjudicated neglected and placed in the custody of the county department.
 - 2013: The county department files a motion to terminate parental rights (TPR).
 - 2014: The TPR is granted and respondent mother appeals based on lack of subject matter jurisdiction arguing the neglect petition was not properly verified as required by statute.
 - 2015: The NC Court of Appeals vacates the TPR, and the N.C. Supreme Court grants petition for discretionary review.

- Although subject matter jurisdiction may be raised at any time, there is a presumption that a court has jurisdiction when it acts on a matter. The respondent, who is raising subject matter jurisdiction, has the burden of proving there is no jurisdiction.
- Verification is addressed by G.S. 1A-1, Rule 11(b) and G.S. 1-148. Rule 11 requires an affidavit where the person verifies that the contents of the pleading are to his or her knowledge true or upon information and belief are believed to be true. G.S. 1-148 authorizes a judge, magistrate, clerk of court, notary public, or any officer competent to acknowledge deeds to verify a pleading. A public official acting in his or her official duty is presumed to act in accordance with the law, and the contesting party has the burden of overcoming the presumption.
- Respondent mother did not show that the petition, which appeared to be facially valid, was not verified before a person who was authorized to administer oaths. There was no evidence or allegations to overcome the presumption that the person who signed as “the person authorized to administer oaths” did not act in his or her official capacity.

Caretaker: Stepparent

In re M.S., ___ N.C. App. ___ (April 19, 2016)

Held: Appeal Dismissed

- The respondent is a stepparent, which is distinguishable from a parent under both the Juvenile Code and adoption statutes. The definition of “caretaker” found at GS. 7B-101(3) explicitly includes a “stepparent” and distinguishes a stepparent from a parent. A stepparent is also distinguished from a legal parent by G.S. 48-1-101(18). Without evidence that a stepparent has either adopted the child and become the child’s parent or has been awarded custody of the child through a court order and become the child’s custodian as defined by G.S. 7B-101(8), a stepparent is a caretaker.

Abuse: Serious Emotional Damage

In re A.M., ___ N.C. App. ___ (June 7, 2016)

Held: Affirmed in part; Remanded in part

- The definition of abuse includes “[a]ny juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker . . . [c]reates or allows to be created serious emotional damage to the juvenile... evidenced by a juvenile’s severe anxiety, depression, withdrawal, or aggressive behavior toward [herself] or others.” G.S. 7B-101(1)(e). The statute does not require a formal psychiatric diagnosis.
- Findings that the mother’s foul and abusive language created a toxic environment and that 16 year old A.M. felt hopeless about DSS’ involvement and helpless that anyone could help her or help her mother change her mother’s behavior, had anxiety, and that her coping method was to withdraw supported the court’s conclusion that the child was abused. The written findings do not need to quote the language of the statute (e.g., “serious emotional damage”) but must address the statute’s concerns, which these findings do.
- Remand for findings based on evidence in the record of the 6 year old’s serious emotional damage. Evidence includes the testimony of a licensed psychologist that the child’s defiant behavior is related to the mother’s lack of structure or guidance, inconsistent discipline, and inability to be attuned to the child’s emotional needs. The testimony addressed the mother’s

demeaning and offensive language that created a toxic environment where the child was subjected to chronic and acute verbal assaults that were part of this child's normal everyday life.

Disposition: Authority to Order Case Plan Requirements

In re D.L.W., ___ N.C. ___ (June 10, 2016)

Held: Reverse COA

- *Note, this a termination of parental rights case that addressed the court's authority to order certain provisions of a case plan when failure to comply with that provision was one of the factors related to the ground to TPR.*
- Pursuant to G.S. 7B-904(d1)(3), the trial court in an A/N/D action has the authority to order a parent to "take appropriate steps to remedy conditions in the home that led to or contributed to the juvenile's adjudication or to the court's decision to remove custody of the children from the parent, guardian, custodian, or caretaker." The children's adjudication and removal in the underlying A/N/D action were based on domestic violence, a lack of consistent and adequate housing, and the parent's inability to meet the children's needs. Based on the court's findings that the parents failed to appropriately budget funds, which resulted in continued instability, it was appropriate for the court order the respondent mother to create a budgeting plan.

Disposition: Child Support

In re A.M., ___ N.C. App. ___ (June 7, 2016)

Held: Remand in part

- G.S. 7B-904(d) authorizes a court to order a parent to pay a reasonable amount of child support when custody of the child is ordered to someone other than the parent. The court must find the parent is able to pay support, and if so, the court orders an amount of child support determined by G.S. 50-13.4, which requires findings of fact and conclusions of law that address the child's reasonable needs and the parent's ability to pay.
- The court's order that the parents "arrange to provide child support for the benefit of their children" does not comply with G.S. 7B-904(d). Remanded for findings that address the respondent mother's income, ability to work, and ability to pay; the reasonable needs of the children; and the amount of child support.

Review Order: Custody to Non-Parent

In re A.C., ___ N.C. App. ___ (May 17, 2016)

Held: Affirmed

- Facts and Timeline re: Respondent Mother
 - 5/2012 mother agrees to kinship placement of 5-month old child with maternal aunt.
 - 8/2012 petition alleging neglect is filed (without request for nonsecure as child is still living with maternal aunt).
 - 3/2013 child is adjudicated neglected and initial disposition grants legal custody to mother and placement with maternal aunt.
 - 11/2013 first review hearing is held and court renders order of sole legal and physical custody of child to mother (order is entered on 1/24/2014). Because placement is with a

parent, further 7B-906.1 hearings are waived, but the court retains jurisdiction rather than enter Ch. 50 custody order pursuant to G.S. 7B-911.

- 11/2013-12/2014 child remains in care of maternal aunt.
- 12/2014 mother picks up child from day care using January 2014 court order awarding her custody and refuses to return the child to the maternal aunt.
- 1/2015 maternal aunt files a motion to intervene as a caretaker (granted), to reopen, and for custody based on a substantial change in circumstances since the January 2014 order.
- 7/2015 court enters a review order granting maternal aunt sole legal and physical custody and schedules a permanency planning hearing for November 2015. Respondent mother appeals.
- Constitutional Rights
 - A parent has a paramount constitutional right to custody and control of his or her child. The government may only take a child away from a parent upon a showing, supported by clear and convincing evidence, that the parent is unfit or has acted inconsistently with his or her constitutionally protected status. This standard applies to both civil custody (Ch. 50) and abuse, neglect, and dependency (Ch. 7B) proceedings.
 - There is no bright line test when determining if a parent has acted inconsistently with his or her parental rights. Instead, a court employs a case by case analysis. The court looks to the parent's conduct and intentions. In this case the mother acted inconsistently with her parental rights when she voluntarily allowed her child to continuously remain in the maternal aunt's custody for 13 months after obtaining legal and physical custody of her daughter. The mother did not voice any agreement or expectation that the situation would be temporary but instead created a situation that "induced the [maternal aunt and child] to flourish as a family unit in a relationship of love and duty with no expectation that it would be terminated." For 13 months, the mother failed to bear any responsibility for her child. She did not make any effort to take custody of her daughter, develop a plan to transition custody to her, provide any legal mechanism for the maternal aunt to authorize medical or educational care for the child, only sporadically visited with the child, failed to regularly call the maternal aunt or child, and failed to provide any financial support despite having an ability to do so and a court order to pay child support. It was reasonable for the court to infer that the mother intended to presume the natural consequences of her actions. Despite her refusal to agree to the maternal aunt's appointment as guardian, the mother's actions showed she had no meaningful intention that custody with the maternal aunt would be temporary. Her objection to the maternal aunt becoming guardian did not evince an intention that the mother would assume her responsibilities as a parent.
 - If the court finds a parent has acted inconsistently with his or her parental rights, it must move to the best interests of the child standard when determining custody. The court does not need to also find the parent is unfit. Because the court found this mother acted inconsistently with her parental rights, the court of appeals declined to address the mother's appeal of the trial court's conclusion that she was unfit.
- Modification of Custody Order
 - The Juvenile Code (G.S. 7B-1000) authorizes a modification of an order based on a change in circumstances OR the needs of the juvenile.

- In this case, the intervenor sought a modification based on substantial change of circumstances. The burden is on the moving party to prove changes have occurred or come to light since the order sought to be modified was entered. But, a court may consider events that occurred prior to the entry of the order when considering historical facts as part of its determination of whether a change of circumstances has occurred.
- The evidence and court's findings supported its conclusion that there was a substantial change in circumstances that affected the child's general welfare and best interests since the entry of the review order. The mother abdicated her parental role for 13 months after the order that granted her custody was entered. Then the mother removed the child from the only home she had known and kept her from having contact with her caregiver and other extended family members until the court ordered the mother to allow for contact through a visitation schedule. The mother's actions adversely affected the child, who experienced behavior changes and a resulting diagnosis of an adjustment disorder. The court may consider evidence of the child's mental health and behavior up to the time of the hearing on the motion, rather than up to the date the petition was filed.

Appeal: Standing

In re C.A.D., ___ N.C. App. ___ (May 17, 2016)

Held: Affirmed

- Respondent mother appealed a permanency planning order that changed the permanent plan from reunification with the mother and maternal grandparents to adoption concurrent with custody with approved caretakers. The mother's argument is that the court should have placed the children with their maternal grandparents, who were also respondents in the action. An order may be appealed by an "aggrieved party," which is "one whose rights have been directly and injuriously affected by the action of the court." The mother does not have standing to argue an injury to the maternal grandparents, who did not appeal the court's permanency planning order.

In re M.S., ___ N.C. App. ___ (April 19, 2016)

Held: Appeal Dismissed

- G.S. 7B-1002 limits who has standing to take an appeal of an order entered in an abuse, neglect, or dependency proceeding, and a caretaker does not have standing.
- Because standing is jurisdictional in nature, and the respondent caretaker, who is a stepparent, has not proved he has standing as a parent (via adoption) or a custodian (via a court order of custody) to appeal the adjudication and disposition order, he is not a proper party to appeal. The appeal is dismissed.

Hearing: Two Stages

In re S.Z.H., ___ N.C. App. ___ (May 3, 2016)

Held: Reversed

- A termination of parental rights (TPR) hearing consists of two stages: adjudication of a ground, and disposition based on the best interests of the child. To ensure a parent's constitutional rights to his child are not violated by basing a TPR solely on the child's best interests, the court must conduct two separate inquiries – adjudication first, then disposition -- even when the two stages are held in the same hearing.

Grounds: Neglect

In re D.L.W., ___ N.C. ___ (June 10, 2016)

Held: Reverse COA

- A TPR based on G.S. 7B-1111(a)(1) “requires a showing of neglect at the time of the termination hearing or, if the child has been separated from the parent for a long period of time, there must be a showing of past neglect and a likelihood of future neglect by the parent.” The trial court’s findings were sufficient to support the court’s conclusion that the ground of neglect existed. In the underlying neglect adjudication order, the court made findings that domestic violence between the parents placed the children at risk, and that one child intervened when the parents were fighting. Respondent mother was ordered to participate in domestic violence counseling. In the TPR order, the court made findings based on evidence in the record that domestic violence between the parents continued after the children’s removal and that the mother was unable to articulate an understanding of what she learned in domestic violence counseling. These findings in the TPR order support the court’s conclusion that there would be repetition of neglect based on the children living in an environment injurious to their welfare.

In re M.P.M., ___ N.C. ___ (March 18, 2016)

Held: Affirmed

- A parent’s rights may be terminated on the grounds of neglect when there is evidence of neglect at the time of the adjudication hearing and of a probability that the neglect will be repeated if the child is returned to the parent’s care. A court may look to the historical facts of the case when predicting the probability that neglect will occur in the future.
- Completion of a case plan by a parent does not preclude a court’s conclusion that the grounds of neglect exist for termination of that parent’s rights. In this case, the respondent father participated in a psychological evaluation, attended ten therapy sessions, and interacted appropriately during his supervised visits with his daughter. Attendance alone is not sufficient. The court’s conclusion that he failed to learn in therapy how to protect his daughter, particularly from her abusive mother, and therefore, was likely to result in a future neglect was supported by findings of fact.
- The findings of fact were supported by competent, clear, cogent, and convincing evidence, including the DSS social worker’s testimony. The court found that respondent father failed to acknowledge his participation in the abuse of the children that were in the home, lied about his continued contact with the children’s mother, and was unable to protect his daughter from her abusive mother.
- A trial court may consider a respondent’s in-court demeanor. The court’s findings of fact of a “respondent’s in-court demeanor, attitude, and credibility...are left to the trial judge’s discretion.”

Grounds: Failure to Correct Conditions

In re D.L.W., ___ N.C. ___ (June 10, 2016)

Held: Reverse COA

- Pursuant to G.S. 7B-904(d1)(3), the trial court in an A/N/D action has the authority to order a parent to “take appropriate steps to remedy conditions in the home that led to or contributed to the

juvenile’s adjudication or to the court’s decision to remove custody of the children from the parent, guardian, custodian, or caretaker.” The children’s adjudication and removal in the underlying A/N/D action were based on domestic violence, a lack of consistent and adequate housing, and the parent’s inability to meet the children’s needs. Based on the court’s findings that the parents failed to appropriately budget funds, which resulted in continued instability, it was appropriate for the court order the respondent mother to create a budgeting plan.

- Findings in the TPR order that the mother failed to comply with the budgeting case plan requirement, her inability to account for where her money went, her evictions for nonpayment of rent despite having employment, her loss of employment due to being incarcerated because of a domestic violence incident, and her driving without a valid driver’s license resulting in charges demonstrate the mother’s failure to correct the conditions that led to the children’s removal and were not simply the result of being poor.

Grounds: Abandonment

In re S.Z.H., ___ N.C. App. ___ (May 3, 2016)

Held: Reversed

- For a TPR based on willful abandonment that occurs during the statutory required 6 month period preceding the filing of the action, petitioner must “show more than a failure of the parent to live up to his/her obligations as a parent in an appropriate fashion; *the findings must clearly show that the parent’s actions are wholly inconsistent with a desire to maintain custody of the child,*” which is “a purposeful, deliberative and manifest willful determination to forego all parental duties and relinquish all parental claims to the child” (emphasis supplied, citing *In re S.R.G.*, 195 N.C. App. 79, 84-88 (1986)). The findings do not support the conclusion of abandonment.
- When testimony from both the petitioner and respondent show that the respondent called the child during the first half of the relevant 6 month time period for the ground of abandonment found at G.S. 7B-1111(a)(7) and the respondent asked petitioner if he could see the child on her birthday, which was also during the relevant 6 month period, there is no clear, cogent, and convincing evidence to support the court’s findings that the respondent failed to maintain communication showing his love, care, and concern for the child.
- Although not raised by the respondent, the court of appeals identified the petition’s failure to put the respondent on adequate notice of the grounds of abandonment. The petition did not include the word “abandon” or any variation of the term (e.g., “surrender,” “relinquish”) or include the statutory citation for the ground.

Disposition: Best Interests

In re C.A.D., ___ N.C. App. ___ (May 17, 2016)

Held: Affirmed

- After finding a ground to terminate parental rights (in this case, neglect), the court must determine if termination of parental rights is in the child’s best interests and consider factors specified in G.S. 7B-1110(a). Although the court may consider the availability of a relative for placement, it is not required to do so under the designated factors. Whether a relative is available is not determinative of the child’s best interests.

- The court considered the six statutory factors and placement with the maternal grandparents and determined the child’s best interests were not served by the grandparents, who created an injurious environment for the children resulting in their adjudication as neglected and dependent. There was no abuse of discretion in concluding it was in the children’s best interests to terminate the respondent mother’s rights to assist in the achievement of the children’s permanent plan of adoption.

Delay in Entry of Order

In re S.Z.H., ___ N.C. App. ___ (May 3, 2016)

Held: Reversed

- A TPR order shall be entered no later than 30 days after the completion of the hearing. If the order is not timely entered, the clerk shall schedule a subsequent hearing at the first session of court scheduled for juvenile matters after the 30 day period expires so that there may be an explanation as to the delay and the ability to obtain needed clarification for the order. The order should be entered within 10 days of this subsequent hearing. G.S. 7B-1109(e), -1110(a). In this case the court violated the time period when the hearing concluded on January 26, 2015 but did not enter the TPR order until July 23, 2015. A party may petition for a writ of mandamus when this time period is not met. “In almost all cases, delay is directly contrary to the best interests of the children, which is the ‘polar star’ of the North Carolina Juvenile Code.”

Oral Rendition vs. Entry of Judgment

In re O.D.S., ___ N.C. App. ___ (June 7, 2016)

Held: Affirmed

- **Facts:** A county department filed a petition to terminate respondent father’s parental rights alleging two grounds: neglect and dependency. At the conclusion of the adjudicatory portion of the hearing, the court made an oral statement that the county department proved neglect existed but the court failed to address the ground of dependency in an apparent omission. At disposition, the court found that the termination of respondent father’s parental rights was in the child’s best interests. In its written order, the court included both alleged grounds (neglect and dependency) existed. Respondent father appealed arguing that the court’s written order had to conform with its oral rendition, which addressed neglect only.
- The trial court was not precluded from basing its termination of parental rights on the ground of dependency when that ground was not addressed in the court’s oral rendition of grounds made in open court. Looking to G.S. 7B-1109 and G.S. 1A-1, Rule 52, a trial court is required to enter a judgment that includes findings of fact, conclusions of law, and a determination of the existence or nonexistence of every ground alleged in a petition or motion to terminate parental rights. Neither statute requires the court to make an oral rendition of its judgment.
- Since Rule 58 of the NC Rules of Civil Procedure was amended in 1994, an entry of a judgment requires that the order be (1) in writing, (2) signed by the judge, and (3) filed with the clerk. The written order, and not the oral rendition, is what controls. *Citing Morris v. Southeastern Orthopedics Sports Med. & Shoulder Ctr.*, 199 N.C. App. 425, 433 (2009), a trial court’s announcement of a judgment in open court is “the mere rendering of judgment, and is subject to change before ‘entry of judgment,’ [and]... the trial court can consider evidence presented

following the oral rendering of the judgment in order to better inform its subsequent written judgment.“

- Prior to this 1994 amendment, an order could be entered, and therefore, in effect when the clerk made a notation of the oral rendition made in open court. After that official entry, a written judgment that conformed with the terms of the oral rendition would follow. An entry of a judgment based on an oral rendition has not been permitted in civil actions since the 1994 amendment to Rule 58. Previous opinions that relied on the pre-1994 version of Rule 58 are not controlling when determining what must be included in a written order.
- Previous opinions holding that a notice of appeal of an oral rendition of a judgment does not vest jurisdiction with the appellate court until a written judgment conforming with the oral rendition is entered pursuant to Rule 58 is an issue of appellate jurisdiction and does not limit what a court may include in its written order. For appellate purposes, if the written judgment does not conform with the oral rendition, the appellant must file a written notice of appeal of the written judgment even if an written notice of appeal was filed after the oral judgment was rendered.

Adoption

Consent of Unwed Father

In re Adoption of C.H.M., ___ N.C. App. ___ (July 5, 2016)

Held: Affirm

- G.S. 48-3-601 requires the consent of a putative father to the child’s adoption if before the adoption petition is filed he has (1) acknowledged paternity, (2) provided in accordance with his financial means, reasonable and consistent payments for the support of the mother (during or after her pregnancy), child, or both, and (3) regularly or attempted to regularly visit or communicate with the mother (during or after her pregnancy), child, or both. The father’s consent was required when he (1) acknowledged paternity, (2) regularly deposited cash (\$3,260) into a lockbox he kept at his home for the exclusive purpose of supporting the child (after the mother had refused to accept offers of financial support from the father), and (3) regularly communicated with the mother via Facebook messages.
- A formal record of payments made for the support of the child is not required. There was competent evidence in the record that the father provided regular support for the child when the district court found the father’s testimony credible. The father testified that he began to save money for the child by placing cash in a lockbox, rather than comingle those funds with his bank account from which he paid his monthly expenses. The father also introduced bank statements showing cash withdrawals.
- The application of child support guidelines in determining whether a father’s support is reasonable is not required but is instead within the court’s discretion.

Civil Case Related to Child Welfare

Custody to Non-Parent, Acting Inconsistently with Parental Rights

Weideman v. Shelton v. Wise, ___ N.C. App. ___ (June 7, 2016)

Held: Affirmed

- **Facts:** Chris is the child at issue in this custody case. Shelton is his mother, and Weideman is his maternal grandmother. Wise was Weideman’s domestic partner, who helped raised Shelton. Chris was born in December of 2006, when Shelton was residing with Weideman (her mother) and Wise. Although she initially cared for Chris, she asked for their help because of her depression and other mental health issues that caused her to act erratically. Shelton self-medicated with drugs and alcohol. In August 2007, Weideman and Wise contacted an attorney to draft a legal “guardianship appointment,” which was subsequently executed by all 3 parties. However, an addendum was added to reflect Shelton’s intent that the guardianship appointment be temporary. Shelton lived in the household off and on until 2009 when Wise banned her from the house. Later in 2009, Wise and Weideman separated, and Chris shared his time between the two residences. Shelton saw Chris when he was with Weideman although Wise attempted to ban her from seeing Chris even when he was with Weideman and informed Shelton that she had no rights to him. In 2011, Shelton was in therapy, on the correct medication regime, found secure housing, and was sober. Although she saw Chris when he was with Weideman and attempted to assert parental control during those visits, she and Weideman agreed that Weideman should have custody, and a consent custody order was entered in 2012. Weideman prohibited Wise from having contact with Chris, and Wise filed a motion to intervene (which was granted), a motion to set aside the custody order (which was denied), and a motion for custody and visitation (which was denied). Wise appealed.
- Wise, the non-parent, failed to establish by clear and convincing evidence that Shelton, the mother, acted inconsistently with her protected parental status to care, custody, and control of her child. The mother never intended to permanently cede her parental rights to a non-parent. Instead, she made a temporary arrangement as evidenced by the addendum to the guardianship appointment that explicitly stated it was temporary and by remaining involved in her son’s life. The transcript of the custody hearing also reflected the mother’s intention that the custody arrangement be temporary as it would allow her to continue to be an active participant in her son’s life and provide her the opportunity to assert her role as his parent to a progressively greater degree. Unlike Wise, Weideman allowed for contact between Shelton and Chris and allowed Shelton to assert parental control, so custody to Weideman allowed Shelton to see her son and prevented Wise from prohibiting Shelton from seeing her son. These actions are not inconsistent with the mother’s protected parental status.
- Wise, the non-parent, cannot simultaneously intentionally prevent the mother from having a relationship with her son and argue that the mother has failed to shoulder her burden to care for her son.

Criminal Cases Related to Child Welfare

Evidence: Child’s Statements

State v. McLaughlin, ___ N.C. App. ___ (March 15, 2016)

Held: No error

- The admission in evidence over objection of a copy and transcript of the Children’s Advocacy Center DVD, which recorded the nurse’s interview portion of the child’s medical evaluation that

included the 15 year old's disclosure of ongoing sexual abuse did not violate the Confrontation Clause, which applies to criminal proceedings. The purpose of the Confrontation Clause is to ensure the reliability (trustworthiness) of evidence, especially "in cases of child sexual abuse, where children are often incompetent or ... unavailable to testify." In this case, the child sexual abuse victim had committed suicide and was therefore unavailable to testify at trial. The court looks to the totality of the circumstances regarding the statement including (1) whether it is nontestimonial in nature, (2) whether it meets an exception based on it being as reliable as cross-examined court testimony because of the circumstances under which it is made, such as medical diagnosis or treatment, (3) who the statement was made to, (4) the primary purpose for which the statement was made, (5) the primary purpose for which it was offered at trial, and (6) public policy concerns. Here, the statement is non-testimonial as it was made for the primary purpose of medical diagnosis and treatment to safeguard the child's mental and physical health. The mandatory reporting law regarding suspected child abuse does not convert the statement to testimonial; the primary purpose is not to create an out-of-court substitute for trial testimony.

- Statements the child made to his mother were admissible as excited utterances. Although there was a 10 day lapse between the last incident of sexual abuse (which occurred in Florida) and the disclosure to his mother (which was made in North Carolina), the statements were made immediately upon the child's return home. There was sufficient evidence to establish that the teen was under the stress of the event (he was frantic and shaking and saying she needed to call the police). Although the excited utterance delay typically involves young children where spontaneity and stress, not time, are the crucial factors, although 15 years old, this child was still a minor, and his minority should be considered.

Felony Child Abuse: Serious Bodily Injury

State v. Bohannon, ___ N.C. App. ___ (June 7, 2016)

Held: No Error

- To prove felonious child abuse inflicting serious bodily injury, the State must prove (1) the defendant is the child's parent, (2) the child was younger than 16, and (3) the defendant intentionally and without justification or excuse inflicted serious bodily injury. In this case, the disputed issue was whether the Defendant inflicted serious bodily injury (as opposed to a lesser offense that involves serious physical injury) on his 3 month old child who suffered from subarachnoid hemorrhages.
- Serious bodily injury is defined at G.S. 14-318.4(d)(1) as "[b]odily injury that creates a substantial risk of death or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization." In determining if there is a substantial risk of death, "the age and particular vulnerability of a minor victim must factor into this analysis."
- In viewing the evidence most favorable to the State, defendant's motion to dismiss was not improperly denied as there was sufficient evidence to submit to the jury the question of whether the child suffered serious bodily injury. Three expert witnesses who treated the child testified about the impact of bleeding on an infant's developing brain, and how it could be life-threatening and would require monitoring for dangerous side effects that could arise as the brain continues to develop.

Misdemeanor Child Abuse: Substantial Risk of Physical Harm

State v. Watkins, ___ N.C. App. ___ (May 3, 2016)

Held: No Error

- Misdemeanor child abuse involves a child younger than 16 years old and a parent who through non-accidental means inflicts, allows to be inflicted, or creates a substantial risk of physical injury to his or her child (G.S. 14-318.2(a)).
- The court did not err when denying defendant's motion to dismiss as the state introduced substantial evidence that Defendant created a "substantial risk of physical injury" to her 18-month child through an officer's testimony that Defendant left her child in her car for over 6 minutes, was unable to observe her car during the 6+ minutes, and had turned the car off and had a window partially rolled down when it was 18 degrees outside with snow and sleet accumulating.
- Defendant's reliance on findings of fact that supported conclusions of neglect in juvenile proceedings (7B actions) illustrate some circumstances that can create a substantial risk of harm to a child but are not determinative on the jury, who decided whether in this case the Defendant created substantial risk of physical injury to her child.