# Fathers and Paternity: Issues in Child Welfare Proceedings

5TH ANNUAL LOCAL GOVERNMENT CONFERENCE
FOR ATTORNEYS AND PARALEGALS
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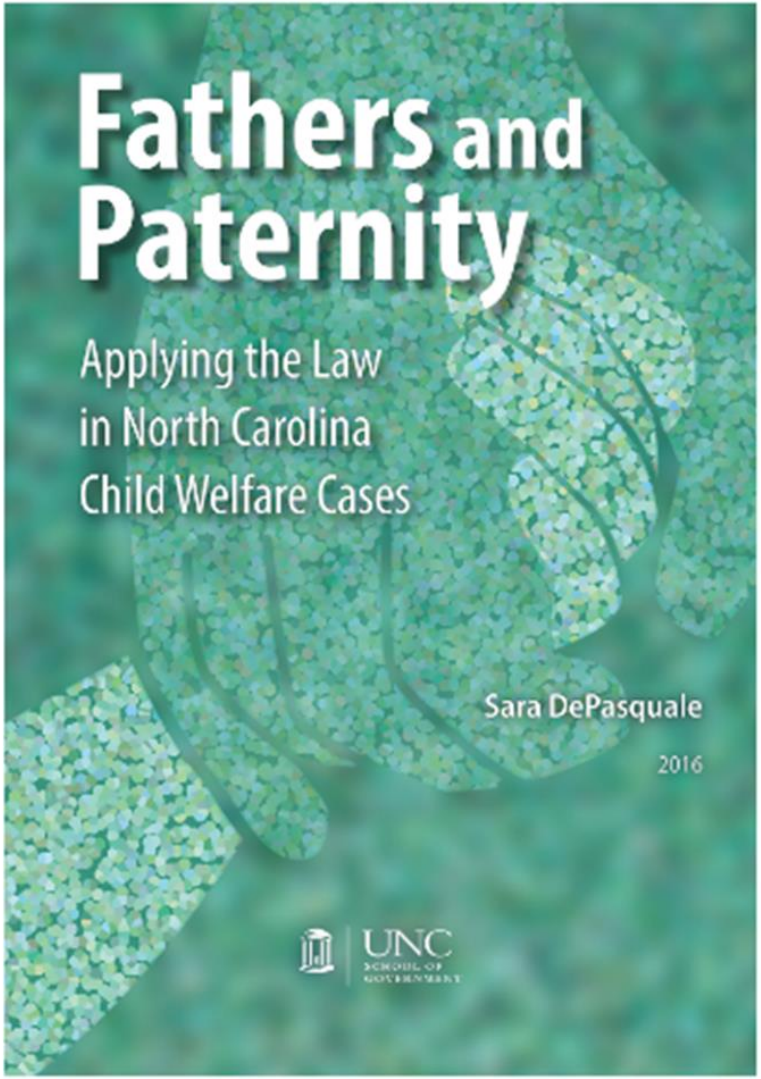
BY: SARA DEPASQUALE, JD, MSW

# Why Did I Pick This Topic?



# A Quick Guide to

1. A Father's Role in an A/N/D Proceeding
2. A/N/D Statutory References to Fathers
3. Determining Whether Paternity Is an Issue
4. Adjudicating Paternity in the 7B Action
5. Why Adjudicating (Non)Paternity Matters

# Q1: What is a father's role in a child welfare action?

- It takes two

- **7B-401.1(b) Parents.** "The juvenile's parent shall be a party" (unless exception)

# Q2: What does GS 7B say about fathers?

References to Fathers

- "parent"
- "paternity"

# Nonsecure Custody

- 7B-503(a) Criteria
  - court shall first consider release to juvenile's parent…

- 7B-506(h)(1) The court shall
  - inquire into the identity and location of any missing parent and whether paternity is an issue
  - include findings of efforts to locate and serve and establish paternity when paternity is an issue
  - court may specify efforts

# Pre-adjudication Hearing, 7B-800.1(a)

- **The Court shall consider**
  - **(2)**: identification of parties
  - **(3):** whether paternity has been established or efforts made to establish… including identity and location of missing parent

# Initial Dispositional Hearing: 7B-901(b)

- The Court shall
  - inquire into the identity and location of any missing parent and whether paternity is an issue
  - include findings of efforts to locate and serve and establish paternity when paternity is an issue
  - Court may specify efforts

# What do efforts look like?

- Birth certificate
- Marriage certificates
- Paternity orders
- Child support orders
- DNA testing
- Family Tree
- IV-D Agency
- What are diligent efforts re: publication?

# Purpose of the Juvenile Code

- Protect constitutional rights of juveniles & parents
- Respect family autonomy and juvenile's needs for safety, continuity, & permanence
- Prevent unnecessary or inappropriate separation of juveniles from their parents
- Provide standards for removal (when nec) and return of juveniles to their homes

- **Reunification/Return Home**
  - Placement of the juvenile in the home of either parent….

# Q3. Is Paternity an Issue?

- Who is Father?

# Presumptions & Operation of Law

- Husband of mother at time of conception – birth
  - Rebuttable by clear, cogent, and convincing evidence
- Reputed father who married mother
  - GS 49-12
- Man who has adopted a child
  - GS 48-1-106(b)
- Husband of women who gave birth to child through heterologous artificial insemination
  - GS 49A-1

# Affidavit of Parentage/Birth Certificates

- "Hospital affidavits" (GS 130A-101(f))
  - 1993- 2005: presumption of paternity
  - Certified copy admissible in action to establish paternity

# Affidavit of Parentage: GS 110-132

- "Constitutes an admission of paternity"
- "Shall have the same legal effect as a judgment of paternity for the purpose of establishing a child support obligation."

# Judicial Adjudications of Paternity

- GS 49-14
  - District court action to establish (or dis-establish) paternity
- GS 49-10; 49-12.1
  - Special proceeding before the clerk to legitimate a child born out of wedlock
- Declaratory Judgment
  - GS 1-256, et. seq.

# Other Judicial Determinations

- When paternity is an element or issue that was litigated
  - Criminal nonsupport (GS 14-322; 49-2)
  - Custody orders
  - Child support orders
  - Divorce orders
  - Juvenile court orders

# Now what?

- COLLATERAL ESTOPPEL!!!!!

# Q4: How do you adjudicate paternity?

# Hearing Required

- Testimony
- AOP
- Birth Certificate
- Marriage Certificate
- DNA Testing
- Child's appearance

# DNA Testing

- **8-50.1(b1)**: In the trial of any civil action in which the question of parentage arises, the court shall…
  - Admissibility/Foundation
  - Rebuttable presumptions, 85% – 97%
  - Does Not Apply To:

    Testing not via 8-50.1(b1)

# Order

- Paternity
- Non-Paternity

**Amended**

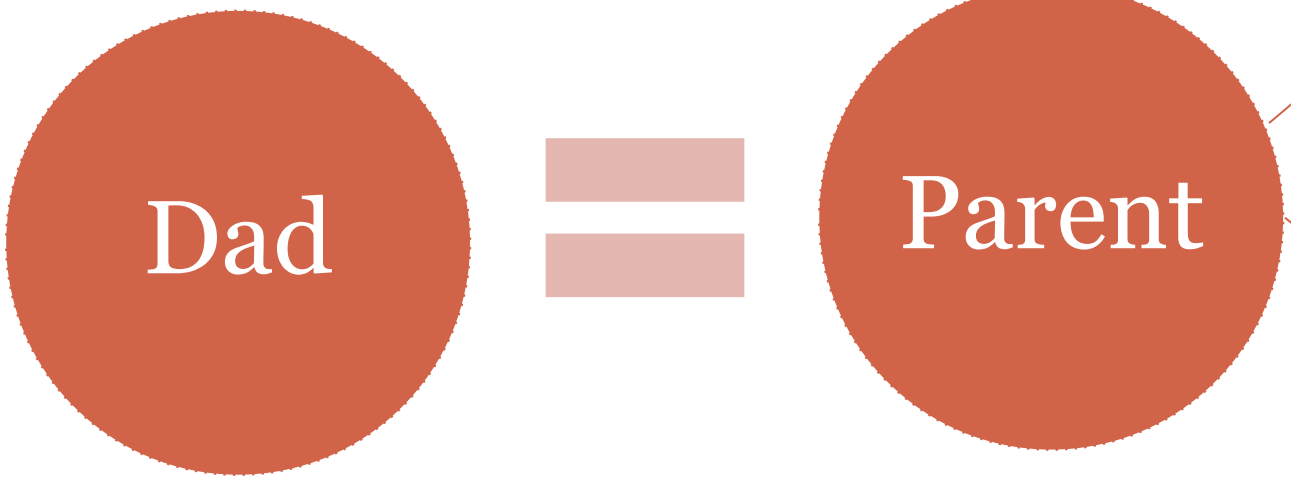
# Q5: Why Does It Matter?

- Parties
- Nonsecure Custody
- Adjudication
- Disposition
- Reunification
- Termination of Parental Rights
- Adoption
- Timing/Outcome of Court Action

# Party Status and Rights

- Not a parent
  - Remain a party?
  - Visitation?
  - Reunification services?
- Caretaker?
- Appointed Counsel?
- Right to appeal?

# Placement and Services




**Reunification**

**No reasonable efforts required**

# Services

- Protective Services, 7B-300
- Reasonable Efforts
- Visitation
- 7B-904

# Adjudication: Status of Child

- Dependency, -101(9)
  - In need of assistance because parent, guardian, custodian
    - Unable to provide care or supervision and
    - Lacks an appropriate alternative child care arrangement
  - Applies to Both Parents!
    - In re V.B., 768 S.E. 2d 867 (Feb. 17, 2015)
    - In re H.H., 767 S.E. 2d 347 (Dec. 2, 2014)

# Consideration of Relatives

# Relative Involvement: Notice

- -505(b) order to make diligent efforts to notify relatives and persons with custody of sibling unless contrary to BIC
- 800.1(a)(4) whether relatives have been identified and notified
- -901(b) inquire about efforts made to identify and notify
- Side note: 42 USC 671(a)(29)

# Relative Involvement: Placement

- Nonsecure Custody, -505
  - Consider if relative willing and able to provide proper care and supervision in a safe home
  - Shall order unless contrary to BIC

- Disposition, -903(a1)
  - Out of home placement, same as above…
  - In re E.R., ___ N.C. App. ____ (July 29, 2016)

# Concurrent Permanent Plans: -906.2

- Reunification = Priority
  - -101(18b): reunification/return home
  - -101(18): reasonable efforts
  - -906.1(d), each review/PP hearing
    - Services offered to reunite
    - Whether efforts would be futile
    - When and if TPR should be considered
  - -906.1(e), each PP hearing
    - If possible to place with parent w/in 6 months
    - If unlikely, consider guardianship/custody with other and what rights and responsibilities remain with parents
    - Consider adoption/need for TPR

# Ongoing Case Action

- Waive reviews
  - 906.1(k), automatic if custody with parent
- Terminate jurisdiction
  - Dismiss case at adjudication/disposition
  - -911 custody order

# Termination of Parental Rights

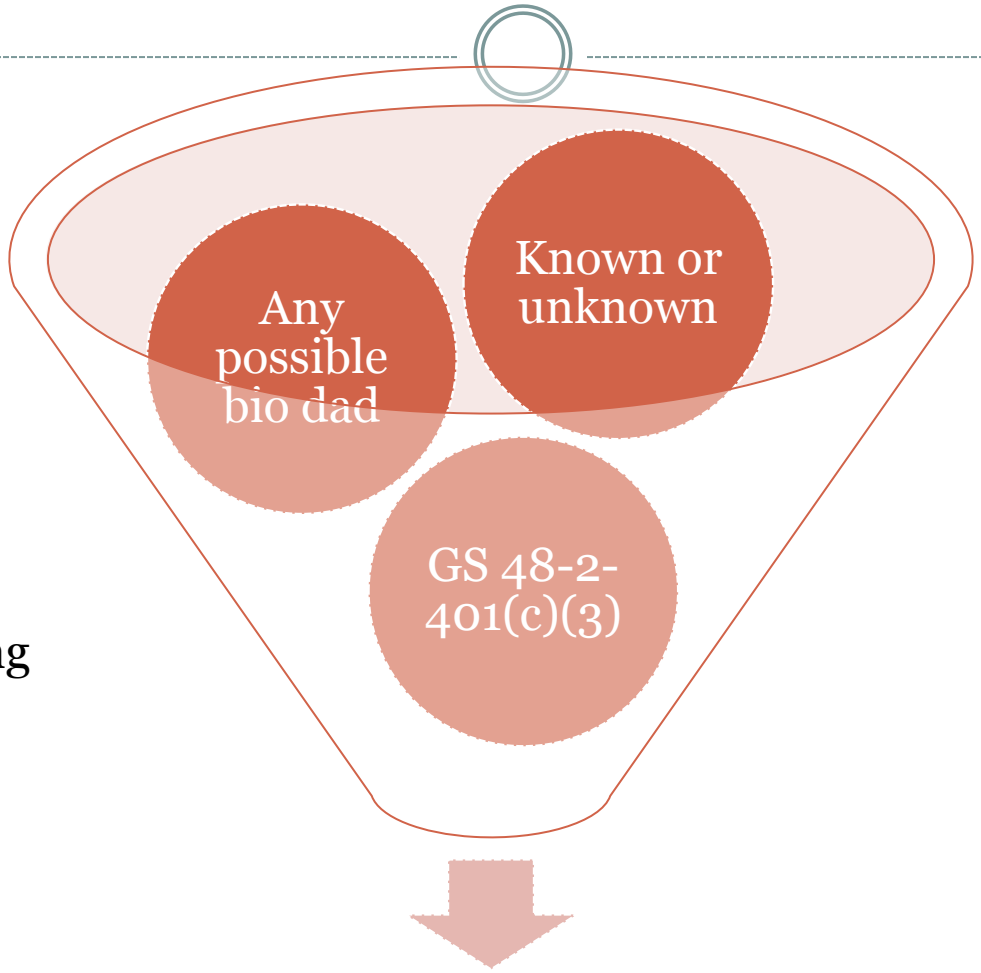
- Unknown Parent, 7B-1105
- Adjudication of Non-Paternity = Dismiss
- Issue of paternity raised = Determine
- Grounds, -1111(a)(5)

# Legally Clear for Adoption

- Relinquish, Consent, TPR
- -906.1(f)(3), no TPR to be filed by DSS if DSS did not provide family with services when reasonable efforts required
  - In re A.E.C., 768 S.E. 2d 166 (January 20, 2015)

# Adoption: Notice

Man who TPR, consent
Relinquish, notarized
Statement denying paternity




Man determined not to be the father

## Consent required?

# Adoption: Consent Not Required

- GS 48-3-603
  - Not timely respond to notice
  - TPR
  - Relinquishment
  - Man determined not to be father or another determined to be father

# Integral Part of Proceeding!