

## Abuse, Neglect, Dependency Actions Automatically Stay Custody Claims in Civil Actions

The district court has exclusive, original jurisdiction over all abuse, neglect, and dependency (A/N/D) proceedings. When a court obtains that jurisdiction after an A/N/D petition has been filed by a county department of social services (DSS), “any other civil action in this State in which the custody of the juvenile is an issue is **automatically stayed** as to that issue, unless the juvenile proceeding and the civil custody action or claim are consolidated ... or the court in the juvenile proceeding enters an order dissolving the stay.” [G.S. 7B-200\(c\)\(1\)](#).

### What does this mean?

Jurisdiction refers to the power of a court to deal with the type of action in question. [In re S.T.P.](#), 202 N.C. App. 468 (2010). [G.S. 7B-200](#) suspends the power of a court to exercise its jurisdiction to determine custody in any civil proceeding outside of the A/N/D proceeding until *the juvenile court* no longer has jurisdiction. A juvenile court loses jurisdiction when:

- the juvenile is adopted [[G.S. 48-2-102\(b\)](#)],
- the juvenile court orders its jurisdiction terminated [[G.S. 7B-201\(a\)](#)],
- the juvenile court enters a Chapter 50 custody order and terminates its jurisdiction [[G.S. 7B-911](#)], or
- the juvenile turns 18 or is emancipated [[G.S. 7B-201\(a\)](#)].

As a result, the **automatic stay** lasts until the child turns 18 unless *the juvenile court* (not the court hearing the other civil action) orders:

- its jurisdiction terminated,
- the consolidation of the civil action with the juvenile action, or
- the stay of the civil action dissolved.

[G.S. 7B-200\(c\)](#), (d).

### What civil actions are automatically stayed?

[G.S. 50-13.1](#) *et seq.* governs civil custody actions in North Carolina. These actions are **automatically stayed** under both [G.S. 7B-200\(c\)\(1\)](#) and [G.S. 50-13.1\(i\)](#) unless the juvenile court consolidates or dissolves the stay of the civil custody action.

Even without consolidating the custody action with the juvenile action, the juvenile court may resolve the **Chapter 50** custody action in the A/N/D proceeding. [G.S. 7B-911](#) authorizes the juvenile court to issue a **Chapter 50** custody order on the court’s own motion when the

involvement of DSS is no longer necessary to protect the child. [Sherrick v. Sherrick](#), 209 N.C.App. 166 (2011). The juvenile court must follow the procedures set out in [G.S. 7B-911](#), which includes terminating its jurisdiction when the **Chapter 50** custody order is entered. The effect of a **G.S. 7B-911 Chapter 50 custody order** is to:

- “resolve any pending claim for custody,”
- modify any prior custody order regarding the child, or
- initiate and resolve a civil custody action if one had not been previously commenced.

[G.S. 7B-911\(b\)](#).

### **What about a DVPO pursuant to Chapter 50B?**

A **DVPO** is a civil action that can include an order for temporary custody. [Henderson v. Henderson](#), 758 S.E. 2d 681 (2014). Although the primary relief is protection against acts of domestic violence, other remedies, including temporary custody of a minor child, are available. [G.S. 50B-3](#). The UCCJEA includes an action for protection from domestic violence in the definition of a “child custody proceeding” if custody is at issue. [G.S. 50A-102\(4\)](#).

It appears that [G.S. 7B-200\(c\)\(1\)](#) is broad enough to **automatically stay** the authority of the Chapter 50B judge to enter any temporary custody order pursuant to [G.S. 50B-2\(c\)\(2\)](#) or [G.S. 50B-3\(a\)\(4\), \(a1\)](#). Importantly, the authority of the Chapter 50B judge to enter other relief available to a plaintiff in a **DVPO** is not affected by [G.S. 7B-200\(c\)\(1\)](#).

However, there is no claim for custody when a minor child is the only plaintiff in a **DVPO**. Instead, the minor plaintiff is seeking remedies available to him or her under G.S. Chapter 50B, such as ordering the defendant to refrain from committing acts of domestic violence against the child or contacting the child, excluding the defendant from residing in the child’s household, and awarding possession of the child’s pet to the child. [G.S. 50B-3](#). Because the child is not seeking custody of him or herself, [G.S. 7B-200](#) does not apply.

### **What about adoptions?**

An **adoption** is not a civil action in which custody is an issue that is stayed by [G.S. 7B-200](#). An **adoption** creates a new legal family based upon the establishment of a permanent relationship of parent and child, which differs from a custody order that determines who has authority to keep and care for a child with whom there is some pre-existing relationship. [Johns v. Welker, 744 S.E. 2d 486 \(2013\)](#). A custody order is also subject to modification upon a showing of changed circumstances. [G.S. 50-13.7](#). Adoption is not included in the UCCJEA definition of a “child custody proceeding.” [G.S. 50A-102\(4\)](#).

[G.S. 48-2-102\(b\)](#) contemplates the simultaneous exercise of jurisdiction in adoption and A/N/D

proceedings for a child. It states “If an adoptee is also the subject of a pending proceeding under Chapter 7B of the General Statutes, then the district court having jurisdiction under Chapter 7B shall retain jurisdiction until the final order of adoption is entered. The district court may waive jurisdiction for good cause.”

## **Conclusion**

[G.S. 7B-200](#) clearly establishes that an A/N/D proceeding takes priority over any other civil action involving custody of the child. [G.S. 7B-200\(c\)\(2\)](#) specifies that any order entered in the juvenile proceeding will control over any order (existing or subsequent) regarding custody of the child entered in a civil action outside of the A/N/D proceeding so long as the juvenile court retains exclusive original jurisdiction and does not dissolve the stay or consolidate the actions. While the juvenile court retains exclusive original jurisdiction regarding the juvenile, a court in another civil action lacks subject matter jurisdiction to enter custody orders. [Sherrick](#).