

It's Complicated: Venue vs Jurisdiction in A/N/D and TPR Actions

Within North Carolina, the appropriate location of a district court where an abuse neglect or dependency (A/N/D) action is filed is a matter of venue. [GS 7B-400](#). And the appropriate location of the district court where a termination of parental rights (TPR) action is filed is a matter of jurisdiction. [GS 7B-1101](#). Why are they different? Because the statutes governing A/N/D and TPR proceedings have different requirements and impose different limitations on the parties and the court.

The General Assembly has the power to “fix and circumscribe the jurisdiction of the courts,” which can require certain procedures. [In re T.R.P.](#), 360 N.C. 588, 590 (2006). A/N/D and TPR cases are statutory in nature and set forth specific requirements that must be followed. *Id.* In an A/N/D or TPR action, the first place to look is the Juvenile Code (GS Chapter 7B) because it establishes both the procedures and substantive law for these types of juvenile proceedings. See GS [7B-100](#); [-1100](#).

Subject Matter Jurisdiction Is Not Venue and Vice Versa

These two legal concepts are not interchangeable. “Jurisdiction implies or imports the power of the court; venue the place of action.” *Shaffer v. Bank*, 201 N.C. 415 (1931).

Subject-matter jurisdiction gives the court the authority to act on a case and make a binding decision. *In re T.R.P.* Subject matter jurisdiction is conferred by law (either the NC Constitution or statute). *Id.*; [In re H.L.A.D.](#), 184 N.C. App. 381 (2007), *aff'd per curiam* 362 N.C. 170 (2008). It cannot be waived or consented to by the parties. *In re T.R.P.* Because a court cannot act without subject matter jurisdiction, lack of subject matter jurisdiction can be raised at any time, even after an order is entered. *Id.* Any order entered in an action where subject matter is lacking is void. *Id.*

Venue refers to the location of the court action – which county or judicial district within the state should the case be filed. *Lovegrove v. Lovegrove*, 237 N.C. 307 (1953). Venue is not jurisdictional and may be waived by any party. [Zetino-Cruz v. Benitez-Zetino](#), 791 S.E.2d. 100 (2016). The waiver may be express or implied and is implied if a party fails to object. *Id.* Venue may also be changed by order of the court, and the court's authority to do that is purely statutory. *Lovegrove*.

Filing an Abuse, Neglect, or Dependency Action

A county department is the only party that can initiate an A/N/D court action. GS [7B-401.1\(a\)](#). The venue statute, GS 7B-400(a), requires that the action be filed in the judicial district where the child resides or is present. A **child's residence** is defined by [GS 153A-257\(a\)](#). Although there are exceptions, the general rule is that a minor's legal residence is that of

- the parent or other relative with whom (s)he resides, or
- if (s)he is not living with a parent or relative or in a foster home, institution, or facility, then the legal residence of the person with whom (s)he is living.

GS 153A-257(a)(3).

If an action is filed in a judicial district where the child does not reside or is not present, a respondent will need to object to that venue; otherwise, the action will proceed in that court. See GS 1A-1, Rule 12(b)(3). Even if venue is proper, a party in an A/N/D action may move for a pre-adjudication change in venue, or the court on its own motion or on motion of a party may change venue post-adjudication. GS 7B-400(c); [-900.1](#).

Termination of Parental Rights

In contrast, the TPR statutes do not reference venue. Instead, GS 7B-1101, which is a subject matter jurisdiction statute, designates the proper judicial district for initiating a TPR action. Under that statute, the district court has exclusive original jurisdiction to decide a termination of parental rights action to any juvenile who

- resides in,
- is found in, or
- is in the legal or actual custody of a county department or licensed child placing agency

in the judicial district at the time the TPR petition or motion is filed.

Some questions have arisen about what “**found**” means. The court of appeals, in giving the language of the statute its natural and recognized meaning, has held that a child is “found” where he or she is physically present. *In re Leonard*, 77 N.C. App. 439 (1985); *In re J.L.K.*, 165 N.C. App. 311 (2004) (child resided in Wake but was present in Johnston County when the TPR petition was filed in Johnston County). The court recognized that the statutory language allows for a child’s visit to a judicial district on the day that the TPR action is filed there to establish jurisdiction under GS 7B-1101. *In re Leonard*.

Here’s Where It Starts to Get Complicated: UCCJEA

A TPR proceeding is also a child custody proceeding under the UCCJEA.* [GS 50A-102\(4\)](#). As such, GS 7B-1101 requires that the court hearing the TPR also have jurisdiction under the UCCJEA. The UCCJEA addresses which **state** has subject matter jurisdiction to make a child custody determination and does not address the jurisdiction of a county or judicial district within a state. *In re M.C.*, 781 S.E.2d 70 (2015). GS 7B-1101 requires a two part test to determine whether a judicial district has subject matter jurisdiction to hear a TPR:

1. Does the judicial district have jurisdiction under GS 7B-1101, and
2. Does the state have jurisdiction under the UCCJEA (GS Chapter 50A)?

In re M.C.; In re Leonard.

If a NC court has jurisdiction under one but not the other, the court lacks subject matter jurisdiction over the TPR action. See *In re Bean*, 132 N.C. App. 363 (1999) (under UCCJA, NC lacked jurisdiction to hear TPR because Florida court had continuing jurisdiction over initial child custody determination even though child had been residing in NC with the court ordered custodians); *In re M.C.* (NC court lacked GS 7B-1101 jurisdiction; the children resided out of state with their mother pursuant to a civil custody order entered under GS 7B-911 after the court terminated its jurisdiction in an A/N/D action, were not found in, and were not in the custody of a county department in the judicial district when the TPR petition was filed even though NC had jurisdiction under UCCJEA as father remained in NC).

Now It Gets Even More Complicated: Underlying A/N/D Actions

The court of appeals has held that the GS 7B-1101 requirement that a child reside in, be found in, or be in the custody of a county department in the judicial district when the TPR action is filed does not apply when there is an existing A/N/D action that the NC court is exercising continuing exclusive jurisdiction under the UCCJEA. *In re H.L.A.D.* (distinguishing between “original exclusive jurisdiction” language of GS 7B-1101 and “continuing exclusive jurisdiction” under UCCJEA; the court held NC had continuing jurisdiction to determine a TPR filed by the child’s out of state guardians who were appointed by an order in a NC A/N/D action where the court retained jurisdiction even though the child resided outside of NC and was not found in or in the custody of a county department in the judicial district when the TPR was filed).

However, the court of appeals decided differently when the child continued to reside in North Carolina with his court appointed guardians. In the most recent published opinion regarding GS 7B-1101, the court of appeals held the district court in Durham County lacked jurisdiction to hear a TPR because the child, who was the subject of an A/N/D action in Durham County, resided with his permanent guardians in Wake County, was not in the custody of the Durham County Department, and there was no evidence the child was found in Durham County at the time the TPR petition was filed there. *In re J.M.*, 791 S.E.2d 879 (2016) (originally unpublished on 10/4/2016). The opinion does not address how GS 7B-1101 should be read with (1) [GS 7B-201](#), which provides that a court who obtains jurisdiction over a juvenile continues its jurisdiction until the child turns 18, is emancipated, or the court orders its jurisdiction terminated or (2) [GS 7B-1102](#), which authorizes a TPR motion to be filed in the underlying A/N/D action.

* *Note, this post is not discussing the application of the UCCJEA to A/N/D and TPR proceedings;*

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that will have to wait for a future post or bulletin.