

## **New Book! Fathers and Paternity: Applying the Law in North Carolina Child Welfare Cases**

This Sunday is Father's Day, a day that celebrates fathers. It's the perfect time to announce my new book, [Fathers and Paternity: Applying the Law in North Carolina Child Welfare Cases](#). The book recognizes the role of fathers in abuse, neglect, or dependency cases. Put simply, they have a role. Fathers are **necessary parties** to the court proceeding. See G.S. [7B-401.1\(b\)](#). Fathers impact a child's placement, visitation, and permanent plan.

Unfortunately, every child does not have a father who has been identified by a marital presumption, acknowledgment, or judicial determination of paternity. Even when a father has been identified, his paternity has not necessarily been established, which allows for it to be challenged. The uncertainty in knowing who a child's father may or may not be has resulted in cases where no father is named or the wrong man is named as a respondent father in the court action.

### **Identifying, Locating, and Serving Fathers**

The court in the abuse, neglect, or dependency action is required to inquire about the identity and location of any missing parent. G.S. [7B-506\(h\)\(1\)](#); [-800.1\(a\)\(2\)](#), [\(3\)](#); [-901\(b\)](#). This means if a respondent father has not been named as a party to the case, the court must ask about the father's identity. And, if a respondent father has been named but has not been served with the summons and petition alleging the child's abuse, neglect, or dependency, the court must ask about the named father's location and the efforts made to serve him. G.S. [7B-506\(h\)\(1\)](#); [-800.1\(a\)\(3\)](#), [\(5\)](#); [-901\(b\)](#). The court's inquiry starts at the first court hearing, whether that is a hearing on the need for continued nonsecure custody (G.S. [7B-506](#)) or the pre-adjudication hearing (G.S. [7B-800.1](#)), and continues through disposition (G.S. [7B-901\(b\)](#)). In its orders, the court must make findings of the efforts that have been made to identify, locate, and serve a missing father and may also order that specific efforts be taken. G.S. [7B-506\(h\)\(1\)](#); [-901\(b\)](#). The statutes do not address what those efforts look like, but the book discusses various efforts and provides worksheets for the parties and court to utilize.

### **Determining Whether Paternity Is an Issue**

The court in an abuse, neglect, or dependency case must also address whether paternity is an issue, starting with the first hearing and continuing through disposition. G.S. [7B-506\(h\)\(a\)](#); [-800.1\(a\)\(3\)](#); [-901\(b\)](#). Paternity may be an issue when the identity of the child's father is known but paternity has not been established. To determine whether paternity is an issue, the court looks to common law and the various laws addressing parentage that are scattered throughout the North Carolina General Statutes. The court may also need to decide if collateral estoppel applies to a party raising paternity as an issue. The book provides an in-depth discussion of the various statutes as well as collateral estoppel.

## Selected Applicable North Carolina Laws Addressing Parentage

- Legitimation. In North Carolina, a child may be legitimated by
  1. Marriage.
    - North Carolina has a rebuttable presumption that a husband is the father of a child born to or conceived by his wife during their marriage. *Eubanks v. Eubanks*, 273 N.C. 189 (1968); see G.S. [49-12.1](#).
    - A child who is born out of wedlock is “legitimated” when his or her mother and putative father marry after his or her birth. G.S. [49-12](#).
  2. Adoption creates the parent–child relationship, giving the child the same legal status as that of a legitimate child born to the adoptive parents. G.S. [48-1-106\(b\)](#).
  3. A special proceeding initiated by the putative father in the superior court that declares the child’s legitimacy. G.S. [49-10](#); -12.1.
  
- A Judicial Determination of Paternity. There are various court proceedings where paternity may be adjudicated. They include
  1. a civil paternity action brought in district court by the putative father, the mother, the child, or a county department if the child, or the mother with respect to medical expenses, is likely to become a public charge. G.S. [49-14\(a\)](#); -16.
  2. a criminal action against a parent for willfully neglecting or refusing to provide adequate support for his or her or child. G.S. [49-2](#); [14-322](#). One of the elements for a conviction that must be proved beyond a reasonable doubt is that the defendant is the child’s parent. G.S. [49-7](#); *State By & Through New Bern Child Support Agency ex rel. Lewis v. Lewis*, 311 N.C. 727 (1984).
  3. civil actions when the issue of parentage arises. This is often seen in *custody, divorce, and child support* proceedings brought pursuant to G.S. Chapters 50, 52C, or 110. The issue of paternity must be raised and addressed by the court in order for there to be a judicial determination of paternity.
  4. A declaratory judgment. G.S. [1-253](#); *Batcheldor v. Boyd*, 119 N.C. App. 204 (1995).
  
- An Affidavit of Parentage. When a child is born out of wedlock, the mother and putative father may execute an affidavit of parentage (AOP). An AOP is an admission of paternity that is signed, under oath, by both the mother and father. [G.S. 130A-101\(f\)](#). The father declares that he believes he is the natural father of the child, and the mother declares the man is the father and consents to his assertion as such and further declares that she was not married during the time of conception through the child’s birth. *Id.* If the AOP is executed within ten days of the child’s birth, the man will be listed as the child’s father on the child’s birth certificate. *Id.* The AOP is neither an adjudication of paternity nor a presumption of paternity ([S.L. 2005-389, s.4](#) removed the presumption of paternity that was created in 1993 by S.L. 1993-333, s.1.). If paternity is at issue, a certified copy of the AOP may be admitted as evidence of paternity in a court proceeding. G.S. 130A-101(f).

## **Paternity Is an Issue: Adjudicating Paternity**

If the court determines paternity is an issue, it must make findings of the efforts that have been made to establish paternity. G.S. 7B-506(h)(1); -901(b). It is possible the court will find that no efforts have been made; for example, the mother is married and her husband is the child's father, or the mother had a one night stand with a man she met once and doesn't know anything about him other than the first name he went by on that night. The court may order a party to take specific efforts to establish paternity (G.S. 7B-506(h)(1); -901(b)), or it may decide to adjudicate paternity in the A/N/D action.

Although the Juvenile Code does not explicitly state the court may adjudicate paternity, as with a child custody or divorce action, paternity may be raised as an issue or constitute an element of the claim the court is deciding. Paternity impacts various procedural and substantive elements of an A/N/D proceeding, since it determines who the child's parent (specifically father) is or is not. A paternity adjudication affects

- who is a necessary party (a parent is a necessary party pursuant to G.S. 7B-401.1(b)),
- an adjudication of dependency ([In re V.B.](#), 768 S.E.2d 867 (2015)),
- who is entitled to reunification efforts (G.S. [7B-101\(18b\)](#); [In re A.E.C.](#), 768 S.E.2d 166 (2015)),
- who is entitled to visitation (G.S. [7B-905.1\(a\)](#)),
- who is responsible to pay for the child's support (G.S. [7B-904\(d\)](#)), and
- who are paternal relatives for placement consideration (G.S. [7B-505\(b\)](#) ; -506(h)(2); [-903\(a1\)](#)).

In addition, a juvenile proceeding is a civil proceeding. [In re Pittman](#), 149 N.C. App. 756 (2002). The court of appeals has held that G.S. [8-50.1\(b1\)](#) mandates that in "any civil action in which the question of parentage arises, the court *shall*, on motion of a party, order ... blood or genetic marker tests, to be performed by a duly certified physician or other expert. (emphasis added)." [In re J.S.L.](#), 218 N.C. App. 610, 611 (2012) (citations omitted).

## **A Hearing is Required**

An adjudication of paternity requires a court hearing and the entry of an order. Evidence must be admitted, and the court must make findings based on competent evidence that supports the court's conclusion regarding paternity. [In re L.D.B.](#), 168 N.C. App. 206 (2005). Genetic marker testing is evidence of paternity or non-paternity and is not necessarily dispositive of the question. The court determines how much weight to give to competing evidence, and witness testimony may outweigh test results. Nash Cty Dep't of Soc. Servs. *ex rel/Williams v. Beamon*, 126 N.C. App. 536 (1997).

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In the book, I discuss these issues in greater detail along with the impact of a paternity or non-paternity adjudication on the A/N/D proceeding, the family (specifically, the child, father, and paternal relatives), and related adoption and termination of parental rights actions when a child's permanent plan is adoption.