

**Juvenile Cases Decided by the
North Carolina Court of Appeals**

February 16, 2010

Jurisdiction in Neglect Case; Termination of Parental Rights (Jurisdiction and Best Interest)

Neglect and dependency: terminating jurisdiction vs. closing the case

- Trial court order stating, “Case closed,” did not terminate the court’s jurisdiction.
- Where custody had been awarded to grandparents at disposition, the court had jurisdiction to consider DSS’s motion to reassume custody.
[Issue of best interest determination in termination of parental rights action is discussed below.]

In re S.T.P., ___ N.C. App. ___, ___ S.E.2d ___ (2/16/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091281-1.pdf>

Facts: In 1999 the child was born cocaine positive and was adjudicated neglected and dependent. At disposition, the court adopted DSS’s recommendations and placed the child in the custody of the maternal grandparents. The order stated, “Case closed.” Several years later the grandfather died, and DSS received reports relating to the grandmother’s care of the child and substance abuse. In 2007, DSS filed a “Motion In The Cause To Reassume Custody,” in the same case and obtained a nonsecure custody order. The court returned custody to DSS and entered orders relating to a goal of reunification with the grandmother. In 2008, the court changed the plan to adoption, and DSS filed a petition to terminate parental rights. On appeal from an order terminating their parental rights, the parents argued that the trial court lacked subject matter jurisdiction because the May 1999 order closing the case had the effect of terminating the court’s jurisdiction.

Held: Affirmed.

1. “Closing a case file is not the equivalent of the trial court terminating its jurisdiction.”
2. The trial court’s order awarded custody to the grandparents and ordered the father to stay away. The parties were not returned to their pre-petition legal status as would have been the case if the court terminated its jurisdiction.

Note: It appears from the opinion that the disposition order closing the case had the effect of no review and permanency planning hearings being held as required by G.S. 7B-906 and -907. DSS is required by statute to schedule the hearings. Because the child had not resided with the grandparents for a year when the order was entered, the statutory criteria for waiving review hearings did not exist.

- Lack of valid summons did not deprive court of subject matter jurisdiction.
- Respondent and the juvenile, through the GAL, waived any objection to personal jurisdiction.

In re N.E.L., ___ N.C. App. ___, ___ S.E.2d ___ (2/16/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/081573-2.pdf>

On remand from the N.C. Supreme Court, the court of appeals rejected respondent’s argument that the trial court lacked subject matter jurisdiction because no valid summons was served on respondent, the juvenile, or the juvenile’s guardian ad litem.

1. Following the holding in *In re K.J.L.*, 363 N.C. 343, 677 S.E.2d 835 (2009), the court held that problems with or the absence of a summons affects only personal, not subject matter, jurisdiction.
2. Both respondent and the GAL waived any objection to personal jurisdiction by appearing and participating in the proceeding without raising the issue.

Termination of parental rights: best interest

- Findings demonstrated that trial court properly considered the statutory dispositional factors.
[Jurisdictional issue is discussed above.]

In re S.T.P., ___ N.C. App. ___, ___ S.E.2d ___ (2/16/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091281-1.pdf>

Facts: Respondent argued on appeal that the trial court's findings of fact did not support the conclusion that termination of parental rights was in the child's best interest. Respondent did not challenge any of the findings, which dealt with the substantial history of the case, the parents' and grandmother's inability to establish a safe home for the child, their failure to address substance abuse issues, and professional assessments of the child's needs. The court of appeals quoted from a number of the findings, which numbered up to 98 or more.

Held: Affirmed.

The court of appeals held that

1. the uncontested findings demonstrated that the trial court properly considered the factors listed in G.S. 7B-1110(a), and
2. the trial court did not abuse its discretion in terminating parental rights.

The courts' opinions can be accessed from <http://www.aoc.state.nc.us/www/public/html/opinions.htm>. Earlier case summaries can be found at http://www.sog.unc.edu/programs/dss/case_summaries.html.



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