

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

May 18, 2010

*Termination of Parental Rights*

**Termination of Parental Rights; Notice of Appeal; Recusal**

- When notice of appeal referred only to the disposition order, the order adjudicating grounds for termination was not before the court of appeals.
- Trial court did not abuse its discretion in ordering that parental rights be terminated.
- Respondent did not preserve for appeal the issue of whether trial judge should have recused himself, because respondent did not make a motion seeking recusal.

**In re D.R.F., \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (5/18/10).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091716-1.pdf>

**Facts:** Child came into DSS custody when he was six weeks old and was adjudicated neglected and placed in foster care. About ten months after the child came into care, respondent parents identified paternal relatives who could care for the child, a home study found no problems or issues with the home, and visitation with the relatives was instituted. After a concurrent plan of reunification and guardianship or adoption, the court relieved DSS of the obligation to make reunification efforts and changed the plan to guardianship with a relative or adoption. Subsequently the trial judge recused himself from a scheduled permanency planning hearing. At that hearing another judge changed the plan to adoption by the foster parents and ordered that visitation with the relatives continue. DSS filed a motion to terminate both parents' rights. At the adjudication, both parents stipulated to "a finding of past neglect." The trial court, on August 7, 2009, adjudicated the neglect ground based on the stipulation, a social worker's testimony, and prior court orders. At disposition hearings the court considered evidence comparing placement with the relatives to adoption by the foster parents, including the GAL's recommendation that the child be placed with the relatives. The court made findings, concluded that termination was in the child's best interest, and entered an order terminating parental rights on October 1, 2009. The trial judge who recused himself from an earlier hearing presided over the entire termination action.

**Held:** Affirmed.

1. The court of appeals refused to consider respondents' arguments related to the sufficiency of the evidence and findings to support the adjudication order, because respondents' notice of appeal referenced only the October 1 disposition order, not the August 1, adjudication order.
2. The court of appeals reviewed the trial court's dispositional findings and consideration of the statutory factors and held that the trial court did not abuse its discretion in terminating parental rights, because there was no showing that the decision "was so arbitrary that it could not have been the result of a reasoned decision."
3. The trial judge did not err by failing to recuse himself from the termination action, because
  - a. The judge had no duty to recuse himself sua sponte.
  - b. There was no indication of the reason for the judge's earlier recusal.
  - c. The issue was not preserved for appeal, because no motion for recusal was made in the trial court.

Appellate court opinions can be found at <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](http://www.sog.unc.edu/programs/dss/case_summaries.html)



**Janet Mason**

School of Government

The University of North Carolina at Chapel Hill

Campus Box 3330, Knapp-Sanders Building

Chapel Hill, NC 27599-3330

T: 919.966.4246 F: 919.962.2706

[www.sog.unc.edu](http://www.sog.unc.edu)