

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

June 15, 2010

*Termination of Parental Rights*

**TPR: Appointment of guardian ad litem for parent respondent**

- Whether to conduct a hearing to inquire into a respondent's competency or capacity is in the trial court's discretion.
- The time limit for conducting the TPR hearing is not jurisdictional and a party asserting delay as error on appeal must show prejudice.

**In re A.R.D., \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 15, 2010).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/100153-1.pdf>

**Facts:** DSS's involvement with respondent began in 2006 when her grandfather reported that her behavior was erratic and that she had stated she hated her child and was going to cut her up and put her in the garbage disposal. DSS filed a neglect petition and the child was placed in nonsecure custody with the grandfather. The court adjudicated the child abused and neglected, finding that the child showed no visible signs of neglect but making other findings about respondent's "temper, her emotional imbalance and extreme resistance to an authority figure such as DSS." The court ordered that respondent be evaluated by a psychiatrist and psychologist and comply with treatment recommendations. Results of any evaluations did not appear in the appellate record.

At reviews respondent was ordered to continue with mental health services and parenting classes. The child was returned to her for a trial placement, but the following day she told DSS she could not care for the child because of conflicts with the grandfather. When a social worker came to remove the child, respondent screamed and had to be restrained by law enforcement. The record included other references to respondent's "history of emotional outbursts and erratic behavior," and her "depression, uncontrollable temper, and emotional imbalance." DSS alleged in the TPR petition that the child was dependent and respondent was incapable of providing proper care, and in its order the court found that she was incapable of properly caring for the child and created an atmosphere of potential danger for the child.

DSS filed the TPR petition on 5/13/08; hearings were held in January, March, and May, 2009; and adjudication and disposition orders were entered in June and August, 2009, terminating respondent's rights on grounds of (1) neglect and (2) willfully leaving child in care for more than a year without making reasonable progress to correct conditions. On appeal, respondent asserted as error the trial court's failure to appoint a guardian ad litem for respondent and failure to conduct the hearing within 90 days after the petition was filed.

**Held:** Affirmed (with dissent).

1. The trial court did not abuse its discretion by not conducting a hearing to inquire into whether respondent needed a guardian ad litem or in not appointing a guardian ad litem for her. The court referenced the definition of "incompetent adult" in G.S. 35A-1101 (lacks sufficient capacity to manage own affairs or make or communicate important decisions), and the definition of "diminished capacity" from the case *In re M.H.B.*, 192 N.C. App. 258, 262 (2008) ("a lack of ability to perform mentally"), and concluded that the record did not show circumstances that would "call into question respondent-mother's mental competence, her ability to perform mentally, or to act in her own interest." In contrasting this case with others in which an abuse of

discretion was found – *In re N.A.L.*, 193 N.C. App. 114 (2008); *In re M.H.B.*, 192 N.C. App. 258 (2008) – the court pointed to specific mental health diagnoses in those cases and specific acts of respondents in those cases indicating possible incapacity.

2. The lack of timeliness in holding the hearing was not jurisdictional, and respondent failed to show that she was prejudiced by the delay.

**Dissent:** The dissent would not have distinguished this case from *N.A.L.* and *M.H.B.*, and would have held that the trial court abused its discretion by not conducting a hearing to inquire into respondent's need for a guardian ad litem

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