

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

July 6, 2010

*Termination of Parental Rights; Delinquency*

**Termination of Parental Rights**

- Trial court erred by conducting termination hearing when child's guardian ad litem was not present.

**In re J.H.K., \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (7/6/10).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/100012-1.pdf>

**Facts:** Beginning with the filing of a neglect petition, the children were represented by a GAL who provided written reports to the court but did not attend hearings in the case. A new GAL appointed almost two years into the case did not attend hearings or file written reports. DSS filed a petition to terminate respondent-father's rights when the children had been in foster care for about 2 ½ years, based on repeated failure to make sustained progress in dealing with substance abuse issues. The children's GAL filed a 2-page report with the court but did not attend any of the termination hearings. The court adjudicated the neglect and dependency grounds and terminated respondent's rights.

**Held:** Reversed and remanded.

1. Conducting the termination hearing without the presence of the children's GAL was error requiring remand for a new hearing.
2. The presence of the child's GAL at hearings is an essential part of the GAL's responsibility to "represent" the juvenile's best interest.
3. The respondent could not waive the right to raise this issue by not objecting at trial, because the right involved is that of the child, who is a party to the case, and the court will presume prejudice.
4. The court referred to its holding in *In re R.A.H.*, 171 N.C. App. 427 (2005), in which it reversed a termination order because the child's GAL was not appointed until three days into the hearing, and in which the court stated that the functions of GALs and attorney advocates are not sufficiently similar to allow one to fill in for the other when the child's best interest is at stake.

- Incarcerated parent neglected child by never writing to him or sending him anything, never paying support, and never challenging court order that ceased his visitation rights.

**In re A.J.M.P., \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (7/6/10).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091609-1.pdf>

**Facts:** The child's parents divorced. Petitioner-mother was given custody and respondent-father was given visitation rights. Respondent was incarcerated pending trial on federal charges. After release, he visited the child once in April 2006, then was arrested for assaulting his girlfriend and was incarcerated again. In May 2006 the custody order was modified to cease his visitation rights. Respondent made several unsuccessful attempts to contact the child by telephone or through a friend, but he provided no support (although he had income), never wrote to the child, and never sent the child anything beyond registering him to receive a gift through a program for children with

incarcerated fathers. He never sought to have the custody order modified to restore his visitation rights. Petitioner-mother alleged and the trial court adjudicated four grounds for termination, including neglect. At disposition, the court made numerous findings about both parents and about petitioner's new husband who wanted to adopt the child, and terminated respondent's rights.

**Held:** Affirmed.

1. The court of appeals considered only the neglect ground and concluded that the facts were proved by clear, cogent, and convincing evidence and were sufficient to support the conclusion that respondent neglected the child. The court reiterated that incarceration alone is not sufficient to establish a ground for termination.
2. The court reviewed the trial court's extensive findings of fact relating to disposition and concluded that the trial court did not abuse its discretion in terminating respondent's rights.

- Where infant suffered serious non-accidental injury, the court properly found that both parents, the child's sole care providers, were responsible.
- At the best interest stage, the parents' compliance with the case plan is not one of the factors the trial court is to consider.

**In re Y.Y.E.T.,** \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (7/6/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/100014-1.pdf>

**Facts:** Infant was adjudicated to be abused and neglected, based on a non-accidental fracture about which the parents gave conflicting explanations that were inconsistent with the type of injury; evidence of prior injuries; and failure to seek medical treatment right away. Despite extensive efforts, neither DSS nor the trial court was able to determine which parent caused the fracture, but the parents were the child's sole care providers. DSS filed a petition to terminate parental rights. After a hearing the court adjudicated both the abuse and neglect grounds, finding that both parents were responsible by either causing or failing to prevent the child's injuries and failing to accept responsibility for the reasons the child was initially removed from the home. The court found that termination was in the child's best interest and terminated both parents' rights.

**Held:** Affirmed.

1. The court of appeals held that the trial court properly found the respondents "jointly and individually responsible for their child's injury" and affirmed the neglect ground for termination. Holding otherwise, the court said, would encourage people to deny responsibility and withhold relevant information.
2. "Compliance with the case plan is not one of the factors the trial court is to consider in making the best interest determination." Although the parents had completed substantial parts of the case plans, their failure to accept responsibility or explain the child's injuries supported the conclusion that the child would be at risk if returned to the home. The trial court properly considered the statutory factors related to best interest and did not abuse its discretion in terminating parental rights.

## Delinquency

- Interrogation occurs when officer makes a statement the officer knows or should know is likely to elicit an incriminating response.
- Miranda warning violation does not require exclusion of physical evidence resulting from the violation unless actual coercion is shown.

**In re L.I., \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (7/6/10).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091306-1.pdf>

**Facts:** Officer made a traffic stop. After having the driver and front passenger exit the car and frisking and talking with them, the officer asked the juvenile to get out of the car and asked her for the marijuana he “knew she had.” When she said, “What marijuana?” and appeared to reach in her pants, the officer put her in “investigative detention,” handcuffed her, and placed her in the backseat of the patrol car. He did not read her any Miranda warning. The officer told her that if she took drugs into the jail, that would be an additional charge. Later she indicated she wanted to tell him something, and said that she had drugs in her right coat pocket. He got her out of the car and took from her coat pocket a plastic bag. It contained 9 bags of green leaf material and 2 bags of powdery substance. The trial court denied the juvenile’s motions to suppress her statements and the physical evidence, finding that even if she had been in custody, she made the statements to the officer voluntarily, not as the result of interrogation. The court adjudicated her delinquent and ordered a Level 2 disposition.

**Held:** Reversed and remanded.

1. The court of appeals first determined that the juvenile was in custody, applying the objective test set out in *State v. Buchanan*, 353 N.C. 332 (2001).
2. The trial court should have granted the motion to suppress the juvenile’s statements. The juvenile’s statement about the location of the drugs was the result of interrogation, because the officer’s statement that taking drugs into the jail would be another charge was made for the purpose of eliciting an incriminating response. The officer knew or should have known that his statement to the juvenile was likely to elicit an incriminating response.
3. The trial court did not err in admitting the evidence of marijuana. Although the juvenile argued that the marijuana was “fruit of the poisonous tree,” the court pointed to cases holding that a Miranda violation does not require exclusion of physical evidence obtained as a result of the violation, unless the record shows actual coercion, not just a violation of the Miranda warning requirement. Here, the court found no indication that the juvenile’s statements were coerced.

- For purposes of a charge of possessing a weapon on school property, the petition’s allegation that the juvenile possessed an “other weapon,” described as a “steel link from chain,” was sufficient.

**In re J.C., \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (7/6/10).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/100031-1.pdf>

**Facts:** The juvenile was adjudicated delinquent for possessing a weapon on school property in violation of G.S. 14-269.2(d). The petition described the weapon as a “steel link from chain,” and the trial court denied the juvenile’s motion to dismiss because the petition did not adequately describe a

weapon for purposes of alleging a violation of the statute. Evidence showed that a school counselor observed the juvenile with a steel oval-shaped link through which he slid several fingers and which was held securely over his knuckles. The item weighed about a pound. The juvenile was approaching another student with whom the counselor knew the juvenile had had a problem. The counselor confronted the juvenile, took the object, and took the juvenile to the principal's office. The trial court found that the juvenile possessed a "steel link from a chain which is equivalent in appearance and use to metallic knuckles." The statute specifically lists metallic knuckles as weapons, and a box for that type weapon is on the form petition but was not checked.

**Held:** Affirmed.

1. The court of appeals pointed to the statute's focus on the necessity for school safety and held that the seized item was sufficiently equivalent to what the legislature intended to be recognized as metallic knuckles.
2. The court also characterized the juvenile's argument that the box on the petition for "metallic knuckles" was not checked as the type of hyper technical scrutiny to which petitions and indictments should not be subjected.
3. Because the petition gave the juvenile adequate notice of the offense charged, the trial court had jurisdiction over the case.

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