

Juvenile Cases Decided by the North Carolina Court of Appeals

July 20, 2010

Neglect; Adoption

Neglect

- Unless evidence is “so substantial” that an explicit finding of harm or risk to the child is not required, trial court must make a finding that the child was harmed or at substantial risk of harm in order to adjudicate neglect.

In re H.N.D., ___ N.C. App. ___, ___ S.E.2d ___ (7/20/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/100291-1.pdf>

Facts: For three to four weeks the infant had lived with an unrelated couple who cared for 10 children in a 3-bedroom mobile home. DSS had received several reports of inadequate supervision of the children. The child’s 17-month-old sibling drowned in the pool at the home, and the next day DSS filed a petition alleging that the infant was neglected and obtained a nonsecure custody order. Evidence and the court’s findings indicated that respondent mother was aware of conditions in the home and had expressed concern about them, was present during one of DSS’s visits to the home, admitted using marijuana, and had lived in five residences in the past few months. The court adjudicated the child neglected, placed him in the custody of DSS, stated that the plan was reunification, and provided for visitation between respondent and the child. Respondent appealed.

Held: Reversed and remanded.

1. The court of appeals held that the trial court’s findings were insufficient to support its conclusion that the child was neglected, because the court did not find that the child suffered or was at risk of injury or impairment.
2. In some cases the evidence may be so substantial that a finding of substantial risk is not required, but “the evidence here is capable of more than one inference.”

Dissent: One judge dissented and would have found the trial court’s findings sufficient.

Adoption

- Record supported trial court’s determination that putative father’s consent to adoption was required on basis that he had acknowledged the child and provided reasonable and consistent support in accordance with his means.
- Trial court could not dismiss adoption petition after notice of appeal was given.

In re Adoption of K.A.R., ___ N.C. App. ___, ___ S.E.2d ___ (7/20/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091544-1.pdf>

Facts: In a private-placement adoption proceeding, the district court (after transfer from the clerk) found that the putative father’s consent to the child’s adoption was required, because he had acknowledged the child and provided reasonable and consistent support according to his means before the adoption petition was filed. During the pregnancy he attended pre-natal classes and doctor’s visits until the mother asked him to stop. After obtaining employment, he bought a car seat, crib mattress, and other items worth over \$200 for the child. After the petitioners gave notice of

appeal from the trial court's order, the court granted the father's motion to dismiss the adoption petition.

Held: Affirmed in part; remanded.

1. After reviewing relevant case law, the evidence, and the trial court's findings, the court of appeals held that evidence in the record supported the trial court's findings and that the findings were sufficient to support the trial court's determination that the father's consent was required.
2. Because petitioners had given notice of appeal, the trial court did not have jurisdiction to dismiss the adoption petition, but that error was harmless, and the court remanded the case for entry of a proper order dismissing the petition.

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



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