

Juvenile Cases Decided by the North Carolina Court of Appeals

August 17, 2010

Termination of parental rights; Delinquency

Termination of parental rights

A successful claim of ineffective assistance of counsel requires a showing that the attorney's performance

1. "was deficient or fell below an object standard of reasonableness," and
2. "was so deficient" that respondent did not receive a fair hearing.

In re K.J.L., ___ N.C. App. ___, ___ S.E.2d ___ (8/17/10).

Facts: Earlier in this case the N.C. Supreme Court reversed a decision of the court of appeals and held that defects in a summons or service of process affected only personal, not subject matter, jurisdiction and had been waived in this case. On remand to consider the remaining issues in the case the court considered respondent's arguments that the findings were insufficient and that she received ineffective assistance of counsel and guardian ad litem because her attorney verbally conceded that grounds for termination existed and her guardian ad litem made no objection.

Held: Affirmed.

1. The court reviewed the history of the case, evidence that respondent had failed over time to substantially comply with the court's orders, and the trial court's findings, and held that the findings were sufficient to support the conclusion that neglect existed and was likely to recur if the child were returned to respondent.
2. The court rejected respondent's argument that she received inadequate representation, concluding that counsel's representation "while not perfect, was vigorous and zealous;" that the trial court had not treated counsel's statement about the existence of a ground as an admission; and that given the "overwhelming evidence of the existence of grounds," respondent had failed to demonstrate any prejudice.

Delinquency

1. Adjudication for crime against nature requires proof of penetration.
2. It was the juvenile/appellant's responsibility to ensure that any error in the transcript due to recording problems was addressed at the trial court level.

In re R.N., ___ N.C. App. ___, ___ S.E.2d ___ (8/17/10).

Facts: At the close of the evidence the trial court granted the juvenile's motion to dismiss a sexual battery charge but denied his motion to dismiss the allegation of crime against nature for insufficiency of the evidence. The state's evidence showed that the juvenile (age 12) called his 7-year-old female cousin into his bedroom; that while on a top bunk with the girl he "licked her private area," "touched her private parts," and "forced her head down to his private area;" and that after telling him to stop and leaving the room, the girl described the incident in similar terms to her mother, her grandmother, someone at a child advocacy center, and a social worker. The court adjudicated the juvenile delinquent and ordered a Level 2 disposition.

Held: Reversed in part; vacated and remanded in part.

1. The trial court should have dismissed the crime against nature charge based on evidence that the juvenile “licked” the girl’s private parts, because there was no evidence of penetration, which is an essential element of crime against nature.
2. With respect to the charge based on an allegation that he placed his penis in the girl’s mouth, the transcript did not include evidence of penetration. However, one witness testified that during her interview of the child she asked the child whether there had been penetration. The witness’s testimony about how the child answered the question was muddled and could not be determined from the transcript.
3. The juvenile was responsible for ensuring that the transcript was adequate and should have requested a hearing to reconstruct the substance of the witness’s testimony either by stipulation or by the court. The court of appeals remanded for such a hearing.

Appellate court opinions can be found at <http://www.aoc.state.nc.us/www/public/html/opinions.htm>

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