

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

September 7, 2010

Permanency planning; Termination of parental rights

Permanency Planning

1. Discretion to exclude hearsay. Although hearsay is admissible at review hearings, the court has discretion to exclude hearsay.
2. Waiving further hearings. After an award of guardianship, the court must continue to conduct permanency planning hearings at least every six months unless the court makes the findings required by G.S. 7B-906(b) for waiving further review hearings.

In re P.O., ___ N.C. App. ___, ___ S.E.2d ___ (9/7/10).

Facts: Because of respondent's medical, pain, and substance abuse issues the child was in kinship care. DSS filed a petition and the child was adjudicated neglected in May, 2008, and continued in kinship care. Respondent did not comply with various orders that she complete drug treatment programs and follow medical recommendations. After a permanency planning hearing in November, 2009, the court awarded guardianship to a relative and released DSS and the GAL from further responsibility.

Held: Affirmed in part; reversed and remanded in part.

1. The trial court did not abuse its discretion in refusing to admit into evidence over DSS's objections letters purportedly from three doctors. Although hearsay is admissible at review hearings, the court had discretion to exclude a letter that was not authenticated and two letters from people DSS wanted to cross-examine, when respondent had no explanation about why the authors were not present to testify.
2. The court rejected respondent's challenge to several findings of fact, after reviewing the record and determining that each finding was supported by competent witness testimony.
3. Although the trial court's order did not explicitly appoint the relatives as guardians or refer to guardianship as a "permanent plan," it was reasonable to infer from the findings and other provisions of the order that the court intended to establish guardianship as a permanent plan and to appoint the relatives as guardians.
4. Because the trial court entered a subsequent order, from which respondent did not appeal, providing that respondent would have supervised weekend visits with the child, the court of appeals rejected her argument that the trial court failed to specify the rights and responsibilities she retained.
5. The trial court's dismissal of DSS and the GAL indicated an intent not to conduct further review hearings. However, the court did not make the requisite findings, in G.S. 7B-906(b), that are necessary for such a waiver.

Termination of Parental Rights

1. GAL for parent. Respondent's substance abuse, mental health, and anger issues did not automatically require appointment of a guardian ad litem when there was no indication of incompetence.
2. Best interest factors. Best practice is to making findings about each statutory best interest factor, but failure to do so is not reversible error when the record shows that court considered each factor.

In re S.R., ___ N.C. App. ___, ___ S.E.2d ___ (9/7/10).

Facts: Respondent's children were adjudicated neglected and dependent based on mediation agreements and stipulations. After a fifth permanency planning hearing and findings that respondent had not complied with her case plan or addressed her substance abuse issues, the court changed the permanent plan from reunification to a concurrent plan of adoption or guardianship with a relative. DSS filed a petition to terminate respondent's rights, and the court adjudicated grounds of (i) neglect, (ii) willfully leaving the child in care without making substantial progress, and (iii) willfully failing to pay support. The court found that no relative placement was approved and that the foster parents were interested in adoption, and concluded that termination was in the children's best interest.

Held: Affirmed.

1. The trial court did not abuse its discretion by failing to appoint a GAL for respondent *sua sponte* because of evidence of respondent's substance abuse, mental health, and anger issues. There were not allegations or evidence that those issues affected her competence; the dependency ground was not alleged; respondent attended hearings, participated in mediation, and testified on her own behalf; and she was aware of her problems and what she needed to do.
2. Although better practice is for the trial court to make specific findings related to the best interest factors the court is required to consider, the absence of some findings does not establish abuse of discretion if the evidence in the record demonstrates that the trial court considered all of the factors in making its dispositional decision.

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