

## U.S. Supreme Court to review North Carolina case

### *J.D.B. v. North Carolina*

On Monday, November 1, 2010, the United States Supreme Court granted certiorari to review the decision of the North Carolina Supreme Court in *In re J.D.B.*, 363 N.C. 664, 686 S.E.2d 135 (2009). For links to the N.C. Supreme Court's decision and the petition and briefs related to certiorari, go to this link on SCOTUSblog:

<http://www.scotusblog.com/case-files/cases/j-d-b-v-north-carolina>

The issue is stated as follows: "Whether a court may consider a juvenile's age in a Miranda custody analysis in evaluating the totality of the circumstances and determining whether a reasonable person in the juvenile's position would have felt he was not free to terminate police questioning and leave?"

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

November 2, 2010

*Delinquency; Abuse/Neglect Permanency Planning Order; Social Worker Immunity*

#### Delinquent juvenile: violation of probation

1. Commitment to a youth development center is not an available disposition for violation of probation when the juvenile was on probation for a minor offense.
2. The exception in G.S. 7B-2508(g), allowing commitment as a disposition after adjudication for a minor offense in some instances, applies only to disposition following an adjudication, not after a determination of a violation of probation.

*In re S.B.*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (Nov. 2, 2010).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/100068-1.pdf>

**Facts:** A motion for review was filed alleging that the juvenile had violated probation by possessing marijuana, assaulting a program staff member, and damaging property. The juvenile, who had multiple prior adjudications, was on probation for a minor offense. The trial court found that the juvenile had four or more prior offenses when she was adjudicated delinquent for the offense for which she was on probation and ordered a Level 3 disposition, commitment. On appeal, the juvenile argued that the explicit prohibition in G.S. 7B-2510(f) applied, precluding a Level 3 disposition for violation of probation when the juvenile is on probation for a minor offense. The state relied on G.S. 7B-2508(g), which allows a Level 3 disposition for a minor offense when the juvenile has four or more successive "prior offenses" as defined in that subsection. [An offense is counted only if it is both committed and adjudicated before commission of the subsequent offense. It is not clear from the opinion whether the juvenile's delinquency history satisfied those criteria.]

**Held:** Reversed and remanded.

1. The explicit prohibition in G.S. 7B-2510(f) applied, and commitment was not an option for violation of probation because the juvenile was on probation for a minor offense.
2. Commitment would have been an option if a new petition (instead of just a motion for review) had been filed and the juvenile had been adjudicated for a minor offense, assuming she had at least four prior offenses as defined in G.S. 7B-2508(g).

## Abuse/neglect/dependency: permanency planning order

Issues on appeal became moot when juvenile reached the age of eighteen during pendency of the appeal.

*In re B.G.*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (Nov. 2, 2010).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/100168-1.pdf>

**Facts:** This is the third appeal in this case from trial court permanency planning orders placing the child (teenager) in the physical custody of relatives and in the joint legal custody of the relatives and the child's father. In prior opinions the court of appeals reversed because the trial court, in determining custody between the father and relatives, applied the "best interest" standard without finding that the father was unfit or had acted inconsistently with his constitutionally protected right to custody. *See In re B.G.*, 191 N.C. App. 399, 663 S.E.2d 12 (2008) (unpublished) (*B.G. I*), and *In re B.G.*, \_\_\_ N.C. App. \_\_\_, 677 S.E.2d 549 (2009) (*B.G. II*). In the third order, on appeal in this case, the trial court found that the father had acted inconsistently with his constitutional rights and ordered the same custody arrangement. While the appeal was pending the juvenile reached age eighteen.

**Held:** Appeal dismissed.

When the juvenile reached age eighteen, the trial court had no jurisdiction, and the father's arguments were rendered moot.

## Social worker immunity

1. Denial of motion for summary judgment based on immunity is immediately appealable.
2. Child protective services worker had public official immunity for acts related to conducting assessments and otherwise responding to neglect reports as representative of the director.

*Hunter v. Transylvania County DSS*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (Nov. 2, 2010).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/100288-1.pdf>

**Facts:** Plaintiff, grandmother of deceased child, filed a wrongful death action against DSS, the county, the DSS director, and a social worker. Plaintiff alleged that negligence in DSS's responses to reports of suspected neglect resulted in the child's death. The trial court rejected the social worker's assertion of public official immunity and denied her motion for summary judgment in the claim against her in her individual capacity on that basis. The social worker appealed.

**Held:** Reversed and remanded.

1. Although the appeal was from an interlocutory order, it was proper because orders denying summary judgment motions based on claims of immunity are immediately appealable.
2. The social worker, in conducting the child protective services assessment and making case decisions, was acting as a public official, because
  - a. she was exercising discretion; and
  - b. she was carrying out duties assigned directly to the DSS director by statute, pursuant to the director's statutory authority to delegate responsibilities to staff members. [In distinguishing this case from *Meyer v. Walls*, 122 N.C. App. 507, 471 S.E.2d 422 (1996), *rev'd on other grounds*, 347 N.C. 97, 489 S.E. 2nd 880 (1997), in which the court held that a supervisor and social worker did not have public official immunity, the court pointed to a lack of comparable statutorily designated duties of the DSS director in guardianship matters.]

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](http://www.sog.unc.edu/programs/dss/case_summaries.html)



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