

**Juvenile Cases Decided by the
North Carolina Supreme Court**
December 20, 2010
and
North Carolina Court of Appeals
December 21, 2010
Adoption; Termination of Parental Rights

In addition to the two cases described in yesterday's email, the state supreme court yesterday decided the following case:

Adoption by domestic partner void

***Boseman v. Jarrell*, ___ N.C. ___, ___ S.E.2d ___ (2010).**

<http://appellate.nccourts.org/opinions/?c=1&pdf=2010/416PA08-2.pdf>

The court of appeals, in *Boseman v. Jarrell*, ___ N.C. App. ___, 681 S.E.2d 374 (2009), upheld the trial court's use of the "best interest" standard in a custody dispute between a biological parent and her domestic partner who had adopted the child, holding that the biological parent could not challenge the validity of the adoption because the time for challenging the adoption had expired. The supreme court held that the adoption was void *ab initio*, because the trial court that granted the adoption lacked subject matter jurisdiction to allow adoption by someone other than a spouse while the biological parent retained his or her parental rights. The trial court did not have authority to waive that aspect of the adoption statute.

The supreme court upheld the trial court's application of the best interest standard and its award of joint custody, however, holding that the biological parent had "acted inconsistently with her paramount parental status" by "intentionally creating a family unit in which defendant permanently shared parental responsibilities with plaintiff."

Reversed in part and modified and affirmed in part.

Today the court of appeals decided the following cases, as well as a number of unpublished opinions in juvenile cases:

Termination of parental rights: non-support; willfully leaving child in care

***In re D.H.H.*, ___ N.C. App. ___, ___ S.E.2d ___ (2010).**

<http://appellate.nccourts.org/opinions/?c=2&pdf=2010/10-722-1.pdf>

The trial court adjudicated three grounds for terminating respondent's rights – failure to establish paternity, willfully leaving the child in care for more than a year without making reasonable progress, and failure to pay support. On appeal, respondent did not challenge the trial court's findings of fact and, in his brief, challenged only the first two grounds. The court of appeals held that the third ground (non-support), by itself, was sufficient to affirm the order terminating respondent's rights. The court went on, however, to consider respondent's challenge to the ground of willfully leaving the child in care, and rejected respondent's argument that the trial court should have considered facts only up to the time the trial court awarded guardianship to petitioners. The court held that the ground is not contingent upon DSS's having custody of the child and stated that even after an award of

guardianship, respondent could have taken steps to correct the conditions that led to the child's placement outside the home.

Affirmed.

Termination of parental rights: error to release respondent's guardian ad litem

***In re A.S.Y.*, ___ N.C. App. ___, ___ S.E.2d ___ (2010).**

<http://appellate.nccourts.org/opinions/?c=2&pdf=2010/10-631-1.pdf>

At a nonsecure custody hearing the court appointed an attorney and a guardian ad litem for respondent mother. The court adjudicated the child to be neglected and dependent, based on respondent's homelessness, lack of a support system, and lack of employment. (That order, which placed the child in DSS custody, was affirmed on appeal.) At a permanency planning hearing the court found that respondent had made no progress, concluded that continued reunification efforts would be futile, and changed the plan to adoption. DSS filed a motion to terminate parental rights, alleging that when the child lived with respondent she was neglected because of respondent's mental illness, and that the child was dependent because respondent appeared to be mentally ill, engaged in bizarre behaviors, and had other mental impairments that rendered her unable to provide proper care for the child.

Respondent did not appear at the termination hearing. After receiving no objection from any counsel, the court granted the request of respondent's guardian ad litem to be relieved.

The court of appeals reviewed the history and case law related to the appointment of guardians ad litem for respondents in termination of parental rights cases. When the trial court appointed the guardian ad litem for respondent, it determined that she was not capable of adequately representing her own interest. Nothing in the record indicated a different finding at a later time, and under Rule 17 the court could not proceed to judgment without a guardian ad litem for respondent.

Vacated and remanded.

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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