

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

June 15, 2010

Termination of parental rights

The following case was decided June 15, 2010, in an unpublished opinion. On July 15, 2010, the Court of Appeals ordered that the opinion be published.

Termination of parental rights

- The trial court had an obligation to ensure respondent's right to effective assistance of counsel at trial.
- The court of appeals could not determine from the record what efforts respondent's counsel had made to contact him or to protect his rights.

In re S.N.W., ___ N.C. App. ___, ___ S.E.2d ___ (6/15/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/100119-1.pdf>

Facts: After DSS filed a petition to terminate respondent's rights, the court appointed counsel for respondent. The hearing was continued once because the parents needed "time to prepare with counsel." After two more continuances, the case was heard about four months after the original court date. Respondent was not present, and his attorney stated that his only contact with respondent was one phone message that he tried to return. The court said it would not allow the attorney out of the case, but would allow him to not participate in the hearing, and noted that the respondent had not been in communication with the attorney. The hearing lasted about 15 minutes, and the court adjudicated each of the alleged grounds for termination and terminated respondent's rights. Respondent appealed, asserting (i) that he was denied effective assistance of counsel when the court allowed his attorney to not participate in the hearing, and (ii) that the court erred in relying primarily on documentary evidence and deeming allegations in the petition to be admitted because respondent did not file an answer.

Held: Remanded.

1. Notice of appeal was filed 31 days after the order was entered, but because of the important issues involved, the court treated the appeal as a petition for certiorari, which it granted.
2. The court stated that it was not able to determine whether respondent received effective assistance of counsel and a fair hearing. The trial court should have made further inquiries about the attorney's efforts to contact respondent, to protect respondent's rights, and to ably represent respondent. If the court determined that counsel was ineffective, it should have appointed new counsel.
3. The record did not show what steps the attorney took to contact the client, but showed that respondent was incarcerated during part of the relevant time, that respondent continued visitation with the children, and that DSS communicated with him. The attorney's fee application indicated that the attorney spent .55 hours on the case outside of court. Because respondent may not have received a fair hearing, the court of appeals remanded for further findings relating to the efforts of respondent's counsel to contact respondent and his ability to represent respondent.
4. The court did not address respondent's other arguments.

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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