

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

August 2, 2011

*Permanency Planning; Termination of Parental Rights; Delinquency*

Ceasing reunification efforts

- Ceasing reunification efforts without making one of the prerequisite ultimate findings required by G.S. 7B-507(b) is reversible error.
- Reversal of the order ceasing reunification efforts required reversal of the order terminating parental rights with which it was appealed.

**In re I.R.C., \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (August 2, 2011).**

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS05Ny0xLnBkZg==>

**Facts:** In November, 2008, the child was adjudicated neglected and dependent after respondent mother left her repeatedly with various people, left her alone at times, and did not comply with safety plans. After a permanency planning hearing in March, 2010, the court found that respondent had failed to attend counseling sessions and to provide proof of attending Al-Anon meetings, and had admitted taking prescription drugs that were not hers. The court also found that the child disclosed that she had been sexually abused by her father and that the child was receiving tutoring from her foster parents and attending therapy. The court ordered that the permanent plan be changed to adoption, that DSS cease reunification efforts, and that DSS file a petition to terminate respondent's rights. Respondent filed a "Notice to Preserve Right to Appeal" from the order. DSS filed a termination petition and an order terminating respondent's rights was entered in November, 2010. Respondent appealed both orders.

**Held:** Reversed and remanded.

1. The court of appeals considered only the permanency planning order that ceased reunification efforts, which respondent could not appeal when it was entered but had preserved the right to appeal as provided in G.S. 7B-1001(a)(5).
2. The trial court made findings of fact about respondent's failure to complete a case plan, but did not link those findings to an ultimate finding that further reunification efforts would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time. [G.S. 7B-507(b)(1)] Ceasing reunification efforts without that ultimate finding – or a finding of one of the other conditions set out in G.S. 7B-507(b) – is error. (The court stated that if the trial court had included one of those findings as a conclusion of law, it would have affirmed.)
3. The court of appeals will not infer from other findings that reunification efforts would be futile or inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time.
4. G.S. 7B-1001(a)(5) does not specify what should occur when an order ceasing reunification efforts and an order terminating parental rights are appealed together. Here, the appellate court treated the reversal of the order ceasing reunification efforts as requiring reversal of the order terminating parental rights and remanded "for further proceedings." It is not altogether clear what those further proceedings should look like.

### Termination of parental rights: willful abandonment

- Evidence and findings were sufficient to support adjudication of willful abandonment as a ground for termination of parental rights.
- Adjudication of only one ground is a sufficient basis for terminating parental rights.
- The appellate court is not required to review all adjudicated grounds after affirming one.

**In re C.I.M., \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (August 2, 2011).**

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS0yMjMtMS5wZGY=>

**Facts:** The four children were adjudicated neglected and dependent in October 2009 (based on petitions filed in May 2009) and placed in DSS custody. At a permanency planning hearing in July, 2010, the court found that respondent father had failed to comply with the court's order that he complete a GAINS assessment and psychological evaluation, attend parenting classes and anger management counseling, submit to random drug screens, and pay child support. DSS filed a petition to terminate respondent's rights, alleging five different grounds. The court adjudicated four of the grounds, including willful abandonment, and terminated respondent's rights.

**Held:** Affirmed.

1. The court of appeals reviewed only the abandonment ground and held that the evidence supported the findings and the findings supported the conclusion that respondent had willfully abandoned the children for six months preceding the filing of the petition.
2. The court rejected respondent's argument that the appellate court was required to review all of the adjudicated grounds and, if any of them were not upheld, remand the case for a new disposition hearing. The court reiterated that adjudication of any one ground is sufficient to terminate a parent's rights.
3. After reviewing the trial court's findings, the court of appeals held that the trial court had considered the factors set out in G.S. 7B-1110(a)(1) – (6). (Note: Effective October 1, 2011, Section 16 of [S.L. 2011-295](#) rewrites G.S. 7B-1110(a) to require the court, in addition to considering the statutory criteria that are relevant, to make written findings about them.)

### Delinquency: assault by pointing a gun

- For purposes of the offense of assault by pointing a gun, under G.S. 14-34, the term "gun" includes devices referred to as "firearms," and does not include an airsoft imitation rifle.

**In re N.T., \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (August 2, 2011).**

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xMjgxLTEucGRm>

**Facts:** While another child held an "airsoft pump action imitation rifle," the juvenile pulled the trigger and a pellet hit and injured another child. The juvenile was adjudicated delinquent for the offense of assault by pointing a gun, under G.S. 14-34. The juvenile asserted on appeal that the airsoft gun, which shot plastic pellets using a pump action mechanism, was not a "gun" for purposes of G.S. 14-34. (The parties agreed that it was neither a "firearm" nor a "pistol.")

**Held:** Reversed.

1. The court of appeals applied “general principles of statutory construction,” consulting dictionary definitions and the treatment of the term “gun” in appellate court decisions, to conclude that the term refers to “devices ordinarily understood to be ‘firearms’.”
2. Because the term “gun” in G.S. 14-34 is ambiguous, the “rule of lenity” requires interpreting it narrowly. The court noted that there were other offenses for which the juvenile might have been adjudicated delinquent.

*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/node/513>*



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