

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

October 18, 2011

Termination of Parental Rights; Delinquency

Termination of parental rights: evidence of prior neglect

- Evidence of the original neglect and of continued instability in housing and employment after release from prison supported a conclusion of neglect as a ground for termination.

In re C.G.R. __ N.C. App. __, __ S.E.2d __ (October 18, 2011).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS0yNjMtMS5wZGY=>

Facts: One child came into care and was adjudicated neglected after police raided the home in which he and respondent lived with others and found drugs, large amounts of cash, and guns. The other child, born while respondent was in prison, was adjudicated dependent. One order terminating respondent's rights was reversed and remanded. DSS filed new motions seeking termination. After a hearing the court adjudicated three grounds, including neglect, for terminating respondent's rights to the younger child. Without taking additional evidence the court amended its first order regarding the older child and terminated respondent's rights in relation to him. Evidence and findings related to respondent's unstable housing and employment since her release from prison; her lack of insight into the children's needs and the effect of her actions on the children; uncertainty about respondent's ability to acquire stable housing or employment; and the fact that the older child suffered from PTSD.

Held: Affirmed.

1. The evidence and findings supported the neglect ground for termination in the younger child's case.
2. In the case of the older child, the court should have taken evidence and made findings regarding conditions and events since the entry of the first termination order. However, the evidence and findings in the younger child's case applied equally in the older child's case and were sufficient to support adjudication of the neglect ground. The court cited *In re Safriet*, 112 N.C. App. 747(1993), which held that remand for findings is unnecessary when all of the evidence supported such findings.

Delinquency: adjudication following probable cause and transfer hearings

- Trial court did not err when it announced its adjudication and disposition decisions immediately following the transfer hearing and its decision not to transfer.
- Absence of required written findings from adjudication and disposition orders and order denying release pending appeal will require remand.

In re J.J., Jr., __ N.C. App. __, __ S.E.2d __ (October 18, 2011).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS0zNDItMS5wZGY=>

Facts: The petition alleged and the trial court, after a two-day hearing, found probable cause for first degree sex offense. The state sought transfer, and at a later date the court conducted a transfer hearing at which it heard additional evidence from the state and the juvenile. In closing

arguments, the two sides requested different dispositional alternatives. Immediately after that hearing, the court announced that it retained jurisdiction, found beyond a reasonable doubt that the juvenile was delinquent for first degree sex offense, and committed the juvenile to a youth development center. The juvenile made no objection and gave oral notice of appeal. Appellate entries did not indicate whether the juvenile was to be released pending appeal.

Held: No prejudicial error in part; vacated and remanded in part.

1. Nothing in the Juvenile Code requires the court to conduct entirely separate probable cause, transfer, and adjudicatory hearings.
2. Conducting all three hearings in one proceeding was not error, so long as the juvenile's rights set out in G.S. 7B-2405 were protected. There was no indication in this case that any of those rights was violated, and the juvenile did not indicate that there was other evidence he would have presented and or show any prejudice.
3. Failure of the adjudication order to state findings that were made "beyond a reasonable doubt," although stated in court, required remand.
4. Although the court did not follow the statutory procedure for conducting a disposition hearing, it complied in substance if not in form, and the juvenile failed to show how the disposition might have been different if the court had followed the correct procedure.
5. Failure of the disposition order to include required findings required remand.
6. The court's failure to make written findings to support its oral denial of the juvenile's release pending appeal required remand.

*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>*



Janet Mason

School of Government
The University of North Carolina at Chapel Hill
Campus Box 3330, Knapp-Sanders Building
Chapel Hill, NC 27599-3330
T: 919.966.4246 F: 919.962.2706
mason@sog.unc.edu