

**Juvenile Cases Decided by the  
North Carolina Court of Appeals**  
November 15, 2011  
*Abuse, Neglect, Dependency; Delinquency*

Abuse, Neglect, Dependency

Sufficiency of findings; adjudication of status vs. grounds for termination; visitation

- Incorporation of allegations in the petition does not constitute proper findings of fact.
- Dismissal of the petition only with regard to the father was error even though allegations did not relate to the father's conduct.
- Failure to address visitation is reversible error.

**In re S.C.R., \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (November 15, 2011).**

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS00NTetMS5wZGY=>

**Facts:** Respondent mother appealed from the order adjudicating the child dependent and neglected, placing the child in DSS custody, ceasing reunification efforts, and ordering a permanent plan of adoption or guardianship.

**Held:** Reversed and remanded.

1. The findings of fact were insufficient because the trial court improperly incorporated the allegations in the petition as its findings and failed to make its own independent findings.
2. The trial court erred in dismissing the petition with respect to the father on the basis that he was not involved in actions alleged in the petition. The court of appeals "caution[ed] trial courts to carefully distinguish between an adjudication proceeding, and termination of parental rights proceedings." The first addresses the status of the child, while the second focuses on the conduct of each parent individually.
3. The trial court may not order a permanent plan at a disposition hearing for which notice of a permanency planning hearing has not been given.
4. The trial court erred by failing to address visitation in the disposition order.

Adjudication; placing custody with DSS

- Placing children in DSS custody without a finding that they needed more adequate care or supervision was error and required remand for entry of a new dispositional order.

**In re S.H. \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (November 15, 2011).**

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS03NTYtMS5wZGY=>

**Facts:** A younger child had been removed from the home after suffering cardiac arrest as a result of starvation. Evidence also showed that the three remaining children were disciplined inappropriately and had never received medical attention. The court adjudicated the three children neglected and placed them in the custody of DSS. The children had been residing with a maternal aunt, a therapeutic foster parent. Respondents appealed.

**Held:** Affirmed in part; remanded in part.

1. The court of appeals affirmed the adjudication, finding that the evidence – including evidence of neglect of the youngest child – was sufficient to support the trial court’s findings and conclusions.
2. The court also affirmed the substance of the trial court’s disposition conclusion that it was contrary to the children’s best interest to return to the parents’ home.
3. The trial court erred, however, by placing the children in DSS custody without making the statutorily required finding that the children needed more adequate care or supervision than they could receive in the parents’ home.

Custody to non-parent; waiver of review hearings

- Constitutional argument about granting custody to a non-parent could not be made for the first time on appeal.
- In waiving review hearings, the one year that the child must have lived with a relative may include periods spent in the homes of more than one relative.

**In re T.P. \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (November 15, 2011).**

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS02NDU0MS5wZGY=>

**Facts:** After the child was adjudicated dependent, respondent mother retained legal custody on the condition that physical placement remain with the maternal grandmother. Later placement was changed to the home of the paternal grandparents. At a permanency planning hearing the court ceased reunification efforts and changed the permanent plan to relative placement, custody, and guardianship. At a subsequent review, the court granted legal and physical custody to the paternal grandparents, with whom the child had lived for about nine months, and waived further reviews.

**Held:** Affirmed.

1. After finding that most (but not all) of the findings of fact were supported by the evidence, the court of appeals held that the conclusion that placing custody with the paternal grandparents was in the child’s best interest was based on sufficient findings that were supported by the evidence.
2. Because respondent had not objected at trial to the finding that she had acted inconsistently with her protected parental status, the appellate court would not address whether the trial court properly applied the best interest standard. A constitutional issue not raised at the trial level will not be considered for the first time on appeal.
3. The court rejected respondent’s argument that the trial court erred in waiving review hearings because the child had been with the paternal grandparents less than one year. The court of appeals held that when combining the time spent in the home of the maternal grandmother with the time the child had lived with the paternal grandparents, the child had “resided with a relative” for at least one year, as required by G.S. 7B-906(b)(1).

## Delinquency

### Alford admission in juvenile case; continuances

- Trial court did not err in accepting juvenile's *Alford* admission.
- Denial of juvenile's motion for a continuance before disposition was not error when juvenile did not show how he was prejudiced.

**In re C.L. \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (November 15, 2011).**

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS00MzQtMS5wZGY=>

**Facts:** Based on an agreement between the prosecutor and the defense, the juvenile appeared in court for entry of an *Alford* admission to misdemeanor possession of stolen property. The court asked the juvenile a series of questions and informed the juvenile of the most restrictive possible disposition. The juvenile stated that he understood the admission arrangement and also admitted having committed the offense. On appeal the juvenile asserted that the trial court failed to determine that his *Alford* admission was the juvenile's informed choice and committed error by denying the juvenile's motion for a continuance before the disposition hearing.

**Held:** Affirmed.

1. After noting that G.S. 7B-2405(6) affords juveniles "all rights afforded adult offenders" except those then mentioned in the Juvenile Code, the court of appeals evaluated the trial court's actions pursuant to G.S. 15A-1022, in the article entitled "Procedures Relating to Guilty Pleas in Superior Court," rather than under G.S. 7B-2407, the Juvenile Code provision for accepting a juvenile's admission. The court held that the trial court basically complied with G.S. 15A-1022 and had not erred in accepting the juvenile's *Alford* admission.

Note: Neither G.S. 15A-1022 nor the *Alford* decision itself characterizes making an *Alford* plea as a "right" of a criminal defendant. Rather, both say that the court "may accept" such a plea from an adult offender.

The opinion in *C.L.* does not make reference to *In re D.L.H.*, 364 N.C. 214, 694 S.E.2d 753 (2010), in which the state Supreme Court held that the credit for time served provisions in Chapter 15A did not apply to a juvenile. The court in *D.L.H.* said, "[T]here are numerous instances in the Juvenile Code in which the General Assembly has explicitly made criminal procedure statutes and other criminal provisions applicable to juvenile proceedings. For example, the Juvenile Code expressly imports provisions from Chapter 15A, the Criminal Procedure Act, with respect to service of process. ... Similarly, for cases in which the allegations of a juvenile petition are denied, the Juvenile Code specifically adopts 'the rules of evidence applicable to criminal cases.' ... This practice of using clear legislative pronouncements to apply criminal provisions to juvenile cases renders all the more conspicuous the Juvenile Code's lack of any reference to section 15-196.1."

2. The trial court did not err in denying the juvenile's motion for a continuance. The disposition was as the parties had agreed and there was no indication that the juvenile would have additional evidence to present at a later time.

*Appellate court opinions can be found at <http://www.aoc.state.nc.us/www/public/html/opinions.htm>  
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