

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

April 2, 2013

Termination of Parental Rights

Willfully leaving child in foster care or other placement . . .

- In computing “more than 12 months” of court-ordered placement outside the home, the trial court did not err in counting time the children were in petitioners’ custody after conversion of a juvenile case to a civil custody case.

In re L.C.R., ___ N.C. App. ___, ___ S.E.2d ___ (April 2, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi0xMTk1LTEucGRm>

Facts: In March, 2008, the children were adjudicated neglected, placed in DSS custody, and placed physically with paternal grandparents. In September, 2008, after a permanency planning hearing, the court awarded custody to the grandparents and converted the case to a civil custody action under G.S. 7B-911. In 2011, the grandparents filed a petition to terminate the parents’ rights, alleging the grounds of (1) willfully leaving the children in foster care or other placement for at least a year without showing to the court’s satisfaction that reasonable progress under the circumstances had been made in correcting the conditions that lead to the children’s placement; (2) incapability due to substance abuse; and (3) willful abandonment. The trial court adjudicated all three grounds and terminated the parents’ rights.

Held: Affirmed.

The court of appeals affirmed after analyzing only the first ground set out above.

1. The period of time the children had been in the custody of petitioners after the juvenile case was converted to a civil custody case was properly counted toward the one year of court-ordered placement outside the home. The court rejected respondent’s argument that only the six months under the juvenile court order should count.
2. The court also rejected respondent’s argument that the ground should not be available when petitioners have custody in a private custody action because the standard for regaining custody in the civil action is greater than “reasonable progress” set out in the termination ground. The court of appeals held that making reasonable progress did not require that the parent be in a position to regain custody in a civil action, and that the conversion of the case to a civil custody case was irrelevant to the trial court’s ability to determine whether respondent had made reasonable progress.

Unpublished Opinion – Effective Assistance of Counsel

Although I usually do not summarize unpublished opinions, attorneys and judges might benefit from reading *In re Z.K.M.*, ___ N.C. App. ___, ___ S.E.2d ___ (April 2, 2013) (unpublished) – <http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi0xMTYxLTEucGRm> regarding the duty of the court and parent’s counsel when a parent does not appear at a termination of parental rights hearing.

Facts: The record showed that respondent-father had been served by mail at the same address from which previously served documents had been returned unserved, as were the termination

motion and notice. The trial court made only a brief inquiry about the respondent's absence, and the respondent's attorney stated only that he had had no contact with the client. The attorney did not participate in the hearing, ask for a continuance, or ask to withdraw. The respondent appealed from an order terminating his rights.

Held: Remanded, for the trial court to determine

1. whether respondent's counsel's performance was deficient,
2. whether respondent was denied a fair hearing, and
3. whether respondent was entitled to a new termination of parental rights hearing.

Appellate court opinions: <http://www.aoc.state.nc.us/www/public/html/opinions.htm>.

Earlier case summaries: <http://www.sog.unc.edu/node/513>.

Other juvenile law resources: <http://www.sog.unc.edu/node/1689>.



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