

Termination of Parental Rights: Withdrawal of Parent's Attorney

- Before granting an attorney's motion to withdraw, court must determine whether the attorney gave the client prior notice of intent to withdraw and had justifiable cause to withdraw

In the Matter of D.E.G., ____ N.C. App. ____ (August 6, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMy0yNzktMS5wZGY=>

Facts: By consent order, a 3-year-old was adjudicated neglected and dependent. After a hearing at which the father was represented by counsel, the trial court ordered that reunification efforts with the father cease and changed the permanent plan from reunification to adoption. At a later TPR hearing, neither the parents nor their attorneys appeared. The DSS attorney notified the court that both parents' attorneys had informed her that they had had no contact with their clients and that the father's attorney asked the DSS attorney to be excused from representing the father in the TPR hearing. The trial court excused both parents' attorneys' absence and held the termination hearing. The trial court adjudicated three grounds, found that termination was in the child's best interests, and terminated the father's rights. Respondent father timely appealed the permanency planning order and the order terminating his parental rights.

Held: Affirmed in part; vacated and remanded in part

1. Parents have a right to effective assistance of counsel in termination of parental rights proceedings. The trial court erred by allowing father's appointed counsel to withdraw without first determining
 - a. whether the attorney made reasonable efforts to give his client prior notice of his intent to withdraw and
 - b. whether the attorney had justifiable cause to withdraw.

Without the attorney's appearance in court to determine these facts, the trial court had no discretion to grant the request but should have either granted a reasonable continuance or denied the motion to withdraw.

2. Undisputed findings of fact by the trial court supported the court's conclusion and order to cease reunification efforts with the father.