

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

February 19, 2013

Neglect, Dependency, Termination of Parental Rights; Delinquency

Neglect Adjudication; Visitation

- Trial court may base findings on inadmissible hearsay if there was no objection at trial.
- Ultimate finding of a risk of substantial harm is sufficient even if there is no finding that the child was impaired.
- Orders for electronic contact must comply with G.S. 50-13.2(e) and, alone, they do not constitute visitation.

In re T.R.T., ___ N.C. App. ___, ___ S.E.2d ___ (Feb. 19, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi05MDUtMS5wZGY>

Facts: The child, age 5, had previously been adjudicated neglected and placed in DSS custody because of respondent mother's mental health problems and her inability to provide proper care and supervision. The court returned the child to the mother, and a month later DSS filed a new neglect petition alleging inadequate care and supervision, injurious environment, respondent's refusal to cooperate with DSS and with services that were offered, her deteriorating mental health, and her noncompliance with medical and mental health treatment directives. The trial court adjudicated the child to be neglected, continued custody with DSS, and ordered that visitation occur electronically through SKYPE.

Held: Affirmed in part; reversed and remanded in part.

1. The court of appeals affirmed the neglect adjudication, holding that the findings that were based on proper evidence were sufficient to support a conclusion of neglect. With respect to some specific findings, the court noted that
 - a. one was based only on "allegations";
 - b. one was based on impermissible hearsay, but because respondent had not objected at trial the court could properly consider it; and
 - c. one was based on evidence to which the trial court had sustained an objection.
2. Although there was no finding that the child had suffered actual impairment, the trial court's ultimate finding that he was at risk of substantial harm was sufficient.
3. Ordering contact only through SKPYE did not constitute "visitation" and did not comply with the visitation provisions in G.S. 7B-905(c).
4. Orders in juvenile cases that provide for electronic communication with a child must comply with G.S. 50-13.2(e), which provides that "[e]lectronic communication may not be used as a replacement or substitution for custody or visitation."

Note: The court of appeals held that G.S. 50-13.2(e), which addresses electronic contact, "is a generic provision which applies to all custody actions," including those in juvenile court. The court reasoned that unlike subsection (a), which refers to custody orders entered under G.S. 50-13.2, subsection (e) refers only to "[a]n order for custody of a minor child." That reasoning would suggest that subsections (b) through (d) also apply in juvenile cases – unless they deal with subjects that are addressed more specifically in the Juvenile Code. These subsections include provisions about domestic violence, grandparent visitation, requirements to abstain from consuming alcohol and submit to continuous alcohol monitoring, and taking a child out of state.

Dependency: Ceasing Reunification Efforts and Termination of Parental Rights

- An order changing the plan to adoption and directing that a termination of parental rights action be filed effectively ceased reunification efforts.
- “[A]ny order ceasing reunification efforts must contain the ultimate findings mandated by N.C. Gen. Stat. § 7B-507(b).”

In re A.P.W., ___ N.C. App. ___, ___ S.E.2d ___ (Feb. 19, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi04MDctMS5wZGY>

Facts: At a permanency planning hearing the court changed the permanent plan for respondent’s three children from reunification to adoption and directed the filing of a petition to terminate parental rights. The order did not explicitly cease reunification efforts or make findings related to doing so. Respondent gave notice of her intent to appeal. Later DSS filed a termination petition, and the court terminated respondent’s rights after adjudicating three grounds. Respondent appealed both the permanency planning order and the termination order.

Held: Reversed and remanded.

The court of appeals reversed both the permanency planning order and the order terminating respondent’s rights and remanded the case.

1. Because the permanency planning order continued custody with DSS, it was required to, but did not, contain findings “as to whether [DSS] should continue to make reasonable efforts to prevent or eliminate the need for placement.” G.S. 7B-507(a)(3).
2. The permanency planning order, by changing the plan to adoption and ordering DSS to file a termination action, “implicitly ceased reunification efforts” and failed to include the findings required by G.S. 7B-507(b) for doing so.
3. Respondent gave proper and timely notice of appeal.

Neglect: Ceasing Reunification Efforts and Termination of Parental Rights

- The trial court’s orders included sufficient evidentiary and ultimate findings that were supported by the evidence and that supported the trial court’s conclusions.

In re T.J.C., ___ N.C. App. ___, ___ S.E.2d ___ (Feb. 19, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi05MjctMS5wZGY>

Facts: The children were adjudicated neglected and placed in DSS custody, based largely on ongoing domestic violence between the parents. After a permanency planning hearing when the children had been in foster care for a year, the court ceased reunification efforts in an order that included numerous findings of fact about the parents’ ongoing relationship, the effects of the domestic violence on the children, the parents’ limited parenting skills and intellectual abilities, and their failure to benefit from services. The father filed a notice of intent to appeal that order. DSS then filed a termination of parental rights action, and both parents appealed from the resulting order terminating their rights.

Held: Affirmed.

With respect to both orders the court of appeals examined in some detail the trial court’s findings and the evidence on which they were based.

1. The permanency planning order included the ultimate findings required by G.S. 7B-507(b) in order to cease reunification efforts, and those findings were supported by specific evidentiary findings that the evidence supported.
2. The order terminating the parents' rights on the basis of neglect also included sufficient findings of both past neglect and a reasonable probability of future neglect if the children were returned home.

Termination of Parental Rights: Reopening the Evidence

- The trial court has broad discretion to re-open the evidence before entry of its order.
- A trial court's failure to exercise its discretion based on a mistaken belief that it lacks authority to do so is error.

In re B.S. O., ___ N.C. App. ___, ___ S.E.2d ___ (Feb. 19, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi04NzgtMS5wZGY>

Facts: At the conclusion of a termination of parental rights hearing, the trial court seemed to make some findings, took the matter under advisement, directed the DSS attorney to prepare a draft order, and ordered DSS to continue respondent's visitation and reasonable efforts until further order of the court. Respondent made a motion for review and to reopen the evidence, asserting new facts that could impact the case. The trial court denied the motion on the basis that it had essentially made a ruling based on the evidence already presented and that it would be improper to reopen the evidence. The court then entered an order denying the motion and an order terminating respondent's rights on the same day.

Held: Reversed and remanded.

1. Because the trial court had not entered a written order or even made a definite ruling in court at the time of respondent's motion, the court was in error in stating that it could not reopen the evidence.
2. Whether to reopen the evidence was in the court's discretion and, acting under a misapprehension of the law, the court failed to exercise its discretion, requiring reversal and remand for proper consideration of respondent's motion.
3. A trial court has broad discretion to re-open a matter and hear additional evidence before entry of its order or judgment.

Delinquent Juvenile: Motion to Suppress

- Determination of whether a juvenile is “in custody” is an objective test that must take into account the totality of the surrounding circumstances.
- The fact that a juvenile is a suspect does not render all law enforcement questioning of the juvenile custodial interrogation.

In re D.A.C., ___ N.C. App. ___, ___ S.E.2d ___ (Feb. 19, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi01NjgtMS5wZGY>

Facts: Law enforcement officers saw the juvenile at the home from which they thought shots had been fired at another home. When asked, the juvenile denied shooting at the house. Officers spoke with the juvenile’s parents and then asked the juvenile if he would speak with them. A plain-clothes detective and uniformed officer spoke with the juvenile outside his house for about five minutes. The parents were invited to join them but stayed in the house and told the juvenile to talk to the officers and “tell the truth.” The juvenile admitted shooting at the house. The officers did not give the juvenile a Miranda warning. The juvenile was charged with damaging both personal and real property. The trial court denied the juvenile’s motion to suppress his oral statements, and he was adjudicated delinquent and placed on probation for six months.

Held: Affirmed.

1. The trial court made sufficient findings, which for the most part were not challenged by the juvenile, and the findings supported the conclusion that the juvenile was not in custody when he made the statements.
2. Facts the court considered included that the juvenile was 14; the officers asked whether he would talk with them and did not say he had to; the questioning occurred outdoors at the juvenile’s home during the day; the juvenile’s parents were nearby and could have gone outside with the juvenile; the officers talked with the juvenile for only about five minutes; the officers stood arms length from the juvenile and made no move to touch him; and there was no physical restraint or indication of coercion.
3. Facts that did not suffice to render the juvenile “in custody” included that: the juvenile was very much a suspect in the shooting; his parents told him to talk to the officers and “tell the truth”; and the officers were armed and one was in uniform.

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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