

Summer Conference for District Court Judges

School of Government

June 2014

JUVENILE LAW CASE UPDATE

Cases Decided from November 5, 2013 – June 3, 2014

By:

- LaToya Powell
latoya.powell@sog.unc.edu
919-843-4167
- Sara DePasquale
sara@sog.unc.edu
919-966-4289

Juvenile Delinquency

A juvenile's commitment term may not be extended, unless *written* notice was provided to the juvenile and his parents at least 30 days before the juvenile's scheduled release date.

In the Matter of J.L.H., ___ N.C. App. ___, 750 S.E.2d 197 (November 5, 2013).

Facts: Following adjudications of delinquency for possession of a firearm by a minor and carrying a concealed weapon, the trial court committed the juvenile to a youth development center (YDC) for a maximum period of six months. Approximately 30 days prior to the expiration of the juvenile's commitment period, the juvenile's treatment team notified his father by telephone of its plan to extend the juvenile's commitment. One week later, the Division of Juvenile Justice formally approved an extension of the juvenile's commitment period for up to six months and mailed written notice to the juvenile's parents. The juvenile filed a motion for release from his commitment based on the Division's failure to provide written notice of the proposed extension to the juvenile and his parents at least 30 days prior to the expiration of his scheduled release date, as required by G.S. 7B-2515. The trial court denied the motion, and the juvenile appealed.

Held: Reversed and Remanded

- The oral notice the Division provided to the juvenile's father was insufficient to comply with the plain language of G.S. 7B-2515(a), which "clearly and unambiguously" requires *written* notice be provided to the juvenile and his parents at least 30 days in advance of the juvenile's scheduled release date.
- The error was not harmless because the lack of sufficient notice directly impacted the juvenile's ability to contest the proposed extension of his commitment, as provided in G.S. 7B-2515(c).
- The juvenile's appeal was not rendered moot by his release from YDC during the pendency of the appeal because there were adverse collateral consequences, such as the fact that his release date and the commencement of his post-release supervision were delayed by several months.
- The court ordered that the juvenile be given credit toward his one-year period of post-release supervision for the additional time he was committed beyond his initial six-month maximum commitment.

A trial court must provide “compelling reasons,” in writing, for denying a juvenile’s release pending an appeal.

A trial court is not required to hold entirely separate adjudication and disposition hearings.

***In re G.C.*, ___ N.C. App. ___, 750 S.E.2d 548 (November 19, 2013).**

Facts: The 13-year-old juvenile was charged with two counts of first-degree sexual offense under G.S. 14-27.4(a)(2) and two counts of indecent liberties between children under G.S. 14-202.2, alleging sex acts against the juvenile’s 6-year-old neighbor. During a three-day probable cause hearing, the court heard testimony from the 6-year-old victim, the juvenile’s stepfather, the investigating officer, and three medical professionals, who examined the victim, including a forensic interviewer, pediatrician, and licensed clinical social worker. Immediately following this hearing, the court found probable cause for the first-degree sexual offense and adjudicated the juvenile delinquent for indecent liberties between children. One month later, a transfer hearing was held, and the court retained its jurisdiction and adjudicated the juvenile delinquent for first-degree sexual offense, without holding a separate hearing. The court immediately proceeded to disposition and entered a Level III disposition order, committing the juvenile to a youth development center (“YDC”). The court denied the juvenile’s release pending his appeal without any written findings.

Held: Affirmed in part; Vacated and Remanded in part

- The trial court erred by denying the juvenile’s release pending appeal without providing written “compelling reasons,” as required by G.S. 7B-2605. The applicable space on the Appellate Entries form where the court could have provided its compelling reasons contained the notation “N/A.” Therefore, the court vacated the order denying the juvenile’s release pending appeal and remanded the matter to the trial court to set forth its compelling reasons.
- The trial court did not err by entering a disposition order without making written findings demonstrating that it considered the factors listed in G.S. 7B-2501(c). Although the initial disposition order did not contain any such findings, the Chief District Court Judge filed an amended disposition order with written findings that closely tracked the oral findings of the presiding judge and sufficiently addressed these factors.
- The trial court did not err by adjudicating the juvenile delinquent and entering a disposition order without first holding separate adjudicatory and dispositional hearings. Relying upon the holding of *In the Matter of J.J., Jr.*, ___ N.C. App. ___, 717 S.E.2d 59, 62 (2011), the court found no error in the trial court’s failure to hold separate hearings because the juvenile’s constitutional and statutory rights were not adversely impacted by the trial court’s actions.

Pursuant to G.S. 7B-2600, a trial court may modify a prior disposition order that was based upon an erroneous calculation of the juvenile's delinquency history level.

In the Matter of A.F., ___ N.C. App. ___, 752 S.E.2d 245 (December 17, 2013).

Facts: Prior to the expiration of the juvenile's probation, which was set to expire on June 13, 2012, a motion for review was filed alleging the juvenile violated his probation. However, the juvenile failed to appear for the probation violation hearing. At an adjudication hearing held on October 8, 2012, on a new petition, the juvenile admitted both violating his probation, as alleged in the earlier motion for review, and that he had committed felony breaking and entering (B&E) on August 9, 2012, as alleged in the new petition. At disposition, the trial court determined that the juvenile had four delinquency history points, two of which were based on the trial court's belief that the juvenile was still on probation at the time he committed the felony B&E. The four points placed the juvenile in a "high" delinquency history level, which allowed the court to enter either a Level 2 or Level 3 disposition, pursuant to the dispositional chart. The trial court entered a Level 3 disposition and committed the juvenile to a youth development center (YDC). The juvenile filed a motion to modify the disposition order, under G.S. 7B-2600, asserting that the trial court erroneously calculated his delinquency history level because he was not on probation at the time of the felony B&E. The trial court denied the juvenile's motion.

Held: Reversed and remanded.

- The trial court erred by denying the juvenile's motion to modify the disposition order based upon the erroneous calculation of the juvenile's delinquency history level. Because the trial court never extended the juvenile's probation, it expired on June 13, 2012, which precluded the assignment of the two additional points for the juvenile's probation status at the time of the offense, which occurred in August, 2012. In the absence of this error, the trial court had no authority to impose a Level 3 disposition and commit the juvenile to a YDC.
- Pursuant to G.S. 7B-2600(b), the trial court was authorized to correct an error of law in an earlier disposition order.
- The Court rejected the State's argument that by assigning the two additional points and entering a Level 3 disposition, the trial court had implicitly and retroactively extended the juvenile's probation.

A “prior adjudication,” within the meaning of G.S. 7B-2507(a) is one that occurred prior to the disposition hearing and entry of the disposition.

Whether to deviate from the dispositional chart based upon written findings of “extraordinary needs,” pursuant to G.S. 7B-2508(e), is solely within the trial court’s discretion.

In the Matter of P.Q.M., ___ N.C. App. ___, 754 S.E.2d 431 (February 18, 2014).

Facts: The juvenile was adjudicated delinquent on three separate dates - January 5, 2012, for communicating threats, a Class 1 misdemeanor; November 29, 2012, for robbery with a dangerous weapon (RWDW), a Class D felony; and December 3, 2012, for larceny of a firearm, a Class H felony. On March 4, 2013, all three adjudications were calendared for disposition. The trial court found that RWDW was the juvenile’s most serious adjudication and entered the disposition based on that offense. The court also found that the juvenile had two “prior adjudications” for communicating threats and larceny of a firearm, which gave him three delinquency history points. Based on the dispositional chart in G.S. 7B-2508(f), the court entered a Level 3 disposition and committed the juvenile to a youth development center. On March 7, 2013, the court entered an amended Level 3 disposition order, which contained the corrected finding that the juvenile had a “medium” delinquency history level with three points, rather than a high delinquency history level, as indicated in the original order. The juvenile appealed.

Held: Affirmed.

- The trial court was not required to consolidate the offenses for disposition pursuant to G.S. 7B-2508(h) because the three offenses were adjudicated in separate sessions of juvenile court.
- The trial court did not err by finding that the larceny of a firearm adjudication was a “prior adjudication” within the meaning of G.S. 7B-2507(a). Analogizing to the interpretation of a prior conviction in criminal law, the court held that the larceny adjudication was a prior adjudication because it occurred prior to the disposition hearing and entry of the disposition.
- The trial court did not abuse its discretion by declining to impose a Level 2 disposition, pursuant to G.S. 7B-2508(e), based upon written findings of extraordinary needs. The record indicated the trial court made a reasoned decision after hearing all the evidence presented at the disposition hearing and considering the juvenile’s rehabilitation and treatment needs.

Abuse/Neglect/Dependency

Day Care Licensing: Substantiation Determination, Due Process

DHHS must conduct its own investigation and make its own determination of whether abuse or neglect of a child occurred in a licensed child care facility before it may issue any written warning or corrective action plan.

Nancy's Korner Care Center v. N.C. Dep't of Health & Human Services, ___ N.C. App. ___ (May 20, 2014) <http://appellate.nccourts.org/opinions/?c=2&pdf=30694>

Facts: After an 8-year old child attending a licensed child care facility alleged she was inappropriately touched by a staff member, the county department of social services (dss) and a consultant from the DHHS Division of Child Development and Early Education worked together to investigate the allegations. The county dss notified DHHS that it “substantiated” the employee as having sexually abused the child. As a result, the DHHS consultant recommended the center be issued a special provisional license along with the continuation of a protection plan that prohibited the employee from being present at the facility during operational hours. The sanction was reduced by the DHHS Internal Review Panel to a written warning and implementation of the corrective action or protection plan. The petitioner appealed to an administrative hearing, where the child, the child’s parent, and the dss worker did not testify. The hearing officer concluded that the substantiation by the county dss allowed DHHS to issue a written warning and corrective action plan. The hearing officer also found that the preponderance of the evidence at the hearing raised serious questions about whether the abuse occurred, but the hearing did not have jurisdiction to revisit the county dss substantiation. Petitioner appealed the administrative decision to the Superior Court, which affirmed the hearing decision concluding DHHS could rely on the county dss substantiation when issuing administrative sanctions. Petitioner appeals the final agency decision issuing a written warning and implementation of a corrective action plan.

Held: Vacated and Remanded to DHHS to conduct its own investigation of substantial evidence of abuse

- The statutes and administrative code found at G.S. 110-88(6B), -105, and -105.2, and 10A N.C.A.C. 09.1904(b) place an affirmative duty on DHHS to independently determine whether abuse or neglect occurred in a child care facility.
- A county DSS substantiation is not dispositive when determining an administrative action to be imposed by DHHS on a licensed child care facility.
- Although a collaborative investigation occurs, and evidence is shared, that collaboration does not relieve DHHS of its affirmative duty to conduct its own investigation and determine if abuse or neglect occurred.
- Because the petitioner’s liberty interests (her livelihood) were impacted by DHHS’ actions, she is entitled to due process, which can only occur if DHHS conducts and determines whether abuse or neglect occurred, rather than rely on a county dss substantiation that cannot be challenged by petitioner.

Intervention; Notice of permanency planning hearing

Adoption severs all parental rights of a biological parent such that the biological parent does not have a right to intervene in a juvenile proceeding for the adopted child or have standing to appeal an adjudication or disposition order for that child

A party waives formal notice of a permanency planning hearing if she participates in a disposition hearing without objection that results in a permanency planning order

Visitation plan in a court order must contain a minimum outline of time, place and conditions

In Re T.H., ___ N.C. App. ___ (January 21, 2014)

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMy00MzMtMS5wZGY=>

Facts: This case involves six juveniles; four of whom had been adopted by their maternal grandmother in 2009 and two of whom were placed in the custody of their maternal grandmother. After their maternal grandmother was murdered, all six juveniles were adjudicated dependent in 2012, and DSS was granted legal custody and placement authority for all the juveniles. Respondent mother of the two juveniles who were not adopted filed a motion to intervene as of right as the children's sister (her mother had adopted her four biological children). Her motion was denied, and she appealed. Respondent mother also appealed the adjudication and disposition orders for all six juveniles.

Held: Affirmed in part, remanded in part, dismissed appeal in part

- An adoption divests the biological parent of all rights and relieves her of all legal duties and obligations regarding the child who is adopted. A biological parent whose children have been adopted has no right to intervene in a juvenile proceeding for the child.
- In a juvenile proceeding, permissive intervention allows the intervenor to provide full and accurate information regarding the child's welfare, but this purpose can be accomplished through the indirect participation of that individual as a witness or suggested relative placement rather than through intervenor status.*
- Standing to appeal a juvenile proceeding is limited to those parties listed at G.S. 7B-1001 and -1002, therefore, the biological mother of the adopted children who had her parental rights severed as a result of the adoption lacked standing to appeal orders entered in the proceedings for those children.
- The findings of fact and conclusions of law were supported by clear and convincing evidence that both required prongs of dependency were proved by dss.

- By participating without objection in a disposition hearing that addressed a permanent plan, any lack of formal notice for a permanency planning hearing was waived.
- The court made sufficient findings of fact to support its conclusions of law when determining a non-relative placement was in the best interests of the juvenile.
- The visitation plan must contain a minimum outline of time, place and conditions.**

* Prior to S.L. 2013-129, G.S. Chapter 7B, Subchapter 1 (Abuse, Neglect and Dependency) only addressed intervention under the termination of parental rights statute, therefore, allowing the court to look to Rule 24 of the North Carolina Rules of Civil Procedure. As of October 1, 2013, G.S. 7B-401.1 limits who may intervene in a juvenile proceeding.

** S.L. 2013-129 adds G.S. 7B-905.1, which specifically addresses visitation.

Adjudication and Disposition; Notice/Objection; Permanent Plan; Visitation

A party may waive the statutorily required notice of a permanency planning hearing by participating in the hearing without objecting to the lack of notice.

Visitation order must have minimum outline of specificity regarding time, place, and conditions.

In Re J.P., ___ N.C.App. ___, ___ S.E. 2d ___ (November 19, 2013)

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMy0zNS0yLnBkZg==>

Facts: The parties entered into a consent adjudication order, and the court ordered a temporary concurrent permanent plan of reunification or custody/guardianship and scheduled a disposition hearing. At the disposition hearing, the court ceased reunification efforts; ordered a permanent plan of custody or guardianship; and ordered that DSS offer the father supervised visitation every other week and that visitation be reduced to once a month if the father missed visits without notice or acted inappropriately. Respondent parents appealed.

Procedural history: On June 4, 2013, the court of appeals published a decision affirming the adjudication and affirming in part and reversing in part the disposition. That decision was republished on August 6, 2013. A rehearing was granted by the court of appeals on August 9, 2013.

Held: Adjudication affirmed; disposition affirmed in part and reversed in part

- If it was error for the court to order a temporary permanent plan at adjudication, respondents showed no prejudice as a result, and any error was corrected by the court's later order of permanent plan at disposition.

- Respondents waived the lack of notice required by former G.S. 7B-907(a)* by participating in the disposition hearing after the court announced its intention to enter a permanent plan without objection.
- Findings were sufficient to support the cessation of reunification efforts, and the court related those findings to a conclusion of law that reunification efforts would be futile and inconsistent with the juvenile's safety and need for permanent home within a reasonable period of time.
- Visitation plan must contain a minimum outline, such as time, place and conditions of appropriate visitation plan; this portion of the disposition order reversed and remanded.

*G.S. 7B-907 has been repealed and replaced by G.S. 7B-906.1.

Findings

Findings of fact must be supported by competent evidence in the record.

In the Matter of C.M. ___ N.C. App. __ (November 5, 2013)

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMy01NDYtMS5wZGY=>

Facts: Child was adjudicated neglected in 2010 and placed in DSS custody. In January 2013, the permanent plan changed from reunification with respondent mother to guardianship with court approved caretakers. In March 2013, the court ordered legal guardianship to non-relatives and found no further reviews were required under the former G.S. 7B-906. Respondent father appealed.

Held: Reversed and remanded

- There was no competent evidence in the record to support the court's findings and conclusions. No testimony was taken, no evidence was admitted, and no judicial notice was taken at the hearing.
- On remand, court of appeals cautioned trial court to ensure respondent father's due process rights regarding appearing at the hearing and his right to effective assistance of counsel were protected.

Adjudication: Collateral Estoppel and Preservation of Issue for Appeal

Collateral estoppel requires the same burden of proof in each action

In re K.A., ___ N.C. App., ___, ___ S.E. 2d ___ (April 1, 2014).

<http://appellate.nccourts.org/opinions/?c=2&pdf=31396>

Facts: A G.S. Chapter 50 civil custody action between Respondent Mother and Respondent Father awarded legal custody of the parties' three children to Respondent Father. The Court found that Respondent Mother had perpetuated a false set of beliefs, in alleging the father had molested and/or abused one of the children, and that the children now believed those false beliefs. Physical custody of two of the children was placed with the father, and the father was ordered to participate in counseling with the third child to prepare her for the transition to his home. One week later, DSS filed a petition alleging that all three children were abused, neglected, and dependent, and the child who was not in Respondent Father's physical custody was placed in foster care. At the adjudication hearing, the court determined Respondent Mother was collaterally estopped from re-litigating the issues that were litigated in the Chapter 50 action, specifically the allegations that Respondent Father had abused the children, thereby limiting the evidence Respondent Mother was able to introduce at the hearing. The court adjudicated all three children neglected and the child who was in foster care dependent as well. Respondent Mother appealed.

Held: Reversed and remanded

- Collateral estoppel does not apply when the two actions require different burdens of proof: preponderance of the evidence in a Chapter 50 action versus clear and convincing evidence in a Chapter 7B abuse, neglect, or dependency adjudication. No exception arises from the best interests of the child analysis that is applied in both types of proceedings.
- Respondent Mother preserved the issue for appeal when counsel argued during an objection to her line of questioning that collateral estoppel and res judicata should not apply. Stating in closing argument that she accepted the court's ruling to the extent she needed to do so to try the case did not waive her preservation of the issue for appeal.

INDIAN CHILD WELFARE ACT (ICWA)

Subject matter jurisdiction, timing of expert testimony for permanent plan, and cease reunification

State court must find subject matter exception to tribal court jurisdiction under ICWA applies

Expert testimony regarding serious physical or emotional damage that would result to child if returned to parent must occur at hearing that results in permanency planning order for placement outside of parent's home

"Active efforts" for reunification are required in actions involving ICWA, but those efforts may be ceased when the court finds they would be futile

In re E.G.M. ____ N.C.App. ____ (November 5, 2013)

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMy01ODQtMS5wZGY=>

Facts: A three year old Indian child as defined by the Indian Child Welfare Act (ICWA) was removed from her parents' care while they were domiciled on the Cherokee Tribe's Qualla Boundary land trust. Subsequently, the child was adjudicated neglected by the North Carolina district court. At disposition the court awarded legal custody to the respondent mother and placement in kinship care, where respondent mother was also residing. At an April 2012 dispositional hearing, an expert witness on Indian culture testified that continued custody or the return of custody to either parent would likely cause serious physical or emotional damage to the child. A permanency planning hearing was held in January 2013, and the Permanency Planning Order, after referencing the expert testimony from the April hearing, changed legal custody from the respondent mother to DSS with continued placement of the child with the kinship caregiver. Although the permanent plan continued to be reunification with the mother, the court relieved DSS of further reunification efforts with the respondent father based upon a finding that further efforts would be futile or inconsistent with the juvenile's health, safety and need for a safe, permanent home within a reasonable period of time. Both respondent mother and respondent father appealed, raising three issues under ICWA: subject matter jurisdiction between tribal and state court, the timing of expert testimony when proving by clear and convincing evidence that the child would likely suffer serious emotional or physical damage if the child remained in her parent's custody, and whether ICWA allows for the cessation of "active efforts" to reunify an Indian family prior to a TPR. Noting that the last two issues are issues of first impression in

North Carolina, the court of appeals addressed all three issues in the interests of expediting review.

Held: vacated and remanded

1) Subject Matter Jurisdiction

- Under 25 U.S.C.A. §1911, the tribal court had exclusive jurisdiction over the child custody proceeding because the child was domiciled on Indian land. Exceptions are found at 25 U.S.C.A. §1919, and one of those exceptions involves an agreement between the state and tribe. Attached to the GAL's appellee brief was a Memorandum of Agreement (MOA) between the Eastern Band of Cherokee Indians, the N.C. Department of Health and Human Services, and four county dss agencies located in judicial district 30. The MOA deferred jurisdiction from tribal court to state court for all child protective cases under G.S. Chapter 7B. The GAL requested the court of appeals take judicial notice of the MOA.
- Judicial notice of adjudicatory facts can be requested at any time; however, the court of appeals could not take judicial notice of the MOA because (1) the MOA is a legislative, not adjudicatory, fact, (2) the attached MOA was unable to be validated since it was uncertified and without a reference source, and (3) nothing exists in the trial court record to determine the state of the general knowledge of MOA within the county of the trial court.
- Remanded to determine subject matter jurisdiction.

2) A determination under 25 U.S.C.A. §1912(e) that continued custody of the child to the parent is likely to result in serious emotional or physical damage to the child must be made contemporaneously with the placement, and the expert must testify at the permanency planning hearing where order for placement is made.

3) The provision of 25 U.S.C.A. §1912(d) requires a party seeking foster care placement of or the TPR over an Indian child to prove that "active efforts" were made to provide remedial services and rehabilitative programs and that those efforts were unsuccessful. Although "active efforts," as opposed to "reasonable efforts" as set forth in G.S. 7B-507(b)(1), are required for ICWA cases, the court may order a cease reunification if it finds such efforts would clearly be futile.

- Remanded for the trial court to make findings that support the conclusion that further efforts would be futile.

UCCJEA

Review and Permanency Hearings: Findings

A court may not relinquish jurisdiction and transfer a case to another state when no other action is pending or has been commenced in that other state

Court must make specific findings of fact that support conclusions of law regarding placement of juvenile outside of a parent's home and an order of no further reviews

Visitation plan in court order must contain a minimum outline of time, place and conditions

In Re M.M., ___ N.C. App. ___ (November 5, 2013)

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMy02MDAtMS5wZGY=>

Facts: Child was adjudicated dependent in 2008. In 2013, a permanency planning order awarded legal custody and guardianship of the child to her paternal grandparents, with whom the child had been living since 2010. The child, respondent father, and paternal grandparents reside in Michigan. Respondent mother was awarded supervised visitation one day per month not to exceed 4 hours in MI, with travel costs shared between mother and father. The trial court relinquished its jurisdiction and transferred the case to Michigan. Respondent mother appeals.

Held: reversed and remanded

- The UCCJEA requires that if a court determines its state is an inconvenient forum, it must make findings of fact and conclusions of law regarding the relevant factors enumerated at G.S. 50A-207(b).
- A court may not transfer jurisdiction to another state when no action is pending or commenced in that other state. The court must stay its proceeding and condition that stay upon the commencement of a child custody proceeding in that other state.
- Recitation of testimony and the incorporation of admitted reports are not findings of fact.
- Incorporating findings from prior orders without specifying portions of the order that identify the prior findings does not allow for proper appellate review.
- The court must make findings of fact and conclusions of law under G.S. 7B-907(b)* regarding a child's continued placement outside of her parents' home and -906(b)* regarding an order of no further reviews.
- A visitation plan must specify time, place and conditions and cannot be left to the discretion of a custodian.

* Note: G.S. 7B-906, -907 were repealed by S.L. 2013-129 and replaced with G.S. 7B- 906.1

Termination of Parental Rights

Subject matter jurisdiction; standing

In determining if a child resides with or lives with someone, the court looks to the number of nights the child spends with that person

A continuous period of time allows for temporary absences

In re A.D.N. ___ N.C.App. ___, ___ S.E. 2d ___ (December 3, 2013)

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMy03MDktMS5wZGY=>

Facts: On January 2, 2013, paternal grandmother petitioned for termination of parental rights. The trial court found the petitioner had standing because the child resided with her for a continuous period of two years or more preceding the filing of the petition. Child was born drug addicted, and after his hospital discharge, petitioner calendared when he stayed overnight with her. Petitioner documented that the child spent a minimum of twenty-four nights per month with her in January, February, March and April 2011. In May, 2011, the child stayed with petitioner sixteen nights prior to her obtaining a custody order on May 19, 2011. The court granted the TPR after finding petitioner had standing, three statutory grounds existed, and it was in the child's best interests. Respondent mother appealed asserting petitioner lacked standing to commence a TPR action, and the court erred by not appointing a guardian *ad litem* (GAL) to the child.

Held: Affirmed

- Although the court made the ultimate finding of fact necessary to establish the petitioner had standing, it did not make detailed supporting findings. The record, however, contained competent evidence supporting the ultimate finding that petitioner had standing and, therefore, the court had subject matter jurisdiction.
- Legal custody is not a determinative factor when deciding who the child resides with, which is interpreted to mean "lives with."
- In looking at analogous child support guidelines, "lives with" is determined by the number of nights a child spends with the person per year. The trial court reasonably concluded 85% of the child's time established that the child resided with and was not visiting with petitioner.
- In looking at the UCCJEA for guidance, a continuous period of time allows for the child to spend a limited number of nights (i.e., a temporary absence) away from the person's home.
- Citing previous holdings, respondent mother failed to preserve the issue of the court not appointing a GAL to the child for appeal.

Grounds and Best Interests of the Juvenile

If a petition for termination of parental rights alleges a specific statutory ground, an order of TPR based upon a different statutory ground may stand if the petition alleges facts sufficient to place the parent on notice that parental rights could be terminated on that other ground

The court's findings must support its conclusion that termination of parental rights is in the juvenile's best interests

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

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMy03MDctMS5wZGY=>

Facts: Mother filed petition to terminate father's parental rights on the ground of neglect, and a TPR was ordered on the ground of willful abandonment. At disposition, the court concluded that TPR was in the best interests of the juvenile. Respondent father appeals.

Held: Affirmed

- Despite grounds of neglect, the petition sufficiently alleged facts, such as his failure to have contact with the child within the six months preceding the petition and his failure to pay for the cost and care of the child, to place the respondent father on notice that his parental rights may be terminated on the basis of abandonment.
- Based upon findings that the respondent father failed to maintain contact with his child, that the child had a close and loving relationship with her mother and maternal grandparents, and that the maternal grandparents desired to adopt the child, the court's conclusion that TPR was in the juvenile's best interests was not an abuse of discretion.
- Although the court found the juvenile would be entitled to financial benefits if adopted by her maternal grandparents, the additional findings that the respondent father failed to satisfy his parental obligations by withholding his presence, affection and support supported the court's conclusion that TPR was in the juvenile's best interests.

Findings Addressing the Best Interests of the Juvenile

Although the court must consider all six statutory factors enumerated in G.S. 7B-1110(a), the order must contain written findings on only those factors that are relevant to the court's decision

In re D.H., ___ N.C. App., ___, ___ S.E. 2d ___ (February 4, 2014).

<http://appellate.nccourts.org/opinions/?c=2&pdf=31214>

Facts: DSS filed a petition to terminate respondent mother's parental rights. The court found four grounds existed for the termination of parental rights, and at disposition, the court further found that termination of respondent mother's parental rights was in each juvenile's best interest. Respondent mother appeals, arguing the disposition portion of the order did not contain written findings for each statutory factor required to be considered as provided for in G.S. 7B-1110(a).

Held: Affirmed

- Although age is one of the factors the court must consider, there was no evidence in the record that age was relevant in this case; therefore, the order was sufficient even though there were no written findings addressing each child's age.
- The lack of an adoptive placement at the time of the termination hearing is not a bar to a termination of parental rights. In addition, the factor addressing the quality of the relationship between the juvenile and proposed adoptive parent cannot be addressed and is, therefore, not a relevant factor requiring written findings in the TPR order.
- The findings were sufficient to address two factors that were relevant in this case: the likelihood of adoption and whether termination will aid in the accomplishment of a permanent plan for each juvenile. Those findings were supported by the evidence.
- The court's conclusion that TPR was in the juvenile's best interests was not an abuse of discretion as it was not "manifestly unsupported by reason."

Findings: Statutory Language; Cease Reunification and TPR

The court's finding must address the substance of the statutory criteria required to be included in the order

In an appeal of both a cease reunification and termination of parental rights order, the appellate court may review the two orders together when determining if the necessary findings of fact required for both actions are present and supported by competent evidence in the record

In the matter of L.M.T. and A.M.T., ___ N.C. ___ (Dec. 20, 2013)

<http://appellate.nccourts.org/opinions/?c=1&pdf=31026>

Facts: After making findings of fact regarding respondent mother's drug use, domestic violence, deception on the court, and unstable and injurious living environment for her children, the trial court entered a cease reunification order and a subsequent termination of parental rights order. Respondent mother appealed both orders, arguing that the cease reunification order did not contain the required findings of futility or inconsistency with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time as required by G.S. 7B-507(b)(1). In a unanimous opinion, the court of appeals reversed and remanded both orders after

concluding the cease reunification order did not contain the requisite statutory findings of fact. Petition for discretionary review was granted by the N.C. Supreme Court.

Held: Reversed decision of the court of appeals, thereby reinstating decision of trial court

- Although best practice is to include the language of the statute in an order, the order need not recite the exact language of the statute but instead must address the substance of the concerns contained in the statute.
- Competent evidence must support the findings of fact, and the findings of fact must support the conclusions of law.
- Although not using the phraseology of the statute, the specific findings fact in the cease reunification order indicate continued reunification efforts would be futile and inconsistent and support the conclusion of law to cease reunification efforts.
- When a termination of parental rights order is entered, an appeal of a cease reunification order is combined with the appeal of the termination of parental rights order, requiring the appellate court to review both orders together. When reviewed together, incomplete findings of fact in one order may be cured by additional findings of fact in the other order.

ADOPTION

Parental Relinquishment; Administration of an Oath

- | |
|--|
| <ul style="list-style-type: none">• <i>A certifying officer may delegate the ministerial task of administering an oath so long as the certifying officer is at the administration of the oath.</i> |
|--|

In Re Adoption of “Baby Boy,” ___ N.C. App., ___, ___ S.E. 2d ___ (April 14, 2014).

<http://appellate.nccourts.org/opinions/?c=2&pdf=31105>

Facts: Birth mother signs a relinquishment before an adoption agency worker and a hospital notary the day after her child is born. The adoption agency worker reads the relinquishment aloud, which states: “I, Amy Costin, being duly sworn, declare....” After being read the form, which included a 26 question questionnaire, birth mother signs the relinquishment in the presence of the notary. The notary was present during the reading of the relinquishment and questionnaire and the birth mother’s signatures on those forms. The notary signed the acknowledgment. Eight days after signing the relinquishment, the birth mother texted the adoption agency worker that she changed her mind; however the adoption agency did not revoke the birth mother’s relinquishment because she did not provide written notice within 7 days as required by statute and specifically included in the relinquishment and questionnaire birth mother signed. The birth mother filed a motion to void her relinquishment, and the trial court determined the relinquishment was not valid because it was not signed under oath and did not specify the infant’s gender as required by the statute. As a result, the trial court granted birth mother’s petition to declare her relinquishment void. The adoption agency and adoption petitioners appealed.

Held: Reversed

- G.S. 48-3-702(a) requires a relinquishment to be signed and acknowledged under oath. Although the court stressed the seriousness of properly administering oaths and urging notaries to be diligent in performing that duty, it found an oath is a ministerial duty that may be administered by a person without official authority to administer an oath so long as a certifying officer is present and assents to the administration. This means a notary need only certify that he or she witnessed the signor make a vow of truthfulness, which could include any form of the word swear. In this case the notary was present when birth mother was read the relinquishment and signed the document that contained the language “duly sworn.”
- The failure to include baby boy’s gender in the relinquishment was not fatal as the relinquishment was executed in substantial compliance with the law pursuant to G.S. 48-3-702(a).

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>.