

Cases Affirmed Per Curiam

Sufficiency of evidence of neglect

In re A.S., 190 N.C. App. 679, 661 S.E.2d 313 (6/3/08), *aff'd per curiam*, 363 N.C. 254, 675 S.E.2d 361 (5/1/09).

- Evidence was sufficient to support the adjudication of neglect, where respondents did not object to DSS's introduction of the DSS and guardian ad litem reports, which provided substantive evidence, and did not preserve for appeal any argument about the introduction or consideration of that evidence.

UCCJEA jurisdiction in termination

In re E.X.J., 191 N.C. App. 34, 662 S.E.2d 24 (2008) (6/17/08), *aff'd per curiam*, 363 N.C. 9, 672 S.E.2d 19 (2/6/09).

- If jurisdiction is clear from the record, the trial court is not required to make specific findings of fact to support a conclusion that it has jurisdiction under the UCCJEA, although doing so is the better practice.
- An order entered pursuant to temporary emergency jurisdiction under the UCCJEA remains in effect until an order is received from another state that has jurisdiction.
- N.C. became the child's home state when the child and parent had been here more than six months and no action had been filed in another state.
- Failure to serve one of the parents in the underlying juvenile case did not deprive the court of subject matter jurisdiction in a later termination action.

Applicability of G.S. 1A-1, Rule 15

In re B.L.H., 190 N.C. App. 142, 660 S.E.2d 255 (5/6/08), *aff'd per curiam*, 362 N.C. 674, 669 S.E.2d 320 (12/12/08).

- It was error for the trial court to allow the petitioner to amend the petition to conform to the evidence, because
 1. Article 11 of G.S. Chapter 7B is silent with regard to such amendments, and
 2. applying G.S. 1A-1, Rule 15, to allow the amendment amounted to conferring a new procedural right, which the court has held it will not do in termination cases.
- The petition as filed did not give sufficient notice that the added ground might be litigated, because the children had not been in care for a year when the petition was filed and the ground could not have been alleged at that time.

Authority of parent's guardian ad litem

In re L.B., 187 N.C. App. 326, 653 S.E.2d 240 (12/4/07), *aff'd per curiam*, 362 N.C. 507, 666 S.E.2d 751 (10/10/08).

- The signature of the respondent parent's guardian ad litem did not suffice to satisfy the requirement under Rule 3A of the Rules of Appellate Procedure that both trial counsel and the appellant sign the notice of appeal. Failure of the parents to sign the notice of appeal deprived the court of appeals of jurisdiction to consider the appeal.

Jurisdiction in termination; child's presence in district

In re H.L.A.D., 184 N.C. App. 381, 646 S.E.2d 425 (2007), *aff'd per curiam*, 362 N.C. 170, 655 S.E.2d 712 (2008).

- The Juvenile Code conditions jurisdiction in a termination case on the child's residing in, being found in, or being in the custody of an agency in the district when the petition or motion is filed. Nevertheless, when the trial court had awarded custody to a relative who then moved out of state with the child, that requirement did not apply because N.C. had exclusive continuing jurisdiction under the UCCJEA.

Relevance of cost of providing services

In re J.J., 180 N.C. App. 344, 637 S.E.2d 258 (2006), *aff'd per curiam*, 362 N.C. 172, 655 S.E.2d 712 (2008).

- It was not error for the trial court to consider the cost of providing services when determining whether to change the permanent plan. (The trial court had found that reunification was possible but not financially practical because the mother would need help 24 hours a day to care for the children.)

Supreme Court Opinions

Nature of "condition alleged" for purposes of amendments

In re M.G., ___ N.C. ___, ___ S.E.2d ___ (8/28/09).

- When petition already alleged abuse of Child A and sexual abuse of another child, an amendment to add allegations of sexual abuse of Child A did not change the nature of the condition alleged. The additional factual allegations "fell within the nature of the abuse condition that was initially alleged."
- The court examined the definition of "abused juvenile" and concluded that the various forms of abuse have in common "the existence or serious risk of some nonaccidental harm inflicted or allowed by one's caretaker."

Statutory timelines for entry of orders

In re T.H.T., 362 N.C. 446, 665 S.E.2d 54 (2008).

- The appropriate means for addressing a trial court's failure to enter orders within the required statutory time period is mandamus, not a new hearing.