

Juvenile Law Case Update Supplement: June 11 - 16, 2015

GAL for Respondent Parent: Court Inquiry into Competence

[In re T.L.H.](#), ___ N.C. ___ (June 11, 2015)

Reversed decision of the N.C. Court of Appeals

- A trial court is not required to conduct a hearing on a parent's competency and resulting need for a Rule 17 GAL when (1) a parent has a diagnosed mental illness, (2) the grounds for a TPR are based on parent's diagnosed mental illness, or (3) a party requests a hearing. Incompetency is defined at G.S. 35A-1107. Because this is a different standard from the ground for a TPR based on a parent's incapability of providing care for her child [G.S. 7B-1111(a)(6)], the ground itself does not require a hearing on the parent's competency, even if a request for a hearing is made.
- A trial court's decisions of whether (1) to hold a hearing on a parent's competency, and/or (2) whether a parent is incompetent and requires a Rule 17 GAL are discretionary. The standard of review is an abuse of discretion. Substantial deference must be given to the trial court that has interacted with the respondent parent whose competency is at question. Evaluating a respondent parent's competency extends beyond finding there is a mental health diagnosis and includes observations of the respondent's behavior in the courtroom, ability to express herself and her understanding of the situation, and her ability to assist her counsel.
- Absent "extreme instances," a trial court should not be held to have abused its discretion by failing to holding a hearing on a respondent parent's competency when the record contains "an appreciable amount of evidence tending to show the litigant whose mental condition is at issue is not incompetent." Here, the record showed the respondent mother exercised proper judgment in agreeing to have DSS take custody of her newborn infant, demonstrated a reasonable understanding of the proceedings when informing DSS that she wanted to reunify with her child, and testified to receiving treatment and needing to manage her own affairs including budgeting for her limited financial resources and seeking subsidized housing.

Neglect Adjudication: Findings, Domestic Violence

[In re M.K., M.K., M.K., & M.K.](#), ___ N.C. App. ___ (June 16, 2015)

Held: Affirmed

- The trial court's findings of fact should not merely recite the allegations in the petition but must reflect the court's process of logical reasoning when considering the evidence before it to make its ultimate findings of fact that support its conclusion of law. The findings of fact that were not verbatim recitations of the allegations demonstrated the trial court considered the evidence and exercised logical reasoning to support its conclusion that the children were neglected.

- *Concurrence*: Recognizes the holding in *In re J.W. and K.M.*, ___ N.C. App. ___ (May 5, 2014), which held findings of fact that are verbatim recitations of the allegations of the petition are not per se reversible error so long as the record shows the court used logical reasoning when considering the evidence before it to find the ultimate facts to support its conclusion of law.
- Findings of fact that are really conclusions of law will be treated as a conclusion of law.
- Findings that all four children were exposed to the long standing history of domestic violence between their parents were supported by competent evidence. A child's exposure to domestic violence may constitute an environment injurious to a child's welfare. Evidence that shows the child's exposure to domestic violence negatively impacted the child and placed the child at risk may support an adjudication of neglect.

Neglect Adjudication: Evidence, Culpability of Parent

[In re A.L.T. and C.T.](#), ___ N.C. App. ___ (June 16, 2015)

Held: Affirmed (there is a concurrence and a dissent)

- The rules of evidence apply to an adjudication hearing. It is presumed the court disregarded incompetent evidence, specifically, the child's hearsay statements, when the court dismissed the sexual abuse allegations related to the father. The rules of evidence are relaxed at a disposition hearing such that a hearsay and evidence of the father's past sexual conduct may be considered if the court finds the evidence is relevant, reliable, and necessary to determine the most appropriate disposition for the child.
- When there are ample findings of fact based upon competent evidence to support a child's adjudication, other findings of fact that are not supported by competent evidence and are not necessary for the adjudication does not constitute reversible error.
- When determining if a juvenile is neglected, the court has some discretion in determining if the child is at risk for a particular type of harm when considering the child's age and living environment. Findings that show the children lived in a home where the father punched holes in walls, hit one child in the mouth causing her lip to bleed and that the child was scared of her father, and hit another child at least once support the adjudication of neglect. There need not be findings of each parent's fault or culpability.

Concurring Opinion:

- When a home has a violent and non-violent parent, the trial court does not need to make findings about each parent's culpability but instead must make findings about the children's living circumstances when determining if a child is neglected.
- A court may consider the past history of domestic violence, even if that history occurred years before the juvenile petition was filed, when determining if a juvenile is neglected.
- A court has discretion to consider any competent evidence at disposition even if that evidence would be excluded at adjudication because the rules of evidence apply.

Dissenting Opinion

- A finding about the father's history of difficulty controlling his anger without evidence that his anger caused the children to be neglected at the time of the adjudication hearing or is likely to cause future neglect is insufficient to support neglect adjudication.

- One single act of physical discipline is not clear, cogent, and convincing evidence to support an adjudication of neglect.
- Hearsay evidence and evidence of prior acts were not admissible and should not have been considered at disposition.
- Without any findings regarding the mother's culpability in the children's neglect, the findings are insufficient to support the children's adjudication as neglected.

Disposition: Cost of Visitation

[In re J.C.](#), ___ N.C. ___ (June 11, 2015)

Reversed COA decision affirming disposition order, [In re J.C.](#), ___ N.C. App. ___ (July 15, 2014) Remanded to trial court to make necessary findings of fact

When a parent is ordered to pay for the cost of supervised visitation, the court must make findings that the parent has the ability to pay. Without those findings, there can be no meaningful appellate review.

- *Author's Note:* The COA held in [In re J.C.](#), ___ N.C. App. ___ (July 15, 2014) that G.S. 7B-905.1 (the visitation statute) requires the court to order conditions of visitation, which allows the court to order that a parent pay the cost of supervised visitation, but the statute does not require the court to make a finding regarding the parent's ability to pay. However, there was a dissent that reasoned the juvenile court must consider a parent's ability to pay. The NC Supreme Court's reversal and remand appears to hold the juvenile court may order a parent to pay the cost of supervised visitation, but it must consider the parent's ability to pay before doing so

TPR: Impact of Void Orders Due to Lack of Subject Matter Jurisdiction under UCCJEA

[In re A.G.M. & A.L.M.](#), ___ N.C. App. ___ (June 16, 2015)

Held: reversed and remanded

- Procedural History and Facts:
 - January 2011, nonsecure custody granted to DSS after A/N/D petition filed; Mother was incarcerated
 - At some point, children adjudicated neglected and dependent
 - March 2012, permanent plan changed to adoption
 - September 2012, mom files motion to dismiss TPR brought by DSS based on lack of subject matter jurisdiction under UCCJEA
 - January 2013, DSS dismisses petition and files request for nonsecure custody pursuant to emergency temporary jurisdiction under UCCJEA; Mother is released from prison
 - February 25, 2013, nonsecure custody granted to DSS under emergency temporary jurisdiction of UCCJEA
 - **Author's Note: it is unclear how nonsecure custody was granted without a petition having been filed. This issue was apparently not before the COA.*

- March 2013, new petition filed by DSS alleging children neglected and dependent due to DSS's custody of the children since 2011, mother's history of substance abuse and domestic violence, and mother's incarceration limiting her ability to meet requirements of DSS service plan from the 2011 case.
 - July 2013, mother receives DSS service agreement for the 2013 case
 - October 2013, KY relinquishes its jurisdiction; service agreement sent to mother
 - November 7, 2013, adjudication hearing held
 - December 5, 2013, disposition and permanency planning review hearing held
 - December 10, 2013, order entered adjudicating children neglected and dependent and ordering mother to engage in therapy and contact the children's therapist
 - February 4, 2014, disposition order entered with concurrent plan of adoption and reunification. Court found mother failed to comply with the service agreement and TPR should be considered due to children being in DSS custody for 31 months. DSS should make efforts to reunify and file a TPR within 60 days
 - February 7, 2014 DSS filed motion to terminate mother's rights
 - May 2014, TPR hearing
 - September 4, 2014 TPR order entered.
- Because NC did not have subject matter jurisdiction until February 25, 2013, when it exercised emergency temporary jurisdiction under the UCCJEA, all the previous orders are void ab initio. Respondent did not lose legal custody of her children until the nonsecure custody order was entered in February 2013. Prior to the February 2013 nonsecure custody order, neither DSS nor the court had authority to require the mother to comply with any service agreements or court orders. Evidence of her noncompliance may not be considered.
 - Emergency temporary jurisdiction under the UCCJEA limits a court's authority to ordering the respondent to relinquish her children to the temporary custody of DSS. The court is without jurisdiction to order DSS to do anything beyond what is necessary to take care of the children or to consider other matters related to the custody of the children.
 - The court does not have authority to order a parent to participate in therapy in an adjudication order. G.S. 7B-904 authorizes a court to order a parent to participate in therapy in a dispositional or subsequent order. The legal authority to act on an order occurs when it is entered, and the mother was not bound by the conditions of any orders prior to the entry of the first disposition order on February 4, 2014. A TPR that is initiated 3 days later is an insufficient amount of time to determine if respondent willfully abandoned her children. A TPR hearing that is held 3 months after the disposition is an insufficient period of time for a court to determine if the children are at risk of a repetition of neglect in order to terminate parental rights on the ground of neglect.
 - The children were not removed until NC obtained jurisdiction and entered its adjudication order on December 10, 2013. The ground that the mother willfully left her children in a foster care placement for more than 12 months is not valid when the TPR hearing was held less than 4 months after the children were removed.

Update for Cases: [In re M.G. & H.G.](#) (Jan 20, 2015); [In re A.E.C.](#), (Jan. 20, 2015)
Stays dissolved; PDRs and Petitions for Writ of Supersedeas Denied