

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

January 19, 2010

Permanency Planning Hearing in Dependency Case

Permanency planning hearing

- Permanency planning hearing was insufficient when court relied solely on written summaries, prior orders, and arguments of counsel.

In re D.Y., ___ N.C. App. ___, ___ S.E.2d ___ (1/19/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091087-1.pdf>

Facts: At a permanency planning hearing, the court considered written summaries by DSS and the guardian ad litem, prior orders, and arguments of counsel. Respondent was given an opportunity to address the court, but was not sworn and did not take the stand. No witnesses testified. The trial court found that it was not possible for the children to return home, that respondent had not completed the family service plan, that the children had expressed a wish not to return to respondent's home, and that their return would be contrary to their welfare. The court declined to return the children to respondent's custody and ordered that they remain in their placements. (The opinion does not indicate who had legal custody of the children or whether that changed as a result of the permanency planning hearing order.)

Held: Reversed and remanded for new hearing.

1. The trial court failed to hold a proper hearing.
2. "[B]ecause no evidence was presented, the trial court's findings of fact are unsupported, and its conclusions of law are in error."

The court of appeals relied in particular on *In re Shue*, 311 N.C. 586 (1984), and *In re D.L.*, 166 N.C. App. 574 (2004). Both of those cases were decided in part on the basis of trial court error in restricting the evidence a party was allowed to present. In *D.L.*, as in *D.Y.*, DSS's only evidence was a written summary, and the court of appeals found that DSS had presented no competent evidence to support the trial court's findings. Some of the opinion suggests error in failure to make sufficient findings when an order incorporates and overly relies on written summaries. The main point, however, seems to be the failure to have any sworn witnesses – in effect, the failure to actually hold a hearing.

The courts' opinions can be accessed from <http://www.aoc.state.nc.us/www/public/html/opinions.htm>. Earlier case summaries can be found at <http://www.sog.unc.edu/programs/dss/pubs.htm>.



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