

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

December 7, 2010

All of the juvenile cases decided today by the Court of Appeals are *Unpublished* opinions.

Two published cases – one civil and one criminal – may interest some readers:

### **Assertion of Fifth Amendment privilege in civil case**

*Lovendahl v. Wicker*, \_\_\_ N.C. App. \_\_\_ (12/7/10).

<http://appellate.nccourts.org/opinions/?c=2&pdf=2010/09-954-1.pdf>

In motor vehicle accident case, the trial court did not err in striking the defendant's affirmative defenses, because defendant's invocation of his Fifth Amendment privilege at a deposition deprived plaintiff of information he needed to respond to those defenses. The court noted that the defendant "has not cited any North Carolina case requiring the trial court to put off a civil case indefinitely — requiring a plaintiff to wait to prosecute his claims — until a criminal case is resolved . . . ."

### **Child's out-of-court statements; expert opinion testimony**

*State v. Treadway*, \_\_\_ N.C. App. \_\_\_ (12/7/10).

<http://appellate.nccourts.org/opinions/?c=2&pdf=2010/10-287-1.pdf>

In an appeal from a conviction of one count of first degree sexual offense, the court rejected defendant's arguments that admission of certain testimony, to which defendant had not objected, was plain error. The court held that:

1. Step-grandmother's testimony about child's statements to her about what the defendant had said and done was offered for non-hearsay purposes of explaining the witness's subsequent actions and corroborating the child's testimony.
2. Testimony by expert in clinical social work about child's statements served to corroborate the child's testimony.
3. Testimony by expert in child mental health about another child's statements about what he had seen was elicited by defendant on cross-examination.
4. Admission of that expert's testimony that she diagnosed the child with sexual abuse, when there was no physical evidence of abuse, was erroneous; however, it was not plain error in this case.

Two unpublished juvenile cases to note:

### **Cessation of reunification efforts at disposition**

*In re D.G.*, \_\_\_ N.C. App. \_\_\_ (12/7/10) (*unpublished*).

<http://appellate.nccourts.org/opinions/?c=2&pdf=2010/10-654-1.pdf>

The evidence and the trial court's findings at adjudication and disposition were sufficient to support trial court's conclusion that reunification efforts and visitation should cease.

**TPR: “year in foster care”**

*In re J.K.*, \_\_\_ N.C. App. \_\_\_ (12/7/10) (*unpublished*).

<http://appellate.nccourts.org/opinions/?c=2&pdf=2010/10-649-1.pdf>

Termination of parental rights based on G.S. 7B-1111(a)(2) requires proof that when the petition or motion was filed, the child had been left in foster care or other placement outside the home for “more than 12 months.” Where the final adjudication/disposition order giving custody to DSS was entered (signed and filed with clerk) on April 4, 2008, and termination petition or motion was filed on April 3, 2009, the court held that the children had not been in foster care more than 12 months and vacated the termination order.

Appellate court opinions can be found at <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/case\\_summaries.html](http://www.sog.unc.edu/programs/dss/case_summaries.html)



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