

District Court Judges' Summer Conference
June 23, 2011
Wrightsville Beach, NC

JUVENILE LAW UPDATE



Themes for the Day

1. Do not make the court of appeals guess or infer what you intended.
2. Err on the side of making more, rather than fewer, findings of fact.



ABUSE, NEGLECT, DEPENDENCY

Neglect Adjudication <i>(H.N.D.)</i>
<p><u>Court of appeals reversed:</u></p> <ul style="list-style-type: none"> ■ must include finding of harm / risk of harm, ■ unless evidence is so substantial that the finding is not required. <p><u>Supreme court reversed:</u></p> <ul style="list-style-type: none"> ■ evidence supported findings and ■ findings supported conclusion.
<ol style="list-style-type: none"> 1. Was evidence “capable of more than one inference”? [COA] 2. Did “all the evidence [support] such a finding”? [Safriet]

Consent Adjudication <i>(J.N.S.)</i>
<ul style="list-style-type: none"> ■ Court may rely on statements of respondent's attorney – not necessary to inquire directly of respondent.
Disposition Evidence and Order
<ul style="list-style-type: none"> ■ Witnesses at disposition must be sworn. ■ Need explicit language about continuing or ceasing reunification efforts. 

Permanency Planning <i>(J.M.D.)</i>
<ul style="list-style-type: none"> ■ “Return home” means return to the home from which the child was removed. ■ G.S. 7B-907(b) applies when custody is given to <i>the other</i> parent. <p><u>Role of trial court upon remand</u></p> <ul style="list-style-type: none"> ■ taking more evidence is in trial court's discretion. ■ must carry out mandate of appellate court (even if “respectfully disagree”)

Permanency Planning: Parental Status
(D.M.)

Permanent custody to grandmother was improper without finding/conclusion that parents

- were unfit or
- had acted inconsistently with constitutionally protected status.

Also:

- must make reasonable efforts findings about both parents, when child removed from both
- cannot delegate visitation terms to treatment team



Permanency Planning: Mootness of Appeal
(B.G.)

- Appeal became moot as soon as child reached age 18.



Converting to Civil Custody Order
(*Sherrick v. Sherrick*)

- PP hearing: consent temporary joint custody order treated as initiation of civil action
- In civil case – order giving parents sole custody

1. Civil order was not “permanent” order
2. Jurisdiction in juvenile case was not terminated
3. Findings for terminating jurisdiction were not made

J.M.D.

Order that case be transferred to domestic court on proper motion by a party was invalid.

Conversion to Civil Custody Order
G.S. 7B-911

Step 1

Civil custody order

1. findings & conclusions
 - sufficient to create or modify civil order
 - *if custody to non-parent*, special findings by clear and convincing evidence
2. parties and caption
3. venue
4. filing fee (if new case)



Conversion to Civil Custody Order
G.S. 7B-911

Step 2

Order terminating juvenile court jurisdiction must find:

1. no need for continued state intervention
2. six months since placement was made the permanent plan, unless child in custody of
 - parent or
 - person with whom child lived when petition was filed



Consolidation of Civil and Juvenile Cases
(N.T.S.)

- G.S. 7B-200(d) allows court to consolidate cases
- Need clarity about which kind of order is being entered
- Here, temporary order for custody to father was interlocutory and not appealable



Civil vs. Juvenile Jurisdiction
(Rodriguez v. Rodriguez)

- Court of Appeals inferring that trial court terminated jurisdiction
 - children returned to mother's custody
 - DSS and GAL relieved from case
- In civil custody action, prior adjudication of dependency was not sufficient to establish unfitness



Ceasing Reunification Efforts
(T.R.M.)

- Competent evidence supported finding that changes in child's behavior related to ceasing visits with mother.

TPR Jurisdiction

- Because TPR petition was not verified, trial court lacked subject matter jurisdiction.



TPR: Jurisdiction under UCCJEA
G.S. 50A-203

N.C. can modify other state's order only if:

- N.C. would have jurisdiction to enter non-emergency initial custody order, and
- either
 1. court of other state determines
 - a. it no longer has exclusive continuing jurisdiction, or
 - b. N.C. is more convenient forum
 - or
 2. court of either state determines parent, child, etc., are no longer in the other state

TPR: Jurisdiction under UCCJEA
(K.U.-S.G.)

An order from the other state must be in the record here if other state determined that

- it no longer had exclusive continuing jurisdiction, or
- N.C. was a more convenient forum.

Official commentary to G.S. 50A-202:
 "A party seeking to modify a custody determination must obtain an order from the original decree State stating that it no longer has jurisdiction."



TPR: Guardian ad Litem for Parent
(A.R.D.)

- Whether to conduct inquiry into respondent's need for a GAL is in judge's discretion.

"incompetent" – references G.S. 35A-1101
 "diminished capacity" – references case law:
 lack of ability to perform mentally

- Do the circumstances or the evidence call into question respondent's
 - mental competence,
 - ability to perform mentally, or
 - ability to act in her own interest?



TPR: Guardian ad Litem for Parent
(A.S.Y.)

- Release of respondent's GAL must be supported by evidence and findings.
- Role of GAL: reaches conclusion different from *In re L.B.*



TPR: Waiver of Right to Counsel
(P.D.R.)

1. Determine after thorough inquiry that respondent
 - has been clearly advised of right to counsel;
 - understands and appreciates consequences of waiving counsel; and
 - comprehends nature of the petition, proceedings, and meaning of termination of her rights.
(based on G.S. 15A-1242)
2. Determine whether respondent has basic competence to present a defense without aid of counsel.



TPR: Sufficiency of Evidence and Findings
(D.J.E.L.)

Ground:

- rights to another child were terminated, and
- lacks ability or willingness to establish a safe home

Best interest:

- record must show court considered statutory factors



TPR: Willfully leaving child in care . . .
(D.H.H.)

- Child does not have to be in DSS custody.
- Parent can continue efforts even if court has ordered guardianship.



<p>TPR: Incapability Ground <i>(L.H.)</i></p>
<ul style="list-style-type: none"> ■ Parent who merely consented to placement arranged by DSS did not have a “suitable alternative arrangement.”
<p>TPR: Jurisdiction during Appeal</p>
<ul style="list-style-type: none"> ■ During appeal of TPR order, trial court <ul style="list-style-type: none"> • could conduct hearing and determine how it <i>would</i> rule on a Rule 60 motion; • could not conduct a new disposition hearing.



<p>OTHER CASES</p>
Empty space for other cases

<p>Adoption by Domestic Partner Void <i>(Boseman v. Jarrell)</i></p>
<ul style="list-style-type: none"> ■ Trial court did not have authority to <ul style="list-style-type: none"> • waive statutory provision or • expand trial court’s jurisdiction ■ However, application of best interest standard in custody dispute was proper



Fifth Amendment in Civil Case
(Lovendahl v. Wicker)

- In motor vehicle case, invoking Fifth Amendment → striking affirmative defenses
- Nothing requires court to postpone civil case until criminal action is resolved



U.S. Supreme Court Review of
Camreta v. Greene, 588 F.3d 1011 (9th Cir. 2010)

Does interview of suspected child abuse victim require one of the following:

- warrant
- court order
- parental consent
- exigent circumstances

Appeal dismissed as moot.
131 S.Ct. 2020 (May 26, 2011)

DELINQUENCY

Delinquent Juveniles: Custodial Interrogation
(K.D.L.)

- Child questioned at school was in custody
 - 12 years old
 - transported by law enforcement
 - frisked by law enforcement
 - SRO present most of the time
 - questioning lasted several hours
- U.S. Supreme Court heard arguments in *In re J.D.B.*, 363 N.C. 664 (2009), in which our court held that juvenile's age was not relevant when determining whether in-school questioning was "custodial interrogation."



Juvenile's Waiver of Rights
(State v. Williams)

- After invoking rights, juvenile may waive them by initiating further communication.



Juvenile's Privilege against Self-incrimination
(J.R.V.)

Before a juvenile testifies in his own case, the court must

1. inform the juvenile of the privilege against self-incrimination and
2. ensure that the juvenile understands the privilege.



Closing Arguments
(A.W.)

Juvenile's attorney must be given opportunity to make closing argument.

- At adjudication, juvenile is entitled to same rights as adult defendant, except those excluded by statute.
- U.S. Supreme Court: Denial of defendant's right to make a closing argument is a denial of the right to effective assistance of counsel and impedes the right to present a defense.



Sufficiency of Delinquency Adjudication Order
(J.V.J.)

Order adjudicating delinquency must

- refer to allegations in the petition;
- find that allegations were proved beyond a reasonable doubt; and
- include
 - date of the offense,
 - misdemeanor or felony classification, and
 - date of adjudication.



Disposition in Delinquency Case
(K.L.D.)

Where

- chart authorized Level 1 or Level 2 disposition, and
- court ordered Level 2 without considering Level 1,

court of appeals would reverse only if "manifestly unsupported by reason."



HOWEVER:

Disposition in Delinquency Case
(*V.M.*)

- Disposition order must
 - contain appropriate findings of fact and conclusions of law, and
 - show that court considered factors in G.S. 7B-2501(c).
- Not sufficient to state that court received, considered, and incorporated predisposition report and risk and needs assessments.



In re D.K.H.
(2008) (unpublished)

- Affirmed Level 3 disposition when court had choice between 2 and 3.
- “We caution the trial courts to give equal care to the written orders as they do to their decision-making process so that the orders properly set out the basis for the court’s ruling and accurately reflect the facts leading up to that ruling.”



Disposition after Violation of Probation
(*S.B.*)

- If juvenile is on probation for only a minor offense, commitment is never an option for violation of probation.
- If violation is also a new offense, commitment may be an option after adjudication for the new offense.
- If commitment is an option when court places juvenile on probation, may the court order and then suspend commitment?



Court's Authority when Juvenile is Committed
(J.S.W.)

- Court's jurisdiction continues when juvenile is committed.
- The court has some leeway to enter orders *about* the juvenile's commitment.


