

District Court Judges' Summer Conference  
Wrightsville Beach, NC

June 18, 2013

## **JUVENILE LAW UPDATE**

**Abuse, Neglect Dependency, and Termination of Parental Rights**

Cases Filed from November 20, 2012, through June 4, 2013



## Abuse, Neglect Dependency, and Termination of Parental Rights

### **GAL for Parent: Role Depends on Basis for Appointment**

**In re P.D.R.**, \_\_\_ N.C. App. \_\_\_, 737 S.E.2d 152 (Dec. 18, 2012).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMC0xNTE5LTlucGRm>

**Facts:** This case was previously before the court of appeals on the question of whether the trial court had erred in allowing the respondent mother to waive her right to counsel in a termination of parental rights action. The court reversed the termination order and the supreme court, after granting discretionary review, reversed the court of appeals, holding that G.S. 15A-1242 does not apply to waivers of counsel in non-criminal cases. In the supreme court both parties argued that the waiver decision belonged to the parent's guardian ad litem, not the parent herself – a position different from the one both had taken in the trial court and court of appeals, but they disagreed as to whether the guardian ad litem had waived counsel. The supreme court remanded the case to the court of appeals for a determination of whether the role of the parent's guardian ad litem in a termination action is one of assistance or substitution.

**Held:** Vacated and remanded.

1. The court first noted the “seeming conflict” between G.S. 7B-1101.1(e), which describes a role of assistance for the guardian ad litem, and the requirement that GAL appointments be made pursuant to Rule 17 of the Rules of Civil Procedure, which provides for a role of substitution.
2. The court then focused on the two prongs of the statute's authorization for the appointment of guardians ad litem, i.e., the court has a reasonable basis to believe that the parent
  - a. is incompetent, or
  - b. has diminished capacity and cannot represent his/her own interests.The court held that if the trial court finds the former, the guardian ad litem's role is one of substitution. If the trial court finds the latter, the role is one of assistance.
3. Before appointing a guardian ad litem for a parent, the court must conduct a hearing and determine which (if either) prong applies and, if the court appoints a guardian ad litem, the order must specify the relevant prong and the role – substitution or assistance – of the guardian ad litem.

### **Role of Parent's GAL; Allowing Party to Act *Pro Se*; Findings Required to Waive Reviews**

**In re A.Y.**, \_\_\_ N.C. App. \_\_\_, 737 S.E.2d 160 (Jan. 15, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi04MC0xLnBkZg>

**Facts:** Before adjudication the court appointed a guardian ad litem for respondent mother. When her attorney asked to withdraw and respondent asked to be allowed to proceed *pro se*, the court ordered her to have a psychological evaluation and appointed another attorney. The psychologist reported that respondent's poor decision making was due to personality problems, not cognitive limitations. When respondent again asked to be allowed to proceed *pro se* the court engaged in an exchange with respondent to assess her understanding of the nature and significance of the proceeding and her awareness of the consequences of representing herself, then allowed her to proceed *pro se*. Subsequently, after a permanency planning hearing the court ceased reunification

efforts, granted guardianship to the child's grandparents, and ordered that reviews be held only on motion of a party.

**Held:** Affirmed in part; reversed and remanded in part.

1. Appointment of a GAL for respondent did not preclude her from waiving counsel and limit the ability to do that to the GAL. Although the order appointing respondent's GAL did not specify whether the GAL's role was one of substitution or assistance, a distinction addressed in *In re P.D.R.*, \_\_\_ N.C. App. \_\_\_, 737 S.E.2d 152 (Dec. 18, 2012), decided after the trial court acted in this case, the court held that the intention that the GAL's role be one of assistance was clear from the trial court's findings and from the record, including statements by the GAL.
2. The trial court's inquiries of respondent were sufficient for the trial court to determine that respondent's waiver of counsel was voluntary and knowing. The supreme court, in *In re P.D.R.*, \_\_\_ N.C. \_\_\_, 723 S.E.2d 335 (Apr. 13, 2012), held that the provisions in G.S. 15A-1242 for waivers in criminal cases do not apply in civil cases.
3. After reviewing the trial court's findings the court held that they were sufficient to support the trial court's decision to cease reunification efforts and grant guardianship. Findings related in part to a pattern of poor parenting, ongoing conflict and domestic violence, and respondent's limited progress toward seven treatment goals.
4. Waiving review hearings without making the findings required by G.S. 7B-906(b) was error.

### **UCCJEA: Communications between Courts**

**Jones v. Whimper**, \_\_\_ N.C. \_\_\_, 736 S.E.2d 170 (Jan. 25, 2013).

<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMy84OUExMi0xLnBkZg>

**Facts:** The mother and child moved to New Jersey. More than a year later the mother's new husband filed an action in N.J. to adopt the child, and soon thereafter the father (a N.C. resident) filed an action in N.J. seeking custody of the child. The judge there consolidated the two actions. After the mother and child moved back to N.C., having been in N.J. three years, the father filed a motion to dismiss the N.J. actions on the basis that N.J. was an inconvenient forum. The court in N.J. denied the motion, and the father then filed a custody action in N.C. The N.J. and N.C. judges talked, and because the N.J. judge declined to find that N.C. was a more convenient forum, the judge in N.C. dismissed the action here for lack of subject matter jurisdiction.

**Court of Appeals:** The court of appeals affirmed. *Jones v. Whimper*, \_\_\_ N.C. App. \_\_\_, 727 S.E.2d 700 (2012). One judge dissented.

**Supreme Court - Held:** Modified and affirmed.

Finding the lack of jurisdiction clear, the supreme court affirmed. However, it modified the decision of the court of appeals in line with points made by the dissent in the court of appeals.

1. G.S. 50A-206 states that a N.C. court may not exercise jurisdiction if, when the action is filed, a custody action "has been commenced in a court of another state having jurisdiction substantially in conformity with" the UCCJEA, if the other court does not determine that N.C. is a more convenient forum. The court of appeals had referred instead to the other state's "substantial compliance" with the UCCJEA. The statute, the supreme court said, refers to the type of jurisdiction the other state has, not its actions or procedures with respect to determining jurisdiction in a particular case.

2. G.S. 50A-110 authorizes the court to communicate with a court in another state about jurisdiction in a custody action. It requires the court to allow parties an opportunity to present facts and legal arguments before making a jurisdictional decision and requires that a record be kept of substantive communications between the courts. The court of appeals had held that these requirements apply only to discretionary communications between courts, not to communications required by G.S. 50A-206 when there are simultaneous proceedings. The supreme court, referring to the official commentary, held that the requirements in G.S. 50A-110 apply to all communications between courts that are trying to resolve a jurisdictional question.

### **UCCJEA: Jurisdiction to Modify; Standing to Appeal**

**In re E.J.**, \_\_\_ N.C. App. \_\_\_, 738 S.E.2d 204 (Feb. 5, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi02NzMtMS5wZGY>

**Facts:** The teenager was taken into custody when he and his father had a fight while driving back to Tennessee from a trip to North Carolina. DSS filed a petition alleging that the child was neglected and dependent. The mother, who lived in New Hampshire, told DSS she could not care for the child. At a nonsecure custody hearing the court learned of a protective services case in New York, and contacted the judge there. The trial court found that the N.Y. judge had not determined whether it should retain jurisdiction and would notify the N.C. court before the next hearing, but that did not happen. The father, but not the mother, was served with the DSS petition. The court here proceeded to adjudication and disposition, finding the boy to be neglected and dependent. The court stated that it had jurisdiction, but made no reference to the N.Y. court or the action there. The mother appealed.

**Held:** Vacated and remanded.

1. The court of appeals rejected DSS's argument that the mother lacked standing to appeal since she had not been served in the action. G.S. 7B-1001 and -1002 provide when and by whom an appeal may be taken, and make clear that a parent may appeal an initial adjudication and disposition order.
2. The trial court did not have jurisdiction to enter the adjudication and disposition order. The court made none of the findings required by G.S. 50A-203 to conclude that it had jurisdiction to modify the New York order. Even if the court had found that no party still resided in New York, it failed to make the findings to support a conclusion that it would have jurisdiction to enter an initial child custody order. While the court had temporary emergency jurisdiction, its order should have provided that it was for a specific limited period of time.

### **Abuse Petition: Voluntary Dismissal by DSS**

**In re E.H.**, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 4, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMy0yNzMtMS5wZGY>

**Facts:** DSS filed a petition alleging that the children had been sexually abused by the father. Before adjudication, DSS voluntarily dismissed the petition without prejudice. The children's GAL, asserting that DSS lacked authority to take a voluntary dismissal, asked the trial court to schedule an adjudication hearing. The trial court directed the GAL that filing a Rule 60 motion to

set aside the dismissal was the proper way to raise the issue of DSS's authority to dismiss. The GAL filed a Rule 60 motion, which the trial court denied, and the GAL appealed.

**Held:** Affirmed.

1. Acknowledging inconsistencies in some other kinds of cases, the court of appeals held that in a juvenile proceeding a motion pursuant to Rule 60 was the appropriate way to raise the issue of whether DSS had authority to take a voluntary dismissal.
2. The order denying the Rule 60 motion was appealable under G.S. 7B-1001 because it both determined that the trial court lacked jurisdiction and determined the action and prevented any other judgment from which appeal could be taken.
3. G.S. 1A-1, Rule 41, applies in juvenile proceedings to permit DSS to take a voluntary dismissal of its petition.
  - a. Nothing in the Juvenile Code prohibits application of the rule and applying it is consistent with the purposes of the Code, with judicial efficiency, and with the responsibilities the Code gives to DSS.
  - b. Allowing DSS to take a voluntary dismissal does not thwart the duties of the GAL or leave the child unprotected, because the GAL's role and duties are contingent on the existence of a petition and there are numerous ways to protect children.
  - c. The legislature gave only DSS the authority to determine whether a petition should be filed, and requiring consent of the GAL or parent to dismiss a petition is contrary to the statutory scheme.
  - d. The GAL and parents cannot seek affirmative relief in a juvenile proceeding and thus cannot be viewed as being in the position of parties who have filed counterclaims for purposes of precluding a voluntary dismissal.

### **Neglect Adjudication; Hearsay; Visitation**

**In re T.R.T.**, \_\_\_ N.C. App. \_\_\_, 737 S.E.2d 823 (Feb. 19, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi05MDUtMS5wZGY>

**Facts:** The child, age 5, had previously been adjudicated neglected and placed in DSS custody because of respondent mother's mental health problems and her inability to provide proper care and supervision. The court returned the child to the mother, and a month later DSS filed a new neglect petition alleging inadequate care and supervision, injurious environment, respondent's refusal to cooperate with DSS and with services that were offered, her deteriorating mental health, and her noncompliance with medical and mental health treatment directives. The trial court adjudicated the child to be neglected, continued custody with DSS, and ordered that visitation occur electronically through SKYPE.

**Held:** Affirmed in part; reversed and remanded in part.

1. The court of appeals affirmed the neglect adjudication, holding that the findings that were based on proper evidence were sufficient to support a conclusion of neglect. With respect to some specific findings, the court noted that
  - a. one was based only on "allegations";
  - b. one was based on impermissible hearsay, but because respondent had not objected at trial the court could properly consider it; and
  - c. one was based on evidence to which the trial court had sustained an objection.

2. Although there was no finding that the child had suffered actual impairment, the trial court's ultimate finding that he was at risk of substantial harm was sufficient.
3. Ordering contact only through SKPYE did not constitute "visitation" and did not comply with the visitation provisions in G.S. 7B-905(c).
4. Orders in juvenile cases that provide for electronic communication with a child must comply with G.S. 50-13.2(e), which provides that "[e]lectronic communication may not be used as a replacement or substitution for custody or visitation."

**Note:** The court of appeals held that G.S. 50-13.2(e), which addresses electronic contact, "is a generic provision which applies to all custody actions," including those in juvenile court. The court reasoned that unlike subsection (a), which refers to custody orders entered under G.S. 50-13.2, subsection (e) refers only to "[a]n order for custody of a minor child." That reasoning would suggest that subsections (b) through (d) of G.S. 50-13.2 also apply in juvenile cases – unless they deal with subjects that are addressed more specifically in the Juvenile Code. These subsections include provisions about domestic violence, grandparent visitation, requirements to abstain from consuming alcohol and submit to continuous alcohol monitoring, and taking a child out of state.

### **Neglect: Adjudication; Disposition; Indian Child Welfare Act**

**In re A.R.**, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 4, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi0xNTU0LTEucGRm>

**Facts:** In a nonsecure custody order the court had noted the parents' claim that the children might be associated with an Indian tribe and found as a fact that DSS would undertake the necessary investigation in that regard. The children were adjudicated neglected based primarily on exposure to ongoing domestic violence and the parents' failure to seek medical care. One child was also adjudicated abused based on being hit by a board during a domestic violence incident. At disposition the court found that it was contrary to the children's best interest to remain in the home and ordered the parents to do a number of things relating to mental health assessment recommendations; taking prescribed medication; having a substance abuse evaluation; random drug screens; documenting any new residence and employment or income; maintaining contact with DSS; and following recommendations of the child medical evaluation. The parents appealed the adjudication and disposition orders.

**Held:** Affirmed in part and remanded in part.

1. The findings of fact that were not challenged on appeal were sufficient to support the conclusion that the children were neglected, based on exposure to domestic violence and failure to obtain medical care.
2. Conditions the trial court placed on the parents were reasonably related to the reasons the children came into care, and they did not exceed the scope of the court's dispositional authority.
3. The court of appeals determined that the trial court had at least cause to suspect that the children were Indian children for purposes of the Indian Child Welfare Act (ICWA) and, erring "on the side of caution" to avoid possible future delays, remanded for the trial court to determine the results of DSS's investigation of any applicable notification requirements under ICWA.

## **Neglect / Abuse: Adjudication and Disposition; Permanent Plan; Visitation**

**In re J.P.**, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 4, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMy0zNS0xLnBkZg>

**Facts:** The parties entered into a consent adjudication order, and the court ordered a temporary concurrent permanent plan of reunification or custody/guardianship and scheduled a subsequent disposition hearing. At that hearing the court ceased reunification efforts; ordered a permanent plan of custody or guardianship; and ordered that DSS offer the father supervised visitation every other week and that visitation be reduced to once a month if the father missed visits without notice or acted inappropriately.

**Held:** Adjudication affirmed; disposition affirmed in part and reversed in part.

1. If it was error for the court to order a temporary permanent plan at adjudication, respondents showed no prejudice as a result and any error was corrected by the court's later order of a permanent plan.
2. Respondents could not complain of lack of notice that the disposition hearing would be a permanency planning hearing, when they attended and participated in the hearing without objecting to the lack of notice.
3. The trial court's findings were sufficient to support ceasing reunification efforts because the court related the findings to the conclusion that it would be contrary to the children's best interest to be returned to respondents.
4. The part of the order providing for visitation was insufficient. The court of appeals reviewed earlier cases addressing the need for more specificity about the time, location, and other details of a visitation plan and reversed that part of the order.

## **Neglect: Adjudication; Permanent Plan; Visitation**

**In re L.G.I.**, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 4, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi0xMzY5LTEucGRm>

**Facts:** In court the parties did not dispute the adjudication of neglect based on the child's medical condition due to the mother's use of drugs during pregnancy. Medical records were introduced without objection and considered by the court. At disposition, respondents claimed that their "agreement" to the adjudication was contingent on DSS's continuing reunification efforts. The trial court rejected that position, stating that the adjudication was based on the evidence, not the parties' consent, and proceeded to disposition. The court ceased reunification efforts and scheduled a later permanency planning hearing, but encouraged the parents to continue to make efforts on their own. The court also ordered that any visitation be supervised by DSS in its discretion.

**Held:** Affirmed and remanded.

1. The record did not reflect that the adjudication order was a consent order or was contingent on a specific outcome at disposition. At most, the mother stipulated to certain facts.
2. Although the trial court stated verbally that adoption was the best permanent plan, the court did not order a permanent plan, but scheduled a hearing for that purpose later and encouraged the parents to take steps to comply with their case plan.
3. The part of the order providing for visitation was insufficient, and the court of appeals remanded for the trial court to provide a visitation schedule.

## **Permanency Planning: Importance of Well-Drafted Orders and Sufficient Findings**

**In re H.J.A.**, \_\_\_ N.C. App. \_\_\_, 735 S.E.2d 359 (Nov. 20, 2012).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi02MzgtMS5wZGY>

**Facts:** Both children came into DSS custody as dependent juveniles soon after their births, when respondent mother was a minor in DSS custody. The father of only one of the children was identified, and he was incarcerated. At a permanency planning hearing a year and a half after the second child came into custody, the court adopted a concurrent plan of reunification and adoption and ceased reunification efforts with respondent mother. The court's findings included that return home was possible within six months; that DSS had not made reasonable efforts to implement the permanent plan; and that efforts to reunify with respondent mother would be futile. Respondent mother gave notice of her intent to appeal the order. Subsequently the trial court terminated respondent's and the fathers' rights on three grounds, and respondent, but neither father, appealed both orders.

**Held:** The court of appeals reversed both orders and remanded for additional findings of fact, but discussed only the permanency planning order.

1. The court noted the confusion caused by the order's dealing with both respondent mother and the father of one child without making clear which findings related to which parent. Only after reviewing the transcript did the court fully understand the trial court's intent, including that references to possible reunification related to the father of one child, not to the respondent.
2. The order failed to make the findings required by G.S. 7B-907(b). While the order found that it would be contrary to the child's best interest to be returned to respondent, it did not include evidentiary findings sufficient to support that ultimate finding. Because there was evidence from which the court could have made the required findings, the court remanded for additional findings.
3. Many of the "findings" in the order were merely recitations of witnesses' testimony, which do not constitute findings of fact.
4. Merely incorporating GAL reports or DSS summaries, without making specific findings, is insufficient.

## **Permanency Planning: Changing Plan and Ceasing Reunification Efforts**

**In re A.P.W.**, \_\_\_ N.C. App. \_\_\_, 741 S.E.2d 388 (Feb. 19, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi04MDctMS5wZGY>

**Facts:** At a permanency planning hearing the court changed the permanent plan for respondent's three children from reunification to adoption and directed the filing of a petition to terminate parental rights. The order did not explicitly cease reunification efforts or make findings related to doing so. Respondent gave notice of her intent to appeal. Later DSS filed a termination petition, and the court terminated respondent's rights after adjudicating three grounds. Respondent appealed both the permanency planning order and the termination order.

**Held:** Reversed and remanded.

The court of appeals reversed both the permanency planning order and the order terminating respondent's rights and remanded the case.

1. Because the permanency planning order continued custody with DSS, it was required to, but did not, contain findings “as to whether [DSS] should continue to make reasonable efforts to prevent or eliminate the need for placement.” G.S. 7B-507(a)(3).
2. The permanency planning order, by changing the plan to adoption and ordering DSS to file a termination action, “implicitly ceased reunification efforts” and failed to include the findings required by G.S. 7B-507(b) for doing so.
3. Respondent gave proper and timely notice of appeal.

### **Dependency: Ceasing Reunification Efforts and Awarding Guardianship**

**In re I.K.**, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (May 21, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi0xMDUzLTEucGRm>

**Facts:** The child was adjudicated dependent based on both parents’ lack of appropriate living arrangements and the mother’s having attempted suicide. At the first permanency planning hearing the court ceased reunification efforts with the mother and ordered a concurrent permanent plan of reunification with the father or guardianship to the foster parents. At a second permanency planning hearing, the court found that the father had complied with parts of the case plan but had not provided a plan of care for the child should the father be hospitalized. DSS recommended continuing reunification efforts and the guardian ad litem opposed that position. The court ceased reunification efforts with the father, awarded guardianship to the foster parents, and gave the father four hours a month of unsupervised visitation that could be increased in the guardians’ discretion. The father appealed.

**Held:** Reversed and remanded.

1. The court of appeals rejected DSS’s argument that the court needed to examine the cessation of reunification efforts only if it determined that guardianship was not in the child’s best interest.
  - a. First the court noted that DSS had changed its position – from supporting a primary plan of reunification to opposing continued reunification efforts – without making any attempt to explain or address the reason for doing so.
  - b. A permanency planning order must address the factors and questions set out in G.S. 7B-907(b) and G.S. 7B-507 and therefore must address reunification efforts.
2. The evidence did not support the trial court’s critical findings relating to reunification efforts, and the findings did not support the conclusion about ceasing reunification efforts:
  - a. No evidence supported the finding that there was an “appreciable risk” that respondent would sexually or physically abuse the child.
  - b. Evidence in fact indicated that those risks did not exist.
  - c. Some findings merely recited evidence.
  - d. Findings did not explain why the child could not be returned home immediately or within six months or why returning home was not in her best interest.
  - e. The court improperly considered positive aspects of the foster care placement before determining whether respondent would be able to parent the child.
3. DSS’s claims about risks to the child and the trial court’s order were inconsistent with supporting and providing for respondent to have unsupervised visitation with the child.
4. On remand, whether to take additional evidence is in the trial court’s discretion.

## **Permanency Planning: Ceasing Reunification Efforts and Termination of Parental Rights**

**In re T.J.C.**, \_\_\_ N.C. App. \_\_\_, 738 S.E.2d 759 (Feb. 19, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi05MjctMS5wZGY>

**Facts:** The children were adjudicated neglected and placed in DSS custody, based largely on ongoing domestic violence between the parents. After a permanency planning hearing when the children had been in foster care for a year, the court ceased reunification efforts in an order that included numerous findings of fact about the parents' ongoing relationship, the effects of the domestic violence on the children, the parents' limited parenting skills and intellectual abilities, and their failure to benefit from services. The father filed a notice of intent to appeal that order. DSS then filed a termination of parental rights action, and both parents appealed from the resulting order terminating their rights.

**Held:** Affirmed.

With respect to both orders the court of appeals examined in some detail the trial court's findings and the evidence on which they were based.

1. The permanency planning order included the ultimate findings required by G.S. 7B-507(b) in order to cease reunification efforts, and those findings were supported by specific evidentiary findings that the evidence supported.
2. The order terminating the parents' rights on the basis of neglect also included sufficient findings of both past neglect and a reasonable probability of future neglect if the children were returned home.

## **Termination of Parental Rights: Stipulations**

**In re A.K.D.**, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (May 7, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi0xMzU1LTEucGRm>

**Facts:** In an action by the mother to terminate the rights of the father, the parties stipulated, for purposes of adjudication only, that the father had not seen the children for six months and that the abandonment ground for terminating his rights existed. Respondent's attorney indicated that at disposition he intended to show why the respondent had not seen the children for six months. Based on the parties' stipulation, the trial court concluded that the ground of willfully abandoning the children for six months before the filing of the petition existed. The court found that termination was in the children's best interest and terminated respondent's rights.

Respondent appealed.

**Held:** Reversed and remanded.

1. The conclusion that the abandonment ground existed was not supported by the findings of fact, because there was no finding or stipulation that the respondent's abandonment of the children was willful.
2. Respondent's intent to explain the abandonment at disposition indicated an intent to contest the willfulness of the abandonment.
3. Parties may stipulate to facts, but not to questions of law. Thus, parties may not stipulate that a ground for termination exists (or that a child is abused or neglected). Instead, if that is the intent, stipulations should establish facts from which the court can conclude that a ground for termination exists (or that a child is abused or neglected).

### **Termination of Parental Rights: Standing; Willfully Leaving Child in Care**

**In re D.C.**, \_\_\_ N.C. App. \_\_\_, 737 S.E.2d 182 (Feb. 5, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi04OTMtMS5wZGY>

**Facts:** The child was removed from the home in 2004, at age three, after he was severely injured by a dog at the home. He was adjudicated neglected and remained in DSS custody. In 2005 the plan was changed to adoption, but in 2007 it was changed to guardianship and the court named the foster parents as the child's guardians. In 2011 respondent filed a motion for review and the child's guardians filed a petition to terminate respondent's parental rights. The court consolidated the two for hearing, adjudicated three grounds for termination, denied respondent's motion, and terminated her rights.

**Held:** Affirmed.

The court of appeals reviewed only the ground of willfully leaving the child in care for more than a year without making reasonable progress to correct conditions that led to the child's removal.

1. The court rejected respondent's argument that the guardians could not file a termination action without the trial court's changing the permanent plan from guardianship to adoption. The court held that the Juvenile Code places no preliminary requirements on a guardian's filing a termination petition.
2. The court rejected respondent's argument that the dog had been killed and that the reason for the removal, therefore, no longer existed. The court characterized the reason for removal as the injurious environment, lack of proper care and supervision, and respondent's failure to appreciate what was a danger to the child's health and safety. For four years after the plan became guardianship respondent did not take the steps she knew she had to take in order to have visits with the child. She made the required appointment only after the termination petition was filed, and she filed no motion for review for a period of more than three years.

### **Termination of Parental Rights: Dependency and "Alternative Child Care Arrangement"**

**In re K.O.**, \_\_\_ N.C. App. \_\_\_, 735 S.E.2d 369 (Nov. 20, 2012).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi03MjItMS5wZGY=>

**Facts:** In a civil custody action in 2008 petitioner (an unrelated acquaintance) was awarded full custody of the child, based on the court's determination that the mother had abandoned the child "to petitioner's exclusive care and control" and had not dealt with her drug problem. In 2011, petitioner filed a petition to terminate respondent's rights based on the dependency ground. The court adjudicated that ground and terminated respondent's rights.

**Held:** Affirmed.

1. When petitioner had custody of the child pursuant to a court order, due to respondent's abandonment and substance abuse problems, respondent could not characterize custody with petitioner as her suitable alternative child care arrangement.
2. Having affirmed termination based on the dependency ground, the court of appeals did not consider two other grounds that were added to the petition by amendment and were also adjudicated.

### **Termination of Parental Rights: Willfully Leaving Child in Care; Best Interest Findings**

**In re J.L.H.**, \_\_\_ N.C. App. \_\_\_, 741 S.E.2d 333 (Dec. 4, 2012).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi00NTItMS5wZGY>

**Facts:** After the child had been in DSS custody for over a year, DSS filed a petition to terminate respondent's rights and the trial court adjudicated three grounds: neglect, willfully leaving the child in foster care, and willfully failing to pay a reasonable portion of the cost of the child's care. The court of appeals examined only the second of these grounds.

**Held:** Affirmed in part and remanded in part.

1. The court held that the evidence and the trial court's findings were sufficient to support the adjudication of the ground of willfully leaving the child in foster care. Even though respondent had participated in some services, her failure to participate in her own therapy and inconsistent participation in the child's therapy was not "reasonable progress under the circumstances."
2. With respect to disposition, the court remanded for additional findings because the trial court failed to make the findings required by G.S. 7B-1110.

### **Termination of Parental Rights: Willfully Leaving Child in Foster Care or other Placement**

**In re L.C.R.**, \_\_\_ N.C. App. \_\_\_, 739 S.E.2d 596 (April 2, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi0xMTk1LTEucGRm>

**Facts:** In March, 2008, the children were adjudicated neglected, placed in DSS custody, and placed physically with paternal grandparents. In September, 2008, after a permanency planning hearing, the court awarded custody to the grandparents and converted the case to a civil custody action under G.S. 7B-911. In 2011, the grandparents filed a petition to terminate the parents' rights, alleging the grounds of (1) willfully leaving the children in foster care or other placement for at least a year without showing to the court's satisfaction that reasonable progress under the circumstances had been made in correcting the conditions that lead to the children's placement; (2) incapability due to substance abuse; and (3) willful abandonment. The trial court adjudicated all three grounds and terminated the parents' rights.

**Held:** Affirmed.

The court of appeals affirmed after analyzing only the first ground set out above.

1. The period of time the children had been in the custody of petitioners after the juvenile case was converted to a civil custody case was properly counted toward the one year of court-ordered placement outside the home. The court rejected respondent's argument that only the six months under the juvenile court order should count.
2. The court also rejected respondent's argument that the ground should not be available when petitioners have custody in a private custody action because the standard for regaining custody in the civil action is greater than "reasonable progress" set out in the termination ground. The court of appeals held that making reasonable progress did not require that the parent be in a position to regain custody in a civil action, and that the conversion of the case to a civil custody case was irrelevant to the trial court's ability to determine whether respondent had made reasonable progress.

### **Termination of Parental Rights: Neglect**

**In re D.A.H.-C.**, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 4, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi0xNTM3LTEucGRm>

**Facts:** The children were removed from the home and adjudicated neglected after another child in the home was seriously injured by respondent's husband. That child later died and the husband was convicted and sentenced and thus was out of the home. The children were returned to respondent on a trial basis and she and the children later resided with the father of one of the children. That man hit one of the children with a belt and the children revealed to DSS that he frequently physically punished them. Respondent did not intervene to protect them and was herself the victim of domestic abuse. The children were again removed from the home and adjudicated to be neglected, and the trial court ordered that reunification efforts cease but that respondent continue to have visitation with the children. That order was affirmed by the court of appeals. Respondent had complied with her case plan, participated in services, visited the children regularly, and paid child support. DSS sought termination of parental rights and the court adjudicated the neglect ground and terminated respondent's rights.

**Held:** Affirmed.

1. Evidence was sufficient to support the finding of a substantial probability that the children would be neglected, if not abused, if returned to the mother's custody.
2. Although respondent had complied with the case plan, the court found no indication that doing so affected the likelihood that she would protect the children. The court pointed to evidence and findings about the "culture of violence" in which respondent had lived and her strong sense of duty to defer to a husband or partner.
3. Although the trial court's order quoted sections of the earlier appellate court decision in the case, the court of appeals held that it was clear that the trial court had made its own independent findings based on evidence in the record.

### **Termination of Parental Rights: Reopening the Evidence**

**In re B.S.O.**, \_\_\_ N.C. App. \_\_\_, 740 S.E.2d 483 (Feb. 19, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi04NzgtMS5wZGY>

**Facts:** At the conclusion of a termination of parental rights hearing, the trial court seemed to make some findings, took the matter under advisement, directed the DSS attorney to prepare a draft order, and ordered DSS to continue respondent's visitation and reasonable efforts until further order of the court. Respondent made a motion for review and to reopen the evidence, asserting new facts that could impact the case. The trial court denied the motion on the basis that it had essentially made a ruling based on the evidence already presented and that it would be improper to reopen the evidence. The court then entered an order denying the motion and an order terminating respondent's rights on the same day.

**Held:** Reversed and remanded.

1. Because the trial court had not entered a written order or even made a definite ruling in court at the time of respondent's motion, the court was in error in stating that it could not reopen the evidence.

2. Whether to reopen the evidence was in the court's discretion and, acting under a misapprehension of the law, the court failed to exercise its discretion, requiring reversal and remand for proper consideration of respondent's motion.
3. A trial court has broad discretion to re-open a matter and hear additional evidence before entry of its order or judgment.

### **Adoption: Evidence and Findings; When Putative Father's Consent is Required**

**In re S.K.N.**, \_\_\_ N.C. App. \_\_\_, 735 S.E.2d 382 (Dec. 4, 2012); *petitioners' motion for temporary stay allowed*, \_\_\_ N.C. \_\_\_, 735 S.E.2d 823 (Jan. 8, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi0yNzUtMS5wZGY>

**Facts:** The mother and putative father, although unmarried, had lived together for nine years and were the parents of two other children. While they still lived together, the mother hid this pregnancy from respondent, lied and told him she had a tumor, and went to another county to have the child. She relinquished the child to an agency for adoption and said that respondent was not the father. The father later found pictures making him think the child was his. He talked to his mother, who called DSS to tell the agency that her son thought the child was his and that he did not want the child to be adopted. The following day petitioners filed a petition to adopt the child. The trial court determined that respondent's consent to the adoption was required because, before the petition was filed, he had acknowledged paternity, provided reasonable and consistent support for the mother, and regularly visited or communicated with the mother, for purposes of G.S. 48-3-601. Petitioners appealed.

**Held:** Affirmed.

1. The court of appeals first held that the order, although interlocutory, was immediately appealable because it affected a substantial right.
2. The court then held that
  - a. Respondent's statements to his mother and her call to DSS on his behalf were sufficient to constitute "acknowledgement," and his request for a blood test did not void the acknowledgement.
  - b. Respondent satisfied the support and communication requirements during the pregnancy, while he and the mother were living together, and the fact that he was not aware of the pregnancy during that time was not pertinent.