

**District Court Judges' Summer Conference
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JUVENILE LAW UPDATE

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Abuse, Neglect, Dependency, and Termination of Parental Rights

1. Jurisdiction

- Failure to issue a proper summons did not affect subject matter jurisdiction, and respondents waived any objection to personal jurisdiction by appearing and stipulating to neglect.

In re K.J.L., 363 N.C. 343 (6/18/09).

<http://www.aoc.state.nc.us/www/public/sc/opinions/2009/pdf/037-09-1.pdf>

Facts: In the underlying neglect/dependency action, in which DSS obtained custody of the child, no summons was ever properly issued because the summons was not signed by a clerk or assistant or deputy clerk. The parents appeared, however, and stipulated to neglect. The parents appealed from a subsequent order terminating their parental rights, arguing that the trial court lacked subject matter jurisdiction. The court of appeals, consistent with its earlier decisions, held that failure to issue a summons deprived the trial court of subject matter jurisdiction in the underlying case and that the order giving DSS custody of the child (and standing to file the termination action) was void.

Held: Reversed and remanded.

The Supreme Court, overruling a series of decisions of the court of appeals, held that the failure to issue a summons implicates only personal jurisdiction, not subject matter jurisdiction.

1. “Even without a summons, a court may properly obtain personal jurisdiction over a party who consents or makes a general appearance, . . .”
2. In this case, respondents’ appearance in the underlying case without raising any objection to jurisdiction waived any defenses based on personal jurisdiction.

The Supreme Court had held In February, 2009, in *In re J.T.*, 363 N.C. 1, that failure to issue a summons directed to the juvenile in a termination of parental rights action did not deprive the court of subject matter jurisdiction when a proper summons was issued to the parents. The opinion seemed to say that the issuance of a summons to some party was essential for subject matter jurisdiction, but in *K.J.L.*, the Court explicitly rejected that interpretation of *J.T.*

- Lack of valid summons did not deprive court of subject matter jurisdiction.
- Respondent waived any objection by making a general appearance.

In re J.D.L., ___ N.C. App. ___, 681 S.E.2d 485 (8/18/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/090025-1.pdf>

Facts: In the initial dependency proceeding respondent was never served with a summons and the summons expired, but respondent appeared in court and admitted the allegations of dependency. Subsequently respondent was served with a summons and petition to terminate parental rights. After a hearing the court terminated respondent’s rights on the grounds of dependency and abandonment.

Held: Affirmed.

1. Failure to issue a summons or expiration of a summons affects only personal jurisdiction and any defects can be waived. The court discusses the Supreme Court cases on this issue – *In re J.T.*, 363 N.C. 1 (2009), and *In re K.J.L.*, 363 N.C. 343 (2009).
2. DSS had standing to petition for termination, and the evidence supported the court’s findings and conclusions terminating parental rights on basis of abandonment and dependency.

- Expiration of summons before service on respondent did not affect jurisdiction where respondent made general appearance without objecting to service.

In re S’N.A.S., ___ N.C. App. ___, 686 S.E.2d 917 (12/22/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/090959-1.pdf>

Facts: In underlying neglect/dependency case, respondent was served after several hearings and after the summons expired. Respondent attended two nonsecure custody hearings, but not the adjudication. The children were adjudicated neglected/dependent and placed in DSS custody. In a later appeal from orders terminating her rights, respondent argued that DSS did not have standing to file the TPR because the orders giving DSS custody were void, due to expiration of the summons.

Held: Affirmed.

1. The summons relates only to personal jurisdiction, and expiration of the summons or failure to issue a summons does not affect subject matter jurisdiction. *In re K.J.L.*, 363 N.C. 343 (2009).
2. By making a general appearance without objecting to lack of service, respondent waived any objection to personal jurisdiction.

- Lack of valid summons did not deprive court of subject matter jurisdiction.
- Respondent and the juvenile, through the GAL, waived any objection to personal jurisdiction.

In re N.E.L., ___ N.C. App. ___, 688 S.E.2d 803 (2/16/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/081573-2.pdf>

On remand from the N.C. Supreme Court, the court of appeals rejected respondent’s argument that the trial court lacked subject matter jurisdiction because no valid summons was served on respondent, the juvenile, or the juvenile’s guardian ad litem.

1. Following the holding in *In re K.J.L.*, 363 N.C. 343 (2009), the court held that problems with or the absence of a summons affects only personal, not subject matter, jurisdiction.
2. Both respondent and the GAL waived any objection to personal jurisdiction by appearing and participating in the proceeding without raising the issue.

- When petition for return of custody under the Hague Convention was not verified, the trial court lacked subject matter jurisdiction.

OBO v. Steven B., ___ N.C. App. ___, 687 S.E.2d 496 (12/22/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/090845-1.pdf>

Facts: After hearing from the U.S. State Department and a children’s services agency in Germany, DSS filed a petition alleging that the child was dependent. The German agency filed a petition in the same court under the Hague Convention seeking immediate return of the child, alleging that a German court had awarded custody to the agency and respondent mother had wrongfully removed the child from the country. The trial court consolidated the juvenile and Hague Convention actions, ordered the return of the child to Germany, and stayed the order pending appeal.

Held: Vacated in part and remanded in part.

1. The Hague Convention action was governed by the Uniform Child Custody Jurisdiction and Enforcement Act [*see* G.S. 50A-302], which requires that petitions seeking expedited enforcement be verified [*see* G.S. 50A-308(a)]. Applying the N.C. Supreme Court’s reasoning in

In re T.R.P., 360 N.C. 588 (2006), the court of appeals held that the trial court lacked subject matter jurisdiction in the Hague Convention matter because the petition was not verified.

2. The trial court still had jurisdiction in the dependency matter. Because the trial court had not ruled on respondents' motion to dismiss, the court of appeals could not consider that matter.

- When TPR petitioner lacks standing, the trial court does not have subject matter jurisdiction.

In re B.O., ___ N.C. App. ___, 681 S.E.2d 854 (9/1/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/090400-1.pdf>

Facts: The court had placed the child with petitioners, and when the child had been with them for about 15 months, petitioners filed an action to terminate respondent's rights, asserting that they were the child's custodians. Respondent appealed from an order terminating her rights.

Held: Vacated.

1. When the petition was filed the child had not resided with petitioners for two years, and they did not satisfy any other criteria in G.S. 7B-1103 for having standing to petition for TPR.
2. The Juvenile Code does not equate custody and guardianship. Petitioners were not the child's guardians, and the Code does not give custodians standing to petition for termination.

- Trial court did not have jurisdiction to amend its order after notice of appeal was given, when the amendment changed the effect of the order.

In re C.N.C.B., ___ N.C. App. ___, 678 S.E.2d 240 (6/16/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/081510-1.htm>

Facts: The trial court entered its order terminating respondent's rights on the basis of the only ground alleged, the parent's inability to provide proper care for the child. Respondent filed notice of appeal, and three days later the trial court entered a "corrected order" purporting to correct "clerical mistakes and errors arising from oversight or omission." This order added a finding of fact that respondent lacked an appropriate alternative child care arrangement, which was not in the original order or the court's oral rendition.

Held: Reversed and remanded.

1. The court of appeals reviewed the amended order for the sole purpose of determining subject matter jurisdiction and concluded that the trial court did not have jurisdiction to enter the order under G.S. 1A-1, Rule 60(a). The added finding was essential to a conclusion that the ground existed, and without the "correction" the order did not support an adjudication of the ground.
2. Rule 60 does permit the trial court to correct clerical mistakes and errors arising from oversight or omission, up to the time an appeal is docketed in the court of appeals, but in this case the change was substantive.
3. The court of appeals then reviewed the original order and reversed and remanded on the basis that it did not include the essential finding about lack of an alternative child care arrangement.

Dissent: The dissent would have affirmed, stating that

1. because notice of appeal was given only from the original order, not the "corrected" order, only the original order should have been considered on appeal.
2. because appellant did not assign error to the trial court's findings of fact or conclusions of law, those were binding on the court of appeals and the order should have been affirmed.

Once a final order of adoption is entered,

- district court no longer has jurisdiction under G.S. Chapter 7B, and
- the adoption may be challenged only through procedures in G.S. Chapter 48.

In re W.R.A., ___ N.C. App. ___, 685 S.E.2d 151 (11/3/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/090592-1.pdf>

Facts: While the child was in DSS custody the father signed a relinquishment. Respondent mother signed a relinquishment for adoption by a specified couple, but then revoked it, and DSS filed a motion to terminate her rights. In court, at DSS's request before the case was continued to a later date, the court ordered respondent to provide a urine sample for a drug test and she refused. After talking with her attorney, respondent signed another relinquishment conditioned on adoption by the same couple specified earlier – making the relinquishment irrevocable. After a final order of adoption was entered, respondent and relatives filed a “motion for appropriate relief” pursuant to G.S. 15A-1415 *et seq.*, in the juvenile matter, asking that the adoption be set aside because her relinquishment was given under duress. The trial court dismissed for lack of jurisdiction.

Held: Affirmed.

1. An action to terminate parental rights is a civil action, and criminal procedures in G.S. Chapter 15A are not applicable.
2. After the final order of adoption was entered, the trial court no longer had jurisdiction in the termination or underlying juvenile action.
3. The proper procedure for challenging an order of adoption is the one set out in G.S. 48-2-607, which allows a claim based on fraud or duress to be made within six months after the fraud or duress was or should have been discovered.

- District court did not have jurisdiction to set aside clerk's order in an adoption proceeding, when the adoption had been neither appealed nor transferred to district court.

Norris v. Norris, ___ N.C. App. ___, 692 S.E.2d 190 (4/20/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091329-1.pdf>

Facts: After children's father was incarcerated for killing their mother, plaintiff grandparents were awarded custody of the children in a civil action, then filed a petition to adopt the children. Defendant, another grandparent, filed a motion to intervene in the custody action and a motion for visitation. In the adoption, the clerk waived the 90-day time period for disposition and entered final decrees of adoption. Plaintiffs filed a motion to dismiss defendant's motions in the custody action. Soon thereafter the clerk entered an order setting aside the adoption decrees, stating that a civil visitation action was pending and the grandparent seeking visitation in that action had not been given notice of the adoption proceeding. The order directed the plaintiffs to give defendant notice of the adoption, which they did. Plaintiffs filed a motion seeking reinstatement of the adoption decrees. Defendant filed an amended motion seeking visitation, a motion for custody, and a motion to set aside the existing custody order. The district court entered orders allowing the motion to intervene, appointing a guardian ad litem for the children, and consolidating the custody and adoption actions. After a hearing on the motion to reinstate the adoption decrees, the district court concluded that the clerk of court lacked authority to set aside the decrees and declared void the order setting them aside. The court also entered an order dismissing the custody action. Defendant/intervener appealed.

Held: Vacated and remanded.

1. The district court did not have jurisdiction to set aside the clerk's order setting aside the adoption decrees, because
 - a. petitioners in the adoption did not appeal the order, and
 - b. the order was interlocutory and therefore not appealable.
2. Because defendant was contesting the adoption, the clerk was required by G.S. 48-2-601(a1) to transfer the adoption action to district court, but did not do so.

The court of appeals remanded for the clerk to determine whether the adoption was still contested and, if it was, to transfer the adoption to district court for a hearing under G.S. 48-2-603 to determine whether the adoption was in the children's best interests.

- Trial court order stating, "Case closed," did not terminate the court's jurisdiction.
- Where custody had been awarded to grandparents at disposition, the court had jurisdiction to consider DSS's motion to reassume custody.

In re S.T.P., ___ N.C. App. ___, 689 S.E.2d 223 (2/16/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091281-1.pdf>

Facts: In 1999 the child, who was born cocaine positive, was adjudicated neglected/dependent. At disposition, the court placed the child in the custody of maternal grandparents, and the order stated, "Case closed." Several years later the grandfather died, and DSS received reports about the grandmother's care of the child and substance abuse. In 2007, DSS filed a "Motion in the Cause to Reassume Custody," in the same case and obtained a nonsecure custody order. The court returned custody to DSS and entered orders relating to a goal of reunification with the grandmother. In 2008, the court changed the plan to adoption, and DSS filed a petition to terminate parental rights. On appeal from a TPR order, the parents argued that the trial court lacked subject matter jurisdiction because the May 1999 order closing the case had the effect of terminating the court's jurisdiction.

Held: Affirmed.

1. "Closing a case file is not the equivalent of the trial court terminating its jurisdiction."
2. The trial court's order awarded custody to the grandparents and ordered the father to stay away. The parties were not returned to their pre-petition legal status as would have been the case if the court terminated its jurisdiction.

Note: It appears from the opinion that no review or permanency planning hearings were held after disposition, as required by G.S. 7B-906 and -907. DSS is required by statute to schedule the hearings. Because the child had not resided with the grandparents for a year when the order was entered, the statutory criteria for waiving review hearings did not exist.

- Statutory procedures that allowed placing individual's name on the Responsible Individuals List without a meaningful hearing were unconstitutional under the N.C. Constitution.
- The statutory procedures deprived individuals of procedural due process.

In re W.B.M., ___ N.C. App. ___, 690 S.E.2d 41 (3/2/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/090205-1.pdf>

Facts: After an investigative assessment based on a report by the child's mother, DSS substantiated sexual abuse and identified petitioner, the child's biological father, as the responsible individual. He consistently denied that he had abused the child and raised questions about the mother's boyfriend. Law enforcement interviewed the child, but did not interview the petitioner or pursue a criminal

investigation. DSS did not file a petition and closed its case because petitioner lived in another county and the mother and child moved to another county. Petitioner followed the statutory procedures for seeking expunction of his name from the Responsible Individuals List and was unsuccessful. When, months after the expunction hearing, no order had been entered in district court, petitioner filed a motion to have his name removed from the list and to have the statutory scheme declared unconstitutional. The court entered its order denying the expunction motion and, after a hearing, denied petitioner's motion for removal of his name from the Responsible Individuals List and for a declaration that the statute was unconstitutional. Petitioner appealed from that order.

Held: Reversed.

1. Placement of an individual's name on the Responsible Individuals List adversely affects a constitutionally protected liberty interest, because it imposes a stigma and hinders the individual in opportunities related to employment, adoption, and providing care for children.
2. Determining the adequacy of the statutory procedures for placing a person's name on the list requires application of the balancing test prescribed in *Matthews v. Eldridge*, 424 U.S. 319 (1976), which involves weighing (i) the private interest involved, (ii) the state's countervailing interest, and (iii) the risk of erroneous deprivation of a person's constitutionally protected interest. Here, both the individual's liberty interest and the state's interest in protecting children are substantial. A DSS assessment is "plainly insufficient to support the loss of liberty that accompanies listing on the RIL."
3. When feasible, the state must provide notice and a hearing before depriving an individual of a protected interest. Providing a pre-deprivation hearing would not be unduly burdensome on the state in relation to the liberty interest at stake. As written, "the RIL procedures are unconstitutional under Article I, Section 19 of the North Carolina Constitution because they violate an individual's due process rights by listing the individual on the RIL prior to a hearing."
4. In a proper pre-deprivation hearing,
 - a. preponderance of the evidence is the correct standard of proof; however,
 - b. the issue at the hearing must be whether the individual abused or seriously neglected the juvenile, not just whether DSS's decision was correct based on information available to DSS.

2. Procedure

- When petition already alleged abuse, allowing amendment to add factual allegations of sexual abuse of one child, based on disclosure made after petition was filed, was not error.

In re M.G., 363 N.C. 570 (8/28/09).

<http://www.aoc.state.nc.us/www/public/sc/opinions/2009/pdf/36-08-1.pdf>

Facts: DSS filed a petition alleging that four children were abused, neglected, and dependent. The petition included allegations under four subdivisions of the definition of "abused juvenile," including sexual abuse, but not with respect to M.B. After the petition was filed, M.B. disclosed inappropriate sexual conduct by respondent, and DSS moved to amend the petition to add factual allegations about the child's disclosure. The court allowed the amendment and adjudicated M.B. to be abused based on both sexual abuse and a parent's creating or allowing risk of serious nonaccidental physical injury. The court of appeals vacated the portion of the order adjudicating M.B. abused based on sexual abuse, holding that the trial court erred in allowing the amendment because it changed the nature of the conditions on which the petition was based, in violation of G.S. 7B-800.

Held: Reversed in part and remanded.

1. The amendment in this case did not change the nature of the condition alleged.

2. The court examined the definition of “abused juvenile” and concluded that the various forms of abuse have in common “the existence or serious risk of some nonaccidental harm inflicted or allowed by one’s caretaker.”
3. The added allegations “fell within the nature of the abuse condition that was initially alleged.”
4. The court did not address any issues regarding notice, because it was clear in this case that the parties had extensive notice of the amendment before the adjudication hearing.

- Proper remedy for delay in conducting hearings and entering orders was a petition for writ of mandamus, not seeking relief on appeal.

In re E.K., ___ N.C. App. ___, 688 S.E.2d 107 (2/2/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091057-1.pdf>

Facts: Children came into DSS custody and were placed in foster care in May 2005. In October 2005 they were adjudicated neglected/abused. The permanent plan remained reunification with the mother. After many continuances, a permanency planning order was entered in March, 2008, continuing custody with DSS, approving placement with the foster parents, ceasing reunification efforts, ordering that a permanent plan be established within 30 days, and scheduling a hearing for April 9, 2008. The hearing was not held until May, 2009, due to numerous continuances. The court awarded joint custody to the foster parents and grandmother, designating the grandmother as a secondary placement and specifying numerous conditions on both. DSS appealed.

Held: Affirmed in part; reversed in part.

The court of appeals strongly disapproved the long delay in entry of the permanency planning order, the failure to conduct hearings according to statutory timelines, and the more than 25 continuances that did not appear to be required by extraordinary circumstances. Citing *In re T.H.T.*, 362 N.C. 446 (2008), however, the court held that the proper remedy for delay in holding hearings was to file a petition for a writ of mandamus during the delay.

- In TPR initiated by motion, lateness of the notice and fact that certified mail receipt was signed by someone other than respondent did not require reversal.

In re T.D.W., ___ N.C. App. ___, 692 S.E.2d 177 (4/20/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091519-1.pdf>

Facts: DSS filed a motion to terminate respondent’s rights. Respondent did not appear at the hearing and her attorney who was there did not object to the notice given to respondent. Respondent appealed the TPR order, asserting that trial court erred, abused its discretion, and violated due process because the notice was not timely and was defective.

Held: Affirmed.

1. Certified mail receipt signed by someone other than respondent created presumption that service was proper, and respondent presented no evidence to rebut that presumption.
2. Although notice of the date, time, and place of the hearing was sent 30 days later than it should have been, and hearing was held later in the day than the time stated on the notice,
 - a. there was no indication of prejudice, thus the error was harmless; and
 - b. respondent waived her right to object because, even though she did not attend the hearing, her attorney was there and made no objection to the notice.

3. Adjudication and Disposition

- Court could consider adjudication that one child was abused in determining whether second child was neglected.
- Trial court erred by failing to address visitation in the disposition order.

In re C.M., ___ N.C. App. ___, 678 S.E.2d 794 (7/7/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/081551-1.pdf>

Facts: Respondents lived together with two children, not quite two years old. Father took the boy to the races, returned late, and when child would not go to bed easily, slapped the boy's head and told him to shut up. The next day the boy was left at a cousin's house while family shopped, and otherwise was with respondents. That evening mother called 911 twice, requesting an ambulance the second time, when the boy had trouble breathing and was unresponsive. At the ER the child was found to have bruises on his back and chin and a subdural hematoma. Respondents argued in the waiting room, and a nurse took the girl to keep her from getting hurt. At the adjudication three doctors testified that the boy had suffered a blow to the head within a relatively short time before being brought to the hospital. Although unable to testify with absolute certainty, or to specify exactly where or how the injury occurred, each testified that the injuries very likely were non-accidental. A fourth doctor testified that the injuries most probably were caused accidentally. The court adjudicated the boy abused and neglected and the girl neglected, and placed both in DSS custody.

Held: Affirmed and remanded.

1. The court of appeals affirmed the adjudications, holding that the trial court's findings were supported by clear and convincing evidence and supported the court's conclusions.
2. With respect to the neglect adjudication of the girl, the trial court had discretion to consider its adjudication that the boy was abused. Other findings supporting the neglect related to domestic violence, mother's total dependence on father and lack of resources, and father's deceitfulness.
3. The trial court erred by failing to address visitation in the disposition order. The court may deny visitation based on proper findings and conclusions, but otherwise must include a visitation plan in the disposition order.

- When one child is adjudicated neglected at same hearing in which another child is adjudicated abused, trial court has discretion to consider the fact that the second child lived in a home where another child was subjected to abuse by an adult who regularly lived in the home.

In re D.B.J., ___ N.C. App. ___, 678 S.E.2d 778 (7/7/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/090320-1.pdf>

Facts: Father appealed from adjudication that child was neglected, but did not challenge any of the trial court's findings of fact. Findings related to the child's exposure to domestic violence and substance abuse; the mother's obtaining a domestic violence protective order but continuing to have contact with respondent; and the adjudication at the same hearing that the child's half-sibling, who lived in the same home, was an abused juvenile.

Held: Affirmed.

Trial court's findings were sufficient to support conclusion that the child was a neglected juvenile.

- A child may be adjudicated to be neglected when the child has lived for a substantial period with a caretaker pursuant to a kinship agreement before the filing of the petition.

In re K.J.D., ___ N.C. App. ___, 692 S.E.2d 437 (5/4/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091579-1.pdf>

Facts: Without court action, the child was placed with a grandparent in February 2008 after DSS made a determination of “in need of services” based on domestic violence in the home, the mother’s assaultive behavior, and the father’s substance abuse problems. The child remained in the grandmother’s home throughout this case. In August 2008 DSS filed a petition alleging that the child was neglected, and the parties stipulated to facts relating to the child’s placement and the parents’ circumstances. The court dismissed the petition, finding that there was no evidence that the child had been present during any domestic violence or that the child had been exposed to marijuana. In April 2009, DSS filed a second petition. The parties stipulated to numerous facts and the court found additional facts – including that the child received proper care from the grandmother and that neither parent had attempted to remove or expressed any intention of removing the child from the grandmother’s home. Many findings related to the father’s substance abuse issues and his failure to complete an assessment or obtain treatment; the mother’s failure to complete an anger management program or make progress in addressing her anger; the mother’s lack of independent housing and her incarceration because of a probation violation; both parents’ failure to pay regular child support; infrequent visits by the parents; and past domestic violence. The trial court concluded that over a period of 16 to 18 months, both parents had neglected the child by failing to correct the conditions that led to the kinship placement. The court concluded that the child was a neglected juvenile in that the parents had not provided proper care or supervision. At disposition, the court continued placement with the grandmother, allowed weekly supervised visits, and imposed various requirements on the parents. The mother appealed.

Held: Affirmed.

1. The conclusion that the child was a neglected juvenile was supported by findings showing that placement in kinship care with the grandmother was made because of the parents’ inability to care for the child or meet the child’s physical or economic needs; the mother’s problems had continued uncorrected since the placement; and the child would be at substantial risk of harm if either parent removed the child from the placement.
2. References in the trial court’s order to ASFA and the purposes of the Juvenile Code were unnecessary, and they did not affect the trial court’s conclusions of law.
3. The trial court’s dismissal of the first petition was not res judicata with respect to the second petition, because there was not an identity of issues between the two cases.

- Order to pay support must be supported by specific findings of fact.
- Order for weekly supervised visits was not sufficiently specific.
- Trial court did not have authority to order a parent to obtain and maintain stable employment, when parent’s employment status was not relevant to the neglect adjudication.

In re W.V., ___ N.C. App. ___, ___ S.E.2d ___ (6/1/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091568-1.pdf>

Facts: Unmarried parents lived together with their child. Respondent father used and grew marijuana in the home, was controlling, had assaulted the mother and had a history of domestic violence, was

verbally abusive, refused to enter into a case plan or attend domestic violence classes, and became violent when respondent mother told him she wanted to end the relationship. The mother obtained a domestic violence protective order and moved. The court adjudicated the child neglected and placed him in the mother's home. The order also provided for respondent father to have weekly visitation with the child supervised by DSS, pay \$100 per month in child support, and obtain stable employment. Respondent father appealed.

Held: Affirmed in part; vacated in part; remanded.

1. Trial court's findings were sufficient to support the neglect adjudication, as his conduct created an injurious environment and substantial risk of harm to the child. [Adjudication affirmed.]
2. Trial court did not abuse its discretion and the findings were sufficient to support its order for weekly supervised visitation. However, the court failed to set out a minimum outline of a visitation plan ("such as the time, place, and conditions under which visitation may be exercised"). [Remanded for clarification of visitation plan.]
3. Trial court had jurisdiction to order respondent to pay child support to child's mother; however, the court failed to make specific findings about child's needs and respondent's ability to pay, sufficient to support its order for payment of a specific amount. [Remanded for additional findings and entry of appropriate support order.]

Dissent: One judge dissented from the portion of the order remanding the case for determination of a support amount, because trial court had asked the mother to go to the IV-D child support office and had ordered \$100 a month only pending establishment of a support order through IV-D. The dissent would have vacated the part of the order dealing with support because support could be addressed more appropriately in IV-D child support court.

4. Trial court did not have statutory authority to order respondent to obtain and maintain stable employment. Nothing in the record indicated that the child's adjudication was in any way related to respondent's employment status, and G.S. 7B-904 did not authorize the order. [Portion of order dealing with employment vacated.]

- Trial court that adjudicated children to be dependent erred by not deciding the neglect allegation and by attempting to hold it in abeyance.
- Disposition that removes children from the home must address terms of parent's visitation.

In re T.B., ___ N.C. App. ___, 692 S.E.2d 182 (4/20/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091401-1.pdf>

Facts: Trial court adjudicated children to be dependent based on respondent's failure to meet the children's special needs and the conduct resulting from her mental health problems and failure to take her medications. The petition also alleged neglect, and the court stated that this allegation should "remain pending." The children were placed in DSS custody. Respondent appealed.

Held: Affirmed with regard to adjudication that children were dependent; reversed and remanded for further findings and conclusions on the neglect allegation, based on the existing record, and to further address visitation.

1. Medical reports provided sufficient evidence to support the trial court's inference that respondent's mental difficulties impaired her parenting ability.
2. The court is not required to delineate in its order the evidence on which it relied in making findings of fact.
3. Findings about the children's low weight and height measures and their psychological and educational difficulties were sufficient to support the conclusion that neither respondent nor her partner was capable of meeting the children's needs.

4. Trial court erred in attempting to hold the neglect allegation in abeyance, as Juvenile Code does not authorize that and it did not appear from record that court's action was merely a continuance.
5. It was error for trial court not to address in disposition order terms of respondent's visitation with the children, effectively delegating decisions about visitation to others, which is impermissible.

- Where evidence supporting findings was in reports that were admitted without objection, respondent could not assert on appeal that evidence was not sufficient to support the findings.
- Failure to serve the father of one child with notices of hearings and numerous other documents filed in the case after his appointed counsel withdrew was reversible error.

In re H.D.F., ___ N.C. App. ___, 677 S.E.2d 877 (6/16/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/090053-1.htm>

Facts: Respondent mother's three children, each with a different father, were adjudicated neglected based on her substance abuse problems, her repeated failure to provide proper care and supervision, and her recurring refusal to communicate or cooperate with DSS or the children's schools about their needs. At disposition, (1) one child was placed in the custody of his father; (2) a second child was placed in DSS custody and placed physically with his father; and (3) the third child was placed in DSS custody, based in part on a finding that his father had not attended a number of the hearings to offer evidence that he was fit and proper to have custody. Respondent mother and the father of the third child appealed.

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

1. The court dismissed the part of the mother's appeal relating to the third child, after taking judicial notice that the child had been placed back with the mother after the appeal was filed.
2. The court rejected respondent mother's arguments relating to sufficiency of the evidence, because the findings to which she objected were supported by evidence in reports that were admitted without her objection.
3. The court rejected respondent father's argument that his waiver of counsel had not been knowing and voluntary, because the waiver was reflected in a stipulated agreement indicating that the court, through the facilitator, had reviewed the consent order with the parties and that they understood its terms and voluntarily agreed.
4. The court reversed with respect to the third child, because after that child's father waived his right to counsel, numerous notices and documents were filed in the matter but not served on him. There was no indication that he had notice of the disposition hearing or other significant parts of the case, including parts that occurred during the period the court found that he failed to appear.

- Evidence did not support finding that reunification efforts would be futile and inconsistent with child's health and welfare.
- Award of custody to DSS was error when order did not include findings as to the father's fitness to parent the children.

In re A.S., ___ N.C. App. ___, ___ S.E.2d ___ (3/16/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091386-1.pdf>

Facts: In an earlier appeal in the same case, the court of appeals affirmed the adjudication that the child was neglected and remanded for additional findings of fact with respect to disposition. After a hearing the trial court entered a new disposition order continuing custody with DSS and changing the permanent plan from reunification to guardianship. The court took judicial notice of and relied

heavily on findings it had made in the case of the child's siblings, including findings that placement with the paternal grandmother was not appropriate. The order in the siblings' case was reversed, in part because the findings about the grandmother, which the court made again in this case, were not supported by the evidence and also because the award of guardianship was improper where there were no findings that the father was unfit or had neglected his constitutional responsibilities. Respondents appealed the new disposition order.

Held: Reversed and remanded for new hearing.

1. Awarding custody to DSS was improper in the absence of findings that the parents were unfit or had neglected their constitutional responsibilities.
2. Trial court did not make sufficient findings to rule out grandmother as an appropriate placement.
3. No evidence supported trial court's findings that further reunification efforts would be futile and inconsistent with the child's health and safety, and evidence did not establish that DSS had made reasonable efforts to reunify the child with the parents.

- Notice of appeal from only the adjudication order was not effective, and amended notice was not timely.
- Respondent could not assert on appeal error with respect to an outcome that she sought.

In re K.C., ___ N.C. App. ___, 681 S.E.2d 559 (9/1/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/090445-1.pdf>

Facts: The trial court adjudicated two teenagers to be neglected and dependent and ordered that they remain in DSS custody. Respondent's original notice of appeal referred only to the adjudication order. An amended notice of appeal, which also referred to the disposition order, was filed more than 30 days after entry of the disposition order. The trial court made findings about respondent's refusal to work with DSS toward reunification, her expressed desire to have nothing to do with the children until DSS straightened them out, her failure to visit the children, and her expression of an intention not to visit with them. On appeal, respondent's only argument was that the trial court erred in failing to include a visitation plan in the disposition order.

Held: Affirmed

1. The court of appeals first granted DSS's motion to dismiss the appeal because notice of appeal was not timely. The court then allowed respondent's petition for a writ of certiorari in order to review the merits of the case.
2. The court held that although the trial court failed to comply with the statutory duty to address visitation in the disposition order, respondent in this case "invited" the error by her many representations that she did not want or intend to visit the children. Therefore, she could not complain on appeal that the court did what she effectively asked the court to do.

- Party invoking court's jurisdiction has burden of establishing that the party has standing.
- Respondent failed to establish that she was a custodian or "non-prevailing" party.

In re T.B., ___ N.C. App. ___, 685 S.E.2d 529 (11/3/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/090575-1.pdf>

Facts: Maternal grandmother appealed from order adjudicating child to be neglected and placing child in the custody of paternal grandparents. Before DSS involvement the child had lived with respondent for some period of time but also received care from paternal grandparents. Respondent

returned the child to his mother without notifying DSS, contrary to prior agreements. The parties stipulated to neglect. Respondent did not attend the disposition hearing. Her attorney on her behalf asked that the other grandparents not be given permanent custody and that she be given visitation.

Held: Appeal dismissed.

1. Respondent had burden of establishing that she had standing to appeal, and she failed to do that.
 - Although the record contained various references to a civil custody action, to respondent's being given temporary custody, and to the other grandparents' intervening in that action, the record contained no court order or other indication that respondent had been given legal custody of the child.
 - The record did not support a determination that respondent was the child's custodian by virtue of assuming the status and obligations of a parent, because she had returned the child to the mother and it was unclear for what periods of time the child was with respondent or what portion of the child's care she provided.
2. Respondent failed to establish that she was a non-prevailing party, because she had not sought custody of the child and had been granted visitation as she requested.

4. Review and Permanency Planning Hearings

- Order to transfer to civil court and terminate juvenile court jurisdiction lacked required findings.
- Award of custody to grandparent without necessary findings "subrogate[d] respondent's paramount rights as a parent."

In re J.B., ___ N.C. App. ___, 677 S.E.2d 532 (6/16/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/090021-1.htm>

Facts: In May 2007 the child, who had been living with the father and father's girlfriend, was placed in DSS custody as a neglected juvenile and placed in home of the paternal grandmother. Home studies of the mother's and grandmother's homes indicated in July 2008 that the child would be safe in either home and was not in need of protection. At a review hearing in August/September 2008, both DSS and child's GAL recommended that custody be returned to mother. The court concluded that it was in the child's best interest to remain with the grandmother, ordered that the grandmother have physical and legal custody of the child, terminated jurisdiction in the juvenile case, and transferred the matter to Chapter 50 court. The mother appealed.

Held: Reversed and remanded.

1. Although it was not clear whether the hearing was a review or permanency planning hearing, or both, the trial court's order did not include findings sufficient for either type of hearing.
 - a. It made no reference to the permanent plan and whether or why it had changed from reunification.
 - b. It did not address whether reasonable efforts should continue.
 - c. It did not address whether the child could return home within six months.
 - d. There was no finding that the child's return home was unlikely.
 - e. The order did not specify rights retained by the parents and it improperly delegated decisions about visitation.
2. The order lacked the findings required by G.S. 7B-911 for transferring a case to civil district court. It neither created nor modified a Chapter 50 custody order, did not make the grandmother a party to any civil action, did not make required findings about placement being the permanent plan, and did not indicate that there was no need for state intervention on the child's behalf.

3. The court's findings were insufficient to support award of custody to grandmother given evidence of the DSS and the GAL assessments and the mother's compliance with case plan.
4. The court of appeals stated that the award of custody to the grandmother without sufficient findings "subrogates respondent's paramount rights as a parent."

- Findings were insufficient to permit use of "best interest" standard in deciding custody between a non-offending parent and relatives.
- The Juvenile Code does not prohibit awards of joint custody.

In re B.G., ___ N.C. App. ___, 677 S.E.2d 549 (6/16/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/081448-1.htm>

Facts: The child was adjudicated neglected and remained with her mother initially, then was placed in the custody of DSS and placed physically with the relatives. After a permanency planning hearing the court placed the child in the joint legal custody of the relatives and the father, with the father to have structured visitation. The court based its order on a best interest determination, stating that the child could be returned to the father, but citing child's wishes, a strong bond between the child and the relatives, and the fact that remaining with the relatives allowed the child to see her mother and siblings. The order referred to the father as "a non offending parent who has not acted inconsistently with [his] constitutionally protected right to the care and custody and control of the child."

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

1. Trial court misstated the standard for applying the best interest standard in a custody contest between a parent and non-parent. To apply that standard there must be a showing that the parent is unfit or has acted inconsistently with his or her constitutionally protected rights as a parent.
2. The court of appeals rejected respondent's arguments
 - a. that awarding joint custody was not a dispositional alternative available to the court, and
 - b. that findings required for a permanency planning hearing and about the relatives' ability to provide for the child were insufficient.

- A permanency planning order that changes custody and names a guardian must make findings of fact about the factors listed in G.S. 7B-907(b).

In re J.V., ___ N.C. App. ___, 679 S.E.2d 843 (7/7/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/090213-1.pdf>

Facts: Respondent father appealed from a permanency planning order changing custody of his child from DSS to relatives, naming those relatives as guardians, and giving respondent supervised visitation. Until the permanency planning hearing, the permanent plan had been reunification, with an alternate plan of custody with a relative or other person. The trial court heard evidence and made extensive findings of fact about the history and current circumstances of the parties, including a finding that respondent had completed his case plan and done everything the court had ordered. The court awarded guardianship to the relatives, released DSS and the child's guardian ad litem, gave respondent supervised visitation, and ordered another review within six months.

Held: Vacated and remanded.

1. The trial court failed to make the finding required by G.S. 7B-907(b), whether it was possible for the child to return home within 6 months and, if not, why.
2. The trial court's "finding" that the child's return home would be contrary to her health, safety, welfare, and best interests was actually a conclusion of law."

- 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. ___, 688 S.E.2d 91 (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.

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.

- Trial court’s conclusions of law were contradictory and not supported by the findings of fact.

In re E.K., ___ N.C. App. ___, 688 S.E.2d 107 (2/2/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091057-1.pdf>

Facts: Children came into DSS custody and were placed in foster care in May 2005, and in October, 2005, were adjudicated neglected/abused/neglected. After a kinship care assessment, DSS recommended against placement with maternal grandmother. In February 2006 the court allowed the grandmother to intervene. The permanent plan remained reunification with mother. In August 2006 the children were placed with the grandmother, and in December 2006 the court allowed the foster parents to intervene. A permanency planning order was entered in March 2008 continuing custody with DSS, approving placement with the foster parents, ceasing reunification efforts with the mother, ordering that a permanent plan be established within 30 days, and scheduling a hearing for April 9, 2008. In its order after a permanency planning hearing in May 2009, the court incorporated its findings from the March, 2008, order and made additional findings, many of which related to DSS’s concerns about the grandmother as a placement resource. The court’s conclusions included that (1) no relatives were willing and able to provide proper care and supervision in a safe home, and (2) primary custody to the foster parents and secondary custody with the grandmother was in the child’s best interest. The court awarded joint custody to the foster parents and grandmother, designated the grandmother as a secondary placement, and specified numerous conditions on both. DSS appealed.

Held: Affirmed in part; reversed in part.

1. Court of appeals reversed the part of the order that awarded secondary custody to the grandmother. The trial court’s conclusions of law were contradictory – concluding both that no

suitable relative was available and that secondary custody with the grandmother was in the child's best interest.

2. The findings of fact did not support the conclusions of law, given that numerous findings related to reasons DSS did not recommend placement with the grandmother and to the children's stronger relationship with the foster parents.

5. Termination of Parental Rights

- When more than one ground is alleged, trial court should adjudicate existence or nonexistence of each of them; failure to adjudicate an alleged ground means it does not exist.
- If trial court adjudicates only one of several alleged grounds, petitioner must cross assign error to preserve for appeal the issue of the trial court's failure to adjudicate the other grounds.

In re S.R.G., ___ N.C. App. ___, 684 S.E.2d 902 (11/3/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/090789-1.pdf>

Facts: Earlier in the same case, DSS filed a petition to terminate parental rights, alleging three grounds: neglect, failure to pay support, and abandonment. After a hearing the trial court adjudicated the abandonment ground, without commenting on the other two grounds, and terminated respondent's rights. On appeal from that order, the court of appeals (1) held that the trial court's findings did not support its conclusion that respondent had willfully abandoned the child for six months; (2) held that although many of the findings seemed to relate to a different ground, that ground had not been alleged and could not have been adjudicated; and (3) reversed and remanded for action consistent with the opinion. *In re S.R.G.*, 195 N.C. App. 79 (2009). After remand, the trial court took no additional evidence but, relying on its earlier findings, adjudicated the neglect ground and terminated respondent's rights on that basis.

Held: Reversed.

1. G.S. 7B-1109(e) requires the trial court to adjudicate the existence or non-existence of any of the statutory grounds, so the trial court's failure to adjudicate the neglect or nonsupport ground was a determination that they did not exist. The trial court may not exercise its discretion and address fewer than all of the alleged grounds.
2. DSS failed to cross-assign error to the trial court's failure to adjudicate the other two grounds and thus had not preserved those issues for appeal.
3. The court of appeals also relied on the "law of the case" doctrine, which prohibits a trial court's reconsidering an issue that has been previously answered on appeal in the same case.

- Evidence and findings were sufficient to support neglect ground to terminate mother's rights.
- Evidence and findings were sufficient to support the ground that father of illegitimate child failed to take steps necessary to prevent termination of his rights.

In re S.C.R., ___ N.C. App. ___, 679 S.E.2d 905 (8/4/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/090368-1.pdf>

Facts: The child was placed in DSS custody in April, 2008, and adjudicated neglected in May, 2008. Facts leading to the adjudication included father's incarceration, mother's substance abuse, and domestic violence between mother and her boyfriend. Both parents entered into a case plan with DSS and after adjudication the court ordered many of the same terms. The mother failed to complete

requirements of the plan or the court's order, other than submitting to random drug screens. She enrolled in but was terminated from a substance abuse treatment program; tested positive for marijuana eight times and for "benzos" and cocaine at the last screening; and failed to attend 18 of 29 scheduled visits.

The father remained incarcerated on a cocaine trafficking conviction, with a release date of July, 2009. He earned a small amount but did not pay child support or purchase anything for the child. Although his parents had brought the child to visit him, after DSS obtained custody he saw the child only in court. He wrote letters to and had numerous photographs of the child. He filed an affidavit of parentage that both he and the mother signed, but only after the termination motion was filed.

In June, 2008, the court ceased reunification efforts and changed the plan to adoption, with a concurrent plan of reunification. In August, 2008, DSS filed a motion to terminate parental rights. The court adjudicated the neglect and dependency grounds for terminating the mother's rights. With respect to the father the court adjudicated the neglect ground and the father's failure to take steps to legitimate or support the child before the termination action was initiated. The court found that termination was in the child's best interest and terminated both parents' rights.

Held: Affirmed.

Father's appeal.

1. The court did not consider the father's argument that holding the termination hearing less than 9 months after DSS took custody of the child violated his due process rights, because he had neither sought a continuance nor raised the constitutional issue in the trial court.
2. The court rejected father's argument that trial court made insufficient findings when it ceased reunification efforts, finding that he failed to give notice required to preserve the issue for appeal.
3. Father failed to make required showing to support a claim of ineffective assistance of counsel.
4. Trial court's findings supported its conclusion that the father failed to take any of the steps that would have prevented termination of his parental rights to his illegitimate child.
 - a. The court stated that even though "a father may have 'acted consistently with acknowledging his paternity,' strict compliance" with the statute is required, citing *A Child's Hope, LLC v. Doe*, 178 N.C. App. 96, 105, 630 S.E.2d 673, 678 (2006).
 - b. Judge Wynn, referring to the "poignant dissent" in *A Child's Hope*, concurred in the result, but would have affirmed on the basis of the neglect ground.

Mother's appeal

1. Referring to specific evidence in the record, court held that trial court's findings were supported by clear and convincing evidence and supported conclusion that neglect ground was established.
2. The trial court's findings indicated that it considered appropriate "best interest" factors, and the court did not abuse its discretion in terminating the mother's rights.

- Amendment of petition to allege identity of formerly unknown parent did not constitute filing of a new action such that actions taken by respondent between filing of the original and amended petitions would serve to defeat termination under G.S. 7B-111(a)(5).

In re M.M., ___ N.C. App. ___, 684 S.E.2d 463 (10/6/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/090610-1.pdf>

Facts: DSS filed a petition to terminate the rights of child's mother; legal father; and an unknown father. At the hearing required by G.S. 7B-1105, the mother named respondent as a possible biological father. Based on DNA tests results, the court at a review hearing found that respondent was the biological father, joined him as a party in the juvenile case, and ordered DSS to serve him in the termination action. After service, respondent filed an answer and motion to dismiss because the

petition did not allege that he was the child's father. The court granted a continuance during which DSS amended the petition to include respondent as a named party. After a hearing the court terminated respondent's rights on the basis of G.S. 7B-1111(a)(5) – failure of a putative father to take specified steps before the filing of the petition.

Held: Affirmed.

1. Court rejected respondent's argument that amendment of petition constituted filing of a new petition and that finding that respondent was child's biological father was judicial determination of paternity occurring before filing of the new petition, defeating the alleged ground.
 - a. DSS and the trial court followed proper procedures for a case involving an unknown parent. At the hearing on an unknown parent required by G.S. 7B-1105 the mother identified respondent as a possible father, the court ordered paternity testing, and respondent was joined as a party. Respondent's interpretation would defeat the purpose of those procedures.
 - b. The issue was governed by G.S. 7B-1105, the Juvenile Code's specific procedures for cases involving unknown fathers, not by G.S. 1A-1, Rule 15, which deals with amendments. The "amendment" in this case was actually a supplemental pleading that clarified the parties but was not necessary in order for the court to have personal jurisdiction over respondent.
2. The court of appeals did not decide whether the trial court's finding that respondent was the child's biological father constituted a judicial determination of paternity for purposes of G.S. 7B-1111(a)(5). Respondent was required to establish paternity before the filing of the original petition, and that occurred before the court's finding about paternity.
3. The court of appeals held that the trial court did not abuse its discretion in terminating respondent's rights even though respondent's mother expressed a desire for custody of the child.
 - a. At disposition in a termination case, the court "may, but is not required to, consider the availability of a relative placement."
 - b. Although it was not clear that foster parents could adopt, "nothing [in G.S. 7B-1110] requires that termination lead to adoption in order for termination to be in a child's best interests."
 - c. Respondent had never seen, inquired about, attempted to visit, or paid support for the child.

- Adjudication of a ground for termination of parental rights results in forfeit of parent's constitutionally protected status and allows court to apply the "best interest" standard.

In re A.C.V., ___ N.C. App. ___, 692 S.E.2d 158 (4/20/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091199-1.pdf>

Facts: During pregnancy, child's mother and respondent father continued to see each other; respondent went to some appointments with mother; and mother's father talked with respondent about need for him to provide financial assistance. The mother informed respondent that she planned to place the child for adoption. On April 15 the child was born. On April 16 the mother relinquished the child to the Agency for adoption; on April 17 the Agency filed a petition to terminate respondent's rights alleging that he failed to provide adequate support for mother during pregnancy. Respondent filed an answer asserting that he was not given an opportunity to care for the child although he had expressed his desire to do so, and that he was not aware that he could file legal documents to legitimate the child. The court adjudicated a ground for termination under G.S. 7B-1111(a)(5), found that termination was in the child's best interest, and terminated respondent's rights.

Held: Affirmed.

1. Nothing in the trial court's findings or the facts put forward by respondent showed that he or his parents provided any direct financial support or "consistent care" during the pregnancy, and respondent satisfied no other prong of G.S. 7B-1111(a)(5).

2. The court of appeals rejected respondent's argument
 - a. that the mother's relinquishment alone was insufficient to confer standing on the Agency to petition for termination of his rights.
 - b. that he could not comply with G.S. 7B-1111(a)(5) because he was a minor.
 - c. that the trial court erred by terminating his rights without finding that he was unfit or had neglected the child.
3. The court of appeals noted the potential unfairness to a putative father in application of the ground at issue in this case, but held that the court was bound by the holdings in *Owenby v. Young*, 357 N.C. 142, 579 S.E.2d 264 (2003) and *A Child's Hope, LLC v. Doe*, 178 N.C. App. 96, 630 S.E.2d 673 (2006) and the harsh interpretation of the statute that they represent.

- Imprecise statement of standard of proof as "clear and cogent" was not prejudicial error.
- Findings were sufficient to support adjudication of the abandonment ground.

In re M.D., ___ N.C. App. ___, 682 S.E.2d 780 (9/15/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/090500-1.pdf>

Facts: Petitioner-mother had physical custody of the two children after the parties separated in 2000, and later a court awarded her custody and gave respondent-father supervised visitation. Petitioner remarried and in 2008 she petitioned to terminate respondent's rights on grounds of abandonment and failure to pay support for one year. After a hearing, the court adjudicated the ground of abandonment as to both children and the ground of non-payment of support with respect to one.

Held: Affirmed.

1. The trial court did not commit prejudicial error in stating in its order a standard of proof of "clear and cogent," rather than "clear, cogent, and convincing." The court of appeals did not decide whether the two standards are substantively different, but noted that the trial judge had stated the correct standard in open court, the main issues were not in sharp dispute, and respondent had not challenged the sufficiency of the evidence to support any of the findings.
2. The court rejected respondent's challenge to the sufficiency of the findings to support the conclusion that the abandonment ground existed. The trial court had made extensive findings about respondent's failure to visit, call, inquire about, or have any contact with the children for more than six months before the petition was filed.
3. At disposition, the trial court considered the relevant factors and did not abuse its discretion in terminating respondent's rights.

- Findings as to whether parents made reasonable progress were insufficient when they focused on earlier period of time and did not address substantial period just before the petition was filed.
- When parents visit the children or act in other parental ways during the relevant period, the abandonment ground for termination does not exist.

In re F.G.J., ___ N.C. App. ___, 684 S.E.2d 745 (11/3/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/090522-1.pdf>

Facts: Children came into foster care because of pattern of repeated domestic violence, father's alcohol abuse, and failure to comply with service agreements. The court later appointed an uncle as the children's guardian. For a year and a half the parents did very little to address the issues that led to placement. Later they completed various courses and visited the children monthly. The uncle filed a petition to terminate the parents' rights, and the trial court adjudicated the abandonment ground and

the ground of willfully leaving the children in foster care for more than a year without making reasonable progress to address the issues that led to placement, and terminated both parents' rights.

Held: Reversed in part; vacated and remanded in part.

1. Failure to bifurcate adjudication and disposition hearings is not reversible error if trial court applies appropriate evidentiary standards at each stage. Trial court is presumed to be able to consider evidence according to the appropriate standard.
2. Even if testimony challenged by respondent father was impermissible hearsay, he failed to show that he was prejudiced by its admission.
3. Where trial court found that parents visited the children at least monthly, adjudication of the abandonment ground was error.
4. Court of appeals could not adequately review an order that made no findings about parents' progress for a substantial period just before the filing of the petition and instead focused findings on earlier period of time. The court noted that the trial court "could have found that the progress made by respondents was not reasonable under the circumstances," but the court of appeals refused to speculate on the trial court's rationale. The court remanded for further findings of fact.

- The findings supported adjudication of the ground of willfully leaving the child in foster care for more than a year without showing reasonable progress, as well as court's conclusion that termination was in the child's best interest.
- Because the petition did not allege the dependency/incapability ground, the trial court did not err in failing to adjudicate whether respondents, due to their cognitive limitations, were unable to provide the child with proper care.

In re S.C.H., ___ N.C. App. ___, 682 S.E.2d 469 (9/15/09), *aff'd per curiam*, ___ N.C. ___, 689 S.E.2d 858 (3/12/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/090363-1.pdf>

Facts: The child was born with cocaine exposure and special medical needs in October 2004. In 2005 he was placed in nonsecure custody with DSS, adjudicated neglected by consent order, and continued in DSS custody. In September 2005 the court found that respondents had made progress and returned physical custody to them. At a review about six months later, the court found that the mother left the child alone in a room with the door closed, which she had been advised not to do; on more than one occasion it appeared that the child's diaper had not been changed regularly; the child was found in the crib with dried vomit on her clothing; although advised not to do so, the mother continued to leave the child in the crib alone with a bottle; respondents moved without notifying DSS; and their home had safety issues. The court ordered additional services and authorized DSS to return the child to respondents when the services were in place. At a subsequent hearing, DSS's court summary stated that the mother had violated probation by not paying fees; respondents had been evicted and moved to another county; they had tried to take the child out of daycare without permission; they had failed a parenting test and did not reenroll in a parenting program; the father was not employed and there was no indication that he was seeking employment; and they were not participating in reunification services. DSS recommended that it be relieved of reunification efforts. (The opinion does not indicate whether the trial court found all of these statements as facts or what the court ordered at the hearing.)

In September 2007 DSS filed a petition to terminate respondents' rights. After hearings in December 2008, the trial court adjudicated the grounds of neglect, willfully leaving the children in care for more than a year without showing reasonable progress, and failure to pay support, and entered an order terminating respondents' rights.

Held: Affirmed.

1. The court of appeals reviewed the trial court's findings with respect to the ground of willfully leaving the child in foster care. The majority rejected the argument that the trial court had erred in failing to take into account respondents' cognitive limitations in regard to the "willfulness" prong of the ground, finding that willfulness was sufficiently established by findings about their failure to provide personal items, cards, or letters, or to participate in reunification services.
2. In response to the dissent, the majority said that because the "incapability" ground had not been alleged, it would have been improper for the trial court to adjudicate whether respondents were capable of providing proper care.
3. The majority held that the trial court did not abuse its discretion in terminating parental rights. Although the trial court did not make findings specifically about the parent-child bond, it made extensive findings about other factors and, in the adjudication stage, had made findings about the lack of contact between the parents and child. The majority concluded it was apparent that the trial court had considered the bond between respondents and the child.

- The dependency ground for termination cannot be sustained without findings to support a conclusion that the parent lacked a suitable alternative arrangement.

In re N.B., ___ N.C. App. ___, 688 S.E.2d 713 (11/3/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/090811-1.pdf>

Facts: Respondent mother appealed from order terminating her parental rights on the dependency ground, G.S. 7B-1111(a)(6). Respondent had a history of substance abuse, mental illness, and criminal convictions. The court found she had left the children in the care of relatives and others, including the couple they were with who had been in the children's lives 'since birth' and were the proposed adoptive parents.

Held: Reversed and remanded in part; affirmed in part.

1. The trial court failed to make findings that would support a conclusion as to whether respondent had a suitable alternative arrangement – the absence of which is an essential element of the ground for termination. The court remanded for further findings.
2. The court of appeals rejected respondent's argument that the children had not had adequate guardian ad litem representation, when the record showed that they did have a guardian ad litem for the proceeding that was before the court for review. Any error in that regard in earlier proceedings was not before the court.

- Findings of fact that are conclusory and that primarily recite statutory wording of a ground are not sufficient to support a conclusion that a ground exists.

In re T.P., ___ N.C. App. ___, 678 S.E.2d 781 (7/7/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/090143-1.pdf>

Facts: DSS filed petitions to terminate respondent's rights to three children. At the hearing a social worker testified about respondent's failure to comply with case plans, substance abuse problems, and failure to make progress in correcting problems that led to the children's placement. The court entered an order terminating respondent's rights.

Held: Reversed and remanded.

1. Insufficient findings of fact required reversal. The findings were not sufficiently specific, mainly quoted statutory language, and were not adequate for meaningful appellate review.

2. G.S. 1A-1, Rule 52, applies to termination cases, requiring court to “find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment.”
3. Court of appeals rejected respondent’s argument that trial court’s failure in original nonsecure custody order to specify a particular basis for nonsecure custody deprived trial court of jurisdiction. The trial court had general jurisdiction to hear the type of matter involved, and its jurisdiction in the particular case was invoked by the filing of a properly verified petition.

- Findings demonstrated that trial court properly considered the statutory dispositional factors.

In re S.T.P., ___ N.C. App. ___, 689 S.E.2d 223 (2/16/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091281-1.pdf>

Facts: Respondent argued on appeal that the trial court’s findings of fact did not support the conclusion that termination of parental rights was in the child’s best interest. Respondent did not challenge any of the findings, which dealt with the substantial history of the case, the parents’ and grandmother’s inability to establish a safe home for the child, their failure to address substance abuse issues, and professional assessments of the child’s needs. The court of appeals quoted from a number of the findings, which numbered up to 98 or more.

Held: Affirmed.

The court of appeals held that

1. the uncontested findings demonstrated that the trial court properly considered the factors listed in G.S. 7B-1110(a), and
2. the trial court did not abuse its discretion in terminating parental rights.

- When notice of appeal referred only to the disposition order, the order adjudicating grounds for termination was not before the court of appeals.
- Respondent did not preserve for appeal the issue of whether trial judge should have recused himself, because respondent did not make a motion seeking recusal.

In re D.R.F., ___ N.C. App. ___, ___ S.E.2d ___ (5/18/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091716-1.pdf>

Facts: Child came into DSS custody when he was six weeks old and was adjudicated neglected and placed in foster care. About ten months after the child came into care, respondent parents identified paternal relatives who could care for the child, a home study found no problems or issues with the home, and visitation with the relatives began. After a concurrent plan of reunification and guardianship or adoption, the court relieved DSS of the obligation to make reunification efforts and changed the plan to guardianship with a relative or adoption. Subsequently the trial judge recused himself from a scheduled permanency planning hearing. At that hearing another judge changed the plan to adoption by the foster parents and ordered that visitation with the relatives continue. DSS filed a motion to terminate both parents’ rights. At the adjudication, both parents stipulated to “a finding of past neglect.” The trial court adjudicated the neglect ground based on the stipulation, a social worker’s testimony, and prior court orders. At disposition hearings the court considered evidence comparing placement with the relatives to adoption by the foster parents, including the GAL’s recommendation that the child be placed with the relatives. The court made findings, concluded that termination was in the child’s best interest, and entered an order terminating parental

rights. The trial judge who recused himself from an earlier hearing presided over the entire termination action.

Held: Affirmed.

1. The court of appeals refused to consider respondents' arguments related to the sufficiency of the evidence and findings to support the adjudication order, because respondents' notice of appeal referenced only the October 1 disposition order, not the August 1, adjudication order.
2. The court of appeals reviewed the trial court's dispositional findings and consideration of the statutory factors and held that the trial court did not abuse its discretion in terminating parental rights, because there was no showing that the decision "was so arbitrary that it could not have been the result of a reasoned decision."
3. The trial judge did not err by failing to recuse himself from the termination action, because
 - a. The judge had no duty to recuse himself sua sponte.
 - b. There was no indication of the reason for the judge's earlier recusal.
 - c. The issue was not preserved for appeal, because no motion for recusal was made in the trial court.

- Notice of appeal filed after court's oral rendering of its judgment but before entry of the written order was timely.

In re S.F., ___ N.C. App. ___, 682 S.E.2d 712 (8/4/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/090426-1.pdf>

Facts: The trial court orally announced its decision to terminate respondent's rights. Nine days later respondent filed a notice of appeal. The court's order was not entered (written, signed, and filed with the clerk) until more than a month later, and no other notice of appeal was filed.

Held: Affirmed.

1. The court of appeals denied the motion of DSS and the child's guardian ad litem to dismiss the appeal for lack of jurisdiction, stating, "[T]his Court has squarely held that notice of appeal given within thirty days after rendering of judgment in open court, but before entry of judgment, is timely," citing *Darcy v. Osborne*, 101 NC. App. 546, 548, 400 S.E.2d 95, 96 (1991). [Note: The significance of the phrase "within thirty days" is not clear, because it generally refers to a period after entry of judgment, not after rendering of the judgment.]
2. DSS and the child's guardian ad litem also moved to dismiss because the notice of appeal did not include a certificate of service. The court (a) noted that case law establishes that "failure to show proof of service affects personal jurisdiction and does not deprive [the] court of subject-matter jurisdiction;" (b) cited a juvenile case in which the appeal was dismissed for failure to attach a certificate of service to the notice of appeal; and (c) noting that all parties had actual notice of the appeal, allowed respondent's petition for certiorari.

Delinquency

- When court counselor received a complaint and filed a petition, receipt more than 30 days later of a second complaint about the same incident could not be the basis for a second petition based on that incident, thus extending the time within which a petition could be filed.
- The fact that the petition alleged that the juvenile touched the victim with his hand and the evidence showed he touched her with an object, was not a fatal variance.

In re D.S., ___ N.C. App. ___, 682 S.E.2d 709 (6/16/09) (review pending).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/081078-1.htm>

Facts: On 9/25/07 the court counselor received a complaint about an incident that occurred in a school, involving the juvenile's holding a piece of candy (Pixy Stix) and touching a female student with it several times. On 10/10/07 the counselor filed a petition based on the complaint, alleging simple assault. On 11/15/07 the court counselor received a second complaint relating to the same incident, and the next day the counselor filed a second petition alleging sexual battery. The trial court adjudicated the juvenile delinquent for both offenses.

Held: Affirmed in part; vacated in part.

1. Trial court lacked subject matter jurisdiction with respect to the sexual battery petition because it was untimely filed. The court counselor received all the information about the incident on 9/25/07, and could not file a second petition based on that incident more than 50 days later, even after receiving a "second complaint." The court did not discuss what constitutes a "complaint."
2. The court of appeals rejected the juvenile's argument that the simple assault petition was defective because it alleged that he touched the victim with his hands, while the evidence showed only that he touched her with an object. The court held that the variance was not material and did not affect the juvenile's ability to prepare a defense.

- Lack of jurisdiction in juvenile court requires dismissal by superior court if case is transferred.

State v. Smith, ___ N.C. App. ___, 688 S.E.2d 75 (1/19/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/090467-1.pdf>

Facts: Court counselor received complaints on February 26 and approved the filing of petitions two days later. The petitions were not filed, though, until April 4, more than 30 days after the complaints were received. The case was transferred to superior court where the juvenile was convicted of first-degree kidnapping, second-degree sexual offense, and robbery with a dangerous weapon.

Held: The court of appeals reversed the convictions because the district court did not have jurisdiction, due to the late filing of the petitions, and could not transfer the case to superior court.

- Trial court lacked subject matter jurisdiction when the petition did not name the victim of the alleged sexual offense.

In re M.S., ___ N.C. App. ___, 681 S.E.2d 441 (8/18/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/081016-1.pdf>

Facts: The trial court accepted the juvenile's admission to two petitions alleging first degree sexual offense, adjudicated him delinquent, and placed him on probation for one year. On appeal, the

juvenile argued for the first time that the petitions were fatally defective because they did not name a victim, referring only to “a child under the age of 13 years.”

Held: Vacated.

1. A delinquency petition generally is held to the same standards as a criminal indictment.
2. A challenge to the facial validity of a petition can be made at any time, even if the juvenile has been adjudicated based on an admission.
3. It is clear from the requirements for a short-form indictment for sexual offense that it is essential to name the alleged victim in some fashion, and here there was no attempt to name the victim.
4. Court was not required to decide whether naming victim only by initials was sufficient, but noted that federal courts have supported the use of initials in indictments under certain conditions.

- Before custodial interrogation, juvenile must be advised of the right to have a “parent, guardian, or custodian” present.
- Adding “or anyone else” to that advisement renders it legally insufficient.

In re M.L.T.H., ___ N.C. App. ___, 685 S.E.2d 117 (11/3/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/081569-1.pdf>

Facts: DSS reported to law enforcement concern about possible sexual contact between 15-year-old juvenile and a younger sibling. At request of law enforcement the parents, both children, and 21-year-old brother who was in the military went to the police station. Officer took the children to another area, and when she interviewed the juvenile she asked him if he wanted his parents, his brother, or “anyone basically” to be present, and he said he wanted his older brother there. With that brother present, the juvenile was read his juvenile Miranda rights and both he and his brother signed forms indicating waiver of the juvenile’s rights. The form signed by the juvenile said that he had a right to have “a parent, guardian, custodian or any other person” present during questioning. The juvenile confessed and signed a statement. Petitions were filed alleging that he was delinquent for several sex offenses.

The juvenile moved to suppress his statement to law enforcement. When the court denied the motion the juvenile made an admission to one offense, reserving his right to appeal denial of his suppression motion, and other charges were dismissed without prejudice.

Timeline:

4/3/08	court denied suppression motion
5/5/08	order adjudicated juvenile delinquent and continued for disposition
6/27/08	juvenile filed notice of appeal from 4/3/08 and 5/5/08 orders
9/9/08	disposition order entered

Held: New trial.

1. The court of appeals first held that it did not have jurisdiction to hear the appeal, but treated the appeal as a petition for certiorari, which it granted.
 - Only the disposition order was a final order for purposes of appeal, under G.S. 7B-2602.
 - Notice of appeal was not given within 10 days after entry of either order the juvenile appealed.
 - The statute says that “if no disposition is made within 60 days after entry of the order, written notice of appeal may be given within 70 days after such entry.” In that provision, “entry of the order” refers to the order being appealed. Since notice of appeal from the order denying the suppression motion was given 85 days after entry of the order, it was not timely.
2. The juvenile Miranda rights advisement given to the juvenile was legally insufficient.
 - The state had the burden of showing that the juvenile was properly advised of his rights and that he knowingly, willingly, and understandingly waived them.

- The state could not argue on appeal that the juvenile was not “in custody,” when that was not argued in the trial court and where it was clear that everyone assumed he was in custody.
 - The advisement and related form should have informed the juvenile that he had a right to have a “parent, guardian, or custodian” present. Adding “or any other person” gave the juvenile an improper choice and rendered the advisement insufficient.
 - Purpose of the right is to ensure that juvenile understands his situation and the warnings he is given. Cases emphasize the legal authority of the person a juvenile has a right to have present.
3. Trial court erred in denying the juvenile’s motion to suppress his statement, and there was a reasonable possibility that the error affected the result in the case.

- Thirteen-year-old special education student who was questioned at school was not in custody.
- Age and academic standing are not considerations in determining whether a person is in custody during interrogation.

In re J.D.B., 363 N.C. 664 (12/11/09).

<http://www.aoc.state.nc.us/www/public/sc/opinions/2009/pdf/190-09-1.pdf>

Facts: Juvenile was adjudicated delinquent for felonious breaking and entering and larceny. The trial court had denied the juvenile’s suppression motion, and in an earlier appeal the court remanded for additional findings on the question of whether the juvenile was in custody when he made incriminating statements. The trial court made additional findings, including: The juvenile, a 13-year-old 7th-grader in special education classes, was escorted by uniformed school resource officer (SRO) from class into a conference room to be interviewed. Present were an investigator, an assistant principal, the SRO, and an intern. The door was closed but not locked. The juvenile was not given any Miranda warnings or told that he could contact a parent. The juvenile agreed to answer questions about a recent break-in. After initial denials and further questioning, the juvenile was encouraged to “do the right thing.” He asked whether he would still be in trouble if he gave the items back. The investigator said it would help but that the matter was going to court and he might seek a custody order. The juvenile then confessed. The investigator then told the juvenile he did not have to answer questions and was free to leave. The juvenile continued to provide information and wrote a statement about his involvement. He was allowed to leave when the end-of-school bell rang, after being interviewed for 30 to 45 minutes. Based on these and other findings the trial court concluded that the juvenile was never in custody and again denied the motion to suppress.

Court of Appeals: Affirmed.

1. The court of appeals restated the objective test for determining whether a person is *in custody*: “whether a reasonable person in the individual’s position would have believed himself to be in custody or deprived of his freedom of action in some significant way.” A subjective belief that one is not free to leave, age, or mental capacity, by itself, is not sufficient to establish custody. (When a person in custody is questioned, that person’s age and mental capacity may be relevant to whether his or her waiver of rights was knowing and intelligent.)
2. The court of appeals then concluded that based on the uncontested findings of fact the trial court had properly denied the juvenile’s motion to suppress.

Supreme Court: Affirmed.

The supreme court affirmed, reiterating the objective nature of the test for determining whether an individual is in custody and declining “to extend the test for custody to include consideration of the age and academic standing of an individual subjected to questioning by police.”

- Reasonableness standard applies to search of student at school by law enforcement officer when officer acts in conjunction with school administrators to maintain a safe environment.

In re D.L.D., ___ N.C. App. ___, ___ S.E.2d ___ (4/20/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091253-1.pdf>

Facts: Assistant principal and law enforcement officer at school observed juvenile and two others leave a bathroom and immediately reenter when they saw the officer and principal. The officer followed them and saw juvenile put something in his pants. The principal entered and told officer they needed to “check it.” The officer frisked the juvenile and found container holding green material the officer identified as marijuana. The officer handcuffed the juvenile and took him to a conference room. After the principal said they needed to check to make sure he had nothing else, the officer searched juvenile and found \$59, which juvenile stated was for his mother’s rent – which the mother later contradicted. Trial court denied juvenile’s motion to suppress all statements and physical evidence on Fourth and Fifth Amendment grounds. The juvenile was adjudicated delinquent.

Held: Affirmed.

1. With regard to searches by law enforcement officers at school, North Carolina has adopted the reasonableness standard, which applies when
 - a school official initiates the search or law enforcement involvement is minimal – i.e., the officer acts in conjunction with a school official; or
 - a school resource officer conducts the search based on his own investigation or at the direction of a school official, in furtherance of well-established education and safety goals.
 The traditional probable cause requirement applies when the search is conducted (i) by outside law enforcement officers as part of an independent investigation or (ii) by school officials, at the request or behest of outside law enforcement officers.
2. Here, officer was acting in conjunction with and at direction of a school administrator to maintain a safe and educational environment at the school, so the reasonableness standard applied.
3. The search was “justified at its inception” because there was reasonable cause to suspect that it would reveal illegal substances.
4. The search was not unnecessarily intrusive in light of the juvenile’s age and gender and the nature of the offense.
5. The juvenile’s statement that the money he had was “not from drugs” was spontaneous, not the result of interrogation, and motion to suppress it was properly denied.
6. Court did not err in allowing officer to testify about traditional practices in the sale of drugs.

- Juvenile in secure custody pending disposition is entitled to a hearing at least every ten days.
- When a Level 2 disposition included detention days under G.S. 7B-2506(20), the juvenile was entitled to credit for days spent in detention after adjudication and pending disposition.

In re D.L.H., ___ N.C. App. ___, 679 S.E.2d 449 (7/21/09) (review pending).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/081019-1.pdf>

Facts:

- 7/6/07 Juvenile was adjudicated delinquent and ordered to remain in detention pending disposition.
- 8/21/07 Court placed juvenile on Level 2 probation, ordered that she spend 14 days in detention, and stayed the detention on condition that she follow terms of probation.

- 12/13/07 After hearing on a motion for violation of probation, at which the juvenile admitted the allegations, the court ordered the juvenile to detention for the previously stayed 14 days and continued disposition.
- 1/3/08 In an order based on a hearing this date, the court found juvenile was delinquent and would benefit from probation, continued disposition, and ordered the juvenile to be in detention pending disposition.
- 1/10/08 Juvenile filed a motion seeking (1) release from detention on basis that court lacked authority to order her to remain in detention or, in the alternative, (2) a hearing under G.S. 7B-1906 on the need for continued secure custody.
- 1/29/08 Court ordered that it could not modify the previous orders entered by another judge.
- 1/31/08 In an order based on a hearing this date, the court extended probation 12 months, ordered 14 days detention, stayed that part of the order conditioned on compliance with terms of probation, and scheduled another review.
- 2/26/08 Juvenile gave notice of appeal from the orders (underlined above).

Held: Affirmed in part; reversed in part.

1. Although issues raised by the juvenile were moot, dismissal of the appeal was not required because the issues were “capable of repetition, yet evading review.”
2. When ordering the juvenile to detention for 14 days, the trial court erred in failing to give the juvenile credit for time she had spent in detention pending the disposition hearing. The court of appeals said that it was bound by its decision in *In re Allison*, 143 N.C. App 586, 547 S.E.2d 169 (2001), <http://www.aoc.state.nc.us/www/public/coa/opinions/2001/000705-1.htm>, which “expressly holds that the provisions of N.C. Gen. Stat. § 15-196.1 [credit for time served in criminal cases] are applicable to juvenile commitments.”
3. After the juvenile admitted the alleged violations of probation, the trial court had authority under G.S. 7B-1903(c) to order the juvenile to be in detention pending the disposition, because
 - a. the juvenile had been adjudicated delinquent,
 - b. the juvenile admitted probation violations, and
 - c. the court had good cause (determination of whether out-of-home placement was appropriate) to continue the dispositional hearing.
4. In the 1/29/08 order, the trial court erred in refusing to consider the juvenile’s motion for release.
5. G.S. 7B-1906(b), relating to periodic hearings to determine the need for continued secure custody, applies to secure custody that is ordered pending disposition pursuant to G.S. 7B-1903. While in detention pending disposition, the juvenile was entitled to a hearing at least every 10 calendar days unless she waived the hearing or was released.

- The juvenile had an absolute right to review his DSS and mental health records.
- Denial of juvenile’s motion for a continuance to prepare for disposition hearing was an abuse of discretion.

In re J.L., ___ N.C. App. ___, 685 S.E.2d 11 (9/1/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/081306-1.pdf>

Facts: After adjudication for first-degree burglary and robbery with a dangerous weapon, the juvenile moved to continue the disposition hearing scheduled for a week later, to give him time to review the predisposition report. The court denied the motion. At the disposition hearing, the court (1) granted the juvenile’s GAL’s motion to quash a subpoena for records on the basis that insufficient time was allowed to gather them; (2) after reviewing DSS and mental health records, ordered that the DSS court summary was admissible but that other records were either cumulative or not relevant

(these were sealed for appellate review); (3) denied the juvenile's motion to continue; and (4) committed the juvenile to "training school."

Held: Reversed and remanded.

The court of appeals reversed, holding that

1. the court abused its discretion when it reviewed the juvenile's DSS and mental health records and allowed the juvenile to review only some of them;
2. the juvenile had an absolute right to review his own mental health and DSS records to search for mitigating evidence;
3. G.S. 7B-2901(b) gives the juvenile a right to examine his DSS files and mental health records;
4. the court abused its discretion in denying the juvenile's motion for a continuance to allow time to prepare for the disposition hearing.

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| <ul style="list-style-type: none">• Adjudication order must state clearly the appropriate standard of proof. |
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In re D.K., ___ N.C. App. ___, 684 S.E.2d 522 (11/3/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/090495-1.pdf>

Facts: Teacher noticed 11-year-old juvenile picking up the teacher's visor just before running out of the room when class ended. The juvenile denied having it, and the visor was never found. A petition was filed alleging that juvenile was delinquent for misdemeanor larceny and misdemeanor possession of stolen goods. The trial court denied the juvenile's motions to dismiss and adjudicated the juvenile delinquent for larceny.

Held: New trial.

1. Trial court did not err in denying juvenile's motion to dismiss for insufficient evidence. The state's evidence was sufficient to establish each element of the offense.
2. The trial court was ambiguous about the standard of proof applied, referring in its order both to facts proven beyond a reasonable doubt and to the state's having shown by clear and convincing evidence that the juvenile committed the act.
3. Because the judge who presided at trial was no longer on the district court bench, the court ordered a new trial.

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| <ul style="list-style-type: none">• Notice of appeal given before court renders or enters a final order of disposition is not effective. |
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In re D.K.L., ___ N.C. App. ___, 689 S.E.2d 508 (12/8/09).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/090357-1.pdf>

Facts: On September 10, 2008, the juvenile was adjudicated delinquent for multiple offenses. At a disposition hearing on October 15, 2008, the court specified conditions of the juvenile's release from detention (curfew, obey parents' rules, stay in school) but did not enter a final disposition order. In open court the juvenile gave notice of appeal. On November 26, 2008, the court entered a disposition order placing the juvenile on probation, ordering restitution, and ordering cooperation with wilderness program placement.

Held: Appeal dismissed for lack of jurisdiction.

1. Oral notice of appeal in open court is sufficient, but only for appeal from a final order.
2. An adjudication order is not a final order.
3. In this case, the trial court had neither rendered nor entered a final order when the juvenile gave notice of appeal; therefore, the notice was not effective under G.S. 7B-2602 to confer jurisdiction on the court of appeals.