

District Court Judges' Summer Conference
June 24, 2010
Winston-Salem, NC

Juvenile Case Update



Issue Areas in Delinquency (pp 26-31)

1. Interrogation and search
2. Jurisdiction
3. Disposition and post-disposition

Interrogation

- Sufficiency of *Miranda* warning – must state “parent, guardian, or custodian” (*M.L.T.H.*)
- Standard for “in custody” – age and academic standing of 13-year-old were not relevant factors (*J.D.B.*)



Search at School

“Reasonableness” standard for school searches under *T.L.O.*, 469 U.S. 325 (D.L.D.)

Search must be

1. justified at its inception, and
2. reasonably related in scope to the circumstances that justified the interference



Jurisdiction: timely petition

***In re D.S.* (N.C. Supreme Court, June 16, 2010)**
15 / 30 - day rule for filing petition

1. The “complaint” is the completed document
 - time runs from court counselor’s receipt of a signed complaint
 - in *D.S.*, counselor complied with timeline
2. The timeline is not jurisdictional



Jurisdiction: sufficient petition

Standard for petition is same as indictment

1. touching with hand vs. object not a fatal variance (*D.S.*)
2. failure to name victim of sexual offense in some fashion deprived court of jurisdiction (*M.S.*)



Disposition and post-disposition

- Juvenile's rights (*J.L.*)
 - access to records
 - continuance

- Appeal (*D.K.L.*)
 - notice not timely if given before judgment is rendered or entered



Credit for time in secure custody

***In re D.L.H.* (N.C. Supreme Court, June 16, 2010)**

- When court at disposition ordered 14 days detention, juvenile was not entitled to credit for days spent in secure custody pending disposition.

- G.S. 15-196.1 (credit for time served in criminal cases) does not apply to juvenile cases.



Issue Areas in

Abuse, Neglect, Dependency, TPR

1. Jurisdiction
2. Procedures
3. Adjudications
4. Review and Permanency Planning
5. Termination of Parental Rights

Jurisdiction

(pp 3-5)



A summons relates only to personal jurisdiction.

- Defect in summons can be waived.
- Absence of summons can be waived.
- If not waived, court may lack personal jurisdiction.

Verification is essential when required by statute.

- Lack of proper verification → no subject matter jurisdiction (*OBO*)



No standing → no jurisdiction (B.O.)

TPR statute gives standing to

- parent
- guardian
- person with whom child has lived for 2 years

but not custodian with whom child has lived less than 2 years



**Effect on jurisdiction of:
(pp 5-7)**

- notice of appeal (C.N.C.B.)
- final order of adoption (W.R.A.)
- other orders in adoption (Norris v. Norris)

**Effect on jurisdiction of
“closing” a case**

In re S.T.P.

“Closing a case file is not the equivalent of the trial court terminating its jurisdiction.”

Court order should never say that a case “is closed.”

Court should either

- > retain jurisdiction or
- > terminate jurisdiction.



DSS closes cases

- “DSS completed a family assessment and closed the case.” *In re H.D.F.*, 677 S.E.2d 877 (2009).
- “Respondents . . . complied with their treatment plan and their case was closed.” *In re H.T.*, 180 N.C. App. 611 (2006).

Earlier court of appeals language:

- Jurisdiction in the district court was “terminated by the trial court’s order to close the case.” *In re P.L.P.*, 173 N.C. App. 1 (2005) (*aff’d*).
- “DSS [did not] include in its brief any citation of statutory or case law authority that would allow the court to act after it had closed the case.” *In re D.D.J.*, 177 N.C. App. 441 (2006).



Earlier court of appeals language:

- "The juvenile court has 'closed' this juvenile matter and ceased its jurisdiction over this child. In doing so, the juvenile court has returned the parents to their pre-petition status. See *In re Dexter*, 147 N.C. App. 110 (2001)."

In re A.P., 179 N.C. App. 425 (2006) (dissent by Judge Levinson adopted by Supreme Court).



"Closing" Cases

- Was court in *S.T.P.* really discerning trial court's intent?
- To avoid the issue, court's order should
 - retain jurisdiction, or
 - terminate jurisdiction
- If court in *S.T.P.* had jurisdiction, it should have conducted review hearings



Responsible Individuals List

- Statute violates N.C. Constitution (*W.B.M.*)
- List and related procedures are suspended
- S.B. 567 (conference committee appointed)

Procedures

(pp 8-9, 13)

Amendment of petition – G.S. 7B-800 (M.G.)

- When does an amendment “change the nature of the conditions upon which the petition is based”?
- The nature of abuse is “existence or serious risk of some nonaccidental harm inflicted or allowed by one’s caretaker.”

Delay in Holding Hearing

(E.K.; A.R.D.)

- Remedy same as for delay in entry of order – petition for writ of mandamus (E.K. – permanency planning hearing)
- But, in A.R.D. (6/15/10), court of appeals considered issue of delay and held that respondent failed to show prejudice (A.R.D. – TPR hearing)

Notice

(H.D.F.)

Reversal required where notice of key events in case was not given to father whose attorney had withdrawn.





Notice (T.D.W.)

- Signature of someone else → presumption of service on respondent
- Late notice and inaccurate time = reversible error only if prejudice shown
- Where respondent's attorney was present and did not object, right to object to notice was waived





Adjudication (pp 10-13)

- Abuse or neglect of another child
(C.M.; D.B.J.)
- Effect of kinship placement protection plan
(K.J.D.)
- Adjudicating only one of two alleged statuses
(T.B.)



Disposition pp 10-14

Visitation (C.M.; W.V.; T.B.)

When child is placed outside the home, order must either

- provide visitation plan or
- include findings about why visitation is not in child's best interest.

Court may not delegate visitation decision.



Visitation

W.V. –

- “weekly supervised visits” – not sufficient
- court must specify minimum outline of visitation plan (such as time, place, and conditions)

C.R.C. (unpublished, 6/15/10) –

- “unsupervised weekend visitation coordinated by custodian” – not sufficient
- must specify when, where, for how long



Avoid “Boilerplate”

Order for parent to “**obtain stable employment**” was invalid, where employment was not related to reasons for adjudication or removal.

(W.V.)



Disposition Order

- Findings required for
 - custody to DSS (G.S. 7B-507) or
 - custody to any non-parent (A.S.)



Appeal Issues (pp 14-15)

- Proper and timely notice (*K.C.*)
- Party cannot appeal outcome she sought (*K.C.*)
- Standing to appeal (*T.B.*)



Review and Permanency Planning (pp 15-18)

Requirement for some testimony (*D.Y.*)

- permanency planning hearing
- court considered DSS and GAL reports, prior orders, attorneys' argument
- respondent offered no evidence
- court made findings, continued placement, declined to return children home

COA reversed and remanded.



What the court said in *D.Y.*

1. Findings were unsupported by properly introduced evidence.
2. Order was based solely on written reports of DSS and the GAL, prior court orders, and oral arguments by the attorneys.
3. No sworn testimony from any witness was received.
4. Because no evidence was presented, the trial court's findings of fact are unsupported, and its conclusions of law are in error.

Earlier Cases

In re A.M., 192 N.C. App. 538 (2008)
In re N.B., 195 N.C. App. 113 (2009)

- TPR cases
- DSS offered no testimony

Court of Appeals:

- summary TPR not allowed
- court may not rely solely on written evidence
- court must hear some testimony

In both *A.M.* and *N.B.*, the court said:

"[T]his opinion should not be construed as requiring extensive oral testimony. We note that the trial courts may continue to rely upon properly admitted reports or other documentary evidence and prior orders, as long as a witness or witnesses are sworn or affirmed and tendered to give testimony."



In re A.S., 190 N.C. App. 679 (2008)
(Supreme Court affirmed *per curiam*)

- Neglect adjudication
- Parent did not object to admission of DSS and GAL reports

Court of appeals:

"Since there was no objection . . . to the admission of these reports . . . the reports constitute substantive evidence sufficient to support the trial court's findings of fact."



Custody to non-parent (B.G.)

- Findings insufficient to apply “best interest” standard and award custody to non-parent
- There was no showing that parent
 - was unfit,
 - had neglected the child, or
 - had acted inconsistently with his constitutionally protected rights as a parent



Guardianship to non-parent (J.V.)

Permanency planning / guardianship order reversed, where court made no finding:

- “Is it possible for the child to return home within 6 months?”



Conversion to civil custody order (J.B)

- Findings were insufficient to:
 - create or modify a Chapter 50 custody order,
 - terminate jurisdiction in juvenile case, or
 - award custody to non-parent.

Without findings necessary to override it, a parent’s paramount right as a parent exists in a juvenile case.

Termination of Parental Rights

(pp 18-25)

Multiple grounds (S.R.G.)

- After TPR order reversed and remanded, trial court adjudicated ground it had not addressed initially, based on same evidence and findings.
- Reversed
 1. Silence = adjudication that ground did not exist
 2. DSS could cross-appeal failure to adjudicate

Neglect Ground

(In re S.C.R.)

Conclusion of neglect ground based on:

- prior neglect adjudication
- neglectful conduct
- but no specific finding of "likely to recur"

Putative Father Ground

- Acting consistently with acknowledging paternity not sufficient (S.C.R.)
- Strict compliance with statute required (S.C.R.)
- Amending petition to add name of formerly "unknown father" did not start action anew (M.M.)
- Adjudication of TPR ground → forfeiture of constitutionally protected status (A.C.V.)



Abandonment Ground

- Evidence of failure to visit, call, inquire about or have contact with children for 6 months was sufficient (*M.D.*)
- Monthly visitation during relevant period defeats ground (*F.G.J.*)



Year in Care Ground

- Evidence and findings must relate to period up to filing of petition (*F.G.J.*)
- Finding of “willfulness” required, but because incapability ground not alleged, it would have been improper for court to adjudicate whether respondents were capable of providing proper care. (*S.C.H.*)



Dependency / Incapability Ground

Requires findings to support conclusion that parent lacks suitable alternative arrangement (*N.B.*)



Termination of Parental Rights

- Findings must be specific, not conclusory (*T.P.*)
- Proper consideration of best interest factors (*S.C.R.*; *M.M.*; *M.D.*; *S.C.H.*; *S.T.P.*)
 - consideration of relatives allowed, not required
 - proof of prospective adoption is not required
- Failure to bifurcate hearings not reversible error if court applies correct evidentiary standards (*F.G.J.*)
