

**Juvenile Cases Decided by the
North Carolina Court of Appeals**
January 17, 2012
Termination of Parental Rights; Delinquency

Termination of Parental Rights

Jurisdiction; UCCJEA

- Where a N.J. court had awarded custody to the mother, who moved to N.C., and the father remained in N.J., the court here lacked subject matter jurisdiction to terminate the father's rights, in the absence of findings required by G.S. 7B-203.

In re J.A.P., __ N.C. App. __, __ S.E.2d __ (January 17, 2012).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xMTg2LTEucGRm>

Facts: After a court in New Jersey awarded custody to the mother, she and the child moved to North Carolina. Several years later the mother filed an action to terminate the father's rights, and the court here entered an order terminating his rights. The father appealed, arguing that the N.C. court did not have jurisdiction under the UCCJEA.

Held: Vacated.

1. The court of appeals rejected the mother's argument that the father's jurisdictional argument should not be considered because no custody order was in the record. The court pointed out that it was the mother's duty under G.S. 50A-209 to file a copy of the custody order and that her pleading on its face made clear that a custody order had been entered in N.J.
2. Because no N.J. court had determined that it no longer had exclusive continuing jurisdiction or that N.C. was a more convenient forum, and no court here or there had determined that no party resided in New Jersey, N.C. lacked jurisdiction to modify the N.J. order.

Dismissal of petition

- Father's name on child's birth certificate, when father and mother were not married, created rebuttable presumption that he had established paternity of the child either judicially or by affidavit.
- Unchallenged findings of fact supported trial judge's conclusion that none of the alleged grounds for terminating parental rights had been proved by clear and convincing evidence.

In re J.K.C., __ N.C. App. __, __ S.E.2d __ (January 17, 2012).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS03ODMtMS5wZGY>

Facts: After years of DSS involvement, lack of success in dealing with substance abuse issues, and the children's being in and out of foster care, the mother relinquished to DSS. The guardian ad litem filed a petition to terminate rights of the father, who was serving a 9-year prison sentence and was due to be released in early 2013. At the conclusion of the evidence the trial court dismissed the petition, finding that none of the alleged grounds had been established by clear and convincing evidence. The guardian ad litem appealed.

Held: Affirmed.

Following are some of the factors the court of appeals cited in upholding the trial court's order dismissing the petition.

1. Neglect. After finding that there was a prior adjudication of neglect, the trial court properly considered respondent's actions and changed conditions since then – including respondent's substantial compliance with his case plan, keeping in contact with DSS, completing substance abuse and other courses available to him, and sending gifts to the children through his mother – and did not find a substantial probability of a repetition of neglect.
2. Willfully leaving the child in care without making reasonable progress. Factors the same or similar to those above for neglect.
3. Failure to pay cost of care. Respondent earned \$1.00 a day and had money in an account from relatives, but provided no support for the children. However, the record included evidence that respondent had written to DSS about providing support for the children and was informed that it could not be arranged because he was earning less than minimum wage.
4. Failure to establish paternity. Noting that petitioner's burden with this ground is difficult because it involves proving negatives, the court pointed to the fact that the children's birth certificates had been amended to indicate respondent as the father. Although no affidavit or order of paternity was presented, DSS in its reports referred to respondent as the biological, not the putative father. The court articulated a new presumption – appearance of the father's name on the children's birth certificate creates a rebuttable presumption that his paternity has been established by affidavit or court order. Here the presumption was not rebutted.
5. Dependency. There was no evidence that respondent was incapable of providing care and supervision due to a condition specified in the statute or any similar cause or condition. Respondent's incarceration was not sufficient to establish this ground.

Sufficiency of order after remand

- When an order is reversed and remanded, the order is defunct and the trial court must enter a new entire, complete order upon remand.

In re A.R.P., __ N.C. App. __, __ S.E.2d __ (January 17, 2012).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xMTE2LTEucGRm>

Facts: In an earlier opinion the court of appeals reversed a termination order and remanded for additional findings on the question of willfulness with regard to the ground of willfully leaving the child in foster care, etc. [G.S. 7B-1111(a)(2)] In a new order, the trial court incorporated by reference the transcript of a hearing, made new findings about willfulness, and made a “supplemental” conclusion of law. This order did not include the findings and conclusions or decree from the original order.

Held: Reversed and remanded for entry of a complete order.

1. Incorporation of an entire transcript into an order does not constitute a finding of fact. (In addition, the transcript was not included in the record on appeal.)
2. When the first order was reversed and remanded, it became ineffective. The trial court was required to enter an entirely new and complete order and could not assume that the provisions of the first order were somehow incorporated into its new order.

Delinquency

Intake and evaluation procedures; delay in production of transcript for appeal

- The intake interviews mentioned in G.S. 7B-1702 are required only when additional information is needed in order to evaluate the DJJDP intake factors.
- Delay in production of the transcript for appeal did not violate the juvenile's due process rights.

In re T.H., __ N.C. App. __, __ S.E.2d __ (January 17, 2012).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS03MTgtMS5wZGY=>

Facts: The juvenile was adjudicated delinquent for simple assault and common law robbery. When the complaint was filed with juvenile services, the juvenile was already on probation, a law enforcement officer had investigated the case and interviewed the alleged victim, and the victim had made a written statement about the event and twice identified the juvenile in a photographic line-up. After talking with the complaining officer, but without interviewing the juvenile or the alleged victim, the court counselor approved the complaint for filing as a petition. After the adjudication and disposition, the juvenile gave notice of appeal. The transcript from the March 2010 hearing was not delivered until April 2011.

Held: Affirmed.

1. The court of appeals rejected the juvenile's argument that G.S. 7B-1702 should be strictly construed to require, in every case, that the court counselor interview the juvenile and the alleged victim unless it is impossible to do so.
2. The addition to the statute of the phrase "if practicable," in 1998, gave court counselors more flexibility in how they evaluate whether a petition should be filed. That wording means that the statute requires the suggested interviews only when additional evidence is needed in order to evaluate the matter according to the DJJDP intake factors.
3. Here, additional information was not required and the court counselor complied with G.S. 7B-1702 in assessing the complaint and approving it for filing.
4. Delay in production of the transcript was not presumptively prejudicial. Factors in determining whether a delay violates due process are the same as those for pre-trial delay in a criminal case: length of delay; reason for delay; respondent's assertion of his right to speedy action; and prejudice resulting from the delay. In this case, the juvenile's attorney was partly responsible for the delay, he did not specifically assert a right to a speedy trial [appeal], and he was not "particularly prejudiced" by the delay.

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