

**Juvenile Case Decided by the  
North Carolina Supreme Court**

April 13, 2012

*Termination of Parental Rights*

TPR: Waiver of right to counsel

- Waiver of counsel. A respondent's waiver of the right to counsel in a termination action is not governed by G.S. 15A-1242, which applies only in criminal cases.
- Role of respondent's GAL. The court of appeals should determine whether the role of respondent's GAL in a termination action is one of assistance or substitution.

**In re P.D.R., \_\_ N.C. \_\_, \_\_ S.E.2d \_\_ (April 13, 2012).**

<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMi8yODNQQTExLTEucGRm>

**Facts:** Respondent mother repeatedly failed to follow through with a mental health evaluation. In both the underlying dependency and neglect proceeding and the termination of parental rights action the trial court appointed a guardian ad litem for respondent. At the termination hearing respondent's attorney made a motion to withdraw, and respondent indicated that she wanted to represent herself. The court made some inquiry about respondent's understanding. When questioned by the court, respondent's guardian ad litem responded that she would leave that question up to the court. Later the GAL questioned the sufficiency of the court's inquiry and the mother's understanding of the waiver, and the court conducted further inquiry. The court then allowed respondent to waive her right to counsel, and after a hearing respondent's rights were terminated.

**Court of Appeals:** Respondent appealed and the court of appeals reversed [\_\_ N.C. App. \_\_, 713 S.E.2d 60 (2011)] holding that the trial court abused its discretion in allowing respondent to waive counsel, erred by not conducting an adequate inquiry consistent with the one required by G.S. 15A-1242 in criminal cases, and erred by failing to determine whether respondent was competent to represent herself.

**Held:** Reversed and remanded.

1. The Supreme Court held, as a matter of statutory interpretation, that the requirements in G.S. 15A-1242 for a defendant's waiver of the right to counsel has no application in a termination of parental rights proceeding. The opinion is silent with respect to the proper procedure and standard for a party's waiver of the right to counsel in a termination action.
2. The Supreme Court remanded to the court of appeals to decide whether the role of respondent's guardian ad litem in a termination of parental rights action is one of assistance or substitution. The court of appeals did not address the role of respondent's guardian ad litem in relation to the waiver of counsel, because both petitioner and respondent took the position that the decision belonged to respondent. In the Supreme Court, however, both petitioner and respondent argued that the GAL's role was one of substitution, not assistance, and that the decision about waiving counsel belonged to the GAL, not the respondent.

*Appellate court opinions can be found at <http://www.aoc.state.nc.us/www/public/html/opinions.htm>  
Earlier case summaries can be found at <http://www.sog.unc.edu/node/513>*



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