

**Juvenile Case Decided by the
North Carolina Court of Appeals**

April 17, 2012
*Delinquency*¹

Failure to disclose names and records of witnesses

- State's failure to disclose identity and record of eyewitness before the day of the hearing was prejudicial to the juvenile.
- The court erred in not ruling on the juvenile's motion for disclosure of witnesses and not granting a continuance or otherwise remedying the problem created by petitioner's failure to comply with G.S. 7B-2300(b).

In re A.M., __ N.C. App. __, __ S.E.2d __ (April 17, 2012).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xMzgwLTEucGRm>

Facts: Before the adjudication hearing, the juvenile filed a motion pursuant to G.S. 7B-2300(b) to require petitioner to disclose a list of witnesses and their prior records. The petitioner provided names of some witnesses, but the court did not rule on the motion. On the day of the adjudication hearing, petitioner revealed the identity of a witness who would testify that she had seen the juvenile set the fire he was charged with setting. Petitioner's attorney claimed to have learned of the witness just that day and said the juvenile's attorney had been given a chance to speak to the witness. The court denied the juvenile's motion for a continuance. The witness's testimony, including that she had received a subpoena months earlier, made clear that petitioner (though perhaps not the individual prosecutor) knew of the witness long before the hearing date. The juvenile was adjudicated delinquent and given a Level 2 disposition.

Held: New hearing.

1. Petitioner's failure to disclose the identity of the eyewitness before the day of the hearing and the court's failure to grant a continuance or otherwise deal with the problem were prejudicial to the juvenile and required a new hearing.
2. The juvenile satisfied requirements for showing that the error was prejudicial, i.e., that a different result would have been reasonably possible if the error had not occurred. With prior notice the juvenile might have been able to impeach the witness, might not have been adjudicated delinquent for setting the fire, and might not have received the disposition he received.

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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¹ **Note:** Although I usually do not summarize unpublished opinions, given the decrease in the number of published juvenile cases I have briefly summarized opinions in three neglect cases on the following page.

Unpublished

Findings of fact in adjudication order cannot simply repeat the allegations set out in the petition.

In re M.S., __ N.C. App. __, __ S.E.2d __ (April 17, 2012) (unpublished).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xMjM4LTEucGRm>

In an appeal from a neglect adjudication, respondent argued that the evidence did not support the findings and two other bases for reversal. Instead of addressing those arguments, the court of appeals “note[ed] that the adjudication findings of fact [were] quoted nearly verbatim from the allegations contained in the juvenile petition,” and held that because “the trial court failed to make its own independent findings of fact,” the appellate court was not able to conduct a meaningful review. *Reversed and remanded – trial court’s discretion whether to hear additional evidence on remand.*

In dicta, court of appeals says that when the permanent plan is custody to the non-removal parent and custody has been given to that parent in the juvenile case, the court must continue to conduct review and permanency planning hearings pursuant to G.S. 7B-906 and 7B-907.

In re J.M.D., __ N.C. App. __, __ S.E.2d __ (April 17, 2012) (unpublished).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xMjIyLTEucGRm>

In a permanency planning order the court found that continued custody with the child’s father was still the appropriate permanent plan, continued custody with the father, and relieved the parties’ attorneys of further responsibilities. Respondent-Mother, from whom the child had been removed, argued that the trial court improperly transferred the case to district civil court. The court of appeals pointed out that nothing in the order indicated an intention to terminate jurisdiction in the juvenile case and said, “The juvenile case remains pending in juvenile court, and the trial court remains under an obligation to conduct custody review and permanency planning hearings as required by N.C. Gen. Stat. §§ 7B-906 and 7B-907. *Affirmed.*”

1. Party who participates in permanency planning hearing without objecting to a lack of proper notice cannot assert that lack of notice as error on appeal.
2. A disposition order giving DSS custody must include findings and conclusions about whether a relative is willing and able to provide proper care and, if placement is not with the relative, why placement with the relative is not in the child’s best interest.

In re C.W., __ N.C. App. __, __ S.E.2d __ (April 17, 2012) (unpublished).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xMzI1LTEucGRm>

1. At a disposition hearing the trial court placed the children in DSS custody, found that reunification efforts would be futile, and ordered a permanent plan of adoption. Because respondent did not object to the court’s proceeding with a permanency planning hearing and participated in the hearing, the lack of notice that it would be a permanency planning hearing was not a basis for reversal, as she had waived notice.
2. Although the disposition order included facts about an aunt, it was insufficient because “the trial court must (1) draw factual conclusions and not simply recite evidence regarding potential relatives, and (2) make specific findings of fact explaining why placement with a relative would not be in the child’s best interest if placement is not with the relative.”

Adjudication affirmed. Remanded for amendment of disposition order to (1) add required findings about relative placement and (2) clarify respondent’s visitation rights.