

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

April 17, 2012

*Termination of Parental Rights<sup>1</sup>*

Amendment of petition; sufficiency of evidence

- Trial court erred in allowing amendment of petition to conform to the evidence; however, the error was harmless.
- Evidence of respondent's incarceration, without consideration or findings of his circumstances since his release, was not sufficient to support a conclusion that he neglected the children and that neglect was likely to recur.

**In re G.B.R., \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (May 1, 2012).**

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xMzU0LTEucGRm>

**Facts:** In Nov. 2009 the children were adjudicated neglected based on conditions in the mother's home, when the respondent father was incarcerated. The disposition order continued custody with DSS, directed orders to the mother, and did not mention the father. In May 2010 a permanency planning order ceased reunification efforts with respect to both parents. DSS filed termination motions in July 2010, alleging the neglect ground. Respondent filed an answer denying the material allegations and made a Rule 12(b)(6) motion to dismiss, which the court denied. Before the termination hearing, respondent was released early from prison and was employed. The court allowed DSS's motion to amend the petition to conform to the evidence that respondent was involved in a 2006 adjudication that the children were neglected. The court adjudicated the neglect ground and terminated respondent's rights.

**Held:** Reversed.

1. The trial court erred in allowing the motion to amend the petition to conform to the evidence, based on *In re B.L.H.*, 190 N.C. App. 142, *aff'd per curiam* 362 N.C. 674 (2008). However, the petition put respondent on sufficient notice that his rights might be terminated on the basis of neglect, and the trial court made no findings related to the subject matter of the amendment, so the error was not prejudicial.
2. Findings did not support the conclusion that respondent neglected the children. The evidence and the trial court's findings related to neglect focused almost solely on respondent's incarceration. There was no evidence about respondent's circumstances since his release or that would show a likelihood of a repetition of neglect. Evidence did show that respondent wrote many letters to the children while incarcerated; he was fully employed and earlier was on work release; he had insurance and his own apartment; he did not drink alcohol or use any medication; he had no relationship with the mother; in prison he completed an anger management course, a character education course, a human resource development program, and a 16-week "father accountability" class.

*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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<sup>1</sup> **Note:** Although I usually do not summarize unpublished opinions, given the decrease in the number of published juvenile cases I have briefly summarized the opinion in one neglect case on the following page.

## Unpublished

### Appointment of GAL for Parent

**In re C.M., \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (May 1, 2012) (unpublished).**

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xMzU2LTEucGRm>

Affirming a permanency planning order awarding guardianship to a grandmother, the court held that the trial court did not abuse its discretion in refusing to appoint a GAL for respondent mother. The court restates what it has said before: In an inquiry about whether to appoint a GAL for a respondent, the first question is whether there is a reasonable basis for determining that the parent

1. is incompetent [under the definition in G.S. 35A-1101(7)], or
2. suffers diminished capacity [lacks the ability to perform mentally].

If the court finds either, the court has discretion to appoint a GAL.

Here, the court of appeals said, “The record in the present case did not include findings concerning Respondent Mother's competence or ability to perform mentally. The better method for undertaking an inquiry as to the necessity of a guardian ad litem would be for the trial court to make specific findings of fact as set forth above. However, reviewing the record in this case as a whole, we conclude that the trial court's decision not to appoint a guardian ad litem was not arbitrary or manifestly unsupported by reason.”



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