

**Juvenile Cases Decided by the  
North Carolina Court of Appeals**  
June 19, 2012  
*Termination of Parental Rights; Delinquency*

**Termination of Parental Rights: Sufficiency of Evidence – Neglect and Non-Support**

- Evidence based on sworn testimony that allegations in the motion were true was sufficient.
- Zero support was not a reasonable portion of the cost of the child’s care when respondent was employed from time to time.

**In re J.E.M., \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (June 19, 2012).**

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi03Mi0xLnBkZg>

**Facts:** At the hearing on DSS’s motion to terminate respondent father’s rights (after the mother relinquished), respondent’s attorney agreed with DSS’s statement that respondent did not wish to contest the allegations in the motion. Evidence presented by DSS consisted of sworn testimony of a social worker that the allegations in the motion were true and correct. Neither respondent nor the child’s GAL presented evidence. At disposition, the GAL submitted a written report and respondent called three witnesses. The court adjudicated the neglect and nonsupport grounds and terminated respondent’s rights.

**Held:** Affirmed.

1. The court upheld the neglect ground based on evidence of prior neglect and a likely repetition of neglect if the child were returned to respondent. The latter, the court said, was supported by evidence that respondent did not visit the child for 5 months before the hearing; met only once with a parenting class instructor, when meeting with the instructor was part of his case plan; and provided no support.
2. The court rejected respondent’s argument that evidence of failure to pay support was not sufficient to support the nonsupport ground. The court held the evidence was sufficient when it showed that respondent paid no child support while the child was in DSS custody and that he was “gainfully employed from time to time.” Zero support, the court said, is not sufficient when there was some ability to pay.

**Dissent:** The dissent would have reversed on the basis that the trial court did not conduct a proper hearing and erred in relying only on testimony that the allegations in the petition were true and on written reports offered for disposition. The majority stated that respondent had not raised these issues on appeal and that it was not the court’s role to raise them.

## Motion to Suppress; Admissions

- Before denying a motion to suppress, the court must make findings and conclusions and indicate its rationale for doing so.
- Before accepting an admission, the court must personally inform the juvenile of the most serious possible disposition and may not delegate that responsibility.

**In re N.J., \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (June 19, 2012).**

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xMzY5LTEucGRm>

**Facts:** Officers approached and questioned several teenagers at a housing project. The juvenile consented to be searched for weapons and answered ‘yes’ when an officer asked whether he had marijuana in his pocket. He also admitted that bags of marijuana the officer found on the ground were his. The juvenile was taken into custody and a petition was filed alleging possession of a controlled substance with intent to manufacture, sell, or deliver. The court denied the juvenile’s motion to suppress statements he made to the officers, but did not make findings or state reasons for doing so. The juvenile admitted one offense, retaining his right to appeal denial of the suppression motion. When accepting the admission the court touched on each of the requirements in G.S. 7B-2407(a), including asking the juvenile whether he had discussed with his lawyer the most serious disposition that could result, to which the juvenile said “yes.”

**Held:** Vacated in part, reversed in part, remanded.

1. The trial court erred by failing to make written or oral findings of fact or conclusions of law and failed to state a rationale before denying the suppression motion.
  - Although that conclusion probably could have been reached solely on the basis of the juvenile’s Fifth Amendment rights and the need for effective appellate review, the court held that the requirements in G.S. 15A-977(f) applied in the delinquency case and were violated.
  - In *In re D.L.H.* 364 N.C. 214 (2010), the state supreme court cautioned against assuming the applicability of criminal procedures to juvenile cases, and said, “Although this Court applied several criminal procedure protections in *In re Vinson*, a ... delinquency case, we reasoned in doing so that those protections were mandated by constitutional guarantees of due process”).
2. The court was required to inform the juvenile personally of the most restrictive possible disposition. Relying on a transcript of admission or on the juvenile’s consultation with his or her attorney is not sufficient.

*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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