

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

February 5, 2013

Delinquency; Abuse, Neglect, Dependency; Termination of Parental Rights

Delinquency

- Juvenile who made a statement to an officer at the scene of an automobile accident was not in custody.
- Evidence was insufficient to support two of three adjudications for motor vehicle offenses.

In re A.N.C., ___ N.C. App. ___, ___ S.E.2d ___ (Feb. 5, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi00ODItMS5wZGY>

Facts: An officer saw the juvenile and two others leaving the scene of an accident involving a car that crashed into a utility pole. The officer stopped the boys and after several minutes of conversation the juvenile, age 13, admitted that he had been driving the car, which belonged to his mother. The juvenile was adjudicated delinquent for unauthorized use of a motor vehicle, operating a motor vehicle without being properly licensed, and operating a motor vehicle in a reckless manner. He was placed on probation. On appeal the juvenile argued that his Miranda rights had been violated, that his statement to the officer was involuntary, and that the trial court erred by denying his motions to dismiss for lack of sufficient evidence.

Held: Affirmed in part; reversed in part; and remanded.

1. The court rejected the juvenile's arguments that he was in custody for purposes of G.S. 7B-2101 and *Miranda* and that his statement was involuntary. The fact that he was legally required to remain at the scene of an accident and provide identifying information did not mean that he was in custody or that his 5th Amendments rights were violated. There was no indication of coercive conduct by the officer.
2. The trial court erred by failing to dismiss two of the petitions for insufficient evidence, because there was no evidence
 - a. that his use of his mother's vehicle was unauthorized, or
 - b. that he was driving in a reckless manner.
3. There was sufficient evidence to support the adjudication for driving without a license.
4. Court remanded for any needed additional proceedings and entry of a new disposition order.

Life Sentence for Juveniles

State v. Lovette, ___ N.C. App. ___, ___ S.E.2d ___ (Feb. 5, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi03OTQtMS5wZGY>

Defendant was 17 when he committed the acts for which he was convicted, including the kidnapping and murder of Eve Carson in Chapel Hill. The court of appeals found no error in his trial, but remanded for a new sentencing hearing based on (1) the U.S. Supreme Court's holding in *Miller v. Alabama*, ___ U.S. ___, 183 L. Ed. 2d 407 (2012), that imposition of a mandatory life sentence, without possibility of parole, for a defendant who was under age 18 when he committed the offense violates the Eighth Amendment's prohibition on cruel and unusual punishment; and (2) G.S. 15A-1476 *et seq.*, which was enacted in response to *Miller*.

UCCJEA – Jurisdiction to Modify

- Parent who was not served in a neglect and dependency action had a right to appeal the adjudication and disposition orders.
- North Carolina did not have jurisdiction to modify a New York custody order when the court here did not make any of the findings required by G.S. 50A-203 and had not received a response from the New York court about its intentions.

In re E.J., ___ N.C. App. ___, ___ S.E.2d ___ (Feb. 5, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi02NzMtMS5wZGY>

Facts: Teenager was taken into custody when he and his father had a fight while driving back to Tennessee from a trip to North Carolina. DSS filed a petition alleging that the child was neglected and dependent. The mother, who lived in New Hampshire, told DSS she could not care for the child. At a nonsecure custody hearing the court learned of a protective services case in New York, and contacted the judge there. The court found that the N.Y. judge had not determined whether it should retain jurisdiction and would notify the N.C. court before the next hearing, but that did not happen. The father, but not the mother, was served. The court here proceeded to adjudication and disposition, finding the boy to be neglected and dependent. The court stated that it had jurisdiction, but made no reference to the N.Y. court or the action there. The mother appealed.

Held: Vacated and remanded.

1. The court of appeals rejected DSS’s argument that the mother lacked standing to appeal, since she had not been served in the action. G.S. 7B-1001 and -1002 provide when and by whom an appeal may be taken, and make clear that a parent may appeal an initial adjudication and disposition order.
2. The trial court did not have jurisdiction to enter the adjudication and disposition order. The court made none of the findings required by G.S. 50A-203 to conclude that it had jurisdiction to modify the New York order. Even if the court had found that no party still resided in New York, it failed to make the findings to support a conclusion that it would have jurisdiction to enter an initial child custody order. While the court had temporary emergency jurisdiction, its order should have provided that it was for a specific limited period of time.

Termination of Parental Rights

- Guardians had standing to file termination action without a change in the permanent plan.
- Evidence and findings supported the ground of willfully leaving child in care for a year without making reasonable progress.

In re D.C., ___ N.C. App. ___, ___ S.E.2d ___ (Feb. 5, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi04OTMtMS5wZGY>

Facts: The child was removed from the home in 2004, at age three, after he was severely injured by a dog at the home. He was adjudicated neglected and remained in DSS custody. In 2005 the plan was changed to adoption, but in 2007 it was changed to guardianship and the court named the foster parents as the child’s guardians. In 2011 respondent filed a motion for review and the child’s guardians filed a petition to terminate respondent’s parental rights. The court

consolidated the two for hearing, adjudicated three grounds for termination, denied respondent's motion, and terminated her rights.

Held: Affirmed.

The court of appeals reviewed only the ground of willfully leaving the child in care for more than a year without making reasonable progress to correct conditions that led to the child's removal.

1. The court rejected respondent's argument that the guardians could not file a termination action without the trial court's changing the permanent plan from guardianship to adoption. The court held that the Juvenile Code places no preliminary requirements on a guardian's filing a termination petition.
2. The court rejected respondent's argument that the dog had been killed and that the reason for the removal, therefore, no longer existed. The court characterized the reason for removal as the injurious environment, lack of proper care and supervision, and respondent's failure to appreciate what was a danger to the child's health and safety. For four years after the plan became guardianship respondent did not take the steps she knew she had to take in order to have visits with the child. She made the required appointment only after the termination petition was filed, and she filed no motion for review for a period of more than three years.

Custody Orders

Carpenter v. Carpenter, ___ N.C. App. ___, ___ S.E.2d ___ (Feb. 5, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi04MjAtMS5wZGY>

This case provides a helpful lesson in drafting good custody orders. While the trial court's order contained numerous findings, some were simply recitations of testimony and others did not resolve the issues raised by the pleadings. The order did not explicitly award "legal custody." In addition, the court of appeals suggested that "[g]iven the substantial communication difficulties and different parenting styles of the parties, on remand it may be advisable for the trial court to define its grant of legal and physical custody . . . more clearly, as failure to do so may increase the opportunities for discord between the parties."

Appellate court opinions: <http://www.aoc.state.nc.us/www/public/html/opinions.htm>.

Earlier case summaries: <http://www.sog.unc.edu/node/513>.

Other juvenile law resources: <http://www.sog.unc.edu/node/1689>.



Janet Mason

School of Government
The University of North Carolina at
Chapel Hill
Campus Box 3330, Knapp-Sanders
Building
Chapel Hill, NC 27599-3330
T: 919.966.4246 F: 919.962.2706
mason@sog.unc.edu