

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

June 4, 2013

*Neglect; Abuse; Termination of Parental Rights*

**Abuse Petition: Voluntary Dismissal by DSS**

- A Rule 60 motion was the proper way to challenge DSS's authority to take a voluntary dismissal.
- DSS may take a voluntary dismissal of its petition pursuant to G.S. 1A-1, Rule 41.

**In re E.H.**, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 4, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMy0yNzMtMS5wZGY>

**Facts:** DSS filed a petition alleging that the children had been sexually abused by the father. Before adjudication, DSS voluntarily dismissed the petition without prejudice. The children's GAL, asserting that DSS lacked authority to take a voluntary dismissal, asked the trial court to schedule an adjudication hearing. The trial court directed the GAL that filing a Rule 60 motion to set aside the dismissal was the proper way to raise the issue of DSS's authority to dismiss. The GAL filed a Rule 60 motion, which the trial court denied, and the GAL appealed.

**Held:** Affirmed.

1. Acknowledging inconsistencies in some other kinds of cases, the court of appeals held that in a juvenile proceeding a motion pursuant to Rule 60 was the appropriate way to raise the issue of whether DSS had authority to take a voluntary dismissal.
2. The order denying the Rule 60 motion was appealable under G.S. 7B-1001 because it both determined that the trial court lacked jurisdiction and determined the action and prevented any other judgment from which appeal could be taken.
3. G.S. 1A-1, Rule 41, applies in juvenile proceedings to permit DSS to take a voluntary dismissal of its petition.
  - a. Nothing in the Juvenile Code prohibits application of the rule and applying it is consistent with the purposes of the Code, with judicial efficiency, and with the responsibilities the Code gives to DSS.
  - b. Allowing DSS to take a voluntary dismissal does not thwart the duties of the GAL or leave the child unprotected, because the GAL's role and duties are contingent on the existence of a petition and there are numerous ways to protect children.
  - c. The legislature gave only DSS the authority to determine whether a petition should be filed, and requiring consent of the GAL or parent to dismiss a petition is contrary to the statutory scheme.
  - d. The GAL and parents cannot seek affirmative relief in a juvenile proceeding and thus cannot be viewed as being in the position of parties who have filed counterclaims for purposes of precluding a voluntary dismissal.

## **Neglect: Adjudication; Disposition; Indian Child Welfare Act**

- Broad requirements directed to parents did not exceed court's dispositional authority.
- Where a nonsecure custody order indicated that DSS would investigate whether the Indian Child Welfare Act applied, remand was required to determine the outcome of that investigation.

**In re A.R.**, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 4, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi0xNTU0LTEucGRm>

**Facts:** In a nonsecure custody order the court had noted the parents' claim that the children might be associated with an Indian tribe and found as a fact that DSS would undertake the necessary investigation in that regard. The children were adjudicated neglected based primarily on exposure to ongoing domestic violence and the parents' failure to seek medical care. One child was also adjudicated abused based on being hit by a board during a domestic violence incident. At disposition the court found that it was contrary to the children's best interest to remain in the home and ordered the parents to do a number of things relating to mental health assessment recommendations; taking prescribed medication; having a substance abuse evaluation; random drug screens; documenting any new residence and employment or income; maintaining contact with DSS; and following recommendations of the child medical evaluation. The parents appealed the adjudication and disposition orders.

**Held:** Affirmed in part and remanded in part.

1. The findings of fact that were not challenged on appeal were sufficient to support the conclusion that the children were neglected, based on exposure to domestic violence and failure to obtain medical care.
2. Conditions the trial court placed on the parents were reasonably related to the reasons the children came into care, and they did not exceed the scope of the court's dispositional authority.
3. The court of appeals determined that the trial court had at least cause to suspect that the children were Indian children for purposes of the Indian Child Welfare Act (ICWA) and, erring "on the side of caution" to avoid possible future delays, remanded for the trial court to determine the results of DSS's investigation of any applicable notification requirements under ICWA.

## **Neglect / Abuse: Adjudication and Disposition; Permanent Plan; Visitation**

- A party may waive the statutorily required notice of a permanency planning hearing by participating in the hearing without objecting to the lack of notice.
- An order providing for visitation must provide specific terms of a visitation plan.

**In re J.P.**, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 4, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMy0zNS0xLnBkZg>

**Facts:** The parties entered into a consent adjudication order, and the court ordered a temporary concurrent permanent plan of reunification or custody/guardianship and scheduled a subsequent disposition hearing. At that hearing the court ceased reunification efforts; ordered a permanent plan of custody or guardianship; and ordered that DSS offer the father supervised visitation every

other week and that visitation be reduced to once a month if the father missed visits without notice or acted inappropriately.

**Held:** Adjudication affirmed; disposition affirmed in part and reversed in part.

1. If it was error for the court to order a temporary permanent plan at adjudication, respondents showed no prejudice as a result and any error was corrected by the court's later order of a permanent plan.
2. Respondents could not complain of lack of notice that the disposition hearing would be a permanency planning hearing, when they attended and participated in the hearing without objecting to the lack of notice.
3. The trial court's findings were sufficient to support ceasing reunification efforts because the court related the findings to the conclusion that it would be contrary to the children's best interest to be returned to respondents.
4. The part of the order providing for visitation was insufficient. The court of appeals reviewed earlier cases addressing the need for more specificity about the time, location, and other details of a visitation plan and reversed that part of the order.

### **Neglect: Adjudication; Permanent Plan; Visitation**

- Statements made by the parties in court did not result in a "consent order."
- An order providing for visitation must provide specific terms of a visitation plan.

**In re L.G.I.**, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 4, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi0xMzY5LTEucGRm>

**Facts:** In court the parties did not dispute the adjudication of neglect based on the child's medical condition due to the mother's use of drugs during pregnancy. Medical records were introduced without objection and considered by the court. At disposition, the parties claimed that their "agreement" to the adjudication was contingent on DSS's continuing reunification efforts. The trial court rejected that position, stating that the adjudication was based on the evidence, not the parties' consent, and proceeded to disposition. The court ceased reunification efforts and scheduled a later permanency planning hearing, but encouraged the parents to continue to make efforts on their own. The court also ordered that any visitation be supervised by DSS in its discretion.

**Held:** Affirmed and remanded.

1. The record did not reflect that the adjudication order was a consent order or that it was contingent on a specific outcome at disposition. At most, the mother stipulated to certain facts.
2. Although the trial court stated verbally that adoption was the best permanent plan, the court did not order a permanent plan, but scheduled a hearing for later and encouraged the parents to take steps to comply with their case plan.
3. The part of the order providing for visitation was insufficient, and the court of appeals remanded for the trial court to provide a visitation schedule.

## Termination of Parental Rights: Neglect

- A parent's compliance with a case plan and cooperation with services does not preclude adjudication of the neglect ground for termination.
- Evidence was sufficient to support finding of the probability of a repetition of neglect if the children were returned home.

**In re D.A.H.-C.**, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 4, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi0xNTM3LTEucGRm>

**Facts:** The children were removed from the home and adjudicated neglected after another child in the home was seriously injured by respondent's husband. That child later died and the husband was convicted and sentenced and thus was out of the home. The children were returned to respondent on a trial basis and she and the children later resided with the father of one of the children. That man hit one of the children with a belt and the children revealed to DSS that he frequently physically punished them. Respondent did not intervene on their behalf and was herself the victim of domestic abuse. The children were again removed from the home and adjudicated to be neglected, and the trial court ordered that reunification efforts cease but that respondent continue to have visitation with the children. That order was affirmed by the court of appeals. Respondent had complied with her case plan, participated in services, visited the children regularly, and paid child support. DSS sought termination of parental rights and the court adjudicated the neglect ground and terminated respondent's rights.

**Held:** Affirmed.

1. Evidence was sufficient to support the finding of a substantial probability that the children would be neglected, if not abused, if returned to the mother's custody.
2. Although respondent had complied with the case plan, the court found no indication that doing so affected the likelihood that she would protect the children. The court pointed to evidence and findings about the "culture of violence" in which respondent had lived and her strong sense of duty to defer to a husband or partner.
3. Although the trial court's order quoted sections of the earlier appellate court decision in the case, the court of appeals held that it was clear that the trial court had made its own independent findings based on evidence in the record.

*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>.



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