

**RECENT NORTH CAROLINA APPELLATE COURT DECISIONS:  
ABUSE, NEGLECT, DEPENDENCY, TERMINATION OF PARENTAL RIGHTS**

by Janet Mason  
School of Government  
The University of North Carolina at Chapel Hill

**ABUSE, NEGLECT, DEPENDENCY**

- **Trial court could not enter nonsecure custody order when DSS had not sought one and no petition alleging abuse, neglect, or dependency had been filed.**

**In re K.C.G., \_\_\_ N.C. App. \_\_\_, 615 S.E.2d 76 (7/19/05).**

**Facts:** DSS began investigating a report of suspected neglect due to Munchausen's Syndrome by Proxy. When the child's mother would not permit the child to be evaluated by a child medical examiner and interfered with the social worker's attempts to interview the children, DSS filed a non-interference petition. The trial court entered an *ex parte* order requiring the mother to stop interfering with the investigation. The court continued the order and directed the mother to have the child ready for the father, who was separated from the mother, to take for the evaluation. The mother sought a hearing on the *ex parte* order, and after an "informal emergency hearing," the trial court entered an order giving the father temporary sole and exclusive custody of the child. The mother appealed.

**Holding:** Affirmed in part, reversed in part, remanded.

The court of appeals found no error in the entry of the *ex parte* non-interference order, but held that the trial court did not have jurisdiction to, in effect, give the father nonsecure custody when no petition alleging abuse, neglect, or dependency had been filed.

- **Failure to appoint guardian ad litem for mother when dependency and mental health issues were alleged was reversible error.**

**In re D.D.Y., \_\_\_ N.C. App. \_\_\_, 621 S.E.2d 15 (7/5/05).**

**Facts:** DSS filed a petition that (as amended) alleged that respondent's child was abused, neglected, and dependent and included allegations of respondent's mental illness. Respondent refused or waived counsel and represented herself. The court did not appoint a guardian ad litem for respondent; adjudicated the child abused, neglected, and dependent; placed custody and guardianship of the child with respondent's mother out of state; and denied respondent any communication or visitation rights with respect to the child.

**Holding:** Reversed and remanded.

The court of appeals considered only the issue of the trial court's failure to appoint a guardian ad litem for respondent and reversed on that basis, noting that the requirement is not limited to proceedings to terminate parental rights. Here, the court had taken notice of and made findings about respondent's mental illness and erred by not appointing a guardian ad litem for her *sua sponte*.

- **Failure to appoint guardian ad litem for mother when dependency and mental health issues were alleged was reversible error.**

**In re C.B., \_\_\_ N.C. App. \_\_\_, 614 S.E.2d 579 (7/5/05).**

**Facts:** DSS filed a petition alleging that respondent's child was neglected and dependent. Allegations in the petition included that respondent suffered from mental health issues, that she had been charged with various criminal offenses relating to inappropriate conduct with the child, and that she was unable to establish a safe home for the child because of her mental health issues. The trial court adjudicated the child neglected and dependent, placed custody with the child's father, and relieved DSS of reunification efforts with respondent.

**Holding:** Reversed and remanded.

The trial court's failure to appoint a guardian ad litem for respondent pursuant to G.S. 7B-602(b) was reversible error.

- Evidence was not sufficient to support trial court's findings with regard to one parent.
- Findings that were proper did not support conclusion that placing child in DSS custody was in the child's best interest.

**In re J.A.G., \_\_\_ N.C. App. \_\_\_, 617 S.E.2d 325 (8/16/05).**

**Facts:** The 3-month-old child suffered severe head injuries while alone with the father, while the mother was not at home. The father called the mother on her cell phone to tell her about the child's condition, and the mother immediately call for emergency assistance and returned home. DSS filed a petition and obtained nonsecure custody. The father later was criminally charged. The court adjudicated the child to be neglected and dependent "as it pertains to both parents," and abused "as it pertains to the father." Only the mother appealed.

**Holding:** Affirmed in part, reversed in part, and remanded.

1. The issue of whether the court should have dismissed the abuse allegation at the end of the petitioner's evidence was moot since the court did dismiss it at the end of all the evidence.
2. The court of appeals held that several of the trial court's findings of fact challenged by the mother were not supported by clear, cogent, and convincing evidence. These included findings (a) that the parents had not provided appropriate care to the child in the past, based on evidence that they had left the child on a sofa without putting cushions around her, when at the time the child was immobile and not able to roll over, and (b) that the parents were not willing to investigate other possible placement arrangements for the child, when the mother in fact had provided names of at least four relatives as possible placement resources.
3. The court of appeals held that "insofar as [the trial court's conclusion that the child was a neglected juvenile] reflects the trial court's determination that respondent neglected her child, it is not supported by the findings of fact." Evidence showed that the child was developing properly, had never missed medical appointments, and had not been injured previously. There was no evidence that the mother knew or should have known that the father would hurt the child.
4. The trial court did not err in adjudicating the child neglected, however, because other evidence established that the child did not receive proper care and supervision from his father and lived in an environment injurious to his health.
5. The trial court erred in adjudicating the child dependent, as evidence did not support findings that the mother was incapable of caring for the child.
6. In the disposition order the trial court abused its discretion by ordering that the child remain in the custody of DSS. At the time of the hearing the mother resided with her mother, not with the child's father, and was complying with the DSS family services case plan. There was no evidence to support a finding that placement in DSS custody was in the child's best interest. The trial court had jurisdiction to order that the father have no contact with the child, and there was no indication that the mother would not abide by such an order.

The court of appeals reversed the portion of the adjudication order that found that respondent mother neglected the child; reversed the adjudication of dependency; reversed the portion of the disposition that placed the child in DSS custody; otherwise affirmed the adjudication order; and remanded.

**Note:** One judge, in a concurring opinion, emphasized that

- a. *adjudications* relate to the circumstances and status of a child, not to the individual(s) who may have contributed to those circumstances, although the court inevitably must make *findings* about the conduct of those individuals, and those findings can be critical at the disposition stage;
- b. use of the term "as to" in relation to an adjudication does not accurately reflect the nature of the proceeding and should be avoided;
- c. the trial court continued to have jurisdiction based on the findings and conclusions that the court of appeals affirmed, and upon remand the trial court should conduct a new disposition hearing.

- Respondent could not lose his right to appeal due to petitioner's failure to serve the order before the time for giving notice of appeal had run.
- Failure to comply with Rules of Appellate Procedure precluded review.

**In re A.E., \_\_\_ N.C. App. \_\_\_, 615 S.E.2d 53 (7/19/05).**

**Facts:** The trial court adjudicated respondent's children to be neglected in that they lived in an injurious environment, based primarily on evidence that respondent was an untreated sex offender (having been convicted of taking indecent liberties with a 15-year-old minor) and that he refused to get sex offender

treatment. A doctor who did a sex offender assessment of respondent submitted a written report recommending that respondent have no unsupervised visitation with the children and no contact with post pubertal females. Testifying at the adjudication hearing, the doctor recommended that respondent have no contact with children at all. Respondent appealed and the guardian ad litem moved for dismissal of the appeal because notice of appeal was given more than ten days after entry of the order.

**Holding:** Affirmed (one judge dissenting).

1. Respondent established by uncontested affidavits that his notice of appeal was late because petitioner had served the order on respondent's attorney only after the time for giving notice of appeal had run. The court held that petitioner's actions could not deprive respondent of his right to appeal.
2. The court of appeals declined to review the case on the merits because
  - a. appellant made only one broadside assignment of error – that the court erred by finding the children neglected by clear, cogent and convincing evidence, and
  - b. appellant argued in his brief only that the doctor's opinion was not competent evidence, and because respondent had not objected to that evidence at trial, the issue was not properly before the court.

The dissent would have considered the sufficiency of the evidence and concluded that the record did not include clear, cogent, and convincing evidence that the children were neglected.

## REVIEWS AND PERMANENCY PLANNING

- **Trial court lacked subject matter jurisdiction when petition that initiated the case had not been verified.**

**In re T.R.P., \_\_\_ N.C. App. \_\_\_, 619 S.E.2d 525 (10/4/05).**

**Facts:** The child was removed from the home in which his mother and her boyfriend were found to be operating a meth lab. DSS filed a petition alleging that the child was neglected. The petition was signed and notarized, but it was not verified. The trial court adjudicated the child to be neglected and placed him in the custody of DSS. At a review hearing, the court continued custody with DSS but ordered that the child be placed physically with his father subject to specified conditions. The mother appealed the review order.

**Holding:** Vacated and dismissed. The trial court lacked subject matter jurisdiction because the petition that initiated the matter was not verified. The court of appeals relied on both the statutory language and prior decisions, such as *In re Triscari*, 109 N.C. App. 285, 426 S.E.2d 435 (1993), and the rule that subject matter jurisdiction may be raised at any time.

**Dissent:** One judge, dissenting, would have affirmed the trial court's order on the basis that the trial court clearly had "general jurisdiction" over the subject matter of the proceeding and that appellant had waived her right to challenge whether, in the prior stage of the case, proper steps were taken to "invoke" that jurisdiction. The dissenting opinion also points to practical concerns about the status of the case and the child and suggests that county social services departments might want to review all of their cases to determine whether there are children in their care in cases in which the original petition was not verified.

- **Court of appeals would not consider issues about a judge's retention of jurisdiction and allowing intervention by foster parents when there was no objection to either at trial.**
- **The priority for placement with a "suitable relative" applies at the review stage as well as at nonsecure custody and disposition hearings.**
- **A review hearing order must contain findings about all of the relevant factors set out in G.S. 7B-906.**

**In re L.L., \_\_\_ N.C. App. \_\_\_, 616 S.E.2d 392 (8/16/05).**

**Facts:** Child was removed from the home soon after birth, adjudicated neglected and dependent, and placed in DSS custody. The disposition order was entered in December 2002. The plan was reunification, and the child was placed in foster care while DSS sought an assessment of out-of-state relatives through the Interstate Compact on the Placement of Children (ICPC). The court orally granted an oral motion by the foster parents to intervene, without objection. The foster parents disagreed with the plan and on their own, in March 2003, filed a petition to terminate the parents' rights and a petition to adopt the child. Learning of this the following day DSS immediately removed the child and placed her in a different foster

home. A second review hearing was transferred to the judge who had presided in the case earlier, after it appeared on the juvenile court calendar in another judge's court. At this second review hearing in April, 2003, all parties except the foster parents stipulated to an order placing the child with the relatives. While continuing the plan of reunification, the trial court removed custody from DSS and placed custody with the foster parents. DSS and the parents filed notices of appeal and moved for a stay, which the trial court denied. The written order was not entered until nine months later, and DSS and the parents again filed notices of appeal.

**Holding:** The court of appeals reversed and remanded for a new review hearing.

1. Transfer of the case to the original judge was not reversible error because no party objected at the time. Although there is no legal authority for a judge to "retain jurisdiction" in a particular case, nothing prevents the parties from consenting to a particular judge's hearing a case.
2. The order allowing the foster parents to intervene was not subject to review because no one objected at the time. (Also, it wasn't clear that proper notice of appeal from that order was given.)
3. The order placing custody with the foster parents failed to make necessary findings about why the court was not placing custody with relatives. The court of appeals held that the review statute, G.S. 7B-906, by referring to the disposition statute, G.S. 7B-903, includes the requirement that the court give priority to placement with a suitable relative unless the court finds that placement with the relative would be contrary to the child's best interest, even though the review statute itself does not include this language about priority. The court reasoned, in part, that holding otherwise would conflict with the requirement that out-of-state placements comply with the ICPC, since cases often will be at the review stage before a home study on an out-of-state relative is available.
4. The trial court failed to make two of the findings required by G.S. 7B-906: (1) the appropriateness and goals of the foster care placement and (2) a new foster care placement that addresses the role the current foster parent will play in planning for the juvenile. The court of appeals rejected the foster parents' argument that they were not "foster parents" for purposes of this requirement.

**Note:** The court of appeals expressed concern that the animosity between DSS and the foster parents in this case had shifted the focus to those disagreements and away from the child's best interest.

- **Court did not err in ceasing reunification efforts even though mother had made some progress in correcting conditions that led to removal.**
- **Trial court made sufficient findings about mother's progress and did not focus exclusively or excessively on the children's best interest.**

**In re T.K., \_\_\_ N.C. App. \_\_\_, 613 S.E.2d 739 (6/21/05).**

**Facts:** Respondent's children came into foster care in May 2002, when the family was living in a motel room following an eviction. Problems leading to the children's placement included substance abuse, inadequate housing, employment issues, the children's irregular school attendance, failure to maintain one child's medication, and failure to provide counseling for another child. After a review hearing in October 2002 the court changed the plan for the older children to adoption, keeping the plan of reunification for the youngest child. After a permanency planning hearing in October 2003, the court found that reunification efforts would have been futile and inconsistent with the older children's welfare, granted guardianship of the three older children to an aunt, and continued the plan of reunification for the youngest child. Respondent mother appealed.

**Holding:** Affirmed (one judge dissenting).

1. The court of appeals held that the trial court adequately considered and made findings about the mother's progress in relation to substance abuse and other issues that led to the children's placement and did not err in concluding that her progress was not sufficient for the children to return to respondent's care.
2. The court of appeals also held that the trial court did not focus solely on the children's best interest and stated that "at this stage the best interests of the children, not the rights of the parents, are paramount."

**Dissent:** One judge dissented on the bases that

- (1) by ordering no visitation, the trial court effectively terminated respondent's rights with respect to the older children;
- (2) the trial court gave respondent an unreasonably short time to show progress;
- (3) the order did not state the "required clear, cogent, and convincing standard of proof;"

- (4) the trial court unlawfully delegated to a therapist the authority to determine respondent's visitation with the youngest child; and
- (5) the trial court erred in applying the "best interest" standard, because the order did not contain findings (a) that respondent was unfit or (b) that her conduct was inconsistent with her constitutionally protected parental status.

- **Order granting guardianship was supported by trial court's findings, which were supported by the evidence.**

**In re C.E.L., \_\_\_ N.C. App. \_\_\_, 615 S.E.2d 427 (7/19/05).**

**Facts:** The child's mother was deceased and her father did not participate in the proceeding. DSS removed the child (and respondent's own child) from the home of an aunt in January 2002, after finding the home in disarray and dangerous due to presence of guns, methamphetamines, and related drug paraphernalia. Respondent was taking numerous prescription drugs, including methadone, and was applying for disability benefits based on a herniated disk. In a review hearing order entered in October 2002, the trial court continued its order that respondent comply with a case plan that included attending parenting classes, submit to drug and/or alcohol assessments, and submit to random drug screens. In the same order the court stated that it "deferred" to an ongoing child custody action with respect to a determination of the child's best interest. In a permanency planning order entered in March 2004 the court made findings that respondent had complied with parts of the case plan, but had not made reasonable progress in correcting conditions in the home that led to the child's removal and had failed to submit to most of the requested drug screens in a timely manner. The court also found the child could not be returned to respondent within the next six months and that it was in the child's best interest to remain placed with another relative and to name that relative as her guardian. Respondent appealed from the order granting custody and guardianship to the other relative.

**Holding:** Affirmed. The court of appeals reviewed the trial court's findings of fact and the evidence on which they were based, and held that both were sufficient to support the trial court's order.

**Standard for terminating guardianship.**

**In re J.D.C., \_\_\_ N.C. App. \_\_\_, 620 S.E.2d 49 (10/18/05).**

**Facts:** In June 1999 the court adjudicated the child neglected and placed him in DSS custody, with physical placement with grandparents. The court ordered respondent to complete certain services to facilitate reunification. At a review hearing in September, 1999, the court gave the grandparents legal guardianship and custody of the child. The court repeated that order at various review hearings, and in May 2000 ordered that there be no further reviews. Two years later respondent filed a motion for review asking that the child be returned to her. After hearing arguments, the trial court ruled that the burden was on respondent to prove under G.S. 7B-600(b) that (1) the relationship between the child and the guardians was no longer in the child's best interest; (2) the guardians were unwilling, unable, or unfit to continue; or (3) the guardians had neglected their duties as guardians. After hearing evidence, the trial court ruled that respondent had not met that burden and denied her motion.

**Holding:** Reversed.

The court of appeals held that the trial court applied the wrong standard. G.S. 7B-600(b) applies only if the court has made findings pursuant to G.S. 7B-907 that the guardianship is in the child's best interest and *that guardianship is the permanent plan for the child*. After reviewing the record in this case the court of appeals found that

1. there had never been a permanency planning hearing,
2. the trial court had never found that reunification efforts should cease,
3. each order continued to specify steps respondent should take, and
4. the trial court had never made a finding that the permanent plan for the child was guardianship.

The court of appeals rejected DSS's argument that the trial court should have applied the version of G.S. 7B-600 that was in effect when the child was first adjudicated and that did not include current subsection (b). The court of appeals found that the change was procedural and that not applying the change to cases that were pending when it was enacted would be contrary to the purposes of the Juvenile Code.

*Also see In re E.C., \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (11/15/05)* (court erred in ordering visitation "in the discretion of the guardian.").

## TERMINATION OF PARENTAL RIGHTS

- **Trial court lacked personal and subject matter jurisdiction when respondent was served with summons that had expired and made no appearance in the proceeding.**

**In re A.B.D., \_\_\_ N.C. App. \_\_\_, 617 S.E.2d 707 (9/6/05).**

**Gorsuch v. Dees, \_\_\_ N.C. App. \_\_\_, 618 S.E.2d 747 (9/6/05).**

**Facts:** In private termination action respondent father was served both personally and by mail with the petition and a summons that had expired. (At the time, service within 30 days of issuance was required.) Petitioner mother did not get an extension of time for service, an endorsement on the summons, or an alias or pluries summons. Respondent did not appear personally or through counsel, and the court terminated his rights. Respondent did not appeal. Later respondent filed an action for custody and support, and he and petitioner entered into a consent order giving him visitation rights and providing for him to pay support. Respondent then filed an action to legitimate the child and the clerk entered an order of legitimation. The clerk, and then the superior court, granted petitioner's motion under Rule 60 to set aside the legitimation order on the basis that respondent's parental rights had been terminated. Respondent then filed a motion to set aside the order terminating his parental rights, and the trial court denied the motion. Respondent appealed both that order and the order setting aside the legitimation order.

### **Holdings:**

1. In *A.B.D.*, the court of appeals reversed the order that denied respondent's Rule 60 motion to set aside the termination order, holding that the termination order was void because
  - a. The trial court lacked personal jurisdiction because respondent was not served properly and did not voluntarily submit to the court's jurisdiction.
  - b. The trial court lacked subject matter jurisdiction because, when petitioner took no action to revive the summons within 90 days after its issuance, the action was discontinued and it was as if the action had never been filed. Therefore, there was no proper action within which the court could terminate respondent's rights.
2. In *Gorsuch*, the court of appeals affirmed the order setting aside the legitimation order, holding that a parent whose rights to a child have been terminated does not have standing to petition for legitimation of that child. In a footnote, the court of appeals stated that it addressed the issue because it was "a novel issue of law," even though, in light of its other decision holding that the termination order was void, "the issue on appeal here would appear to be moot."

- **Service pursuant to Rule 5 was proper when motion was filed within two years after filing of most recent neglect petition.**
- **Findings supporting the conclusion that incarcerated parent neglected the child were supported by clear, cogent, and convincing evidence.**

**In re P.L.P., \_\_\_ N.C. App. \_\_\_, 618 S.E.2d 241 (9/6/05).**

**Facts:** Respondents' child was adjudicated neglected in 1999. After mother successfully completed parenting classes, domestic violence counseling, and drug treatment, the court returned custody to her, relieved DSS and the GAL of responsibilities, and ordered that the file was "closed." Father was in jail when the petition was filed, and later he was convicted of attempted first degree murder and sentenced to 14 to 18 years on prison. In 2002 DSS filed a new petition after the mother left the child for long periods and relapsed into substance abuse. The child was adjudicated neglected again, was placed in DSS custody, and after several review hearings was placed in the guardianship of a relative. In 2003 DSS filed a third petition alleging neglect based on domestic violence in the guardian's home and the guardian's alcohol abuse. The court adjudicated the child neglected, placed her in DSS custody, and changed the permanent plan to adoption. In 2003 DSS filed a motion to terminate the parents' rights and served the parents pursuant to Rule 5. The court terminated both parents' rights on grounds of neglect and willfully leaving the child in care, and with respect to the mother also on grounds of abandonment and failure to pay support.

**Holdings:** Affirmed. (One judge dissenting in part.)

1. Service pursuant to Rule 5 was proper since less than two years had passed since the filing of the 2002 (second) petition. The court had terminated its jurisdiction in the case that was initiated in 1999.
2. Because respondent mother abandoned her assignments of error with respect to two grounds for termination, the court of appeals did not consider her argument that evidence of other grounds was not clear, cogent, and convincing.
3. The court of appeals reviewed the evidence and findings regarding the trial court's conclusion that respondent father had neglected the child and held that the findings were supported by clear, cogent, and convincing evidence and were sufficient to support the trial court's conclusion that the ground existed. The evidence related to not only his incarceration – past, present, and future – but also his lack of involvement with the child, failure to provide and support nurturing for the child, failure to write to her, and the likelihood that he would continue to neglect the child if custody were placed with him.

- **Failure to appoint guardian ad litem for respondent was error even though the “incapacity” ground for termination was not alleged.**

**In re T.W., \_\_\_ N.C. App. \_\_\_, 617 S.E.2d 702 (9/6/05).**

**Facts:** Respondent's children were adjudicated neglected in 2001. Respondent had made a motion seeking appointment of a guardian ad litem. The trial court deferred ruling on the motion until respondent had received a psychological evaluation, but never took the motion up again or ruled on it. The evaluation report, which was introduced as evidence, indicated that respondent suffered from “Bipolar Affective Disorder, Mixed, Severe, with Possible Psychoactive Behavior,” and that she required continued, daily support or guardianship, especially with regard to decision-making about any children in her care. After several review hearings, in 2002 DSS filed a motion for termination. Neither the motion nor the trial court's order terminating her rights referred to G.S. 7B-1111(a)(6), the incapacity ground.

**Holdings:** Reversed and remanded.

Failure to appoint a guardian ad litem for respondent was reversible error where the court's orders throughout the case included findings about respondent's mental illness and resulting inability to care for the children, as well as the court's awareness of her severe limitations.

- **Failure to appoint guardian ad litem for respondent was not error even though some evidence related to mental health and substance abuse issues.**

**In re As.L.G., \_\_\_ N.C. App. \_\_\_, 619 S.E.2d 561 (10/4/05).**

**Facts:** Children were adjudicated neglected at a hearing on 6/3/02, although the order was not “entered” until 9/16/03. At a permanency planning hearing on 2/10/03 the court ordered that the plan be adoption and that DSS file a termination petition within 60 days. That order was entered on 2/21/03. At a review hearing on 8/18/03 the court again ordered DSS to file a termination petition, within ten days after the order was entered, which was on 9/5/03. DSS filed a termination petition on 9/29/03. The trial court terminated respondent's rights on grounds of neglect and willfully leaving the children in foster care for more than a year without making reasonable progress. Some of the evidence and findings related to respondent's failure to follow through with counseling and drug treatment.

**Holding:** Affirmed.

Failure to appoint a guardian ad litem for respondent was not error. The court of appeals found that “sparse references to [respondent's] need for counseling and drug treatment [did not] rise to the level of being so intertwined with the neglect of her children as to be virtually inseparable.”

- **Sixth Amendment does not bar evidence of out-of-court testimonial statements.**
- **Denial of motion for funds for expert witness and telephone deposition was not abuse of discretion.**

**In re D.R., \_\_\_ N.C. \_\_\_, 616 S.E.2d 300 (8/2/05).**

**Facts:** Beginning in 2000 DSS became involved with family around issues of inappropriate discipline of four-year-old child, domestic violence, substance abuse, and unstable living arrangements. In 2002 the child was placed with his paternal grandmother, but she could not cope with his aggression and serious mental health problems. DSS took custody and placed the child in foster care. The trial court adjudicated the child to be neglected, placed him in DSS custody, and ordered respondent parents to have psychological evaluations and treatment; complete anger management, substance abuse, and parenting

classes; maintain employment and pay child support; and receive weekly visitation with the child. After the child exhibited inappropriate sexual conduct and knowledge and talked about events in his parents' home, DSS filed another petition alleging abuse but later voluntarily dismissed it. In January 2003 the parents were charged criminally with multiple counts of first-degree sexual offense. The court changed the permanent plan from reunification to adoption in August 2003 and reviewed and renewed the plan in September and November 2003. In September 2003, DSS filed petitions to terminate the parents' rights on grounds of abuse, neglect, and willfully leaving the child in care without making reasonable progress. An order terminating both parents' rights was entered in January 2004. Both parents appealed.

**Holdings:** Affirmed.

1. Trial court's admission of testimony from social workers, foster parent, and psychologists about child's statements did not violate respondents' Sixth Amendment right to confront witnesses, because Sixth Amendment does not apply in civil actions. The court makes reference to the holding in *Crawford v. Washington*, 541 U.S. 36, 158 L.Ed.2d 177 (2004) that out-of-court testimonial statements are barred by the Sixth Amendment unless the declarant is unavailable and the defendant had a prior opportunity to cross-examine the declarant. The respondent apparently did not raise a due process issue and the court did not address whether testimony that would be barred under *Crawford* violates due process.
2. The trial court did not abuse its discretion in denying respondent's motions for funds to employ an expert witness and complete a telephone deposition. Respondent failed to show a reasonable likelihood that either would assist substantially in his trial preparation or that they were necessary for a fair trial.

- **GAL could waive proper service.**
- **Excluding parent from courtroom does not necessarily violate due process and requires balancing analysis.**
- **At adjudication hearing, court may admit prior disposition orders into evidence.**
- **Trial court may ask prevailing party to draft order on its behalf.**

**In re J.B., \_\_\_ N.C. App. \_\_\_, 616 S.E.2d 264 (8/2/05).**

**Facts:** The trial court terminated respondent's rights on the grounds of (i) neglect, (ii) willfully leaving the child in care for more than 12 months, and (iii) incapability of caring for the child. Respondent appealed and the court of appeals considered 13 assignments of error described below.

**Holding:** Affirmed.

1. Service on child. Even if service on the child was improper, that did not affect the court's personal jurisdiction over respondent, who was not an "aggrieved party" with respect to any problem with service on the child. The child's guardian ad litem did not object to service on the attorney advocate at trial or on appeal.
2. Subject matter jurisdiction. Trial court did not err in entering termination order while a previous order in the case was on appeal. The court did not abuse its discretion in denying respondent's motion to stay the termination proceeding, and the decision in *In re R.T.W.* (see below) made clear that the trial court had jurisdiction to proceed.
3. Continuances. Trial court did not abuse its discretion in denying respondent's motion for a third continuance.
4. Expenses. Trial court did not abuse its discretion in denying respondent's motion for expert witness expenses when respondent did not show how appointment of a new mental health provider would materially assist her in the case, the court stated that it would consider bills relating to a telephone deposition and records of respondent's prior therapist, and respondent failed to submit any such bills.
5. Motion to interview child. Given the record in the case, including respondent's earlier abduction of the child and attempts to learn his location, the trial court did not err in denying respondent's motion to interview the child. The court had authority under G.S. 1A-1, Rule 26(b)(1) to limit discovery.
6. Prior disposition orders. Trial court did not err by admitting into evidence prior orders in the case that were based on a lower standard of proof. The court has held before that "[a] trial court may take judicial notice of earlier proceedings in the same cause," and respondent showed no exception to that rule. In addition, the trial court is assumed to disregard any incompetent evidence, and in this case it was clear that the court made an independent determination.

7. Mental health records. Trial court did not err by considering respondent's mental health records that the court had ordered disclosed in an earlier stage of the case and that were contained in the underlying file.
8. Expert witness testimony. Respondent waived her right to object to expert witnesses' testimony when she failed to object to any of the testimony at trial.
9. Exclusion from courtroom. Trial court's exclusion of respondent from the courtroom during the child's testimony did not violate due process. The court had heard testimony about the effect on the child of testifying in his mother's presence; respondent was in an adjacent room with a television monitor and could communicate with her attorney by telephone; respondent's guardian ad litem was with her; and the child was told that his mother was in another room and could hear him.
10. Disposition hearing. Trial court did not err by admitting some evidence "for disposition purposes" during the adjudication hearing, and respondent was not denied an opportunity to present evidence and make arguments for disposition.
11. Best interest. Trial court did not err by failing to make specific oral findings with respect to disposition.
12. Drafting order. Nothing prevents the trial court from directing the prevailing party to draft an order on the court's behalf. The order is not entered until signed by the judge and filed by the clerk.
13. Timely entry of order. Although termination order was entered more than three months after the hearing, respondent failed to demonstrate prejudice sufficient to require reversal.

- **Trial court had jurisdiction to terminate parental rights during pendency of appeal of an earlier order in the same case.**

**In re R.T.W., 359 N.C. 539, 614 S.E.2d 489 (7/1/05).**

**Note: The court's holding in this case applies only to cases filed before 10/01/05.**

**Facts:**

- |          |  |
|----------|--|
| 10/4/01  | Order was entered adjudicating 15-year-old respondent's child, R.T.W., dependent and placing him in DSS custody.   |
| 11/1/01  | A review hearing order left custody with DSS and ordered that reunification efforts cease, that all visitation cease, and that the permanent plan be changed to adoption. Respondent appealed this order.  |
| 12/20/01 | DSS filed a motion for termination of respondent's rights.   |
| 1/29/03  | While appeal of the review order was pending, the trial court entered an order terminating respondent's rights. Respondent also appealed this order.   |
| 5/20/03  | In an unpublished opinion, the court of appeals remanded the review order for additional findings.   |
| 7/25/03  | The trial court entered a review order making additional findings. (The trial court also expressed its view that the matter was moot given the termination order.)   |
| 7/6/04   | In an unpublished opinion, the court of appeals vacated the order terminating respondent's rights, holding that the trial court lacked jurisdiction to terminate respondent's rights while the appeal of the review order was pending. The court relied on the reasoning of <i>In re Hopkins</i> , 163 N.C. App. 38, 592 S.E.2d 22 (2004) – interpreting the language in G.S. 7B-1003, which authorizes a court to enter "temporary orders" affecting custody during an appeal, to limit the trial court's authority during appeals to entry of such temporary orders. The court of appeals mentioned but refused to follow <i>In re Stratton</i> , 159 N.C. App. 461, 583 S.E.2d 323 (2003), which had held that entry of a termination order rendered the appeal of an earlier order in the case moot. |

The Supreme Court granted DSS's petition for discretionary review to resolve the conflicting opinions in the court of appeals.

**Holding:** Reversed and remanded.

"[A] trial court retains jurisdiction to enter an order terminating parental rights while a custody order in the same case is pending appellate review." The Supreme Court affirmed *Stratton* and specifically overruled *Hopkins* and *J.C.S.*, 164 N.C. App. 96, 595 S.E.2d 155 (2004), which had followed *Hopkins*. The court reviewed subchapter I of the Juvenile Code to discern legislative intent, and put some emphasis on the addition to the purpose statement in 2003 of the following:

To provide standards, consistent with the Adoption and Safe Families Act of 1997, P.L. 105-89, for ensuring that the best interests of the juvenile are of paramount consideration by the court and that when it is not in the juvenile's best

interest to be returned home, the juvenile will be placed in a safe, permanent home within a reasonable amount of time. G.S. 7B-101(5).

The Supreme Court held that the court of appeals in *Hopkins* had misinterpreted G.S. 7B-1003. That section, the court said, represents an exception to the general rule that the trial court loses jurisdiction to act while a case is on appeal. It does not address termination proceedings, which have separate purpose, jurisdiction, and procedural provisions under Article 11. The approach taken in *Hopkins*, the court said, would render meaningless the Juvenile Code's time limits and emphasis on achieving permanence within a reasonable time.

- **Failure to appoint GAL for child until four days into the hearing was reversible error.**

**In re R.A.H., \_\_\_ N.C. App. \_\_\_, 614 S.E.2d 382 (7/5/05).**

**Facts:** On 6/10/99 the court adjudicated respondent's child to be neglected. On 3/9/00 the plan was changed to adoption. On 8/23/02 the court terminated respondent's rights on grounds of neglect and willfully leaving the child in foster care. No guardian ad litem was appointed for the child initially in the termination proceeding, but an attorney advocate for the child was appointed before the hearing. The attorney advocate was present throughout the hearings in the case, and after three and a half days of testimony the court appointed the attorney advocate as the child's guardian ad litem. Respondent appealed the termination order, arguing in part that the trial court erred by not timely appointing a GAL for the child.

**Holding:** Reversed and remanded. The court of appeals reviewed the statutory duties of guardians ad litem and attorney advocates and concluded that they were different and distinct. Because the child was without a guardian ad litem during critical stages of the proceeding, the court said that prejudice must be presumed. The court expressed doubt as to whether a guardian ad litem had been appointed in the underlying neglect proceeding and seemed to say that an allegation of neglect as a ground for termination triggers a duty to appoint a guardian ad litem for the child.

- **Respondent was not entitled to a GAL in a termination proceeding when the petition did not allege that she was incapable of caring for her children.**
- **Failure to appoint a GAL for the parent in an underlying dependency case did not affect a subsequent termination action.**

**In re O.C., \_\_\_ N.C. App. \_\_\_, 615 S.E.2d 391 (7/19/05).**

**Facts:** Respondent's children came into DSS custody in November 2001, and in January 2002 they were adjudicated dependent pursuant to a mediated agreement, due largely to respondent's substance abuse problem and domestic violence issues. A motion for termination of parental rights filed in December 2002 alleged three grounds – (1) neglect, (2) willfully leaving the children in care without making reasonable progress, and (3) failure to pay support. Evidence showed that respondent had made repeated, but ultimately unsuccessful, efforts to participate in programs to address her substance abuse problems. She visited the children, but showed no interest in their medical problems. She did not comply with parts of the case plan related to employment, education, and paying support. Respondent asked the court to place the children with relatives that DSS had found unsuitable and to give her more time to deal with her substance abuse issues. The trial court concluded that all three grounds existed and terminated respondent's rights.

**Holding:** Affirmed.

The court of appeals rejected respondent's argument that the trial court's failure to appoint a GAL for her in the termination proceeding was reversible error. The court held that evidence that respondent struggled with a substance abuse problem, by itself, did not require appointment of a GAL when the petition did not allege dependency and did not allege that respondent was unable to care for her children.

The court of appeals also rejected respondent's argument that the court's failure to appoint a GAL for her in the initial proceeding required that the termination order be reversed. The court noted that only the termination order was before it and that errors that might have occurred years earlier were not relevant to the present proceeding. The court also described the legal quagmire that would result if a termination order could be reversed on that basis.

The court of appeals found that the evidence and findings were sufficient to support termination on the basis of willfully leaving the child in care without making substantial progress, and affirmed the trial court's order on that basis.

- **Evidence was sufficient to establish ground of willfully leaving child in foster care without making reasonable progress.**

**In re D.M., \_\_\_ N.C. App. \_\_\_, 615 S.E.2d 669 (7/5/05).**

**Facts:** The child was adjudicated dependent and neglected based on domestic violence, both parties' violation of protective orders, lack of proper care and supervision, and lack of proper medical care. Respondent submitted to paternity testing and entered into a case plan with DSS providing that he would participate in a NOVA domestic violence program, attend parenting classes, attend visits, pay child support, and avoid contact with the child's mother and her other children. Respondent eventually was terminated from the NOVA program due to his level of anger and violation of program rules. He obtained some private counseling. When the child had been in care a little over a year, DSS filed a petition to terminate parental rights, and the trial court terminated respondent's rights on the ground that he had willfully left the child in care for more than a year without making progress satisfactory to the court. Respondent appealed.

**Holding:** Affirmed. (One judge dissenting.)

The court of appeals rejected respondent's argument that there was not clear, cogent, and convincing evidence to support a ground for termination. The court said that domestic violence counseling was the focal point of the case plan, that he failed to complete the NOVA program, and that there was no evidence that the private counseling he obtained even related primarily to domestic violence.

**Dissent:** One judge reviewed the respects in which respondent had complied with the case plan and would have held that the trial court's order was not based on clear, cogent, and convincing evidence.

#### **Termination of Parental Rights: Evidence and findings insufficient to support neglect and nonsupport grounds.**

**In re D.M.W., \_\_\_ N.C. App. \_\_\_, 619 S.E.2d 910 (10/18/05).**

**Facts:** When respondent was incarcerated in early June 2003, she placed the child with the child's grandmother, who then placed the child with respondent's sister. In early July 2003 DSS obtained custody and filed a petition when the sister contacted DSS to say that respondent had not come for the child on her expected release date and that she, the sister, could no longer care for the child. On August 11, DSS located respondent, who was in jail, and respondent entered into a case plan that addressed substance abuse, domestic violence, parenting skills, housing, and employment issues. At the adjudication hearing on August 13, 2003, respondent stipulated to the facts alleged in the petition, and the court adjudicated the child to be neglected and dependent ["as to respondent"]. At disposition, the court adopted the case plan. Respondent was released on August 22, and met with the social worker three days later. Respondent began but did not complete substance abuse treatment and refused to obtain domestic violence counseling. She was incarcerated at least six times while DSS had custody of the child and never visited the child between periods of incarceration. While incarcerated she attended some domestic violence and parenting classes and completed a drug treatment program. DSS filed a termination petition in February 2004, and on August 24, 2004, the court entered an order terminating her rights on the grounds of neglect and failure to pay a reasonable portion of the cost of the child's care. At the time of the termination hearing, respondent was incarcerated, but expected to be released in a few weeks and live with her mother.

**Holding:** Reversed.

The court of appeals held that neither ground was supported by sufficient findings supported by clear, cogent, and convincing evidence.

Neglect ground. With respect to neglect, the court noted that while incarcerated respondent had complied with substantial parts of the case plan and that there was no requirement that she do so through the specific resources to which DSS had referred her. She had started working in the kitchen and had completed some course work toward getting her GED. There was not, the court of appeals said, clear and convincing evidence to support the trial court's finding of a probability of a repetition of neglect if the child were returned to respondent.

Nonsupport ground. With respect to failure to pay a reasonable portion of the cost of the child's care, the court of appeals found that there was not evidence and there were no findings about respondent's resources and ability to pay. She testified that she had just gotten the kitchen job, and without some evidence and appropriate findings, the trial court could not conclude that respondent was able to pay some amount greater than zero.

**Dissent:** One judge dissented and would have affirmed termination based on the neglect ground. The dissent pointed to respondent's failure to maintain contact with DSS or provide DSS with any information about the steps she had taken while incarcerated. In addition the dissent notes that she presented no evidence relating to the goals of the case plan, as opposed to the actions it required, and no evidence about the effectiveness of the programs she attended.

- **Evidence was sufficient to support conclusion that two grounds for termination existed.**

**In re J.W., \_\_\_ N.C. App. \_\_\_, 619 S.E.2d 534 (10/4/05).**

**Facts:** After respondent mother took the children to the hospital in December 2000, they were removed from her home and adjudicated neglected based on one child's failure to thrive, presence of dangerous implements in the home, and unsanitary conditions in the home. The court placed both children in DSS custody, but approved the placement of one child with respondent. At a review hearing in August, 2001, the court approved the return of the other child to the home. In January 2002 (the opinion says 2001, which seems to be a mistake), both children were removed pending a review, based on a social worker's having found unsanitary conditions in the home. At a hearing in February 2002 the court ordered that the children remain in foster care, after finding that respondent had digressed in compliance with the case plan, failed to keep a safe home, and showed "an apparent lack of concern for the children." The court ordered a concurrent plan of reunification and placement with a relative and ordered respondent to comply with a list of twelve items relating to parenting classes, homemaker services, budgeting classes, counseling and treatment, employment, obtaining a telephone, attending medical appointments with the children, maintaining a clean and appropriate home, maintaining a stable residence, and signing releases to allow DSS and the GAL to talk with service providers. At a permanency planning hearing in July 2002, the court found that respondent had not complied fully, ordered that reunification efforts and visitation cease, and directed DSS to pursue guardianship with a relative. After a relative home study was unfavorable, the court changed the plan to adoption in August 2003. A termination petition was filed in September 2003, and after hearings in February 2004, the court found that the grounds of neglect and willfully leaving the children in care had been established and terminated respondent's rights.

**Holding:** Affirmed. (One judge dissenting.)

1. The trial court did not err in sustaining an objection to respondent's cross-examination of a social worker about the condition of her home the day after the first visit to the home by DSS and even if it had been error, it was not prejudicial.
2. It was not error for the trial court to admit and consider prior orders in the case, including review and permanency planning orders. The court may take judicial notice of such records, and the court is presumed to have disregarded any incompetent evidence contained in them.
3. The primary issue in the case was whether clear, cogent, and convincing evidence supported the findings of fact and whether the findings of fact supported the conclusions of law. Both the majority opinion and the dissenting opinions review the record, the findings, and the conclusions at some length, and they reach opposite conclusions.

- **Child's death did not render appeal of termination order moot.**
- **Evidence and findings were not sufficient to establish neglect or that respondent "willfully" left the children in care.**

**In re C.C., \_\_\_ N.C. App. \_\_\_, 618 S.E.2d 813 (9/20/05).**

**Facts:** In May of 2000 respondent agreed to a case plan with DSS addressing supervision of her children, her mental health issues, and conditions in the home. A year later DSS filed a petition alleging inadequate supervision, the children's poor school attendance, and an unkempt and unsanitary home. In July 2001 the children were adjudicated neglected and placed in the custody of DSS, which worked with respondent toward reunification with the children. An expanded case plan addressed respondent's getting a job or income, contacting the children's therapist, attending therapy, participating in Family Preservation Services and in-home education services, paying her bills in a timely way, and maintaining housing. Respondent had several short-term jobs and in early 2004 began receiving SSI for disability (sleep apnea, back pain, and depression). Respondent complied with parts of the case plan but not others. After 2003 she attended all of her therapy sessions and showed progress. She maintained stable housing, completed family education sessions and, on her own, parenting classes. In June DSS recommended that the plan for the children change to adoption, and in October 2003 DSS filed petitions to terminate

respondent's rights, alleging neglect and willfully leaving the children in foster care for more than a year . . . After hearings in March and April 2004, the court entered an order terminating respondent's rights in June 2004. Respondent gave notice of appeal, and one of the children killed himself a short time after that.

**Holding:** Reversed.

1. The appeal with respect to the deceased child was not moot, because (a) respondent still had rights (such as inheritance rights) with respect to the child and (b) termination of her rights could form the basis for a ground for termination in a subsequent proceeding.
2. The evidence and findings were insufficient to establish neglect. No evidence supported a finding that respondent was not able to care for her children at the time of the hearing, and there was no evidence or findings as to a probability of a repetition of neglect if the children were returned to respondent. The prior adjudication of neglect was not sufficient to establish the ground.
3. Although the children had been in care for more than a year, the evidence and findings were insufficient to establish that respondent willfully left the children in care without making reasonable progress.

- **The record supported multiple grounds for terminating respondent's rights.**

**In re D.J.D., \_\_\_ N.C. App. \_\_\_, 615 S.E.2d 26 (7/5/05).**

**Facts:** The trial court terminated the rights of respondent, who was incarcerated, on grounds of abandonment, prior termination and inability to establish a safe home, neglect, and dependency. Respondent had had no contact with the children for five years and made no effort to contact them, arrange visits, or even inquire about them during his incarceration. [After suffering a stroke, the children's mother had agreed to relinquish the children for adoption.]

**Holding:** Affirmed.

1. The court of appeals reviewed the evidence and the trial court's findings and concluded that there was "ample evidence on multiple grounds" to terminate respondent's rights.
2. Respondent argued that the petition was not properly verified. However, the verification had been omitted inadvertently from the record, the court had allowed petitioner to amend the record to include it, and the problem had been cured.

#### **STATUTORY TIME LIMITS**

(Many of these cases are discussed above in relation to other issues.)

- **Entry of order nine months after review hearing was prejudicial and required reversal.**

**In re L.L., \_\_\_ N.C. App. \_\_\_, 616 S.E.2d 392 (8/16/05).**

**Facts:** Child was removed from the home soon after birth, adjudicated neglected and dependent, and placed in DSS custody. The disposition order was entered in December 2002. The plan was reunification, and the child was placed in foster care while DSS sought an assessment of out-of-state relatives through the Interstate Compact on the Placement of Children (ICPC). The court orally granted an oral motion by the foster parents to intervene, without objection. At a second review hearing in April, 2003, all parties except the foster parents stipulated to an order placing the child with the relatives. While continuing the plan of reunification, the trial court removed custody from DSS and placed custody with the foster parents. DSS and the parents filed notices of appeal and made a motion for a stay, which was denied. The written order was not entered until nine months later, and DSS and the parents again filed notices of appeal.

**Holding:** The court of appeals reversed and remanded for a new review hearing, holding that the eight month delay in entry of the review hearing order was prejudicial in that:

1. It substantially delayed the parties' right to appeal.
2. The delay frustrated the plan of reunification. The foster parents did not agree with the plan and were not ordered to cooperate in its implementation.
3. The parties were left in limbo with respect to what should be happening.
4. During the passage of that length of time, the child inevitably became more attached to the foster parents, and the effect on the child of reunification or relative placement may have been altered significantly.

- **Delay in holding termination hearing was not prejudicial.**

**In re D.J.D., \_\_\_ N.C. App. \_\_\_, 615 S.E.2d 26 (7/5/05).**

**Facts:** DSS filed a petition to terminate respondent's rights on 5/1/03 and after several continuances the hearing was held on 11/17/03. The trial court terminated the rights of respondent, who was incarcerated, on grounds of abandonment, prior termination and inability to establish a safe home, neglect, and dependency. Respondent had had no contact with the children for five years and made no effort to contact them, arrange visits, or even inquire about them during his incarceration.

**Holding:** Affirmed.

The court of appeals rejected respondent's argument that holding the hearing more than 90 days after the petition was filed required reversal. The court distinguished this from other cases, both factually and legally, noting that some of the delay was due to respondent's request for continuances and that delay in holding the hearing was not the same as delay in entry of an order.

- **Entry of order five months after a termination hearing, plus showing of prejudice by respondent, required reversal.**

**In re C.J.B., \_\_\_ N.C. App. \_\_\_, 614 S.E.2d 368 (6/21/05).**

**Facts:** The hearing on a termination petition ended on 1/28/03; the trial court announced its decision on 3/5/03; and the order was entered on 7/3/03. Respondent appealed, asserting among other things that the delay in entry of the order required reversal.

**Holding:** Reversed and remanded.

The court of appeals reviewed the line of cases addressing this issue and held that

1. failure to enter an order within the required 30-day period is not prejudicial *per se* and does not require reversal unless there is a showing of prejudice;
2. the longer the delay, the easier it is to show prejudice; and
3. in this case, prejudice was shown because the appellate process was put on hold for four months; any sense of closure for the children, respondent, and the children's care givers was out of reach; and records and transcripts had been misplaced or were irretrievable.

The court of appeals stated that "in light of a five-month delay, little more than common sense is necessary in order to perceive aspects of prejudice to all parties involved in this termination proceeding."

- **Because respondent did not show prejudice, failure to comply with statutory time limits did not require reversal.**

**In re C.L.C., \_\_\_ N.C. App. \_\_\_, 615 S.E.2d 704 (7/19/05).**

**Facts:** Respondent mother twice voluntarily placed her four young children in DSS custody because she could not handle the responsibility of caring for them. DSS filed a neglect petition, and the children were adjudicated neglected based on stipulated facts. About a year and a half after the second placement, DSS filed a petition to terminate parental rights, alleging neglect, willfully leaving the children in care without making reasonable progress, and willful abandonment. Evidence showed that respondent had made some efforts and some progress, but had not complied with parts of the case plan, had moved to Tennessee, had stopped contacting DSS and visiting the children, and was behind in child support. The trial court terminated respondent's rights.

**Holding:** Affirmed (one judge dissenting).

1. The court of appeals stated that the statutory time limitations are not jurisdictional. The court held that even though the trial court had missed almost every deadline with respect to holding hearings and entry of orders, respondent had not shown resulting prejudice that required reversal. The deadlines were missed by as few as two days and as much as almost four months.
2. Even though some of the trial court's findings of fact merely recited testimony, the court of appeals held that other parts of the order contained sufficient findings of ultimate facts to support the trial court's conclusions.
3. The trial court did not abuse its discretion in terminating parental rights.

**Dissent:** The dissent would have held that the delays in the case were prejudicial. The dissenting opinion also reviews additional parts of the evidence regarding respondent's activities and would have held that the trial court's findings were not supported by clear, cogent, and convincing evidence of neglect, willfully leaving the child in care, or abandonment.

- **Respondent failed to show that prejudice resulted from late entry of order.**

**In re D.R., \_\_\_ N.C. \_\_\_, 616 S.E.2d 300 (8/2/05).**

**Facts:** Beginning in 2000 DSS became involved with family around issues of inappropriate discipline of four-year-old child, domestic violence, substance abuse, and unstable living arrangements. In 2002 the child was placed with his paternal grandmother, but she could not cope with his aggression and serious mental health problems. DSS took custody and placed the child in foster care. The trial court adjudicated the child to be neglected, placed him in DSS custody. In January 2003 the parents were charged criminally with multiple counts of first-degree sexual offense. The court changed the permanent plan from reunification to adoption in August 2003 and reviewed and renewed the plan in September and November 2003. In September 2003, DSS filed petitions to terminate the parents' rights on grounds of abuse, neglect, and willfully leaving the child in care without making reasonable progress. An order terminating both parents' rights was entered in January 2004. Both parents appealed.

**Holdings:** Affirmed.

Entry of the termination order 69 days after the hearing was error, but respondent failed to show prejudice.

- **Respondent failed to show prejudice from late entry of order.**

**In re P.L.P., \_\_\_ N.C. App. \_\_\_, 618 S.E.2d 241 (9/6/05).**

**Facts:** Respondents' child was adjudicated neglected in 1999. After mother successfully completed parenting classes, domestic violence counseling, and drug treatment, the court returned custody to her, relieved DSS and the GAL of responsibilities, and ordered that the file was "closed." Father was in jail when the petition was filed, and later he was convicted of attempted first degree murder and sentenced to 14 to 18 years on prison. In 2002 DSS filed a new petition after the mother left the child for long periods and relapsed into substance abuse. The child was adjudicated neglected again, was placed in DSS custody, and after several review hearings was placed in the guardianship of a relative. In 2003 DSS filed a third petition alleging neglect based on domestic violence in the guardian's home and the guardian's alcohol abuse. The court adjudicated the child neglected, placed her in DSS custody, and changed the permanent plan to adoption. In 2003 DSS filed a motion to terminate the parents' rights and served the parents pursuant to Rule 5. The court terminated both parents' rights on grounds of neglect and willfully leaving the child in care, and with respect to the mother also on grounds of abandonment and failure to pay support.

**Holdings:** Affirmed. (One judge dissenting in part.)

Although the termination order was not entered until two months after the hearing, respondent failed to argue or show any prejudice as a result.

- **One year delay in entering order was prejudicial.**

**In re T.W., \_\_\_ N.C. App. \_\_\_, 617 S.E.2d 702 (9/6/05).**

**Facts:** Respondent's children were adjudicated neglected in 2001. After several review hearings, in 2002 DSS filed a motion for termination. The trial court terminated her rights but did not enter the order until a year later.

**Holdings:** Reversed and remanded.

A delay of almost a year in entering the order was prejudicial based on respondent's argument that she continued to pay child support and was denied any opportunity to see the children during the appeal.

- **Respondent failed to show that he was prejudiced by five-month delay in entry of termination order.**

**In re S.B.M., \_\_\_ N.C. App. \_\_\_, 619 S.E.2d 583 (10/4/05).**

**Facts:** Child was adjudicated neglected in February 2000 and placed in DSS custody. Respondent, a convicted sex offender, was in and out of prison between the time of the adjudication and entry of the termination order in July 2004, and had been incarcerated continuously since November 2003. When not incarcerated he did not attend certain court hearings, did not keep appointments relating to the child, paid very little support, and failed to attend court-ordered sex offender treatment. His last contact with the child was in December 2002, almost a year before he was incarcerated. The trial court terminated respondent's rights, but the termination was not entered until five months after the hearing.

**Holding:** Affirmed. Respondent argued that delay in entry of the order prejudiced his right to appeal and his right to have his relationship with his child settled. On the facts of the case, the court of appeals held that he had not demonstrated prejudice to require reversal.

**Note:** Respondent also contested on appeal the trial court's findings and conclusions. However, because he did not assign error to one of the conclusions that a ground existed, the court declined to consider his arguments about the other grounds.

- **Respondent failed to show she was prejudiced as a result of a five month delay in filing of the termination petition.**

**In re As.L.G., \_\_\_ N.C. App. \_\_\_, 619 S.E.2d 561 (10/4/05).**

**Facts:** Children were adjudicated neglected at a hearing on 6/3/02, although the order was not "entered" until 9/16/03. At a permanency planning hearing on 2/10/03 the court ordered that the plan be adoption and that DSS file a termination petition within 60 days. That order was entered on 2/21/03. At a review hearing on 8/18/03 the court again ordered DSS to file a termination petition, within ten days after the order was entered, which was on 9/5/03. DSS filed a termination petition on 9/29/03. The trial court terminated respondent's rights on grounds of neglect and willfully leaving the children in foster care for more than a year without making reasonable progress.

**Holding:** Affirmed.

The court of appeals reviewed thoroughly the sequence of cases in which it has addressed errors relating to violations of time requirements in the Juvenile Code and stated again that (a) these requirements are not jurisdictional and (b) errors relating to time limits are not reversible error absent a showing of prejudice. After reviewing the history of this case, the court expressed "great reservation" about the inexplicable delays in the case but held that respondent had failed to demonstrate prejudice.