

**Special Issues in Parent Representation  
Chapel Hill, NC**

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**CASE UPDATE**

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## ABUSE, NEGLECT, DEPENDENCY

- Evidence in the record must support findings that support a conclusion that the trial court has subject matter jurisdiction under the UCCJEA.
- Issuance of summons to juvenile and service of a summons and petition on juvenile are not required in an abuse, neglect, or dependency proceeding.
- Allowing amendment of the petition to add allegations of sexual abuse was error.
- “Abused” and “neglected” refer to the status of the child, not the culpability of the parent.
- Underage drinking, underage smoking, and marijuana use are not acts involving moral turpitude for purposes of the definition of “abused juvenile.”

**In re M.G., \_\_\_ N.C. App. \_\_\_, 653 S.E.2d 581 (12/18/07).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/070643-1.htm>

**Facts:** The petition, listing four children, named the parents of two of them and the parents of the other two as respondents. It alleged that all four children – who lived with the mother of two and the father of two – were abused, neglected, and dependent. The trial court permitted DSS to amend the petition to allege that a second child was sexually abused. The record showed that when the petition was filed both of the father’s children had been in N.C. less than six months. The trial court’s order said, “The juveniles are . . . physically present in this State and District and were so at the time the petition was filed, and this State is the home state of the juveniles and was so at the time of the commencement of these proceedings.”

The trial court adjudicated all four children to be abused and neglected after hearing evidence and making findings about domestic violence in the children’s presence; inappropriate discipline; the father’s excessive use of alcohol and driving with the children in the car while intoxicated; the father’s groping and inappropriate touching of one child; the father’s giving the older children beer and offering them marijuana; and the mother’s acquiescence in the father’s conduct.

**Held:** The court of appeals affirmed in part; reversed in part; and remanded in part.

1. **Subject matter jurisdiction.** The court of appeals found that evidence in the record and the absence of any indication as to whether there had been prior custody proceedings raised questions about whether the trial court had subject matter jurisdiction with respect to the two children who had been in the state less than six months when the petition was filed. The court of appeals held that neither the findings nor the evidence in the record was sufficient to support the trial court’s conclusion that N.C. was the home state and had subject matter jurisdiction. The court of appeals noted that the record did not contain sufficient evidence from which it could determine whether jurisdiction existed, suggesting that if the record had contained such evidence, the fact that the court’s findings were insufficient would not have required remand of the case.

Although the court remanded the case for findings of fact relating to subject matter jurisdiction under the UCCJEA, the thrust of the case seems to be the need for additional evidence from which the trial court could make findings that would support the conclusion that the court had subject matter jurisdiction. That reading of the case is consistent with *In re T.J.D.W.*, 182 N.C. App. 394, 642 S.E.2d 471 (4/3/07), *affirmed per curiam*, 362 N.C. 84, 653 S.E.2d 143 (12/7/07), in which the trial court had not made any findings to support its conclusion regarding subject matter jurisdiction. The court of appeals, although noting that making such findings “would be the better practice,” held that the statutes require only that certain circumstances exist, not that the trial court make specific findings of fact about them. It was sufficient, the court said, that the trial court’s assertion of jurisdiction in its order was supported by evidence in the record. The dissent in the court of appeals had taken the position that trial courts must make specific findings of fact and conclusions of law as a basis for asserting subject matter jurisdiction under the UCCJEA.

2. Summons and service – the juvenile. Failure to issue a summons to the juveniles and serve a summons and petition on the juveniles did not affect the court’s jurisdiction. In an abuse, neglect, or dependency case, G.S. 7B-406 requires service on only the parent, guardian, custodian, or caretaker.
3. Summons and service – the parents. When the petition named all four children, it was sufficient that the summons served on each parent named only that parent’s two biological children.
4. Amended petition. Although the original petition alleged that M was abused, an amendment that added allegations that she was sexually abused changed the conditions on which the petition was based and should not have been allowed.
5. Evidence and findings. The evidence and the trial court’s findings were sufficient to support the conclusion that all four children were neglected and were abused under G.S. 7B-101(1)(b) (creating or allowing substantial risk of serious non-accidental physical injury) and that one child was sexually abused.
6. Moral turpitude. Evidence was not sufficient to establish that two of the children were abused under G.S. 7B-101(1)(f) (encouraging, allowing, or approving delinquent acts involving moral turpitude), because the acts the father encouraged – underage drinking, underage smoking, and marijuana use – while illegal, were not acts involving moral turpitude.

- Collateral estoppel precluded relitigation of issues decided in an earlier termination case.
- Evidence and findings supported
  - a. an adjudication that infant was neglected, based on living in an injurious environment,
  - b. a conclusion that reunification efforts would be futile, and
  - c. an order ceasing visitation.

**In re N.G., \_\_\_ N.C. App. \_\_\_, 650 S.E.2d 45 (9/18/07), affirmed per curiam, 362 N.C. 229, 657 S.E.2d 355 (3/7/08).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/070369-1.htm>

<http://www.aoc.state.nc.us/www/public/sc/opinions/2008/510-07-1.htm>

**Facts:** Respondents’ rights to their first child were terminated based on serious injuries the child received due to shaken baby syndrome while in respondents’ care. Their second child was in DSS custody pursuant to a neglect adjudication based on the home’s being an injurious environment. DSS filed a petition with respect to the parents’ third child, alleging the history and that the child was not receiving proper medical care because of respondents’ attempts to hide his existence from DSS, that respondents had not taken responsibility for or explained the first child’s injuries, and that they had not cooperated with DSS or complied with the case plan relating to the second child. The trial court adjudicated the child neglected, in that she lived in an environment injurious to her welfare, awarded custody to DSS, concluded that reunification efforts would be futile, and ceased visitation.

**Held:** Affirmed.

1. Collateral estoppel precluded respondents from relitigating issues that had been determined in the case terminating their rights to the first child, to the extent those issues were necessary to the determination in that case—including their responsibility for the injuries to the first child.
2. The trial court’s other findings were supported by clear and convincing evidence, and the findings were sufficient to support the adjudication of neglect. Findings included that respondents did not cooperate with DSS, discouraged or avoided social worker visits to the home, did not make progress on their case plan, did not participate in the PRIDE program or anger management classes, were tardy for visits, and did not accept responsibility for the first child’s injuries.

- Although the evidence would have supported other findings, the trial court’s findings were supported by the evidence and sufficient to support the adjudication of neglect and abuse.
- The findings were sufficient to support entry of a civil custody order under G.S. 7B-911(c).
- The majority held that appellant failed to show prejudice from late entry of the order or failure to hold the hearing that should have been held to inquire into why the order had not been entered.

**In re T.H.T., \_\_\_ N.C. App. \_\_\_, 648 S.E.2d 519 (8/21/07) (appeal pending).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/070122-1.htm>

**Facts:** Respondent and her husband shared custody of their 7-month-old child. When the child returned to the father’s home after being with respondent, the father noticed that her face was bruised and her head was swollen. He called the police and 911 and took the child to the hospital, where it was determined that she had a skull fracture in addition to the visible injuries. The father filed a civil action seeking custody, and DSS filed a petition alleging that the child was abused and neglected. Respondent offered several possible explanations for the child’s injuries, and a doctor testified that in her opinion the skull fracture was not caused by an accident. The court adjudicated the child abused and neglected, awarded custody to the father, and gave respondent unsupervised visitation. The court also ordered that the order would resolve any pending custody claim in the civil action and that jurisdiction in the juvenile matter would terminate. Respondent appealed.

**Held:** Affirmed, with dissent.

1. The court of appeals found that some of the findings were not supported by the evidence and that one actually was a conclusion of law, not a finding of fact, but concluded that the uncontested findings and those that were supported by the evidence were sufficient to support the trial court’s adjudication and disposition orders.
2. The court of appeals also found that the trial court’s findings were sufficient to support its entry of the order in the civil custody action under G.S. 7B-911(c).
3. The court concluded that respondent had not shown prejudice as a result of the fact that
  - the order was entered more than two months after the statutory time limit and
  - the hearing that should have been held after the order was not entered on time was not held.

**Dissent:** Judge Tyson dissented with respect to the delay in entry of the order and failure to hold the required hearing, and would have reversed.

- Overcrowded dockets do not constitute extraordinary circumstances for purposes of permitting a continuance under G.S. 7B-803.
- Respondents showed prejudice resulting from egregious violations of statutory timelines.

**In re R.L. \_\_\_ N.C. App. \_\_\_, 652 S.E.2d 327 (11/6/07).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/061616-1.htm>

**Facts:** DSS filed petitions in August 2004 alleging that respondents’ children were neglected and dependent. In March 2005 the court adjudicated the children neglected “as to” respondent-mother and after a disposition hearing placed the children in the custody of DSS, with a review hearing to be held three months later. The trial court scheduled but continued adjudicatory hearings for the children’s fathers, and between August 3, 2005, and February 26, 2006, continued the whole case 11 times, 5 times due to a crowded docket and 6 times due to the absence of one or more parties and/or attorneys. In February 2006 the court adjudicated the children dependent “as to” their respective fathers, and in March 2006 held a disposition and permanency planning hearing. The court found that respondent mother had not made satisfactory progress and changed the plan from reunification to adoption. The court entered an order seven weeks later but, with respect to one of the fathers, entered an order nearly 7 months later. All three respondents appealed the court’s orders.

**Held:** Reversed and remanded.

1. The court of appeals considered the trial court's violations of various timelines with respect to each parent, and of the 11 continuances, concluded that only two (attorney's illness and death in respondent's family) involved extraordinary circumstances as contemplated by G.S. 7B-803.
2. While continuances due to overcrowded dockets might satisfy the standard for civil cases generally, they do not satisfy the standard set by G.S. 7B-803 for juvenile cases, and those continuances were an abuse of discretion by the trial court.
3. The court, after analyzing the various timeline violations and the parties' arguments, concluded that all three respondents had shown prejudice as a result of the violations.

**Note:** The opinion does not address the procedural peculiarities of the case or question the trial court's approach of having an adjudication "as to" each parent, despite earlier opinions of the court disapproving that approach. *See, e.g.,* In re B.M., 183 N.C. App. 84, 643 S.E.2d 644, 647 (5/1/07) ("Respondent-father further contends that the lower court erred in failing to make . . . findings of fact 'as to the respondent-appellant father' regarding the neglect and dependency of B.M. However, this contention is without merit. Our Court has previously stated that the status of the juvenile and not the assignment of culpability is what is at issue at the adjudication and dispositional stage"); In re J.S., 182 N.C. App. 79, 641 S.E.2d 395 (3/6/07).

- Although medical records were admitted as evidence without a proper foundation, other competent evidence supported the trial court's findings and conclusions.
- Local rules are supplemental and may not be inconsistent with statutory law.
- Holding adjudication hearing 16 months after the petition was filed was not prejudicial error when court made findings of good cause for continuances, most continuances resulted from requests by respondents, and respondents showed no specific prejudice.

**In re T.M., \_\_\_ N.C. App. \_\_\_, 654 S.E.2d 502 (12/18/07).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/070911-1.htm>

**Facts:** The trial court adjudicated one child to be abused and neglected based on findings that she was the victim of shaken baby syndrome and adjudicated the other child neglected on the basis that she lived in an injurious environment. Local rules set out procedures for the parties to obtain access to confidential medical and other records and included a provision that such records were admissible unless a party objected within a set time after notice that the records were available. Relying on the rule DSS introduced extensive medical records. DSS also presented testimony by multiple medical experts and witnesses.

**Held:** Affirmed.

1. The court of appeals held that competent evidence other than the medical records supported the adjudications. The court discussed the various exceptions to the hearsay rule under which the records could be admitted, but held that the local rule could not substitute for the requirement of a proper foundation.
2. The court noted in a footnote that a local rule is not a rule of evidence and that local rules are designed to promote the efficient administration of justice.
3. The court rejected respondents' argument that holding the hearing 16 months after the petition was filed required reversal, because the trial court made findings that there was good cause for the continuances and the major factors in the delay were respondents' request for a special setting and their difficulty in finding an expert who would review the medical records.

- Evidence was sufficient to support an adjudication that a child was abused and neglected, where infant had multiple rib fractures that were several weeks old and in different stages of healing, the parents had not sought medical attention, and they were the child's primary caretakers.

**In re S.W., \_\_\_ N.C. App. \_\_\_, 653 S.E.2d 425 (12/4/07).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/070707-1.htm>

**Facts:** Evidence showed that the infant had multiple fractures in different stages of healing; the parents had failed to obtain medical attention for the injuries, which were discovered when they took him to the hospital for a high fever and chest congestion; and respondents were the child's primary caretakers and either did not notice or ignored the child's pain. The trial court adjudicated the child to be abused and neglected and placed custody with DSS.

**Held:** Affirmed.

The court of appeals held that the trial court's findings and conclusions were sufficient.

**Note:** Although the opinion refers to G.S. 7B-1111(a)(1), the neglect ground for terminating a parent's rights, the case did not involve a claim for termination of parental rights.

- Failure of respondent to sign notice of appeal required dismissal of appeal (but court granted petition for certiorari).
- Evidence, consisting mainly of DSS and GAL reports relating to abuse of another child, was sufficient to support adjudication that newborn was a neglected juvenile.
- Ambiguity of trial court's dispositional findings and order required remand.

**In re A.S., \_\_\_ N.C. App. \_\_\_, 661 S.E.2d 313 (6/3/08).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2008/071242-1.htm>

**Facts:** The juvenile was born after three siblings had been removed from the home and adjudicated neglected following one child's suffering non-accidental immersion burns. DSS filed a petition with the magistrate, who signed a nonsecure custody order, while the newborn juvenile was still in the hospital. On the petition, the magistrate wrote "filed with magistrate" and wrote his name and the date and time. The court held hearings at which it continued nonsecure custody and adjudicated the infant to be neglected. Respondent appealed. The GAL filed a motion to dismiss the appeal because respondent herself did not sign the notice as required by Rule 3A of the Rules of Appellate Procedure.

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

1. The court of appeals granted the GAL's motion to dismiss the appeal, and then agreed to review the case pursuant to respondent's petition for a writ of certiorari.
2. The court of appeals rejected respondent's argument
  - a. that the trial court lacked subject matter jurisdiction because the petition was not filed properly. Even though no filing stamp appeared on the petition, it was clear from the record that the petition was filed with the clerk after it was filed initially with the magistrate.
  - b. that the trial court lacked subject matter jurisdiction because the magistrate lacked authority to issue the nonsecure custody order. Even if the magistrate lacked authority to issue the order, the court entered a proper order at the first nonsecure custody hearing, and there was no effect on the trial court's jurisdiction at adjudication and disposition.
  - c. that the trial court erred by failing to appoint a GAL for the child. The record made clear that a guardian ad litem and attorney advocate represented the juvenile, and the absence of an appointment order in the record on appeal did not require reversal.

3. Evidence was sufficient to support the adjudication of neglect.
  - a. At the hearing, respondents did not object to DSS's introduction of reports prepared by DSS and the GAL, and those provided substantive evidence, including relevant evidence relating to the other three children. Respondents did not preserve for appeal any argument about the introduction or consideration of that evidence.
  - b. Including the "clear and convincing evidence" language in the conclusion section of the order did not make the order deficient.
4. With respect to disposition, because the court of appeals could not tell from the order what findings the trial court made or what disposition it intended to order, the court remanded the case for further findings and conclusions. The trial court had incorporated whole reports, found that statements in them were "true," and adopted recommendations in the reports. The order appeared to include inconsistent statements with respect to whether reunification efforts should continue.

**Dissent:** Judge Tyson dissented from the part of the opinion holding that evidence and findings were sufficient to support a conclusion that the child was neglected. He viewed the trial court's order as relying solely on evidence of one prior incident of abuse and no evidence of respondents' subsequent denial of responsibility, failure to comply with a case plan, or other factors indicating a substantial risk of future neglect.

- Trial court erred by failing to give parent an opportunity to present evidence at adjudication.
- The Rules of Evidence apply at adjudication hearings.
- Court's consideration of testimony from earlier probable cause and nonsecure custody hearings was error where the testimony was not introduced into evidence and was hearsay that was not shown to fall within any exception to the hearsay rule.

**In re J.M.,** \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (5/6/08).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2008/071246-1.htm>

**Facts:** DSS alleged in a petition that respondent's six children were neglected and that one of them was sexually abused by respondent's husband, against whom criminal charges were brought. At a nonsecure custody hearing the trial judge noted that he had found probable cause in the husband's criminal case, found that there was a factual basis to believe the petition's allegations were true, and continued the children in the custody of DSS. At the adjudication hearing the court took judicial notice of the criminal probable cause hearing and the nonsecure custody hearing; refused to let respondent present additional evidence, stating that she had a full opportunity to cross-examine witnesses at the nonsecure custody hearing; adjudicated the conditions alleged in the petition; and entered disposition.

**Held:** Vacated and remanded for a new hearing.

1. Denying respondent the opportunity to present evidence and confront the evidence against her at adjudication violated G.S. 7B-802, deprived respondent of due process, and was reversible error.
2. Rules of Evidence for civil cases apply at a juvenile adjudication hearing, and the trial court erred by
  - a. considering testimony from the probable cause hearing, which was not a recorded hearing, was not part of the same case, and at which a child testified who did not later testify at any hearing in the juvenile case; and
  - b. considering testimony from the nonsecure custody hearing, which was never introduced into evidence and was hearsay that did not fall within any exception to the hearsay rule.

Because the trial court relied solely on testimony and reports from the prior hearings, all of which were inadmissible hearsay, the findings and conclusions were not supported by competent evidence.

- At a permanency planning hearing, court’s finding that child’s return home within six months was “improbable” was sufficient; finding that it was “impossible” was not required.
- The requirement that a permanency planning hearing be held “within a year” of the child’s placement does not mean that a parent is guaranteed a year or other specific time period to comply with a case plan and court orders.

**In re T.R.M., \_\_\_ N.C. App. \_\_\_, 656 S.E.2d 626 (2/19/08).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2008/071170-1.htm>

**Facts:** In October 2006, the child was adjudicated dependent based on respondent’s inability to provide a stable home or obtain employment as well as her mental health problems and need for a psychological evaluation. The court placed the child in DSS custody; ordered respondent to comply with a service agreement and case plan and submit to random drug screenings; and gave respondent supervised visitation. The child was placed in the home of her maternal grandparents. At review hearings in January and April, 2007, the court found that respondent had complied with only some parts of the case plan and continued the plan of reunification. After a permanency planning hearing the court entered an order in July, 2007, making numerous findings, including that respondent was unwilling to participate in counseling or obtain a second opinion about whether she needed counseling, that she refused to accept employment that was offered to her, that she repeatedly violated conditions of visitation and communication with the child, and that it was “not likely” and “improbable” that the child would be returned home within six months. The court appointed the grandparents as guardians of the child and specified visitation and communication restrictions.

**Held:** Affirmed.

1. It was not necessary for the court for the court to find that it was “not possible” for the child to return home within the next six months, despite the statute’s use of that phrase.
2. The court was not required to find that the child continued to be dependent.
3. The statute does not require the court to allow a respondent a full year or any other certain period of time to comply with a case plan or court orders.
4. The court’s findings were sufficient to support the order awarding guardianship and the order waiving further review hearings.

- A nonsecure custody order is not an appealable order.
- DSS had no right to appeal denial of its motion seeking review of an earlier nonsecure custody order that directed DSS to make foster care board payments to kinship care providers.

**In re A.T., \_\_\_ N.C. App. \_\_\_, 662 S.E.2d 917 (7/15/08).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2008/080223-1.htm>

**Facts:**

- 3/06 DSS substantiated neglect and child was placed voluntarily in kinship care
- 7/07 DSS filed petition alleging child was neglected; court held nonsecure custody hearing
- 9/07
  - nonsecure custody order entered, leaving custody with DSS and ordering DSS to pay foster care board rate to the kinship care providers, effective 3/06
  - adjudication and disposition orders entered, continuing requirement that DSS pay foster care board rate to care providers
- 10/07
  - after a review hearing, court ordered that custody remain with DSS
  - DSS filed motion asking court to review the foster care board rate payment provision in the nonsecure custody order, arguing that it improperly ordered payment from 3/06, when children had been in DSS custody only since 7/07

After a hearing the trial court denied DSS’s motion, and DSS appealed.

**Held:** Appeal dismissed.

1. DSS had no right to appeal the earlier nonsecure custody order or the order denying its motion for review of that order.
2. Nonsecure custody orders are excluded from the list of appealable orders in G.S. 7B-1001, and the order denying DSS's motion was neither a final order nor an order finding an absence of jurisdiction, where the court did not rule that it lacked subject matter jurisdiction but only found as a fact that it did not have jurisdiction during a portion of the time for which it had ordered payment of the foster care board rate.
3. The court of appeals did not consider the merits of any claim that the order requiring DSS to pay the foster care board rate or to pay it for a particular period of time was improper.

- Dispositional findings were sufficient to conclude that "aggravated circumstances" existed.
- Declining to place child with grandparents was not an abuse of discretion.
- Evidence and findings were sufficient to support conclusion that reunification efforts should cease.

**In re B.W., \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (5/6/08).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2008/071579-1.htm>

**Facts:** Child was born prematurely and when less than eight weeks old was determined to have suffered cuts, bruises, bite marks, a skull fracture, and multiple rib and leg fractures of varying ages. He also was malnourished and suffered from failure to thrive. The child had been living with his parents in the home of a relative. The parties stipulated to adjudicatory facts and the court adjudicated the child to be abused and neglected. After considering further evidence, including psychological evaluations of respondents, the court made findings and concluded that respondents had subjected the child to aggravated circumstances, that reunification efforts should cease, that it was contrary to the child's best interest to be placed with the maternal grandparents, and that the child should remain in the custody of DSS.

**Held:** Affirmed.

1. Even if the trial court's finding that both parents had been indicted was not supported by the evidence (because the facts were in statements made by respondents' attorneys, which were not evidence), the finding was not necessary to the trial court's determination and was not reversible error.
2. Findings of serial infliction of the kinds of injuries the child suffered were sufficient to support the conclusion that the parents had subject the child to "aggravated circumstances."
3. Court's refusal to place the child with the respondent mother's parents was not an abuse of discretion.
4. The trial court's findings were sufficient to support its conclusions that aggravated circumstances existed, that further reunification efforts would be futile and contrary to the child's welfare, and that reunification efforts should cease.

- Trial court did not err when it ordered DSS, as representative payee, to apply the juvenile's Social Security benefits to pay current and overdue mortgage payments on the house the juvenile owned and for repairs to the house.

**In re J.G., \_\_\_ N.C. App. \_\_\_, 652 S.E.2d 266 (11/6/07), rev. denied, \_\_\_ N.C. \_\_\_, 658 S.E.2d 485 (1/24/08), cert. denied, \_\_\_ U.S. \_\_\_, 128 S.Ct. 2972 (6/23/08).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/060752-1.htm>

**Facts:** In 1992, when the juvenile was two, he was adopted by his step-father and his parents purchased a Habitat for Humanity home. In 1994 his mother's rights were terminated and his adoptive father died. The juvenile inherited the home and received Social Security survivor's benefits, both handled by a guardian

and trustee. After an adjudication of neglect, the juvenile was placed in DSS custody, then lived with a relative in the Habitat home on which DSS paid the mortgage. The relative adopted the juvenile, but in 2005 she relinquished her parental rights. The juvenile had been adjudicated delinquent and also was adjudicated dependent and placed back in DSS custody. The house was not maintained well and was vandalized. DSS, as representative payee for the juvenile's Social Security benefits, did not make mortgage payments on the house but applied the benefits toward the cost of the juvenile's foster care. Foreclosure proceedings were initiated on the house. After a motion by the guardian ad litem and a hearing, the trial court ordered DSS to apply the juvenile's benefits to pay the mortgage of \$221/month; to make past-due payments of \$2,800; and to pay \$1,000 for repairs to the house. DSS appealed.

**Held:** Affirmed.

1. The court of appeals first held that although the appeal was interlocutory, the order affected a substantial right and could be appealed immediately.
2. The court rejected DSS's argument that federal law preempted state law such that the trial court lacked subject matter jurisdiction to enter orders affecting the juvenile's Social Security payments.
  - a. Although the U.S. Supreme Court in *Washington v. Keffeler*, 537 U.S. 371(2003), held that the state's application of a child's Social Security benefits to the cost of his foster care did not violate the part of the Social Security Act that protects benefits from execution, levy, attachment, garnishment or other legal process, the court of appeals found that the decision was narrow and, by itself, did not support DSS's argument.
  - b. While the federal government may prosecute a representative payee for misuse of the beneficiary's funds, it does not resolve disputes between the payee and beneficiary about the proper use of the funds, and both the guardian ad litem and the trial court acted within the scope of the duties imposed on them by the Juvenile Code.
3. The court rejected DSS's argument that the trial court's order violated the anti-alienability provision of the Social Security Act, which provides that the benefits are not assignable or subject to legal process, holding that the trial court's order did not constitute "other legal process" within the meaning of that law, which was designed to protect beneficiaries from creditors and others who might claim the benefits.

- The trial court did not err in concluding at the initial adjudication and disposition hearing that DSS should not make reasonable efforts to reunify.
- It was not error to conduct consolidated adjudication and disposition hearings on both the abuse and neglect petition and a motion to terminate parental rights.
- When hearings are consolidated, the trial court should enter two orders or distinguish within an order the components of a hearing.

**In re R.B.B.**, \_\_\_ N.C. App. \_\_\_, 654 S.E.2d 514 (12/18/07), *review denied*, 362 N.C. 235, 659 S.E.2d 738 (3/6/08).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/070727-1.htm>

**Facts:** In August 2006 DSS filed an abuse and neglect petition and obtained nonsecure custody when the child was 7 months old, alleging that the child had broken ribs and numerous healed fractures, was below normal weight and was losing weight, and had bruises and ulcerated lesions. After one nonsecure custody hearing, respondent waived further custody hearings. After multiple continuances in that case, in December, 2006, DSS filed a motion to terminate respondent's parental rights. In February, 2007, the court held a consolidated hearing after which it made extensive findings and entered an order finding the child to be abused and neglected and terminating respondent's rights.

**Held:** Affirmed.

1. The trial court did not err in concluding that DSS should not make reasonable efforts to reunify, based on findings about the number and severity of the child's injuries, continuing danger to the child from respondent and her boyfriend, and respondent's reaction to abuse of the child by respondent's boyfriend.
2. It was not error to conduct consolidated adjudication and disposition hearings on both the abuse and neglect petition and the motion to terminate parental rights, where the trial court had made a proper determination under G.S. 7B-507 that reunification efforts would be dangerous or futile.
3. The court of appeals "encouraged" trial courts, when they conduct consolidated hearings, to either (a) enter separate orders for each component of the consolidated hearing or (b) divide a single order into sections addressing each component of the hearing separately. In addition, the court stressed that each section or order should reference the appropriate standard of proof.

### TERMINATION OF PARENTAL RIGHTS

- A claim for termination of parental rights may not be asserted as a counterclaim in a civil district court action for child custody or visitation.

**In re S.D.W., \_\_\_ N.C. App. \_\_\_, 653 S.E.2d 429 (12/4/07).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/070650-1.htm>

**Facts:** Several years after the parents divorced, the father filed a civil action seeking visitation with the children. The mother filed an answer and a counterclaim in which she asked the court to terminate the plaintiff-father's rights. The trial court required the mother to issue a termination of parental rights summons to the father, denied the father's motion to dismiss the counterclaim, and allowed the mother to amend her pleading to assert additional grounds for termination. Plaintiff-father appealed from the trial court's order terminating his parental rights.

**Held:** Vacated.

1. The court of appeals held that the trial court lacked subject matter jurisdiction because no termination action had been properly commenced.
2. One explicit purpose of the code is to provide procedures for terminating a parent's rights. The Rules of Civil Procedure apply to actions to terminate parental rights only insofar as the Juvenile Code does not provide procedures.
3. Because the Juvenile Code provides specifically for the initiation of termination of parental rights actions by either filing a petition or filing a motion in a pending abuse, neglect, or dependency case, the court of appeals would not impute a right to seek termination of a parent's rights by filing a counterclaim in a civil action.

- Failure to verify motion to terminate parental rights deprived trial court of subject matter jurisdiction.

**In re C.M.H., \_\_\_ N.C. App. \_\_\_, 653 S.E.2d 929 (12/18/07).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/070851-1.htm>

In an appeal by respondent parents from an order terminating their parental rights, the court of appeals, *sua sponte*, noted that the motion to terminate parental rights had not been verified and vacated the order terminating parental rights. The court cited the state supreme court's opinion in *In re T.R.P.*, 360 N.C. 88, 36 S.E.2d787 (2006), holding that a violation of the verification requirement deprives the trial court of subject matter jurisdiction.

- Failure to issue summons to the child when a petition to terminate parental rights was filed deprived trial court of subject matter jurisdiction.

**In re I.D.G., \_\_\_ N.C. App. \_\_\_, 655 S.E.2d 858 (2/5/08).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2008/071107-1.htm>

**Facts:** After the court changed the permanent plan for the child to adoption, DSS filed a petition to terminate the rights of the child's biological father. On appeal from an order terminating his rights, the respondent-father asserted that the trial court lacked subject matter jurisdiction because petitioner-DSS did not have a summons issued to the child.

**Held:** Vacated.

1. Following its earlier holdings in *In re K.A.D.*, \_\_\_ N.C. App. \_\_\_, 653 S.E.2d 427 (12/4/07) and *In re C.T. & R.S.*, 182 N.C. App. 472, 643 S.E.2d 23 (4/3/07), the court of appeals vacated the termination order for lack of subject matter jurisdiction because no summons was issued to the child.
2. The court pointed out that DSS had the option of initiating the termination case by filing a motion in the cause, rather than a petition. Using that procedure, DSS would have been required to issue a notice (not a summons) and would have been required to serve the notice on the child only if the child were 12 or older. See G.S. 7B-1106 and 7B-1106.1.

**In re K.A.D., \_\_\_ N.C. App. \_\_\_, 653 S.E.2d 427 (12/4/07).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/070662-1.htm>

**Facts:** In a termination of parental rights action, no summons was issued to the child.

**Held:** The court of appeals vacated the trial court's order terminating parental rights, holding that failure to issue a summons directed to the child, as required by G.S. 7B-1106(a), deprived the trial court of subject matter jurisdiction. The fact that a guardian ad litem was appointed for the child did not matter.

**In re S.F., \_\_\_ N.C. App. \_\_\_, 660 S.E.2d 924 (6/3/08).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2008/080197-1.htm>

**Facts:** After the permanent plan was changed from guardianship to adoption, DSS filed a petition to terminate respondent's rights. A summons was issued to respondent, but not to the child or her guardian ad litem. After a hearing the court entered an order terminating respondent's rights.

**Held:** Vacated.

As in other recent cases, the court held that failure to issue a summons to the juvenile when a petition to terminate parental rights is filed deprives the trial court of subject matter jurisdiction.

**In re A.F.H-G., \_\_\_ N.C. App. \_\_\_, 657 S.E.2d 738 (3/4/08).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2008/071346-1.htm>

**Facts:** In an action to terminate parents' rights, the petitioners named both parents but not the juvenile in the summons.

**Held:** Vacated.

The court of appeals, stating that it was bound by its prior holdings, vacated the trial court's order for lack of subject matter jurisdiction because no summons was issued to the child. Prior holdings cited by the court include *In re K.A.D.*, \_\_\_ N.C. App. \_\_\_, 653 S.E.2d 427 (2007); *In re C.T.*, 182 N.C. App. 472, 643 S.E.2d 23 (2007).

**Concurrence:** Judge Stephens filed a separate concurring opinion to express the view that the court in *K.A.D.* misinterpreted the court's holding in *C.T.* (In the former, the child was named on the summons but was not listed as a respondent and no summons was issued to the child. In the latter, the name of a sibling but not the name of the other child named in the petition appeared on the summons that was served on the parents.)

**In re J.T. (I), \_\_\_ N.C. App. \_\_\_, 657 S.E.2d 692 (3/4/08), temporary stay allowed, \_\_\_ N.C. App. \_\_\_, 661 S.E.2d 246 (4/10/08).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2008/071372-1.htm>

**Facts:** In appeal from an order terminating parental rights, the record was silent with respect to issuance or service of summons to the juvenile.

**Held:** Vacated.

The court of appeals vacated the trial court's order for lack of subject matter jurisdiction because summons was not issued to the child.

**Concurrence:** Judge Stephens concurred in the result, for the reasons stated in the concurring opinion in *In re A.F.H.-G.* (see above).

- Acceptance of service of process by the attorney advocate constituted proper service on the guardian ad litem, and that constituted proper service on the juvenile.
- Respondent failed to show prejudice resulting from entry of the order 82 days after the hearing.
- Findings and the conclusion that the parents had neglected the child were sufficient and were supported by the evidence.

**In re J.A.P., \_\_\_ N.C. App. \_\_\_, 659 S.E.2d 14 (4/15/08).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2008/071562-1.htm>

**Facts:** After DSS filed a petition to terminate respondents' rights, summonses were issued "referencing" the children. The file included certifications by the attorney advocate that she accepted the attached summonses in the action regarding both children. The court made extensive findings about the condition of the home and the likelihood that neglect would be repeated if the children were returned to the home; made additional findings about best interest; and terminated both parents' rights.

**Held:** Affirmed.

1. Although the parties did not raise subject matter jurisdiction as an issue, the court of appeals considered it and concluded that the trial court did have subject matter jurisdiction. It is difficult to discern, however, the basis for the court's conclusion. The court first distinguished the case from *In re C.T.*, 182 N.C. App. 472 (2007), in which the court of appeals reversed a termination order with regard to one of the two children because that child was not named on the summons. The court then referred to the holding in *In re K.A.D.*, 653 S.E.2d 427 (2007), that "failure to issue a summons to the juvenile deprives the trial court of subject matter jurisdiction." From there, the court shifted to a discussion of *service*, rather than *issuance*, of the summons. It is not clear from the opinion whether either the guardian ad litem or the juveniles were named on the summons as respondents. The court referred to the summons as "referencing" the juveniles, as the summons in *C.T.* failed to do for the one child, but did not talk about what constitutes issuing or directing a summons to the juvenile.
2. The court went on to discuss personal jurisdiction separately, holding that
  - a. service on the attorney advocate was sufficient to accomplish service on the juvenile;
  - b. even if service had not been proper, the guardian ad litem did not object and therefore waived any insufficiency of service; and
  - c. respondents did not show any prejudice and were not "aggrieved" parties for purposes of raising on appeal any insufficiency of service on the child.

- An order entered pursuant to temporary emergency jurisdiction under the UCCJEA remains in effect until an order is received from another state that has jurisdiction.
- Failure to serve one of the parents in the underlying juvenile case did not deprive the court of subject matter jurisdiction in a later termination action.
- N.C. became the child's home state when the child and parent had been here more than six months and no action had been filed in another state.

**In re E.X.J., \_\_\_ N.C. App. \_\_\_, 662 S.E.2d 24 (6/17/08).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2008/071235-1.htm>

**Facts:** In April 2005, the day after arriving in N.C. from Alabama, respondent (mother) took her two children to DSS for placement in foster care, telling the social worker that she was not mentally or financially able to care for them and had left Alabama to escape domestic violence and other marital problems. DSS filed a petition and obtained nonsecure custody. Respondent was served properly but the summons mailed to the father in Alabama was returned "unclaimed." Notice of an August, 2005, adjudication hearing was sent to the father, who wrote a letter to the clerk stating that he could not attend but had a good job and would have his own home soon. At the hearing the mother stipulated to facts relating to dependency and the court adjudicated the children dependent and left them in DSS custody. At a permanency planning hearing in October, 2006, the court ceased reunification efforts and changed the permanent plan to adoption. In December, 2006, DSS filed motions to terminate the parents' rights. Because the father had never been served in the dependency case, DSS in April, 2007, filed a petition to terminate his rights and had a summons issued to him. Both parents were properly served. Both respondents moved to dismiss for lack of subject matter jurisdiction and the father also moved to dismiss for lack of personal jurisdiction because he was not served in the underlying case. The court denied the motions, heard evidence, and entered an order terminating both parents' rights.

**Held:** Affirmed.

1. The court rejected respondents' argument that DSS lacked standing to petition for termination because it was not granted custody by a court of competent jurisdiction.
  - a. Although N.C. was not the children's home state when the underlying petition was filed, it was clear from the record that N.C. had jurisdiction to enter the nonsecure custody order pursuant to the temporary emergency custody provisions of the UCCJEA.
  - b. If jurisdiction is clear from the record, the trial court is not required to make specific findings of fact to support a conclusion that it has jurisdiction, although doing so is the better practice.
  - c. Because no action was ever filed in Alabama, the temporary emergency order remained in effect and the N.C. court had jurisdiction when it gave DSS custody.
2. Because the children and mother had been in N.C. more than two years when the termination action was filed and no action had been initiated in Alabama, N.C. had become the children's home state and the N.C. court had jurisdiction to terminate parental rights.
3. The fact that the father was never served with a summons in the underlying case did not deprive the court of subject matter jurisdiction in the termination action.
  - a. In an abuse, neglect, or dependency case failure to serve one of the parents, if the other is properly served, does not deprive the court of subject matter jurisdiction. *In re Poole*, 151 N.C. App. 472, 568 S.E.2d 200 (2002), (Timmons-Goodson, J., dissenting), *adopted per curiam*, 357 N.C. 151, 579 S.E.2d 248 (2003).
  - b. "Motions in the cause and original petitions for termination of parental rights may be sustained irrespective of earlier juvenile court activity," *citing In re O.C.*, 171, N.C. App. 457, 615 S.E.2d 391 (2005).

- Issuance of a second or subsequent summons, without an extension or alias and pluries summons, begins a new action as of the date of issuance of the new summons and, if the action was discontinued, reinvokes the court's subject matter jurisdiction.
- The standard for measuring prejudice resulting from errors such as violation of statutory timelines is whether the error had a probable impact on the outcome of the case.

**In re D.B.** \_\_\_ N.C. App. \_\_\_, 652 S.E.2d 56 (11/6/07), *affirmed per curiam*, 362 N.C. 345, 661 S.E.2d 734 (6/12/08).

<http://www.aoc.state.nc.us/www/public/sc/opinions/2008/590-07-1.htm>

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/061426-2.htm>

**Facts:** On appeal from orders terminating their parental rights, respondents argued that the trial court lacked subject matter jurisdiction because they were not served with valid summonses.

10/7/04            summonses issued but were never served

10/18/04        second summons issued and served on respondent-mother same day

1/26/05        new summons issued to respondent-father, served 1/30/05

1/31/05        new summons issued to respondent-father and served the same day

There was never an extension noted and no alias and pluries summons was issued.

The hearing was held December 14 and 15, 2005. After hearing evidence, including evidence of domestic violence and failure to complete the case plan, the court terminated both parents' rights.

**Held:** Affirmed.

1. Issuance of a new summons, regardless of whether the preceding summons has expired, begins a new action. If the action has discontinued because a summons was not served or renewed, issuance of a new summons begins the action anew and reinvokes the trial court's subject matter jurisdiction.
2. Respondents did not show prejudice as a result of the delay in conducting the termination hearing. Adopting the reasoning of Judge Levinson's concurring opinion in *In re J.N.S.*, 180 N.C. App. 573, 637 S.E.2d 914 (12/19/06), the court held that the standard for measuring prejudice is whether the error in question had a probable impact on the outcome of the proceeding.
3. Evidence was sufficient to support adjudication of the neglect ground for termination.

- In an action to terminate parental rights, the trial court's jurisdiction in the underlying dependency case was not affected by the fact that (i) the petition did not state specifically that the social worker who signed it was the director's authorized representative or (ii) the social worker signed only the verification, not the signature line for the petitioner.

**In re D.D.F.**, \_\_\_ N.C. App. \_\_\_, 654 S.E.2d 1 (12/4/07).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/070798-1.htm>

**Facts:** In 2000 a DSS social worker filed a petition alleging that the child was dependent. On the petition, the signature line was blank, the address line had on it "Youth and Family Services," and the social worker signed her name as petitioner-affiant on the verification, which was properly notarized. She also signed and verified the affidavit of status of minor child, on which her name was followed by the name and address of the DSS agency. The record identified her as the social worker for the case. The court adjudicated the child dependent and placed the child in DSS custody. In 2006 DSS filed a petition to terminate respondent's rights. A DSS attorney signed the petition and a social worker assigned to the case verified it. After a hearing, the court entered an order terminating respondent's rights. On appeal, she argued that the trial court lacked subject matter jurisdiction and that DSS lacked standing because the petitions did not identify the signer as either the DSS director or the authorized representative of the director.

**Held:** Affirmed.

The court of appeals held that when the record shows that a social worker assigned to the child's case signed the petition and there is absolutely no indication that she is not the DSS director's authorized representative or that she is acting outside her authority, that social worker is an authorized representative for purposes of signing and filing the petition. Because the order giving DSS custody was entered in an action in which the court did have subject matter jurisdiction, there was no issue with respect to standing to bring the termination action.

- Failure to appoint guardians ad litem for the children when the initial neglect and dependency petitions were filed and to ensure consistent representation of the children by guardians ad litem throughout those proceedings did not require reversal of the termination of parental rights order in a proceeding in which the children were represented by a guardian ad litem and attorney advocate.

**In re J.E., 362 N.C. 168, 655 S.E.2d 831 (1/25/08), reversing per curiam, 183 N.C. App. 217, 644 S.E.2d 28 (5/15/07), for reasons stated in the dissenting opinion in the court of appeals.**

<http://www.aoc.state.nc.us/www/public/sc/opinions/2008/297-07-1.htm>

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/061335-1.htm>

**Facts:** DSS filed a petition alleging that one child was neglected and dependent in October, 2002, and that another child was neglected and dependent in November, 2003. The record on appeal included no indication that a guardian ad litem was appointed for either child when these petitions were filed. Orders entered following numerous hearings in the children's cases sometimes recited that a guardian ad litem was present and sometimes did not. A guardian ad litem appointed for the children in 2004 never appeared at a hearing. Five different guardians ad litem made appearances at various times, and four of those were not appointed. At the termination hearing the children were represented by a guardian ad litem who was not appointed and who had not represented them previously, and an attorney advocate.

The court of appeals reversed, holding that the children were prejudiced by the trial court's failing to appoint guardians ad litem for them when the initial petitions were filed; allowing a series of guardians ad litem to appear without being appointed; having some hearings with no guardian ad litem present; and not ensuring a permanent guardian ad litem to represent the children throughout the proceeding, including at the termination hearing.

**Held:** The Supreme Court reversed, based on Judge Hunter's dissenting opinion in the court of appeals, which reasoned that

1. only the termination of parental rights order was before the appellate court; orders resulting from earlier stages of the case, about which respondent complained, were not properly before the court.
2. children were represented by a guardian ad litem and attorney advocate in the termination proceeding.

- Where contents of petition were substantially compliant with the statute and respondent had access to all of the required information, the trial court did not lack subject matter jurisdiction.
- Order terminating parental rights should include conclusions of law regarding the grounds and, for certain grounds, must include findings of willfulness.

**T.M.H., \_\_\_ N.C. App. \_\_\_, 652 S.E.2d 1 (10/16/07), review denied, 362 N.C. 87, 657 S.E.2d 31 (12/6/07).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/070609-1.htm>

**Facts:** In 2006 petitioner-mother filed a petition to terminate the rights of her child's father. Respondent father filed an answer admitting paternity but denying substantive allegations. After a hearing the trial court entered an order making a number of specific findings of fact, but concluding only that grounds for termination existed and that termination was in the child's best interest.

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

1. The court rejected respondent's argument that the trial court lacked subject matter jurisdiction due to omission of certain information from the petition. The court held that the petition was substantially compliant and that respondent had access to all information the petition was required to contain.
2. Because the order contained no findings of willfulness and did not specify which ground(s) it was adjudicating, the court remanded for appropriate findings.
3. The court of appeals noted that the trial court's order was on ruled stationery of the petitioner's attorney and "strongly discourage[d]" judges from signing orders on stationery that bears the name of any law firm.

- Respondent parent failed to show prejudice resulting from trial court's holding the termination hearing more than a year after the petition was filed.

**In re J.Z.M., 362 N.C. 167, 655 S.E.2d 832 (1/25/08), reversing per curiam, 184 N.C. App. 474, 646 S.E.2d 631 (7/3/07), for reasons stated in the dissenting opinion in the court of appeals.**

<http://www.aoc.state.nc.us/www/public/sc/opinions/2008/366-07-1.htm>

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/061242-1.htm>

**Facts:** DSS filed a petition to terminate respondent's rights in January, 2005. A hearing scheduled for October 27, 2005, was continued to January 27 and then to March 7, 2006, when the hearing was held. In an order entered April 18, 2006, the court terminated respondent's rights. At least one continuance was not the subject of a written order in the file. DSS ceased visitation between respondent and the children and respondent asserted the extended period without contact with the children as prejudice.

The court of appeals reversed, holding that the delay was egregious and amounted to a *de facto* termination of respondent's rights. It also held that respondent had established sufficient prejudice to require reversal. Judge Levinson concurred in the result only, stating again his objection to the prejudice analysis the court has adopted in cases dealing with violation of Juvenile Code timelines.

**Held:** The supreme court reversed, based on Judge Steelman's dissenting opinion in the court of appeals, which reasoned that respondent had not demonstrated prejudice; that the delay actually gave her time to address problems that had led to the children's removal, which she did not do; and that the analysis in the majority's opinion in the court of appeals in effect applied a *per se* prejudice rule.

- Competent evidence supported trial court's findings, which were sufficient to support conclusion that respondent had willfully left the children in foster care for more than a year without making reasonable progress.

**In re J.Z.M., \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (6/17/08).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2008/061242-2.htm>

**Facts:** In an earlier opinion in this case the court of appeals reversed an order terminating parental rights because of violations of statutory timelines. The supreme court reversed that decision and remanded to the court of appeals for consideration of other issues. The only issue the court of appeals considered on remand was whether the trial court's findings were supported by competent evidence in support of the ground for termination of parental rights in G.S. 7B-1111(a)(2) – willfully leaving the child in foster care for more than a year without making reasonable progress.

**Held:** Affirmed.

The trial court's findings were supported by competent evidence and were sufficient to support the ground for termination of parental rights, where the court found that respondent had not completed a case plan or complied with a mediation agreement, had not demonstrated the ability to provide consistent care

and supervision for the children, had been terminated from a NOVA program for being dishonest and hiding the fact that she was pregnant, had not addressed the issues that led to the children's placement, and gave testimony that was contradictory and not credible.

- Without evidence to the contrary, the court presumed that the trial court's oral rendition of a dispositional order included everything that was in the subsequent written order.
- The court rejected respondent's argument that DSS violated the Adoption and Safe Families Act by not providing meaningful reunification services, and held that DSS's efforts complied with ASFA.

**In re A.R.H.B., \_\_\_ N.C. App. \_\_\_, 651 S.E.2d 247 (10/2/07), appeal dismissed, 362 N.C. 235, 659 S.E.2d 433 (3/6/08).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/070690-1.htm>

**Facts:** Children were taken into custody in March, 2005, while in the grandmother's home, where the mother had left them while she went to Florida to establish a home. (Conditions in the grandmother's home included intoxication, domestic violence, and a 14-year-old's being allowed to have sex with her boyfriend.) Fathers' whereabouts were unknown. In July, 2005, the mother returned and entered into a reunification plan that included substance abuse assessment and treatment, random drug testing, making safe plans for the children when she chose to drink excessively, parenting classes, meeting with social worker regularly, obtaining employment, and obtaining a safe and stable home. The children were adjudicated neglected in August, 2005, and the disposition order was not entered until December, 2005. In April, 2006, DSS filed motions to terminate the parents' rights. Respondent father had been located, incarcerated in another state, and was served with the notice of termination. The trial court terminated the father's rights based on his failure to establish paternity, legitimate the child, or provide support. It terminated the mother's rights after concluding that three grounds had been established – neglect, incapability, and willfully leaving the children in care without making reasonable progress.

**Held:** Affirmed

1. The court rejected the mother's argument that the trial court's pattern of entering late orders prejudiced her efforts to complete the case plan. In the absence of evidence to the contrary, the court presumed that the trial court's oral rendition of the earlier disposition and review orders contained everything that appeared in the written orders that were entered later.
2. The court also rejected the mother's argument that the trial court violated the Federal Adoption and Safe Families Act (ASFA) by failing to provide meaningful reunification services. The court pointed to a variety of services DSS had provided (foster care, Medicaid, transportation, parenting classes, and substance abuse treatment), and stated that DSS had no duty to provide permanent transportation or housing aid. The court held that DSS made reasonable efforts in compliance with ASFA.
3. The court reviewed the evidence and findings relating to the ground of willfully leaving the children in care and held that they were sufficient to support the trial court's conclusion.
4. The court rejected the father's argument that he had not received proper notice, as he had not challenged the trial court's finding of fact that he was personally served by certified mail on a specific date. The court also reviewed the evidence and findings relating to the grounds for terminating his rights and held that they were sufficient.

- Res judicata did not apply when evidence related only to events that occurred after the filing of an earlier petition that was dismissed for delay in holding the hearing.

**In re I.J., \_\_\_ N.C. App. \_\_\_, 650 S.E.2d 671 (10/2/07).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/070608-1.htm>

**Facts:** The court adjudicated respondent's children neglected and dependent in 2002. DSS filed a petition to terminate respondent's rights in June 2004, but in April, 2005, the children were returned to the mother on a trial placement. They returned to foster care four months later. The court granted respondent's motion to dismiss the 2004 termination petition because it came on for hearing more than 20 months after the petition was filed. In 2006 DSS filed another termination petition, alleging the same grounds as in the 2004 petition. The trial court denied respondent's motion to dismiss the petition on the basis of res judicata, but ordered that evidence of grounds for termination would be limited to occurrences after the filing of the 2004 petition. After hearing evidence, the court adjudicated three grounds for termination and entered an order terminating respondent's rights.

**Held:** Affirmed.

1. Court of appeals rejected respondent's argument that second petition should have been dismissed because dismissal of first petition was res judicata. The court said that res judicata requires identity of parties, subject matter, and issues. That was not the case here because, except for background, evidence of grounds for termination related only to events after the first petition was filed.
2. The court did not reach the issue of whether dismissal of the first petition for violation of the 90-day hearing requirement was a final judgment on the merits for purposes of res judicata.

- In an appeal from an order terminating parental rights, the signature of an appellant's guardian ad litem on the notice of appeal is not a sufficient signature by the "appellant" as required by Rule 3A(a).
- In an action to terminate parental rights the role of a parent's guardian ad litem is to provide assistance, not to substitute his or her judgment or decisions for those of the parent.

**In re L.B., \_\_\_ N.C. App. \_\_\_, 653 S.E.2d 240 (12/4/07), review denied, \_\_\_ N.C. \_\_\_, 661 S.E.2d 248 (4/10/08).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/070549-1.htm>

**Facts:** In an action to terminate the parents' rights, guardians ad litem were appointed for both parents pursuant to G.S. 7B-1101.1. After the court entered an order terminating both parents' rights, both parents' attorneys and guardians ad litem signed notices of appeal. Petitioner made a motion to dismiss the appeal for failure to comply with Rule 3A of the Rules of Appellate Procedure.

**Held:** Appeal dismissed.

1. In juvenile cases, Rule 3A of the Rules of Appellate Procedure requires that both trial counsel and the appellant sign the notice of appeal. The court held that the signature of the respondent parent's guardian ad litem did not suffice to satisfy the requirement that the parent sign. Failure of the parents to sign the notice of appeal deprived the court of appeals of jurisdiction to consider the appeal.
2. The court of appeals contrasted the standards for appointing a guardian for an adult under G.S. Ch. 35A, a guardian ad litem for an adult pursuant to G.S. 1A-1, Rule 17, and a guardian ad litem for a respondent parent under G.S. 7B-1101.1. The last requires only a reasonable basis to believe the parent is incompetent or has diminished capacity. The court concluded that the role of the guardian ad litem appointed under G.S. 7B-1101.1 is limited and does not include exercising legal rights in lieu of the respondent parent.

**Dissent:** Judge Steelman would have denied the motion to dismiss the appeal and thought the majority misconstrued the nature of the guardian ad litem's role. The dissenting opinion proceeded to consider the appeal on the merits and would have affirmed the order terminating both parents' rights.

- Majority held that
  1. trial court erred in allowing amendment of the petition to conform to the evidence, and
  2. G.S. 1A-1, Rule 15, does not apply in a termination proceeding to permit amendment of the petition or motion to conform to the evidence presented at the adjudication hearing.

**In re B.L.H., \_\_\_ N.C. App. \_\_\_, 660 S.E.2d 255 (5/6/08).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2008/071313-2.htm>

**Background:** This opinion supersedes an opinion the court of appeals issued in the same case on March 4, 2008. In that opinion the court vacated the trial court's order terminating respondent's rights after concluding that the trial court lacked subject matter jurisdiction where the record was silent with respect to issuance or service of summonses to the juveniles. After that decision, the court granted petitioner's petition for rehearing, withdrew the earlier decision, and filed this opinion.

**Facts:** DSS filed a petition to terminate respondent's rights on two grounds – neglect and non-payment of child support. At the first of two hearings, after testimony of the social worker, the trial court granted DSS's motion to amend the petition to conform to the evidence and allege the additional ground of willfully leaving the child in foster care for more than a year without making reasonable progress in correcting the conditions that led to placement. Respondent objected. The court adjudicated only this added ground and entered an order terminating respondent's rights.

**Held:** Reversed.

1. The opinion recites that respondent and the children were timely served with copies of the summonses and petitions. It does not discuss subject matter jurisdiction.
2. The majority holds that it was error for the trial court to allow the amendment to conform to the evidence, because Article 11 of G.S. Chapter 7B is silent with regard to such amendments.
3. Because the children had not been in care for a year when the petition was filed, the petition as filed could not have put respondent on notice that the additional ground was being asserted. The court held that notice therefore was not sufficient.

**Dissent:** Judge Steelman dissented on the basis that because the termination statute is silent, G.S. 1A-1, Rule 15, should control with regard to amendments; respondent had not claimed that she had insufficient time to prepare; and respondent had not shown material prejudice.

#### EARLIER OPINIONS AFFIRMED PER CURIAM

- Appellant did not show that she was prejudiced by a two-and-a-half month delay in entry of the permanency planning order.
- Changing plan from reunification to guardianship was not error when court found respondent could care for the children only with constant assistance, which was not available or financially feasible.
- Trial court did not err in considering a written DSS report and psychological report even though they were not formally introduced as evidence.

**In re J.J., 180 N.C. App. 344, 637 S.E.2d 258 (12/5/06), affirmed per curiam, 362 N.C. 172, 655 S.E.2d 712 (1/25/08).**

<http://www.aoc.state.nc.us/www/public/sc/opinions/2008/015-07-1.htm>

<http://www.aoc.state.nc.us/www/public/coa/opinions/2006/051510-1.htm>

- DSS's failure to attach custody order to its petition to terminate parental rights did not deprive the trial court of subject matter jurisdiction.
- Respondent failed to show prejudice resulting from the fact that termination petition was not filed within 60 days after permanency planning hearing or that the hearing was held more than 90 days after the petition was filed.

**In re T.M., 182 N.C. App. 566, 643 S.E.2d 471 (4/17/07), affirmed per curiam, 361 N.C. 683, 651 S.E.2d 884 (11/9/07).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/070911-1.htm>

<http://www.aoc.state.nc.us/www/public/sc/opinions/2007/243-07-1.htm>

- Where the parties agreed that an adjudication of abuse in relation to one of the children should not have been in the order, the court of appeals properly remanded the case for amendment of the order accordingly.

**In re A.S., 181 N.C. App. 706, 640 S.E.2d 817 (2/20/07), affirmed per curiam, 361 N.C. 686, 651 S.E.2d 883 (11/9/07).**

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/061028-1.htm>

<http://www.aoc.state.nc.us/www/public/sc/opinions/2007/140-07-1.htm>

- Notice of appeal is not properly served when no certificate of service is attached.

**In re C.T., 182 N.C. App. 166, 641 S.E.2d 414 (3/6/07), affirmed per curiam, 361 N.C. 581, 650 S.E.2d 593 (10/12/07).**

<http://www.aoc.state.nc.us/www/public/sc/opinions/2007/175-07-1.htm>

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/061272-1.htm>

- The trial court did not err in declining to order the production of or admit into evidence confidential substance abuse records relating to respondent parents.

**In re E.P., 183 N.C. App. 301, 645 S.E.2d 772 (6/5/07), affirmed per curiam, 362 N.C. 82, 653 S.E.2d 143 (12/7/07).**

<http://www.aoc.state.nc.us/www/public/sc/opinions/2007/298-07-1.htm>

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/060687-1.htm>

- Evidence was sufficient, without specific findings, to support the trial court's conclusion of law that it had subject matter jurisdiction under the UCCJEA.

**In re T.J.D.W., 182 N.C. App. 394, 642 S.E.2d 471 (4/3/07), affirmed per curiam, 362 N.C. 84, 653 S.E.2d 143 (12/7/07).**

<http://www.aoc.state.nc.us/www/public/sc/opinions/2007/202-07-1.htm>

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/061323-1.htm>

- The child's presence in the state when termination petition was filed was not required for the court to have subject matter jurisdiction because the court already had exclusive continuing jurisdiction under the UCCJEA.

**In re H.L.A.D., 184 N.C. App. 381, 646 S.E.2d 425 (7/3/07), affirmed per curiam, 362 N.C. 170, 655 S.E.2d 712 (1/25/08).**

<http://www.aoc.state.nc.us/www/public/sc/opinions/2008/386-07-1.htm>

<http://www.aoc.state.nc.us/www/public/coa/opinions/2007/070034-1.htm>

