

2005 CASE SUMMARIES
(IN ALPHABETICAL ORDER BY FIRST INITIAL—KEYWORD INDEX AT PAGE 77)

DEANA K. FLEMING, GAL Associate Counsel
ALEXANDRA S. GRUBER, GAL Appellate Coordinator
With Special Thanks to our Contributing Law Interns
MICHELLE O'LEARY, STACEY AMES & CARY BREGE

Unpublished decisions are noted by an * following the case name. See note at end of section.

Gorsuch v. Dees & A.B.D., --- N.C. App. ---, 618 S.E.2d 747 (September 6, 2005). Plaintiff putative father sought to legitimate A.B.D. despite the termination of his parental rights. The Court affirmed the trial court's order that Plaintiff had no standing to legitimate A.B.D. because a prior termination order completely and permanently terminates a parent's rights and responsibilities.

In re A.B.D., ---- N.C. App. ---, 617 S.E.2d 707 (September 6, 2005) (Wake County). In this companion case to the above action, the TPR order was reversed due to the fact that the summons was not timely served within the requisite thirty days and neither an endorsement nor an alias and pluries summons was obtained to extend the time in which to effectuate service of process. The TPR order was originally entered in November 1999, but respondent father filed a motion to set aside the order in December 2003. The trial court denied the motion to set aside the TPR, and the respondent father appealed. Because service was complete 41 days after the summons was issued, the summons was no longer valid to confer jurisdiction since no method was utilized to resurrect the summons. Note that the respondent did not appear at the TPR hearing, so there was never a general appearance and no personal jurisdiction over respondent.

In re A.C.J., P.A.G.S., * (Unpub.) --- N.C. App. ---, 621 S.E.2d 341 (November 15, 2005) (Durham County). The Court of Appeals reversed the trial court's order terminating parental rights as to respondent mother on the grounds that she had willfully left her children in foster care without making reasonable progress for failure to appoint her a guardian ad litem. Although the petition to terminate parental rights does not specifically cite § 7B-1111(a)(6) as grounds, incapacity due to mental illness and a substance abuse history of 15 years were the basis for the petition. The court held that when there is "some evidence that tended to show that respondent's mental health issues and the child's neglect were so intertwined at times as to make separation of the two virtually...impossible," appointment of a guardian ad litem is required. (citing *In re J.D.*, 164 N.C. App 176 (2004)).

In the Matter of A.D.L., J.S.L., & C.L.L., 169 N.C. App. 701, 612 S.E.2d 639 (April 19, 2005), *cert. denied*, 359 N.C. 852, 619 S.E.2d 402 (2005) (Guildford County). Respondent mother appealed the termination of her parental rights based on neglect, willfully leaving the children in foster care for more than twelve months without showing reasonable progress, and willful failure to pay a reasonable portion child support. In her first argument, respondent argued that the TPR order must be vacated because it was not entered within the statutorily mandated thirty days. The order was decreed on August 22,

2002 and entered October 7, 2002, sixteen days over the mandated thirty. The Court concluded that the legislative intent of the thirty days was for speedy resolution of juvenile custody cases, and reversal based on this untimely filing would further delay permanence. Further, respondent failed to show any prejudice and this assignment of error was overruled. In her second argument, respondent asserted that the TPR be reversed because the trial court failed to appoint a guardian ad litem to represent the children. The Court overruled this assignment of error due to the fact that although there was no appointment order, there was no harm to respondent as a result of this technical violation. The children were represented at the hearing by the guardian ad litem who fulfilled her duties under NCGS § 7B-601. In her third argument, respondent asserted that the court failed to follow the mandates of the Indian Child Welfare Act of 1978 (ICWA); however, the children's tribal affiliation is the Lumbee Tribe who are not a federally recognized tribe as required under ICWA. The Court overruled respondent's fourth argument that she was not given notice that the issue of neglect would be considered as a ground due to the sufficiency of petitioner's factual allegations, specifically the failure to follow through with the case plan components. Finally, the Court overruled respondent's argument that termination was not in the best interest of the children finding no abuse of discretion. Judge Tyson wrote a **separate concurrence** relating to the timeliness of the TPR order's entry, and specifically stated: "I agree with the majority's holding that a sixteen day delay, standing alone, is insufficient to warrant a reversal where respondent failed to argue or show prejudice. However, our decision does not condone the delay in entering the adjudication and disposition order beyond the time limits in the statutes."

In the Matter of A.D.W., * (Unpub.) --- N.C. App. ---, 615 S.E.2d 435 (July 5, 2005) (Lee County). The Court of Appeals reversed and remanded the adjudication and disposition orders for failure to appoint a parental GAL where the disposition alleged dependency. The Court relied on *In re H.W.* to reiterate that the "failure to appoint a guardian ad litem in any appropriate case is deemed prejudicial error *per se* [.]"

In the Matter of A.E., J.E., --- N.C. App. ---, 615 S.E.2d 53 (July 19, 2005) (Buncombe County). The Court affirmed the order adjudicating the children neglected. DSS initiated an investigation after receiving a report about respondent father's relationships with women. During the investigation DSS learned that respondent had been convicted of indecent liberties with a minor and that his probation was revoked for failure to obtain sexual offender treatment. Respondent did obtain a sexual offender evaluation but refused to undergo treatment. DSS filed juvenile petitions alleging neglect, but did not take non-secure custody. The trial court adjudicated the children neglected due to respondent's failure to follow through with treatment and the testimony of the doctor who performed the evaluation. On appeal respondent argued that the doctor's testimony was unreliable, particularly since his recommendations changed from when he wrote the report and his testimony. Because respondent did not object to the doctor's testimony at trial and did not specifically assign error on appeal that the issue is not properly preserved for appellate review and did not reach the merits of the appeal. Judge Tyson **dissented** and would reach the merits of the appeal. He agreed with respondent father's argument

that a conviction of indecent liberties with an unrelated third party minor and subsequent probation violation are insufficient to adjudicate the children neglected.

In the Matter of A.K.,* (Unpub.) 168 N.C. App. 595, 608 S.E.2d 415 (February 15, 2005); *reversed and remanded*, --- N.C. App. ---, 628 S.E.2d 753 (May 5, 2006) (Buncombe County). Respondent father appealed an order that adjudicated the minor child, A.K., neglected and awarded legal custody to the Buncombe County Department of Social Services. While the appeal was pending, the trial court entered a subsequent order that returned custody to the parents and relieved the Department of Social Services and Guardian ad Litem of further responsibility. Although the subsequent order was not in the record on appeal, the Court took judicial notice of it. The Court held that the father's appeal was rendered moot by the subsequent order. A petition for discretionary review was allowed on 7/1/05 and the case was later **reversed and remanded**.

In the Matter of A.L. a/k/a A.H., L.L. a/k/a, L.H., *(Unpub.) --- N.C. App. ---, 621 S.E.2d 343 (November 15, 2005) (Transylvania County). The trial court's disposition order ceasing visitation, reunification efforts, and allowing DSS to proceed with termination of parental rights was reversed and remanded. It was unclear from the order whether or not it was from a review hearing or a permanency planning hearing; however, no findings were made to address the criteria in § 7B-906(c) and there were also no findings to address any of the necessary findings per § 7B-907(b). Because the findings were absent, the conclusions of law could not be upheld.

In re A.M.H., * (Unpub.) --- N.C. App. ---, 613 S.E.2d 530 (May 3, 2005) (Cumberland County). Petitioners, the putative father's brother and sister-in-law, filed for TPR due to respondent mother's failure to pay a reasonable portion of support and because she failed to have any contact with A.M.H. for six months prior to the filing of the petition. Respondent mother's parental rights were terminated and she appealed. The Court of Appeals affirmed. The issues on appeal include whether the petitioners had standing to petition to terminate respondent's parental rights, whether the district court had subject matter jurisdiction over the matter, and whether the district court erred in concluding that respondent willfully abandoned A.M.H. Petitioners were granted temporary custody of A.M.H. in 2001 and because of this had standing to file the TPR. Respondent argued that the district court did not have subject matter jurisdiction because there was a prior award of custody to respondent in South Carolina. The UCCJEA, which governs subject matter jurisdiction, says that a state has jurisdiction over a child custody case if the State is the home state of the child, it is in the best interests of the child because the child or the child's parents had a significant connection with the State, the child was physically present in the state and it was a necessary emergency to protect the child, or it appeared that no other state would have jurisdiction or another state declined to have jurisdiction. Under N.C. Gen. Stat. § 50A-204(a), a court can gain temporary emergency jurisdiction if a "child is present in this State and the child has been abandoned." Subject matter jurisdiction is also governed by PKPA that requires that "every State shall enforce...and shall not modify...any custody determination or visitation determination made...by a court of another State." Federal law preempts the state law where both conflict. In this case, when the TPR was filed, no effective order of custody was in place (the South

Carolina order had terminated prior to the filing of the petition) and precluded North Carolina from having jurisdiction.

In the Matter of A.N.P. and S.R.P., * (Unpub.) --- N.C. App. ---, 615 S.E.2d 96 (June 21, 2005) (Buncombe County). Respondent mother appealed from order terminating her parental rights. The Court of Appeals affirmed. On appeal, respondent mother assigned error to pages 19-121 of the trial transcript. The Court held that “broadside assignments of error do not comply with N.C. R. App. P. 10(c)(1) and are insufficient to sustain a challenge to any of the trial court’s findings of fact.” Because of this, review was limited to whether the court’s findings supported its conclusions of law.

In the Matter of A.P.R. & A.C.R., * (Unpub.) --- N.C. App. ---, 616 S.E.2d 691 (August 16, 2005) (Alamance County). Respondent mother appealed from a TPR order on the ground that she willfully left her children in foster care for more than twelve months without making reasonable progress. The Court of Appeals affirmed the trial court order and held that the trial court did not abuse its discretion in holding that it was in the juveniles’ best interest to terminate parental rights. Of the 76 findings of fact made by the trial court, respondent-mother assigned error to six. The remaining 70 were considered binding on appeal. The trial court found that respondent tested positive for illegal drugs and was incarcerated as a result, and that respondent made “sporadic efforts” at correcting the conditions that led to removal which included gaining a “stable residence” one month before TPR after living in 10 separate places and working for one month after many changed jobs. The Court of Appeals has previously held that “extremely limited progress is not reasonable progress.” *In re B.S.D.S.*, 163 N.C. App. 540 (2004). In addition, most of the efforts made by respondent were only a month before the TPR hearing. The Court of Appeals held that “[a] trial court is not required to consider as reasonable progress efforts occurring only when parental rights are in jeopardy.” Although respondent-mother offered multiple excuses for her failed attempts to comply with the case plans, the trial court correctly held that her actions were “willful” “[w]illfulness is established when the respondent had the ability to show reasonable progress, but was unwilling to make the effort.” *In re Nesbitt*, 147 N. C. App. 349, 350 (2001).

In the Matter of As.L.G. & Au.L.G., --- N.C. App. ---, 619 S.E.2d 561 (October 4, 2005). The TPR order was affirmed in this case despite DSS failing to timely file for TPR under both statutory mandates and the trial court’s order. At a permanency planning hearing, the court adopted the permanent plan of adoption and instructed DSS to file the TPR within 60 days; however, the TPR was not filed for five months. On appeal, respondent mother argued that the five-month delay in filing the TPR was reversible error. The court overruled this argument, stressing the need for respondent to show prejudice in order for reversible to be a remedy when juvenile statutory timelines are not followed. Without additional information regarding the best interests of the children (there was no GAL brief), the court could not find prejudice. Respondent also argued that she should have had a Rule 17 GAL, but this argument was overruled—although there were references to counseling and drug treatment, it did not rise to the level of being so intertwined with the children’s neglect that she required such an appointment. Finally, respondent argued that

her failure to follow the trial court's orders was due to her poverty but the appellate court saw no connection.

In re B.A.A. and P.J.A., * (Unpub.) 169 N.C. App. 455, 612 S.E.2d 448 (April 5, 2005) (Randolph County). Court of Appeals affirmed the termination of respondent mother's parental rights. Respondent mother appealed the TPR arguing that the grounds were not supported by clear, cogent and convincing evidence but did not take exception to any of the findings of fact. Because of this, the Court of Appeals took the findings of fact as binding. The Court of Appeals did not address the other two grounds for termination as finding one ground is sufficient for termination and the trial court properly terminated rights pursuant to N.C. Gen. Stat. §7B-1111(a)(1). Mother also assigned error to the admission of her entire criminal record into evidence. This was rejected because the evidence was admitted without objection—a waiver of prior or later objection to the admission of the same evidence. Mother also assigned error to the admission of social worker's testimony of conversations with a nurse. Court of Appeals held that it was not erroneous because it was explaining the social worker's investigation of respondent and "when evidence of...statements by one other than the witness testifying is offered for a purpose other than to prove the truth of the matter asserted, it is not hearsay and is admissible."

In the Matter of Baby Boy M.,* (Unpub.) 168 N.C. App. 408, 607 S.E.2d 705 (February 1, 2005) (Johnston County). The Court affirmed the termination of respondent father's parental rights. The minor child's mother had relinquished her parental rights to a licensed child placement agency shortly after the minor child's birth in August of 1998, and the agency placed the child with a foster mother that same year. In 2001, the child's foster mother filed a petition to terminate respondent father's parental rights with the goal of adopting the minor child. The respondent father was in the U.S. Army and was stationed in Korea in 1998. While the respondent father was in the U.S. on funeral leave, the child placement agency made three separate appointments to meet with the father. The respondent father failed to appear at any of the appointments and later claimed he lost the agency's phone number. The respondent father did not provide any financial support for the minor child, and the trial court terminated the respondent's parental rights on the ground of his willful failure to pay a reasonable portion of the cost of care of the minor child although physically and financially able to do so. On appeal, respondent father argued that the trial court's failure to enter its written order within thirty (30) days of the termination hearing constituted reversible error because it prevented him from proceeding with his appeal and deprived him of contact with the child. The Court held that the district court's untimely entry of an order terminating parental rights was not reversible error, absent actual prejudice to the respondent. Respondent father also argued that the trial court erred in its conclusion that he had failed to pay a reasonable portion of the child's care in the absence of any findings or evidence regarding his income, living expenses, or ability to pay child care. The Court held that while there was no evidence related to respondent father's actual salary or the specific costs of the child's care, the trial court's findings of fact were sufficient as a valid ground for termination of parental rights.

In re Baby W,* (Unpub.) 169 N.C. App. 255, 611 S.E.2d 900 (March 15, 2005) (Wake County). The Court of Appeals affirmed this private termination of parental rights of respondent father. Baby W's parents were minors. Six months before Baby W's birth, the mother told respondent father that she was pregnant. Paternity testing later established that respondent was the biological father. The mother surrendered custody of Baby W to Amazing Grace Adoptions on the same day he was born and four days later Amazing Grace Adoptions filed a TPR petition against respondent father. The trial court found that the respondent father had not established his paternity judicially or by affidavit, nor legitimated the child through a petition to the court or marriage to the mother. The trial court also found that respondent father had not provided substantial financial support to the child and the child's mother, even though respondent had a full time job. The trial court concluded that there were grounds for termination under NCGS § 7B-1111(a)(5). Respondent father first argued that the trial court erred when it denied his motion to dismiss the termination of parental rights petition on the grounds that the petition did not contain sufficient factual allegations. Although the petition's allegations did not comply exactly with the language of NCGS § 7B-1111(a)(5) regarding failure to establish paternity or legitimate, the petition's allegations put the respondent on notice of what he did not do, what claims were pending against him, and the issues involved in the proceedings. Respondent next argued that the trial court erred in refusing to dismiss the petition as a sanction for the violation of NCGS § 1A-1, Rule 11 because the petitioner failed to conduct a "reasonable inquiry" into the case before filing the petition with the court. The respondent specifically pointed to the fact that the petitioner waited until after the petition was filed to obtain affidavits from government agencies that showed respondent had legitimated the child. The Court held that it was not a violation to conduct a short investigation and that the respondent had not shown that the petition was factually insufficient, legally insufficient, or filed for an improper purpose. Respondent also argued that his constitutional right to parent was violated because filing of the petition so soon after the child's birth did not give him the chance to prove that he could be a good parent. The Court noted that the argument was not properly before the Court because it was not the subject of an assignment of error. However, the trial court did find that the respondent had known of the pregnancy and the child for approximately six months before Baby W's birth. The Court held that this knowledge gave respondent father sufficient opportunity to demonstrate the necessary commitment to the minor child. Respondent objected to questions regarding his sexual misconduct with a thirteen-year old girl and whether he was on probation at the time of the hearing. The Court held that when considering the best interests of the child, it was appropriate for the trial judge to hear evidence that would give them a full picture of the respondent father's personality and parenting abilities.

In the Matter of B.D., 169 N.C. App. 803, 611 S.E.2d 187 (April 19, 2005), *reh'g granted*, 359 N.C. 852, *aff'd on reh'g*, 620 S.E.2d 913, *cert. denied*, 628 S.E.2d 245 (2006) (Buncombe County). The Court vacated the order terminating respondent parents' parental rights. There were two juvenile petitions filed in this case. B.D. was adjudicated neglected based on the first petition; however, a second petition was subsequently filed alleging sexual abuse and neglect. The trial court adjudicated the child to be both neglected and sexually abused, and the respondent parents appealed the second

adjudication [see *In re Derreberry*, 160 N.C. App. 252, 584 S.E.2d 892 (2003)]. While the appeal of this adjudication was pending, DSS filed a petition to terminate parental rights based on neglect and willfully leaving the child in foster care for more than twelve months without showing reasonable progress. In its TPR order, the trial court acknowledged that the appeal was pending; nonetheless, the court incorporated by reference the findings of the adjudication and disposition order that was on appeal. Although the Court subsequently affirmed the adjudication and disposition order, the issue on appeal was whether the TPR order was based on grounds independent as those challenged by the prior appeal as required by the holding in *In re Stratten*. Because the trial court terminated respondents' rights on grounds supported by the same evidence of the prior appeal, the Court vacated the TPR order.

In re B.D., --- N.C. App. ---, 620 S.E.2d 913 (November 1, 2005) (Buncombe County). Case on remand based on order of the Supreme Court filed 18 August 2005 for reconsideration by Court of Appeals in light of the holding of *In re R.T.W.* See above case for factual history. The first issue argued on appeal is that B.D. was not served with a summons whereby the court lacked jurisdiction. This argument was overruled since (1) the attorney advocate was served; and (2) assuming arguendo that such service was improper, the parents were not "aggrieved parties" affected by the error. Respondent parents also argued error for the trial court failing to hold a special proceeding prior to the TPR hearing. This argument was overruled because the purpose of the hearing is to narrow the issues for trial; however, both parents denied all material allegations of the petition. The next argument, failure to attach a copy of the custody order, was overruled. In light of *R.T.W.* it was also not error for the court to proceed to TPR while an underlying order was on appeal. Hearsay evidentiary arguments were overruled—confrontation clause is inapplicable and expert testimony was permissible under Rule 703. Respondent father assigned error to certain findings of fact and conclusions of law, but these arguments were overruled. The order terminating parental rights was affirmed.

In the Matter of B.I., * (Unpub.) --- N.C. App. ---, --- S.E.2d --- (December 20, 2005) (Buncombe County). Respondent mother appealed from an order adjudicating B.I. neglected and from a disposition order ceasing reunification efforts. The Court of Appeals affirmed. With regards to the first assignment of error, the Court held that when finding that a juvenile is neglected evidence that another juvenile has been subject to abuse of neglect by an adult who lives in the home is relevant. In this case, the father had abused respondent's first child and respondent and father relinquished their rights to the state of Missouri due to the injuries the child had suffered and due to respondent's inability to protect the child from abuse. The Court of Appeals also held that these findings supported a conclusion that B.I. was neglected in that she would not receive proper care and supervision and would be exposed to substantial risk of harm. Furthermore, the Court held that the fact that B.I. was taken from respondent two days after birth does not mean that she wouldn't live in an injurious environment. Because the trial court has discretion to determine whether or not neglect is likely in the future, the Court of Appeals held that B.I. was properly adjudicated neglected. The Court of Appeals also held that DSS made reasonable efforts to reunify and that removal was necessary to protect the safety and health of B.I.. The Court held that even if reasonable

efforts were not made, N.C.G.S. § 7B-507(a) still allows an entry of an order authorizing juvenile's placement when the court finds the placement is necessary for the protection of the juvenile as in this case.

In the Matter of B.M., M.M., et al., 168 N.C. App. 350, 607 S.E.2d 698 (February 1, 2005) (Watauga County). Respondent parents appealed the termination of parental rights as to their four children and the Court reversed the order based on failure to appoint guardians ad litem for respondent parents. The family has a long history with DSS due to each child having special needs, the parents' inability to maintain a safe and clean house, and the mental issues of the parents. Respondent father receives a disability check due to extreme learning disabilities and respondent mother has borderline personality disorder with a history of depression. Due to the parents' failure to comply with the family preservation plan, DSS filed a petition alleging neglect and dependency. A consent order was entered finding the children to be dependent, and the initial disposition gave DSS custody and continued placement of the children in the home with DSS to provide services. At a subsequent review hearing, the children were removed from the home due to noncompliance of the parents and reunification efforts were ceased. The grounds found by the trial court for termination were willfully leaving the children in foster care for more than twelve months without making reasonable progress to correct conditions that led to removal and dependency. Respondent parents first argued the trial court lacked jurisdiction to terminate their rights because DSS failed to file the petition within sixty days pursuant to NCGS §7B-907(e). The Court disagreed, holding that the time period was not mandatory, but directory, and not jurisdictional. However, because the dependency was alleged pursuant to NCGS §7B-1111(a)(6) due to the parents' mental issues that impacted their parenting that led to the children's removal, the statute required the appointment of guardians ad litem for the parents, and failure to do so was reversible error.

In the Matter of B.N., M.N., T.N., N.N., M.L.N., * (Unpublished) 169 N.C. App. 842, 612 S.E.2d 693 (April 19, 2005) (Harnett County). Respondents mother and father appealed from orders terminating their parental rights. The Court of Appeals affirmed, holding that only one ground was necessary to support termination and the trial court had correctly found that the mother had willfully left the children outside of the home for more than 12 months without making reasonable progress. In this case, the mother had failed to create a stable home environment and had failed to secure full time employment even though she was physically able to do so. The mother's other contention that the trial court erred in concluding as a matter of law that it was in the best interests of the children to terminate her parental rights was overruled because she did not cite any authority for this contention in violation of the Rules of Appellate Procedure. The father was incarcerated at the time DSS became involved and was only released for three days before he committed another crime and was sentenced to at least 35 years. During his three-day release, he only spent three minutes with the children. The Court held that although incarceration alone is not enough to justify termination, the court can look into the choices that a parent made that negatively affect his or her children. Because the father here chose to commit crime rather than provide for his children and has failed to

support or visit his children in any way, the trial court did not err on terminating his parental rights based upon neglect.

In the Matter of B.N.H.,--- N.C. App. ---, 611 S.E.2d 888 (May 3, 2005) (Catawba County). The Court dismissed as interlocutory respondent mother's appeal from an initial permanency planning order that ordered the permanent plan to be adoption. At three days old, DSS filed a petition alleging B.N.H. was neglected and dependent, obtained nonsecure custody, and placed the infant with the maternal grandmother. The adjudication and disposition order continued custody with DSS and placement with the maternal grandmother. The first review hearing after disposition ordered DSS to continue making reunification efforts; however, at the second review hearing, the trial ordered that reunification efforts cease. Respondent did not appeal the order that ceased reunification efforts. Within the mandated thirty days, a permanency planning hearing was held that continued placement with the maternal grandmother with a permanent plan of adoption. Petitioner filed a motion to dismiss respondent's appeal as interlocutory citing NCGS §7B-1001, which provides appeal may be taken from any *final* order of the court and asserted that not all permanency planning and review orders are in fact final orders subject to appeal. Further, that the order in this case did not modify custodial rights pursuant to NCGS §7B-1001(4) and is not an "order of disposition after an adjudication that a juvenile is abused, neglected, or dependent" under NCGS §7B-1001(3). Acknowledging the holding of *In re Weiler* that essentially held that a permanency planning order was a type of dispositional order subject to immediate appeal, this panel disagreed with such an expansive interpretation. The Court distinguished this case from *Weiler* in that the permanency planning order in that case changed the plan from reunification to adoption whereas the permanency planning order in this case merely repeated the prior order that reunification efforts cease. This case is pivotal at limiting the number of orders from which parents can appeal, and Judge Levinson writes a powerful opinion recognizing that such an expansive reading of NCGS §7B-1001 only frustrates the purpose of the juvenile code in achieving permanency for children.

In the Matter of B.P., S.P., & R.T., 169 N.C. App. 728, 612 S.E.2d 328 (April 19, 2005), *related proceeding at* 2005 N.C. App. LEXIS 835 (Pitt County). Respondent mother appealed from a permanency planning order that continued the permanent plan for R.T. and B.P. as guardianship with approved caretakers, but changed the permanent plan of S.P. from guardianship with an approved caretaker to adoption. The Court dismissed respondent's appeal as to R.T. and B.P. as interlocutory, but reversed and remanded the trial court's order relating to S.P. The Department of Social Services had already been relieved of reunification efforts at a previous permanency planning hearing from which respondent did not appeal. The Court determined that the appeal as it related to the guardianship plan of R.T. and B.P. was interlocutory because respondent's appeal was from a continuation of the permanent plan and not a dispositional change; however, due to the change in the permanent plan of S.P. to adoption, respondent's appeal of that portion of the order was not interlocutory. The Court reversed and remanded the order relating to S.P. due to noncompliance with the statutory mandates of NCGS § 7B-905(a) that requires specific findings of fact and conclusions of law. The trial court failed to

dictate who had custody of S.P.; the duration of the order; and simply adopted the recommendations of the agency without taking evidence. Further, following its recent holding in *In re L.E.B.*, the Court found that failure to enter the written order timely was prejudice to all parties.

Judge Wynn **concurred in part and dissented in part**. His dissent was based on the assertion that vacating the order due to its late entry only further delays permanency for the children, and that the respondent in this case failed to show that she was prejudiced.

In the Matter of B.R. * (Unpublished) 168 N.C. App. 239, 607 S.E.2d 55 (January 18, 2005) (Mecklenburg County). The Court of Appeals affirmed the termination of respondent father's parental rights. The minor child was born prematurely with cocaine in her system and placed into foster care by DSS several days later. The child's parents did not attend the nonsecure custody hearing nor the adjudicatory and dispositional hearing and the trial court noted that they showed little interest in parenting the child. Respondent father attended the permanency planning hearing and was ordered to submit to a paternity test, a parenting evaluation and to comply with the case plan recommended by DSS. After paternity was confirmed, the court authorized visitation between respondent father and the child. This visitation was suspended after his arrest and incarceration for common law robbery. Respondent father testified at the termination hearing and asked the court to place the child with his mother, the child's grandmother, until he was out of prison and able to provide for the child. The grandmother testified to her willingness to keep the child until the respondent father got a full-time job and his own home. When asked why she had not come forward earlier, the grandmother testified that the minor child's mother had told her she was "too old." The grandmother admitted that she had only seen the minor child three times and had no familiarity with her developmental or educational needs. On appeal, respondent father pointed to N.C. Gen. Stat. §§7B-505 and 907(b)(2)(2003) in his assertion that when a minor child is removed from the custody of the parents, the court has a duty to explore placement with a relative before placing the child with strangers. The Court rejected his argument and noted that the statutes in question applied to custody placements during abuse, neglect and dependency proceedings and to permanency planning hearings, and not to TPR proceedings. The Court noted that the grandmother did not express a willingness to be the child's primary caretaker but merely to take custody until respondent father found stable housing and employment. The child had been in a loving and stable environment with a foster family since four days after her birth, which further supported the court's conclusion that adoption was in her best interest.

In the Matter of B.R.C., * (Unpub.) --- N.C. App. ---, 618 S.E.2d 874 (September 20, 2005) (Burke County). Mother's appeal of a permanency planning order was dismissed as moot as the district court found that the parties stipulated to custody with an appropriate person.

In the Matter of B.S.J., * (Unpub.) --- N.C. App. ---, 620 S.E.2d 734 (November 1, 2005) (Halifax County). The Court affirmed the trial court order terminating parental rights on the ground of neglect. The issue on appeal was whether or not the trial court's findings supported its conclusion of neglect. In this case, respondent father failed to

comply with his case plan, failed to sign a visitation agreement so that he could visit the minor child and testified at hearing that he would be willing to sign the relinquishment of parental rights papers. Respondent failed to provide the juvenile with contact, care and affection and there were sufficient findings to support a conclusion of neglect.

In the Matter of C.A.A., S.Y.C., * (Unpublished) 169 N.C. App. 842, --- S.E.2d --- (April 19, 2005) (Caldwell County). Respondent father, is the putative father of S.Y.C., but not C.A.A. He appealed an order terminating his paternal rights as to S.Y.C. and the mother was not a party to the appeal. The Court of Appeals affirmed. The trial court found grounds (neglect) for the Respondent's parental rights to be terminated because he did not pay support for S.Y.C., made no further attempts to comply with the plan, and DSS had lost contact with him from November 2002-April 2003. The Court held that where the allegation is neglect, the court must look at "any evidence of changed conditions in the light of the evidence of prior neglect and the probability of a repetition of neglect..." In this case, the parents had come and gone, left the country for a long period of time, the children were left in foster care and the parents failed to make reasonable progress such that they remain in the same situation as when DSS became involved. Because of this, the Court of Appeals held that the trial court's findings that S.Y.C. was a neglected juvenile were supported by clear, cogent and convincing evidence.

In the Matter of C.B., --- N.C. App. ---, 614 S.E.2d 579 (July 5, 2005) (New Hanover County). Respondent-mother appealed from an order adjudicating her daughter neglected and dependent. Because no guardian ad litem was appointed to represent respondent, the Court of Appeals reversed and remanded for a new trial. Among the findings of fact in the trial court order was that respondent suffered from mental health issues which lead to the sexual abuse of her son, C.B.'s brother. Although this holding does not require the appointment of a guardian ad litem in every case where dependency is alleged, it does require the appointment of such when the juvenile is alleged to be dependent due to one of the conditions in the statute. In this case, dependency was alleged due to respondent's mental health issues that led to the sexual abuse of her son, and therefore a guardian ad litem should have been appointed. The Court of Appeals also addressed the issue of whether or not the trial court erred in incorporating the DSS and GAL reports into the order. The court held that because the order clearly stated that the reports were admitted for dispositional purposes that there was no error. It relied on N.C. Gen. Stat. § 7B-901 which states that "the court may consider written reports or other evidence concerning the needs of the juvenile" during disposition.

In re C.C., J.C., --- N.C. App. ---, 618 S.E.2d 813 (September 20, 2005) (Mecklenburg County). The termination of parental rights was reversed because there was insufficient evidence to support neglect and failure to make reasonable progress as grounds. DSS became involved with the family due to lack of supervision, mental health of the mother, and living conditions in the home. During DSS involvement and also after the adjudication of neglect, the mother was inconsistent in addressing the issues, but continued to make an effort to work her case plan. Because of the inconsistent progress, DSS filed for TPR. The first issue on appeal was whether the appeal was moot as to J.C. who took his own life after the notice of appeal was filed. The Court held that

respondent's parental rights survived J.C.'s death due to the fact that TPR can form the basis of a subsequent TPR of another child of respondent. The neglect ground had insufficient evidence to support the finding at the time of the TPR hearing and there was no evidence as to the likelihood of repetition of neglect. Further the evidence did not support a finding of "willfulness" for failure to make reasonable progress.

In the Matter of C.E., * (Unpub.) 169 N.C. App. 455, 612 S.E.2d 448 (April 5, 2005) (Wayne County). The Court of Appeals affirmed a permanency planning order that rejected respondent-father's request to relinquish his parental rights. C.E. was adjudicated neglected as to her father and was placed into her mother's custody. At the permanency planning hearing, father wanted to relinquish his parental rights, but the court did not do so and held that the permanent plan was for C.E.'s mother to maintain custody; the court closed the case. Respondent's counsel filed an Anders brief which Court of Appeals held that Anders briefs apply only to criminal cases, but they reviewed the record anyway and held that the trial court's findings are supported by clear and convincing evidence which support the conclusions of law.

In the Matter of C.E.L., --- N.C. App. ---, 615 S.E.2d 427 (July 19, 2005) (Rutherford County). Respondent paternal aunt appealed the permanency planning order that awarded legal guardianship to the child's maternal great-grandmother. The child's mother is deceased and the biological father did not participate in any hearings regarding placement of C.E.L. C.E.L. and respondent's biological son came into care due to unsafe conditions related to drug use, particularly numerous prescription medications and methamphetamines. Respondent suffers from degenerative disk disease and applied for social security disability benefits. Simultaneous to the juvenile proceeding, respondent filed an action for custody under Chapter 50 against the maternal great-grandmother. Respondent failed to submit to random drug tests or sign consents to allow the social worker and GAL access to medical, mental health and treatment records. On appeal the Court ruled that facts were sufficient to find that respondent failed to make reasonable progress to correct the conditions that led to removal and that it would not be possible to return the child to respondent within six months. Evidence presented was sufficient to support a finding that respondent was not physically capable of caring for C.E.L. Respondent next argued that due to the trial court previously finding that the Chapter 50 action was more appropriate to determine the child's best interests that this issue was *res judicata* and could not change its position that guardianship was in the child's best interest in the juvenile proceeding. The Court overruled this argument since the permanency planning order that deferred to the Chapter 50 action was not a final adjudication as to placement. Due to the evolving nature of best interests and permanent plans, the trial court is not bound by previous permanency planning orders.

In the Matter of C.E.M.,* (Unpub.) 168 N.C. App. 408, 607 S.E.2d 705 (February 1, 2005) (Johnston County). Respondent mother appealed from an adjudication order finding her minor child to be neglected and dependent. The Court of Appeals dismissed her appeal and held that N.C. Gen. Stat. §7B-1001 allows for the appeal of an order of disposition following an adjudication but that there is no right of appeal from the order of adjudication.

In the Matter of C.I.B., J.L.P., L.H.P., * (Unpub.) --- N.C. App. ---, --- S.E.2d --- (December 20, 2005) (New Hanover County). The Court of Appeals affirmed the trial court's order terminating parental rights on the grounds that respondent had neglected the children, that the probability of neglect is strong, and that the respondent willfully and not due solely to poverty left the children in foster care for more than twelve months without showing reasonable progress. Respondent first argued that the trial court lacked personal jurisdiction over her because the summons and petition to terminate parental rights were not properly served. However, respondent filed an answer to the petition and failed to raise the personal jurisdiction objection at trial, and because of this, the objection was waived. Respondent also argued that the findings of fact and conclusions of law were based upon findings of insufficient evidence and considered past rather than present conditions. The Court held that when adjudicating a juvenile neglected, the trial court must look at the best interests of the child and the fitness of the parent at the time of the termination proceedings. The trial court may consider prior adjudications of neglect, but these alone cannot be sufficient to support termination based upon neglect. The court should also consider changed circumstances and the probability of repetition of neglect as well as the visitation by the parent. In this case, the trial court made a finding that respondent had failed to remedy substance abuse problems, had failed to properly supervise the children, had infrequent visitation with the children, and had failed to maintain employment. The Court held that these findings were sufficient to support a conclusion that the likelihood of repetition of neglect was high. Lastly, respondent argued that the trial court erred in failing to enter the termination order within thirty days pursuant to N.C.G.S. § 1109(e). The trial court did not enter the order in this case until more than 250 days after the termination hearing. The Court held that respondent failed to show that she was prejudiced by this late entry of the order. Respondent argued that she was prejudiced in that her appellate counsel could not be appointed until after the entry of the order. The Court overruled this argument in finding that there was no prejudice because respondent could not point to any specific harm, especially since her parental rights were properly terminated.

In the Matter of C.J.B. and M.G.B., --- N.C. App. ---, 614 S.E.2d 368 (June 21, 2005) (Moore County). The Court reversed and remanded another termination of parental rights order that failed to follow the statutory mandate of entry within thirty days of the hearing. The delay in this case was five months and respondent was able to show prejudice albeit "generic and susceptible to challenge." The Court relied on common sense and the perception that all parties involved were prejudiced by the delay. The decision gives some guidance as to the showing of prejudice on this issue: "A review of our recent cases on point exemplifies that the need to show prejudice in order to warrant reversal is highest the fewer number of days the delay exists." Judge Wynn wrote a separate concurrence to emphasize that failure to comply with the thirty-day requirement is not *per se* prejudicial and it is still necessary to show prejudice for reversible error.

In the Matter of C.J.H-D., * (Unpub.) --- N.C. App. ---, 618 S.E.2d 875 (September 20, 2005). The Court held that a temporary custody order is not a "final order" pursuant to N.C. Gen. Stat. § 7B-1001 and is therefore not appealable.

In the Matter of C.L., Jr., C.L., and C.L., * (Unpub.) --- N.C. App. ---, --- S.E.2d --- (December 20, 2005) (Johnston County). Respondent father appealed from an adjudication order, a disposition order and a permanency planning order. The Court of Appeals affirmed all orders. Respondent father was charged with first-degree sexual assault after the minor daughter was diagnosed with gonorrhea. The adjudication of the children was continued until the close of respondent's criminal trial at which he pled guilty to the lesser charge of contributing to the delinquency of a minor. The trial court adjudicated the child abused, neglected and dependent and at disposition held that it would be against the children's health and welfare to return them to respondent and that custody should remain with the maternal grandmother. On the same day, the court entered a permanency planning order that stated that further efforts to reunite respondent with the children would be futile because of the aggravating circumstance of sexual abuse and because respondent was hesitant to develop a case plan and that reunification efforts should cease. The Court held that the trial court made adequate findings supported by clear and convincing evidence that respondent was the only person who had unsupervised contact with the child and was the most likely to have given her the sexually transmitted disease. The Court also overruled respondent's argument that the trial court erred by making blanket findings incorporating DSS reports in the disposition and permanency planning orders. The court held that although the trial court must not simply recite allegations, if it makes its own findings, as here, the incorporation of the report is not error. Finally, the Court held that the trial court complied with § 7B-507(b), which states that a trial court may require reunification efforts should cease where such efforts would be futile or would be inconsistent with the juveniles health, safety and need for a safe, permanent home or where a court of competent jurisdiction has determined that the parent has subject the child to aggravating circumstances, when it held that reunifications should cease due to aggravating circumstances, such as sexual abuse.

In the Matter of C.L.C., K.T.R., A.M.R., E.A.R., 171 N.C. App. 438, 615 S.E.2d 704 (July 19, 2005), *aff'd, rev improv allow'd* by 360 N.C. 475, 628 S.E.2d 760 (2006) (Buncombe County). The Court affirmed this TPR order and overruled respondent mother's argument that the failure of DSS to comply with certain statutory timelines deprived the trial court of jurisdiction. After a history of voluntary placement agreements with DSS, a stipulated adjudication of neglect, and noncompliance with court orders, petitions to terminate her parental rights were filed. Although she had not previously objected, on appeal the mother argued that several time limits imposed by the Juvenile Code had not been followed. The Court held that she was not prejudiced by the delay, but cautioned both the courts and parties that failure to abide by the timelines disregarded the best interests of children. The Court overruled her remaining assignments of error relating to the summary of testimony in the findings of fact and that it was not in her children's best interests that parental rights be terminated. Judge Tyson **dissented** and agreed with the respondent mother's argument that she and her children were prejudiced by DSS and the trial court's failure to follow statutorily mandated timelines relating to the scheduling of hearings. He also believed that there was not clear and convincing evidence to support the finding that the mother failed to make reasonable progress to correct the conditions the lead to DSS custody.

In re C.L.S., --- N.C. App. ---, --- S.E.2d --- (December 20, 2005) (McDowell County). Respondent mother's appeal from a permanency planning review order was dismissed after the Court's finding that the order was not appealable as defined by NCGS § 7B-1001. C.L.S. was placed in the custody of DSS and the custody continued through several orders. DSS was relieved of reunification with the mother by a prior order, although reunification efforts were continued as to the father. As in the case of *In re B.N.H.* (see above), the order from which respondent appealed *continued* custody with DSS and only delineated the permanent plan as adoption. The order did not alter the disposition of the child nor changed the status quo of the relationship between respondent and her child.

In the Matter of C.M., J.M., Jr., and J.M., * (Unpub.) --- N.C. App. ---, 620 S.E.2d 320 (October 18, 2005) (Buncombe). The Court affirmed the trial court order terminating respondent's parental rights on the grounds of neglect, willfully leaving the children in placement outside of the home for 12 months, failure to pay a reasonable portion of the cost of care for the minor children, and willfully abandoning the minor children for the six months preceding the filing of the petition for termination. Respondent father had allegedly sexually abused the minor children, had abused minor children's mother and failed to make a single court ordered child support payment. On appeal, he argued that there was a defect in notice, that the court lacked subject matter jurisdiction and that the trial court failed to make adequate findings of fact. In his first assignment of error, respondent argued that because C.M., a juvenile over the age of 12, was not personally served with the petition that she was not given notice as required by § 7B-1106.1(a). The Court of Appeals held that because C.M.'s attorney was served with a copy of the motion to terminate parental rights, the notice requirement was fulfilled. Next, respondent argued that because he had an appeal of a permanency planning hearing pending that the court lacked subject matter jurisdiction to terminate parental rights. However, in *In re R.T.W.*, the North Carolina Supreme Court held that "a trial court retains jurisdiction to terminate parental rights during the pendency of a custody order appeal in the same case." In light of this ruling, the Court of Appeals held that the trial court properly retained subject matter jurisdiction. Finally, respondent argues that the trial court failed to make sufficient findings of fact to support its conclusions of law. Although the trial court copied verbatim many findings of fact alleged in the complaint, it added sufficient original findings.

In the Matter of C.M.M. & L.R.W.,* (Unpub.) 168 N.C. App. 595, 608 S.E.2d 416 (February 15, 2005) (Guilford County). The Court of Appeals affirmed the termination of respondent father's parental rights. Respondent has been incarcerated since 1998 and has an expected release date of 2015. DSS obtained custody of the two minor children in 2001 after their stepfather sexually abused them. After obtaining custody, DSS informed the respondent. During the time DSS had custody, respondent wrote his children three letters and spoke to them once. The trial court found three grounds to support the termination of his rights: (1) that he neglected his children; (2) that he willfully left his children in foster care for more than twelve months without showing reasonable progress in correcting the conditions that led to removal; and (3) that he failed to legitimate his

children or provide substantial support or consistent care to them or their mother. Respondent challenged each of the three grounds. On the second ground, the Court conceded that the trial court erred in applying the version of N.C. Gen. Stat. §7B-1111(a)(2) prior to its amendment in 2001. The previous statute read "...without showing to the satisfaction of the court that reasonable progress has been made *within twelve months* in correcting those conditions which led to the removal of the juvenile." N.C. Gen. Stat. § 7B-1111(a)(2)(1999) (emphasis supplied). The current version of the statute does not limit the time period in which the parent must make progress. However, the Court held that the error was harmless as the trial court had sufficient evidence before it to support the conclusion that grounds exist to terminate respondent's parental rights. In addition, the Court noted that the trial court did not improperly restrict its inquiry to a twelve-month period as its findings referred to respondent's actions within a two-year period. After affirming the trial court's finding for the second ground, the Court did not address the other two grounds for respondent's termination of parental rights as the finding of any one of the grounds is sufficient. The Court also rejected respondent's argument that the trial court had abused its discretion in finding termination to be in the best interest of the child.

In the Matter of C.P.D., K.C.D., and T.M.D., (Unpub.)--- N.C. App.---, 616 S.E.2d 30 (August 2, 2005) (Onslow County). Respondent mother appealed from an order terminating her parental rights. The Court of Appeals affirmed. Respondent has six children, none of which were in her custody. C.P.D. had been adjudicated abused and neglected, and K.C.D. and T.M.D. had been adjudicated neglected, and by a later adjudication order, all three children were adjudicated abused and neglected as a result of abuse by respondent's husband, M.M. During visits with the children, respondent did not interact with them. Respondent was often hostile with DSS workers. Respondent did complete PEERs class, substance abuse evaluation, parenting classes and Assertive Discipline classes. All three children were diagnosed with psychological disorders and all remained fearful of respondent's husband. At the time of the termination proceedings, respondent continued to live with her husband and was employed on weekends. Parental rights were terminated on the grounds of neglect and failure to make reasonable progress to correct the conditions that led to removal. On appeal, respondent argued that there was insufficient evidence to support such findings. The trial court found that respondent did not interact with the children when she was allowed to visit, that there are serious concerns about the juvenile's mental health, that respondent accepts no responsibility for the placement of the juveniles in foster care, that domestic violence continues in the home, that the juveniles fear respondent's husband and that respondent intends to continue to live with him. The Court of Appeals held that these findings of fact support the conclusions of law that the juveniles were neglected.

In re C.S.,* (Unpub.) 168 N.C. App. 239, 607 S.E.2d 56 (January 18, 2005) (Watauga County). The Petitioner, the Watauga County Department of Social Services, appealed the trial court's order following adjudication for neglect and abuse, and permanency planning. The Court of Appeals affirmed. The minor child's paternal grandparents sought to intervene in the case after a nonsecure custody order placed the child in DSS custody and were later given physical custody of the minor contingent upon their compliance with certain conditions. At a later hearing, the court adjudicated the minor

child to be abused and neglected and found that she had suffered multiple injuries and broken bones while in respondent parents' care. After this adjudication, petitioner filed a motion to be relieved of reunification efforts and for change of physical custody. The trial court issued a combined disposition and permanency planning order which continued petitioner's motion to be relieved of reunification efforts, denied petitioner's motion to change custody, and placed the child in the physical custody of his paternal grandparents. In affirming the trial court, the Court noted that petitioner's appeal was premised on the assertion that the trial court erred in its denial of the Motion to be Relieved of Reunification Efforts. However, the trial court did not deny the motion but continued it to a later date. The Court rejected DSS's assertion that a finding of aggravating circumstances strips the trial court of its discretion to decide whether to continue efforts to reunify the family and held that the trial court retained discretion over this decision. The Court also rejected the petitioner's assertion that the trial court applied an erroneous standard for reunification by employing the phrase "change of circumstances." The Court held that the trial court was not applying an erroneous standard but merely indicating that there was no evidence of new circumstances arising after the court's earlier orders or after the petitioner executed the case plans, that would render its earlier orders inappropriate. Petitioners also argued that the trial court abused its discretion by finding that the paternal grandparents' home was "safe and suitable" for the minor child when the grandparents continued to provide a place to live for the parents, employ the father, and refused to acknowledge the child's injuries were the result of abuse. The Court held that while the petitioners may not agree with the trial court's discretion, they have not shown that the trial court abused its discretion as they pointed to no evidence that the child has been injured while in his grandparents' care or that the grandparents have violated the trial court's conditions. Finally, the Court rejected the petitioners' argument that the trial court erred in concluding that it was in the best interest of the child to continue with the reunification plan.

In the Matter of C.S., D.G., K.G., * (Unpub.) 169 N.C. App. 455, 612 S.E.2d 445 (April 5, 2005) (Chatham County). Respondent parents appealed from order adjudicating minor children abused, neglected and dependent and ceasing reunification efforts. The children were removed from their home due to an incident in which D.G. was in the care of his father and became so injured that he developed a condition that mimicked cerebral palsy. K.G. and D.G. were adjudicated abused, neglected and dependent and C.S. was adjudicated neglected and dependent. Mother contends that the conclusions of law were not supported by the findings of fact in that she did not abuse her children, there was no clear and convincing evidence that she knew or reasonably should have know of abuse and she sought medical attention for her children when necessary. The Court of Appeals agreed stating that neither the findings of fact nor the evidence indicated that mother abused her children. There was an issue regarding whether or not a social worker's testimony that the mother said a doctor told her K.G. may have shaken baby syndrome was inadmissible hearsay. Court of Appeals held that the mother's statements to the social worker were admissible under N.C. Gen. Stat §8C-1, Rule 201(d) which states "[a] statement is admissible as an exception to the hearsay rule if it is offered against a party and it is (A) his own statement, in either his individual or representative capacity[.]" Although this was admissible, there was still no clear and convincing evidence that

mother knew her children had been abused. With regards to neglect, the Court of Appeals held that where a parent works and leaves his or her children with someone else, he or she will not be deemed to fail to provide proper supervision as required by N.C. Gen. Stat §7B-101(15) where there were no episodes or allegations of abuse or suspicions of abuse and no clear and convincing evidence that the parent should have known of such abuse. In addition, any prior adjudications of neglect cannot be the sole basis for a current adjudication and the trial court must take into account changed conditions to determine if there was neglect at the *time of the proceeding*. The trial court also erred in finding the children dependent with regards to the mother b/c such a conclusion was not supported by findings of fact. The father claimed that the trial court should not have considered a doctor's conclusion that the children had been physically abused b/c the doctor was biased. When determining if expert testimony is admissible, the Court held that the testimony must be such that it will help the trier of fact understand the evidence or fact at issue; there is no need for absolute certainty in the opinion offered. Because the doctor was qualified and reliable, the expert opinion was held to be admissible. The father also claimed that the doctor was biased b/c she volunteered for Orange County GAL and was a member of two organizations that were designed to prevent child abuse. Court of Appeals held that even if the doctor was biased, the trier of fact is to weigh expert opinion and an evidence of bias should be used to weigh credibility; the bias does not affect admissibility. Furthermore, the father assigned error to the testimony of another doctor's testimony that C.S. was neglected claiming that the report and testimony were based upon hearsay. N.C. Gen. Stat. §8C-1, Rule 702(a) states that "[i]f scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact to understand the evidence, or to determine a fact in issue, a witness qualified as an expert in knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion." Although the disclosure of the basis for the expert's opinion may be necessary for a trier's determination of credibility, the underlying data and facts used in forming the opinion are not admissible as substantive evidence; they are only admissible to show the basis for the opinion. The facts that the doctor included in her testimony were statements made by the mother and maternal grandmother and could not be relied upon for substantive purposes. These statements were also not admissible for substantive purposes under the medical diagnosis exception because that exception to hearsay only applies when the statements are made by the person being diagnosed. Because of this, only the opinion of the doctor and not the basis for that opinion can be considered a finding of fact. Despite this and despite the trial court's labeling of conclusions of law as findings of fact, the conclusions of law were supported by findings of fact and the trial court correctly found C.S. neglected as to the father and K.G. and D.G. abused and neglected as to the father. Court of Appeals held that the trial court erred in finding the children abused, neglected and dependent as to the mother. The children should not have been adjudicated dependent as to either parent b/c the mother was capable of taking care of them.

In the Matter of C.T.A., D.T.A., * (Unpub.) --- N.C. App. ---, --- S.E.2d --- (December 6, 2005) (Rutherford County). The Court affirmed the trial court's order terminating respondent's parental rights on the ground that he had willfully left the juveniles in foster care for more than 12 months without making reasonable progress under the

circumstances in correcting the conditions that led to removal (N.C. Gen. Stat. § 7B-1111(a)(2)). The Court held that a finding of willfulness does not require a finding of fault. In contrast, willfulness can be found where a parent has the ability to correct conditions but fails to do so. In this case, respondent had the ability to provide monetary support but failed to do so despite marinating employment. In addition, he rarely visited the juvenile. Respondent did not assign error to any of these facts so they are conclusive on appeal and support a finding of willfulness. In addition, the Court held that extremely limited progress is not reasonable progress and respondent did not provide a showing of such.

In the Matter of C.Y.P. & I.P.,* (Unpub.) 168 N.C. App. 239, 607 S.E.2d 54 (January 18, 2005) (Chatham County). The Court reversed and remanded the termination of respondent parents' parental rights in their two minor children, I.P. and C.Y.P. DSS petitioned for the termination of the respondents' parental rights for C.Y.P., asserting that the respondent father had abused, neglected, and abandoned C.Y.P and that the respondent mother had neglected and abandoned C.Y.P. For the termination of parental rights of the respondent father, the petition for I.P. asserted that the respondent father had neglected and abandoned I.P. but did not allege abuse. The trial court terminated the respondent father's parental rights in both children on the grounds of abuse, neglect, and dependency and terminated respondent mother's parental rights in the children on the basis of neglect and dependency. Each of the termination orders contained forty-four identical findings of fact. Neither of the orders incorporated prior adjudication orders by reference, relied on findings of fact set forth in prior adjudications, or listed prior adjudications as one of the documents the trial court had reviewed. The Court held that it was error in both parents' cases for the trial court to conclude that dependency was a ground for the termination of parental rights. The Court based its decision on the lack of evidence at the hearing on this issue, the failure of the trial court to address the respondents' ability to care for the children in its findings of fact, and the fact that dependency was not alleged by DSS in the petitions for termination. The Court also rejected the grounds of abuse and neglect as the trial court had failed to make an independent termination of the existence of one or more grounds for termination. The Court noted that the earlier adjudication orders may be admitted and considered by the trial court in a termination proceeding but the mere presence of prior orders on the record, without any mention of them in the termination order, is not considered by the Court in its review of the trial court's conclusions. The Court ruled that the trial court's findings of fact were either a recitation of DSS employees' observation and testimony or inadequate to support its conclusions that either parent neglected or abused their children. Finally, the Court ruled that the trial court had erred by denying the respondents' request to offer C.Y.P.'s evidence during the disposition phase. The trial court must first consider relevant, competent evidence offered during disposition before determining the child's best interests.

In the Matter of D.A., Q.A., & T.A., 169 N.C. App. 445, 609 S.E.2d 471 (March 15, 2005) (Beaufort County). Respondent mother appealed the termination of her parental rights and the Court vacated the order and remanded the case for rehearing because the notice of the motion to terminate parental rights did not meet the requirements set forth in § 7B-1106.1. The statute sets forth six provisions that must be included in the notice to

parents that accompanies a motion to terminate parental rights, and the notice in this case only included the first requirement, the name of the juvenile. Because the statute directs that the notice “shall” include the six provisions, failure of DSS to include these provisions was failure to give respondent statutorily required notice resulting in prejudicial error.

In the Matter of D.D.H.,* (Unpub.) 168 N.C. App. 239, 607 S.E.2d 55 (January 18, 2005) (Davidson County). The Court of Appeals affirmed the trial court’s termination of respondent mother’s parental rights. In its petition to terminate, DSS alleged that the respondent mother had a history of lack of supervision of the minor child, limited food supply and inadequate feeding of the minor child. The petition also alleged that the respondent mother had a history of substance abuse, failure to obtain treatment, multiple criminal charges which forced other individuals to care for the minor child, domestic violence in the home, and evidence of a cigarette burn on the child’s wrist. DSS alleged that the respondent was making significant progress towards reunification but then suffered repeated substance abuse relapses and did not know how to set boundaries for the minor child. The trial court entered an order of termination of parental rights on the ground that the minor child was a neglected juvenile. Respondent mother first argued that the trial court erred in determining that sufficient grounds existed to terminate her parental rights. The Court held that the trial court’s findings of fact were supported by clear, cogent and convincing evidence and that its findings of fact support its conclusions of law. Respondent mother’s second argument was that the trial court erred in finding it was in the minor child’s best interest to terminate respondent’s parental rights. The Court rejected this argument as the trial court’s determination was not arbitrary or unsupported by reason as the trial court recognized that respondent’s substance abuse problems prevented her from providing for the child’s special needs.

In the Matter of D.D.M.,* (Unpub.) 168 N.C. App. 239, 607 S.E.2d 54 (January 18, 2005) (Cabarrus County). Respondent mother appealed from order terminating her parental rights claiming that she was denied effective assistance of counsel because her counsel stipulated to the admission of records of DSS. Because Respondent’s counsel had time to review the records stipulated to, the Court of Appeals held that Respondent was not denied a fair trial.

In the Matter of D.D.Y., --- N.C. App. ---, 621 S.E.2d 15 (July 5, 2005) (Halifax County). Respondent appealed from orders that adjudicated D.D.Y. abused, neglected and dependent. The Court of Appeals held that although the original petition did not include dependency, it was eventually amended to do so, and N.C. Gen. Stat. §7B-602(b)(1) requires the appointment of a guardian ad litem for a parent or guardian where dependency is alleged and it is alleged because the parent is incapable to provide proper care and supervision due to substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition. In this case, the court found D.D.Y. to be dependent as a result of respondent’s mental condition. The Court of Appeals, relying on the holding of *In re L.M.C.*, held that the failure to appoint a guardian ad litem in this situation is “prejudicial error *per se.*” The Court of Appeals further held

that the guardian ad litem appointment statute applies to adjudications as well as termination proceedings. The case was reversed and remanded for a new trial.

In re D.J.D., D.M.D., S.J.D., J.M.D., --- N.C. App. ---, 615 S.E.2d 26 (July 5, 2005) (Forsyth County). The Court affirmed the termination of respondent father's parental rights. The mother of the children suffered a stroke and signed a relinquishment to allow for adoption. Respondent father was incarcerated less than a year after the initial adjudication order and his involvement with the children since his incarceration was minimal. On appeal his argument that DSS had not made reasonable efforts was overruled. He also argued that the children were not dependent since he suggested an alternative childcare arrangement while he was incarcerated; however, his alternative was brought up at the TPR hearing and was an aunt with whom he had not spoken in five years. With respect to the finding of willful abandonment, respondent argued that his incarceration limited his ability to show affection; however, no evidence was presented that respondent attempted to even show an interest in his children. Respondent took no steps to develop a relationship with his children. Finally, respondent argued that the delay in scheduling the termination hearing was prejudicial. The Court overruled this argument in that although there was a technical error, there was no prejudicial delay; further, respondent was granted his own motion to continue. Overall it was respondent's failure to communicate with his children and lack of relationship that made it in the children's best interest that his rights be terminated.

In the Matter of D.M., --- N.C. App. ---, 615 S.E.2d 669 (July 5, 2005) (Mecklenburg County). Affirmed *per curiam* (December 16, 2005). Respondent-father appealed from an order terminating his parental rights based upon the ground that he willfully left D.M. in foster care for 12 months without making reasonable progress to address the conditions that lead to removal pursuant to N.C. Gen. Stat. § 7B-1111(a)(2). The central issue in the case was domestic violence. The Court of Appeals affirmed the trial court order. Respondent alleged that the termination ground was not supported by clear, cogent and convincing evidence and that the trial court failed to consider steps towards compliance with the DSS case plan. Respondent claimed that he had attended private counseling for his domestic violence issues but there was no evidence as to the content of this counseling. Furthermore, he did not complete the NOVA as required by the case plan. For that reason, the Court of Appeals agreed with the trial court that there was clear, cogent and convincing evidence that respondent failed to make reasonable progress. In a separate **dissent**, Judge Tyson wrote that, "Reasonable efforts can include a "positive response toward improving [a] situation[.]" "the ability of respondent to care for [his] child," or the "[ability] to show progress in . . . therapy." *In re Oghenekevebe*, 123 N.C. App. at 437, 473 S.E.2d at 396-97." Recognizing that the failure to make reasonable progress must be willful, Judge Tyson held that respondent did in fact make reasonable efforts to correct the conditions that lead to removal in that he attended the NOVA program but was excluded from participation and then sought an alternative form of counseling for domestic violence. Respondent complied with the rest of the DSS case plan. Judge Tyson wrote that there was no clear, cogent and convincing evidence that respondent *willfully* left D.M. in foster care without making reasonable progress.

In the Matter of D.M.H., Jr., * (Unpub). --- N.C. App. ---, 620 S.E.2d 320 (October 18, 2005) (Burke County). The court affirmed in part and remanded in part the order terminating parental rights subsequent to remand by the Supreme Court in the light of *In re R.T.W.* Initially, the TPR order was reversed because it was entered while the case was pending on appeal; in light of *R.T.W.*—which held that the trial court retains jurisdiction to terminate parental rights irregardless of pending appeals—the order had to be reviewed.

In the Matter of D.M.W., --- N.C. App. ---, 619 S.E.2d 910 (October 18, 2005) (Mecklenburg County). The TPR order was reversed for failure to provide clear and convincing evidence to support the conclusions of neglect and failure to pay support. D.M.W. came into DSS custody after respondent's sister contacted the agency because she could no longer care for the child and could not locate respondent. The mother was found in jail and subsequently stipulated to the petition allegations and a case plan was entered for the mother to address substance abuse, mental health and domestic violence issues. While incarcerated, respondent completed a substance abuse program, attended parenting classes, and a domestic violence program. Additionally, she worked in the kitchen. The majority opinion points out that the mother worked her case plan although she did not use the DSS recommended service providers. Further, the trial court failed to make a finding regarding the mother's ability to pay child support that is required when finding that TPR ground. The **dissent** concluded that there was clear and convincing evidence to support TPR based on neglect. Although there was evidence that the mother did attempt to work case plan requirements while incarcerated, she failed to notify DSS of her achievements in order for them to assess whether she was meeting her parenting objectives. Further, between her periods of incarceration, she did not visit the child. The dissent determined that the evidence tended to show what little progress she made on her case plan while incarcerated, and she did nothing on her case plan when she was not incarcerated. As a result, there was little evidence of changed circumstances and a probability of repetition of neglect.

In the Matter of D.R., --- N.C. App. ---, 616 S.E.2d 300 (August 2, 2005) (Buncombe County). The Court affirmed the termination of respondents' parental rights and in an argument of first impression, overruled respondent parents' assertion that the United States Supreme Court's holding in *Crawford v. Washington*, 541 U.S. 36 (2004) applied in civil abuse, neglect and dependency proceedings. After D.R. was adjudicated neglected and the placement with his paternal grandmother fell through due to his serious mental health and behavioral problems, he was placed in foster care. His foster parents reported inappropriate sexual discussions and behavior after D.R. told them that his parents had involved him in sexual activity. Although DSS filed an abuse petition, it was ultimately dismissed without prejudice; however, the parents were criminally charged with several felonies as a result of the foster parents' report and the charges are pending. Rights were terminated on the following grounds: neglect; abuse; and willful abandonment. Respondents argued that it was error to admit statements made by the juvenile through the testimony of social workers, foster parent, and psychologists because it was a violation of the Sixth Amendment's confrontation clause. Proceedings to terminate parental rights are civil in nature, and the confrontation clause is applicable

only in criminal actions. This holding is significant in protecting abused children from the necessity to testify and be cross examined by their parent or caretaker. Respondent father also argued it was error for the trial court to deny his motion for funds to hire an expert and to depose the foster parents by phone. The Court held there was no abuse of discretion in the trial court's denial of the motion. Finally respondents argued that the entry of the TPR order sixty-nine days after the hearing was *per se* prejudicial. The Court overruled this argument and maintains that in order for appellants to be successful on this argument, they must show prejudice.

In the Matter of D.R.M., S.S.M., T.D.M., * (Unpub.) --- N.C. App. ---, 617 S.E.2d 724 (September 6, 2005) (Wayne County). Respondent-mother appealed from an order terminating her parental rights. The Court affirmed the trial court order. Respondent had nine assignments of error; however, the first seven applied to an order other than the one appealed from. Because of this, they were not properly before the court and therefore dismissed. The remaining assignments of error were that the trial court erred in finding as a fact that respondent did not have a stable residence and in finding as a fact that respondent exerted little effort to be reunited with her children. Respondent testified that she had been living in her current home for one and one-half years and did not have room for children and further testified that she was on a waiting list for housing. Respondent testified that if she was given custody she would take the children to her grandmother's home but also testified that she was not welcome there. Due to these inconsistencies, DSS proved by clear, cogent and convincing evidence that respondent had not gained stable residence. With regards to the other assignment of error, the court held that DSS again provided sufficient evidence to show that respondent had not made little effort to be reunited with her children.

In the Matter of D.S.C., 168 N.C. App. 168, 607 S.E.2d 43 (January 18, 2005) (Buncombe County). The Court reversed and remanded this termination of parental rights due to the fact that no guardian ad litem was appointed for the respondent mother when the petition alleged dependency. The basis for the dependency allegations was respondent mother's physical health conditions including lupus, seizures, and kidney failure. Much discussion is dedicated to which version of N.C.G.S. § 7B-1111(a)(6) was controlling: the statute as passed effective June 4, 2003 that includes specifics about the parent's incapacity, or the prior statute that mandated GAL appointment in all cases alleging dependency. Petitioner argued that because respondent suffered from physical as opposed to mental incapacities, that the statute should not apply. The Court held that the earlier version of the statute controlled, and that the allegations of dependency due to respondent's condition mandated appointment of a GAL for the mother. Under the controlling language of the applicable statute, the Court determined that the trial court had no discretion of whether to appoint a GAL only if mental incapacity was alleged.

In re E.C., --- N.C. App. ---, 621 S.E.2d 647 (November 15, 2005) (Mecklenburg County). Respondent mother appealed from an adjudication order that found neglect and dependency and awarded legal guardianship of E.C. to a relative. The order was affirmed in part, vacated in part and remanded. E.C. was born with a positive toxicology for cocaine, and as a result respondent received case management services to assist with

substance abuse treatment. After unsuccessfully completing substance abuse programs, respondent and E.C. moved into the home of her cousin and signed an agreement granting the cousin temporary custody of E.C. Respondent began to leave E.C. with the cousin for extended periods of time then come home and sleep for days with the infant in her room. One night respondent came home high or drunk and threatened to take the child to a crack house. Police intervened and DSS filed the juvenile petition. The child was adjudicated neglected and dependent, and at the subsequent dispositional hearing that respondent failed to attend, the cousin was granted guardianship of the child with visitation at the guardian's discretion. On appeal respondent argued that the juvenile code does not authorize guardianship at disposition and that such an award is tantamount to ceasing reunification efforts without specific findings regarding reasonable efforts. The court overruled both arguments. NCGS § 7B-600(a) permits the trial court to appoint a guardian at any time during juvenile proceedings when in the child's best interest. Awarding guardianship in this case was not tantamount to ceasing reunification efforts because the guardianship was not deemed to be the permanent plan for the child at disposition—DSS was still had a duty to make reasonable efforts for reunification. The portion of the order that granted visitation at the guardian's discretion was vacated. NCGS § 7B-905 requires that if a child is removed from a parent and placement outside the home is continued, the dispositional order must provide for an appropriate visitation plan. Further, visitation is a judicial function that may not be delegated to the child's custodian. The adjudication of neglect was affirmed based on the evidence presented; however, the adjudication of dependency was vacated due to no finding regarding the respondent's ability to provide care and supervision, and lacked an appropriate alternative child care arrangement.

In the matter of E.L.L., * (Unpub.) --- N.C. App. ---, 613 S.E.2d 532 (May 3, 2005) (Wake County). Respondent father appealed from order terminating his parental rights. The Court of Appeals affirmed. The trial court terminated Respondent's parental rights after it found he did not pay child support, did not comply with the psychological evaluation order, did not maintain stable housing or employment, did not comply with completing parenting classes or comply with a domestic violence protective order. Respondent argued on appeal that the trial court erred in failing to appoint a guardian ad litem for the minor child, that there was insufficient evidence to support the trial court's findings of fact and conclusions of law, and that the trial court abused its discretion by finding that it was in the best interests of E.L.L. to terminate parental rights. The trial court took judicial notice of the juvenile file in which E.L.L. was adjudicated neglected, dependent and abused; this file contained a finding of fact that E.L.L. had a guardian ad litem who served as such during the adjudication. There was also evidence that the guardian served during the termination hearing. In addition, at the termination hearing, Respondent orally adopted the mother's answer to the petition which recognized the guardian ad litem. As to the second issue, Respondent did not assign error to any specific findings of fact and only challenged the sufficiency of the evidence. Because he did not assign error, the findings of fact were conclusive on appeal. Grounds for termination were found based on Respondent not paying child support although able to do so. N.C. Gen. Stat. section 7B-1111(a)(3). Finally, the Court of Appeals held that the trial court did not abuse its discretion in determining that it was in the best interests of E.L.L. to

terminate Respondent's parental rights because he had not complied with domestic violence classes, had no stable home or employment, and because E.L.L. had special needs and was in a good environment.

In the Matter of E.F.C.K. & C.F.W., * (Unpub.) --- N.C. App. ---, 617 S.E.2d 722 (September 6, 2005) (Forsyth County). Respondent-mother's parental rights were terminated on the grounds that she willfully left her children in foster care for more than 12 months without making reasonable progress and that the parental rights of the parent with respect to another child of the parent have been terminated involuntarily. On appeal, respondent first argued that the trial court erred in accepting her stipulation of the facts without taking evidence at the adjudication hearing. The court of appeals overruled this assignment finding that N.C. Gen. Stat. § 7B-1109(e) states "The court shall take evidence, find the facts, and shall adjudicate the existence or nonexistence of any of the circumstances set forth in G.S. 7B-1111...." "Stipulations are judicial admissions and are therefore binding in every sense, preventing the party who agreed to the stipulation from introducing evidence to dispute it and relieving the other party of the necessity of producing evidence to establish an admitted fact" *In re I.S.* – N.C. App. ---, 611 S.E.2d 467, -- (2005) (quoting *Thomas v. Poole*, 54 N.C. App. 239, 241, 282 S.E.2d 515, 517 (1981)). Respondent also argued that the trial court erred in finding that it was in the juvenile's best interests to terminate parental rights. The court of appeals held that the trial court did not abuse its discretion in terminating parental rights.

In the Matter of E.T.S., --- N.C. App. ---, --- S.E.2d --- (December 20, 2005) (Guilford County). The majority affirmed order terminating Respondent mother's parental rights. Respondent was 15 years old at the birth of E.T.S. and lived with petitioner (private party custodian) at times with the child and at other times only the child resided with the custodian. Respondent was never stable enough to successfully care for E.T.S. and a juvenile petition alleging neglect was filed in Stanly County. After an adjudication of dependency, DSS retained custody while the child was placed with petitioner and a subsequent order granted petitioner physical and legal custody. Respondent was not appointed a Rule 17 GAL for the juvenile case despite her minority. Respondent argued there was a lack of subject matter jurisdiction because the petitioners (custodian and her husband) did not have standing to file the TPR; however, the Court held that petitioners did have standing because the child had resided with them for two years [see NCGS 7B-1103(a)(5)]. Respondent argued that because she did not have a GAL as a minor in the previous action, the TPR should be vacated. This argument was overruled because (1) it would create uncertainty by a lack of judicial finality; (2) TPR orders rest on their own merits; (3) no prejudice at TPR because she was not entitled to a GAL in that proceeding; and (4) the consequences of reversing TPR orders for a deficiency of a prior proceeding is illogical. The statute confers standing based on petitioners two-year relationship with the child and is not related to respondent or her relationship with the child—it only matters that the child *resided* with the petitioners for the requisite statutory time period. Respondent also argued it was error to rely on the Stanly Court orders because they were entered when she was a minor without a GAL appointment; however, she was represented by counsel and did not appeal the prior orders. Evidence presented supported the conclusion that the child was neglected and the finding that TPR was in the child's

best interest was not an abuse of discretion. Judge Tyson **dissented** based on the assertion that the two-year statutory period to confer standing should have been tolled until respondent reached majority and her disability (of minority) was removed due to the fact that she was not appointed a Rule 17 GAL in the earlier juvenile proceeding that divested her of custody.

In the Matter of F.L.R.,* (Unpub.) 167 N.C. App. 806, 606 S.E.2d 460 (January 4, 2005) (Yadkin County). The Court of Appeals affirmed TPR order for both respondent parents. The parental rights of the respondent mother had been terminated for two other children by the State of Idaho in 1997. This case first came to the attention of Yadkin County DSS when it received a call from the Stokes County DSS that the respondent father had been arrested and charged with assault on a female, assault on a child under twelve, DWI, communicating threats and second degree trespass. Although initially cooperative, the respondent mother denied any domestic violence in her home and minimized the respondent father's alcohol problems. The respondent father did not follow through with any of the recommendations of his psychological and substance abuse assessments and also denied there was any domestic violence between the parents. Both parents had positive drug screens. Respondent parents left Yadkin County for Florida and did not notify DSS or the GAL office before leaving, nor did they check in on the minor child or with their attorney for the juvenile proceedings. While in Florida, respondent parents were arrested on charges of aggravated assault and incarcerated. The trial court ordered termination of parental rights for both respondents based on the following grounds: (1) abuse or neglect of the minor child; (2) willfully leaving the minor child in foster care for more than twelve months without reasonable progress in correcting the conditions that led to the removal of the juvenile; and (3) the parental rights of the parent with respect to another child have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home. Respondents argued that the trial court erred in its finding that the minor child was neglected and that it did not give enough weight to the positive progress they had made. The Court rejected those arguments, noting that the respondents agreed to comply with the treatment plans but then failed to follow through. Respondents also asserted that the trial court erred in its finding of neglect as it failed to find neglect at the time of the termination hearing. The Court of Appeals also rejected this argument, pointing to the rule that when a child has been outside of the custody of the parent for a significant period of time prior to the termination hearing, then evidence showing neglect at the time of the termination proceeding includes evidence of past neglect so long as the trial court also considers any changed conditions. In addition, the Court noted that the trial court had found other evidence indicating neglect at the time of the termination proceeding including the respondents' failure to check in on the minor child for months after they left for Florida. Respondents next attacked the trial court's conclusion that they had willfully left the minor child in foster care for more than twelve months without showing reasonable progress under the circumstances in correcting the conditions that led to her removal. The Court of Appeals held that the trial court's conclusion was supported by clear and convincing evidence as neither party completed their treatment programs and neither acknowledged there was domestic violence. Respondents also contended that they did not willfully leave the minor child in foster care for twelve months because they were in

incarcerated in Florida for most of that time. The Court held that the respondents had sufficient time to comply with DSS's recommended treatment plan before they were incarcerated. Finally, respondent father contended that the trial court's order should be vacated because it was not entered within the thirty days required by statute. The Court held that the respondent had failed to show how the delay prejudiced him and that the statute's thirty-day provision did not implicate a fundamental right.

In the Matter of H.N.T. & J.E.A.M.,* (Unpub.) 168 N.C. App. 239, 607 S.E.2d 56 (January 18, 2005) (Watauga County). The Court of Appeals affirmed the termination of respondent mother's parental rights. Respondent mother abused controlled substances and alcohol in the presence of the minor children before their removal from her home. Respondent mother was repeatedly incarcerated. After her release from a period of incarceration, respondent consumed multiple controlled substances, despite knowing that her continued drug abuse could lead to the permanent removal of her children. Although respondent had often vowed to do better and to treat her children as her top priority, she abstained from using drugs only once to keep her scheduled visitation with them. Respondent mother also failed to complete two drug rehabilitation programs. The trial court issued an order terminating her parental rights on two grounds: (1) she neglected both children; and (2) she left the juveniles in foster care for more than twelve months without showing reasonable progress to correct the conditions which led to their removal. Respondent mother appealed both grounds. The Court held that there was clear, cogent, and convincing evidence to support the trial court's conclusion that the children were neglected at the time of the termination hearing. The Court did not consider her second ground for appeal as the trial court's finding and conclusion regarding neglect was affirmed.

In re I.H., * (Unpub.) --- N.C. App. ---, 621 S.E.2d 342 (November 15, 2005) (Harnett County). Respondent mother appealed from order terminating her parental rights on the grounds for neglect. The Court held that the trial court's findings of facts were supported by competent evidence and those findings of fact supported the conclusions of law. The Court held that in order to decide whether a child is neglected for the purposes of terminating parental rights, the question is the fitness of the parent to care for the child at the time of the termination proceeding. Showing a history of neglect and a probability of repetition of neglect can do this. The Court found that I.H. had been neglected in the past, other of respondent's children had been neglected in the past, and the neglect was likely to continue in the future. The court based these findings on evidence that two other children had been removed from respondent's care as a result of sexual abuse by father and neglect by respondent, respondent failed to comply with her case plan, she had no contact with DSS after I.H.'s adjudication, and the Court found this evidence to be sufficient for such a finding.

In re I.N.P., * (Unpub.) --- N.C. App. ---, 617 S.E.2d 722 (September 6, 2005) (Catawba County). Respondent-mother appealed from a permanency planning order, and the Court affirmed the trial court holding that the order was not a final order because it did not change the plan for the juvenile's permanent placement and therefore not appealable.

In the Matter of I.S., --- N.C. App. ---, 615 S.E.2d 293 (May 3, 2005) (Wayne County). Respondent father appealed the termination of his parental rights, and the Court reversed the order for insufficient findings of fact. Respondent was incarcerated at the time of the child's birth through the termination hearing. At the hearing respondent through counsel stipulated that he had not filed any paternity documents nor signed the birth certificate due to his incarceration. One of the grounds for termination was NCGS §7B-1111(a)(5) that contains four subsections addressing the failure of a putative father to take the necessary steps to establish paternity or legitimate a child. The trial court found that respondent has stipulated to this ground; however, the Court held that respondent only stipulated to subsection (b) that he failed to legitimate the child under NCGS § 49-10. Consequently, it was necessary that the trial court make specific findings as to the remaining subsections of this statutory ground and that the petitioner failed to meet its burden of proof.

In re J.A.A. and S.A.A., --- N.C. App. ---, --- S.E.2d --- (December 20, 2005) (Buncombe County). The TPR order appealed by respondent mother was affirmed. Prior to moving to NC, respondent lived in Florida with her four children, two of which have reached the age of majority. While in Florida, respondent abused drugs; engaged in drug use with her children; had abusive relationships including one husband who sexually abused her older daughter; and within the span of a few months, experienced the deaths of her father, boyfriend and son. Her son died from an overdose that possibly involved foul play and a drug dealer threatened the family. As a result, they moved to NC. DSS became involved after the children called the agency because their mother had not returned home, and when the police responded, a registered sex offender with an outstanding warrant was found in the home. Both children suffered from mental health issues, and J.A.A. admitted that he had been sexually abusing S.A.A. Respondent continued to have mental health and drug abuse issues, and failed to maintain contact with her children. TPR was granted for neglect; failure to make reasonable progress; and failure to pay child support. After her rights were terminated, S.A.A. died in a group home from suffocation and there is a pending wrongful death suit filed by her sister. Although respondent did not timely appeal the order, her *writ of certiorari* was granted and asserted that her appeal was not moot as to S.A.A. because if the wrongful death action is successful, she would be entitled to proceeds. Respondent's argument that she should have been appointed a Rule 17 GAL was overruled. Although the petition referenced drug abuse and mental illness, there was no allegation of dependency or incapability as a result of these issues. Interestingly, the Court describes the mechanism of appointment as an allegation of dependency to be the triggering mechanism for the judge to hold a hearing regarding capacity. Most other cases on this issue describe an automatic appointment. The Court also reviewed the issue under Rule 17 and determined that the trial court did conduct a hearing on the issue of respondent's competency without any abuse of discretion. Respondent also argued ineffective assistance of counsel because her attorney agreed that incapacity was not at issue, but this argument was overruled. Respondent only assigned error to the neglect ground for TPR; therefore, the other grounds were binding and only one ground is necessary to terminate. As to best interests, respondent argued it was an abuse of discretion because her sister was able to take custody of S.A.A. (Respondent had testified that even if her rights were not

terminated as to J.A.A. she did not want him placed with her). Despite no findings of fact regarding the placement, there was no abuse of discretion because the judge is not required to make findings as to consideration of the relative placement; further, the sister testified to having second thoughts because of S.A.A.'s suicidal tendencies.

In the Matter of J.A.D. & A.L.D., * (Unpub.) --- N.C. App. ---, 617 S.E.2d 721 (September 6, 2005) (Buncombe County). Respondent-father appealed from an order terminating his parental rights arguing that the trial court erred in admitting its prior orders into evidence. The court of appeals affirmed the trial court order holding that "It is well established that 'a prior adjudication of neglect is admissible in subsequent proceedings to terminate parental rights for neglect.' *In re Byrd*, 72 N.C. App. 277, 280 (1985). Respondent also argues that the district court omitted reversible error in failing to enter the order within 30 days of the termination hearing as statutorily mandated by N.C. Gen. Stat. § 7B-1110. In this case, the order was entered 5 days late and respondent failed to show prejudice.

In re J.A.G., --- N.C. App. ---, 617 S.E.2d 325 (August 16, 2005) (Johnston County). The Court reversed the adjudication of neglect and dependency as to the respondent mother. At three months old, J.A.G. suffered severe head injury while in the sole care of the father. The father asserted that the infant fell from the sofa after rolling over and began to seize. He called the mother who was at the grocery store who in turn called 911 and returned home. It was determined by medical personnel that the injuries were inconsistent with the father's story and that the injuries were caused by inflicted brain injury. While the infant was hospitalized, DSS requested names from the parents for potential placement if the child was not discharged in their care. Although the mother set forth four placement options within the week, two were determined to be inappropriate and home studies could not be completed within the discharge date. A juvenile petition was filed alleging abuse, neglect and dependency and the child was placed in foster care upon discharge. The child was adjudicated abused, neglected and dependent as to the father; and neglected and dependent as to the mother. The father was charged criminally and did not appeal the adjudication. Upon review, the Court determined that the trial court's finding of fact that the mother failed to appropriately care for the infant was not supported by clear and convincing evidence. The mother was not at home during the injury and although she admitted placing the child on the sofa without restraint, the infant was at the time immobile. The child had no prior injuries, was developing appropriately, and had missed no medical appointments. Further the mother had no prior indication that the father would injure the infant. As a result, the trial court erred in finding that the mother neglected J.A.G. With respect to dependency, the Court determined that the evidence did not support the trial court's finding that the mother was unwilling to investigate a safe environment and did not appropriately care for the infant.

In the Matter of J.B., --- N.C. App. ---, 616 S.E.2d 264 (August 2, 2005) (Buncombe County). The Court affirmed the termination of respondent mother's parental rights based on neglect, failure to make reasonable progress, and dependency. Respondent argued several assignments of error on appeal. First, she argued that failure to serve the minor child deprived the trial court of personal jurisdiction. However, the GAL attorney

advocate was served and she was not a “party aggrieved” to succeed on such an argument. She next argued it was error that the trial court denied her motion to stay the proceedings due to underlying appeals, but the Court found no error. Her argument that it was error to deny her motion to continue was overruled because previous motions had been allowed, and part of the delay was due to respondent’s own criminal actions in kidnapping her child from the foster parents and taking him to Oregon. The Court found no merit in her assertion that it was error to deny her motion for expenses. It is within the trial court’s discretion to determine whether a defendant has made the proper showing of a necessary need for expenses. The denial of her motion to interview the child was not error as there were multiple findings in multiple orders that the child’s contact with respondent disrupted his therapeutic progress. Next she argued that it was error for the trial court to include prior disposition orders as evidence because of the lower evidentiary standard; however, precedent makes it clear that a trial court can take judicial notice of prior proceedings in the same case. Respondent mother argued it was error to introduce her mental health records into evidence. Her argument was overruled because the records had previously been entered at a permanency planning hearing that was not appealed and NCGS §122C-54 requires a medical facility to disclose confidential information if compelled by a court order. Respondent’s argument that it was error to be excluded from the courtroom during the child’s testimony was overruled since she had opportunity to cross examine him through counsel, could communicate with her counsel during the testimony and was not prejudiced. Her next argument for a bifurcated TPR hearing was overruled as well as the assertion that the trial court orally state its finding as to best interests. Respondent argued it was error for the trial court to direct petitioner to draft the order. The Court held that nothing in statute or common practice precludes the trial court from directing the prevailing party to draft the order. Finally, her argument that the order was entered outside of the thirty days was overruled due to no showing of prejudice.

In the Matter of J.B. & A.B., * (Unpub.) --- N.C. App. ---, 619 S.E.2d 594 (October 4, 2005)(Rockingham County). At trial, Respondent-mother and father had their parental rights terminated; subsequent to the TPR hearing, the trial court held permanency planning and review hearings. Respondent mother did not file a timely notice of appeal from a district court order terminating her parental rights, but the Court of Appeals granted her writ of certiorari. On appeal, respondent argued that the trial court erred in failing to conduct a permanency planning hearing and by failing to make findings of fact pursuant to 7B-907 and 7B-507 prior to terminating her parental rights. In overruling this assignment of error, the Court of Appeals held that Article 9 hearings are not prerequisites to termination of parental rights hearings, and that the trial court had discretion under N.C.G.S. 7B-1102(c) to consolidate the review and permanency planning hearings and the termination of parental rights hearings; however, instead of consolidating, the trial court conducted the hearings in accordance with their respective procedural requirements. Respondent’s second argument is that the trial court violated her due process rights under the Fourteenth Amendment by failing to comply with “statutory review timelines.” For the same reasons above, this assignment was overruled. The third argument on appeal was that the trial court lacked subject matter jurisdiction when it terminated parental rights before conducting a permanency planning hearing;

however, N.C.G.S. § 7B-1103(a)(3) gives DSS the authority to terminate parental rights when it has been give custody.

In re J.D.C., --- N.C. App. ---, 620 S.E.2d 49 (October 18, 2005) (Forsyth County). The court reversed and remanded the order continuing legal custody and guardianship with her grandparents. The case involved a neglect adjudication of a three-month-old infant in 1999 who was continually placed with grandparents from the non-secure hearing. At a subsequent review hearing, the court granted the grandparents guardianship, and after two more review hearings continuing the guardianship the court ceased scheduled reviews. Two years later, the mother filed a motion for review and custody citing compliance with reunification conditions was a substantial change in circumstances affecting the welfare of the minor child. The trial court dismissed her motion after finding that it was the mother's burden to prove the guardians unfit—not merely a substantial change in circumstances, and she was unable to meet this burden. On appeal, the Court held that respondent did not have to prove the guardians unfit because the order of guardianship did not comport with NCGS § 7B-600(b) that requires findings for guardianship pursuant to NCGS § 7B-907 that guardianship was judicially determined to be the permanent plan for the child. Because the trial court never conducted a permanency planning hearing or otherwise made the requisite findings of fact to “trigger” the unfitness of the guardians burden of proof. As a result, the case was reversed and remanded to allow the mother to proceed on her motion to modify custody.

In re J.D.S., --- N.C. App. ---, 612 S.E.2d 350 (May 17, 2005) (New Hanover County). The Court affirmed this private termination of parental rights action against respondent father. In respondent's absence, petitioner mother was granted sole custody and child support by a Nevada court. Subsequent orders were entered in Nevada that modified the order to allow petitioner to relocate with the child and to specify a specific amount of child support as opposed to a percentage. Respondent never appeared for any of the Nevada court proceedings and did not appeal any orders. Petitioner subsequently married and relocated to North Carolina where she filed the termination petition. On appeal respondent argued that the trial court lacked subject matter jurisdiction. This argument was overruled because the simple failure to state that the petition was not filed to circumvent the UCCJEA and attach an affidavit as to the status of the minor child does not compel dismissal of the order. Further, the record supported the trial court's findings and conclusions regarding jurisdiction. Respondent failed to assign error to the court's findings and although argued on appeal, the Court held that the issue was not properly before the Court and reiterated that an general assignment of error that challenges the sufficiency of the evidence to support numerous findings of fact is too broad and not effective. As to the ground that respondent failed for one year to pay child support under a judicial decree [NCGS § 7B-1111(a)(4)], the Court held that it was not necessary to find that respondent has the ability to pay—this finding is only necessary under NCGS § 7B-1111(a)(3) that the respondent failed to pay a reasonable cost of care when the child is placed in DSS custody. Evidence and the trial court's findings support that respondent had the ability to pay, but chose only to provide *de minimus* support. Judge Tyson **concurred** in the Court's finding that North Carolina had jurisdiction, but **dissented** as to Respondent properly assigning error to the findings of fact. Further the order failed to

show the proper standard of proof and did not find that respondent had the ability to pay. As a result, he felt the order should be vacated and remanded for proper findings under the clear and convincing standard.

In the Matter of J.G.A., E.M.P.,* (Unpub.) 168 N.C. App. 728, 609 S.E.2d 487 (March 1, 2005) (Granville County). The Court of Appeals affirmed the trial court's disposition orders ceasing reunification efforts. J.G.A. suffered a spinal cord injury while home alone with E.M.P.'s father, P. E.M.P. was diagnosed with Shaken Baby Syndrome. E.M.P. is permanently brain damaged and she will never lead a normal life. P was arrested and charged with felony child abuse inflicting serious injury. After a full psychological evaluation, respondent mother was told to attend individual therapy to enable her to make appropriate choices in her relationships. Respondent mother became involved with another man who had an extensive criminal record. DSS advised respondent mother that moving in with her new boyfriend would hurt her chances of reunifying with her children. However, respondent mother moved in with him and was engaged to him a month later. Both children were adjudicated neglected. At the disposition hearing, the trial court judge ordered that reunification efforts be ceased and that DSS initiate termination proceedings. On appeal, respondent mother first argued that the trial judge's remarks during the disposition hearing constituted prejudicial error because they demonstrated that the trial court had formed an opinion concerning the minor children's cases before it had heard all the evidence. The Court of Appeals reviewed the judge's comments and held that there was no error. Respondent mother next argued that the trial court erred by not considering evidence of changed circumstances. Respondent mother wanted to put on evidence regarding the character of her new boyfriend but was discouraged by the trial court as the mother's involvement with a new man was at issue but the new boyfriend's character was not. The Court of Appeals held there was no error as the trial court made it clear that she could still call her boyfriend as a witness.

In re J.J.L., E.F.L., S.A.L., --- N.C. App. ---, 612 S.E.2d 404 (May 17, 2005) (Burke County). Respondent father appealed the permanency planning order that continued reunification effects with a concurrent plan of adoption. The issue on appeal was whether these concurrent plans under NCGS § 7B-507(d) were contrary to the requirement that a permanent placement plan be achieved to provide a safe permanent home for children within a reasonable time under NCGS § 7B-907(a). The trial court found that respondent father had not fully complied with court orders and overruled his argument that the concurrent plan makes the responsibilities of the parents and DSS unclear. Concurrent plans are authorized by statute and affirmed by caselaw. The Court held that a concurrent plan of reunification and adoption under NCGS § 7B-507(d) does not conflict with the requirement of permanency pursuant to NCGS § 7B-907(a).

In re J.L.S., 168 N.C. App. 721, 608 S.E.2d 823 (March 1, 2005) (Guilford County). The Court reversed this private termination of parental rights due to the trial court's failure to appoint a guardian ad litem to represent the minor child pursuant to NCGS § 7B-1108. Petitioner mother alleged willful abandonment and failure to establish judicial

paternity or legitimate the child. Respondent father filed a response to the petition the day of the TPR hearing that denied material allegations of the petition. While recognizing the frustration of the late filing, the Court held that a guardian ad litem appointment was necessary to ensure that the best interests of J.L.S. were represented.

In the Matter of J.M., D.M., & K.M., * (Unpub.) --- N.C. App. ---, 621 S.E.2d 342 (November 15, 2005) (Guilford County). Respondent appealed from an order that adjudicated his minor children abused, neglected and dependent. They were adjudged abused because “a child sustained a serious injury by other than accidental means.” The Court affirmed the order. On appeal, respondent argued that the trial court abused its discretion in concluding that the children were neglected due to insufficiency of evidence. The Court held that the trial court made adequate findings. Next, respondent argued that the trial court erred in relying on hearsay statements in concluding that the children were neglected. Respondent challenged the admission of J.M.’s statements during a child medical evaluation and statements of the children’s mother to law enforcement. The Court held that because respondent did not show that he was prejudiced by the admission of the evidence that his argument was overruled; and that there was sufficient competent evidence to support a finding of neglect. Finally, respondent argued that the trial court failed to make sufficient findings of fact pursuant to § 7B-507(a)(1) and (3) in its dispositional order. In this case, the court complied with the statute when it found that it was contrary to the best interest of the children to return to the caretaker’s home, and it complied with the statute when it found that the parents and their attorneys will cooperate with DSS reunification efforts.

In the Matter of J.N., * (Unpub.) --- N.C. App. ---, 613 S.E.2d 531 (May 3, 2005) (Mecklenburg County). This was respondent’s second appeal from order terminating parental rights. The first appeal reversed and remanded the trial court’s order for failing to show grounds for termination by clear, cogent and convincing evidence. At the second termination hearing, the allegation of dependency was dismissed after a psychologist testified that Respondent no longer suffered from Schizotypal Personality Disorder. The Court of Appeals reversed and remanded the termination order because no guardian ad litem was appointed to Respondent pursuant to N.C. Gen. Stat. §1101(1) and dependency was *alleged* in the petition to terminate parental rights. The Court of Appeals held that it did not matter that the allegation of dependency was dismissed and another ground for termination existed because the mother’s health issues were “intertwined” with the other grounds and impossible to separate. The statute requires appointment of a GAL when the petition alleges juvenile dependency and it is immaterial that the ground is not pursued in the termination hearing. Failure to appoint a parental GAL was held to be reversible error and the termination order was reversed and remanded.

In the Matter of J.S.H., * (Unpub.) --- N.C. App. ---, 615 S.E.2d 737 (July 19, 2005) (Buncombe County). Respondents, mother and father, appealed from an adjudication and disposition order adjudicating J.S.H. neglected and alleged that the trial court order was not based upon sufficient findings of fact, namely that the order was based only upon the prior adjudication of J.S.H.’s siblings. Respondents had a history of substance abuse and had failed to obtain treatment. In a previous case with respondent-mother’s four older

children of a different putative father, DSS adjudicated the juveniles neglected due to respondent-mother's substance abuse and prostitution; custody was awarded to the father of these older children. Because the trial court made findings as to J.S.H., the Court of Appeals held that they would not consider whether the prior neglect of J.S.H.'s siblings alone would be sufficient to support the adjudication of J.S.H. N.C. Gen. Stat. § 7B – 101(15) states that when determining whether a juvenile is neglected, "it is relevant whether that juvenile lives in a home where...another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home." The findings of fact by the trial court take this into account, but also address the probability of repetition of neglect. The trial court found that there was a risk for future harm. Because the trial court has discretion to consider prior adjudications of abuse and neglect and because the trial court in this case also made findings with regards to J.S.H., the Court of Appeals affirmed the order.

In the Matter of J.Q.F., D.D.P. & C.W.B.,* (Unpub.) 168 N.C. App. 239, 607 S.E.2d 54 (January 18, 2005) (Cabarrus County). The Court of Appeals affirmed the termination of respondent mother's parental rights. The respondent mother's three minor children were adjudicated neglected in 1996. Respondent mother first argued that the trial court erred in finding she failed to pay a reasonable portion of the cost of the minor children's care because the trial court failed to make a finding of what was reasonable for her to pay. The Court of Appeals held that the trial court is only required to make a specific finding that a parent was able to pay some amount greater than the amount the parent actually paid. In this case, there was evidence that the respondent was employed and received child support payments but mother did not pay any portion of the cost of minor's care. Respondent mother disputed the trial court's finding that she had willfully left the minor children in foster care for more than twelve months without making reasonable progress. The Court of Appeals held that while the respondent had made some amount of effort, she did not demonstrate reasonable progress in correcting the conditions that led to the removal of the minor children. Third, the respondent mother appealed the trial court's finding that the minor children were dependent with a reasonable probability that such incapacity would continue into the future. The Court of Appeals upheld the trial court's finding based on evidence that respondent mother suffered from mental illness and substance abuse and that her incapability would likely continue for the foreseeable future. The respondent finally argued that the trial court erred in finding that the minor children were neglected. The Court of Appeals affirmed the trial court's finding based on the evidence of past neglect, the special needs of the children, and the evidence that the respondent had not made any progress towards eliminating her problems.

In re J.W., K.W., --- N.C. App. ---, 619 S.E.2d 534 (October 4, 2005), *reh'g granted*, 626 S.E.2d 298 (2005), *aff'd by* 625 S.E.2d 780 (2006) (Harnett County). The majority affirmed the TPR order finding clear and convincing evidence supported that the mother failed to make reasonable progress while her children were placed outside of the home. The initial petition was filed after J.W. was diagnosed with failure to thrive and the hospital contacted DSS. The home visit showed unsafe and unsanitary conditions in the home, and both children were taken into custody. After the initial adjudication, the children were returned on a trial placement; however, the children were subsequently

removed again for unsanitary conditions. Respondent mother first argued that a specific cross-examination question should not have been sustained, but failed to show prejudice. Second respondent argued it was error to admit documents from prior hearings, but again failed to show prejudice. Finally respondent assigned error to certain findings of fact and conclusions of law. The opinion detailed the specific findings and ultimately held that the evidence showed only sporadic compliance despite some limited progress.

The **dissent** went into detail about the evidence and findings, and reached the conclusion that there was insufficient evidence to support the findings of fact and conclusions of law. In particular, there was not clear and convincing evidence that the mother failed to keep a home safe environment for the children, and that overall the evidence showed that the mother had improved her housekeeping. Despite the fact that visits were suspended, the mother continued to make contact with the social worker.

In the Matter of K.B.B. and K.A.B.,* (Unpub.) 168 N.C. App. 728, 609 S.E.2d 498 (March 1, 2005) (Guilford County). The Court of Appeals affirmed the termination of respondent mother's parental rights. DSS filed a petition which alleged abuse and neglect of the two minor children and the parties stipulated to a finding of neglect and dependency because the respondent mother failed to comply with the case plan requiring adequate supervision of the children and did not obtain appropriate medical treatment for one child. Respondent mother entered a contract of reunification and was required to pay a minimum of \$50.00 per month in child support. The trial court terminated the parental rights of both parents. On appeal, the respondent mother first asserted that the trial court erred by failing to conduct a bifurcated hearing. The Court of Appeals rejected this argument, pointing out that while the court is required to apply different evidentiary standards at the adjudicatory and dispositional stages, there is no requirement that the stages be conducted at separate hearings. The respondent mother next argued that the trial court lacked jurisdiction because she was improperly served. The Court of Appeals overruled this assignment of error as the respondent mother allowed the trial court to acquire jurisdiction by responding to the petition to terminate parental rights, asking the court to deny the petition, appearing in court and testifying on her own behalf. The Court of Appeals also rejected the respondent's arguments that there was no competent evidence to support the trial court's findings of fact and that the findings of fact did not support the conclusions of law. The respondent mother contended that the trial court had improperly allowed her to be without counsel but the Court of Appeals held that the trial court had done everything that it possible could to ensure that she had representation and that she had representation at all relevant proceedings. Finally, the respondent mother argued that the trial court erred in admitting a family services case plan because it was irrelevant to the determination of the case. The Court of Appeals overruled this assignment as well and held that the case plan was relevant to the trial court's determination of whether there were grounds for termination.

In re K.C., * (Unpub.) --- N.C. App. ---, --- S.E.2d --- (December 20, 2005) (Buncombe County). Respondent mother appealed the adjudication and disposition order that denied relative placement with the maternal grandmother as well as the permanency planning order that changed the permanent plan from reunification to adoption. The Court

affirmed both orders. When K.C. was born, respondent lived with her parents; however, DSS determined this placement was inappropriate due to the history of domestic violence between the maternal grandparents, and respondent moved in with the paternal grandparents. The father was not permitted to have contact with K.C. because of domestic violence. K.C. suffered failure to thrive and after hospitalization, DSS filed a juvenile petition. At disposition, the court made findings of fact as to the inappropriateness of placement with the maternal grandmother that was supported by the evidence but continued reunification efforts until the initial permanency planning hearing that ceased reunification efforts. The findings of fact of both orders were supported by the evidence and complied with statutory requirements.

In the Matter of K.C.G. and J.G., --- N.C. App. ---, 615 S.E.2d 76 (July 19, 2005) (Rockingham County). The Court affirmed an *ex parte* order entered for respondent mother to cease interference with the investigation of DSS, but reversed and remanded the order granting the father temporary custody of the children. DSS received a report that respondent mother was evidencing signs of Munchausen's Syndrome by Proxy relating to K.C.G. Respondent had been taking K.C.G. to doctors in an attempt to obtain Valium based on her belief that her daughter suffered from anxiety. Respondent had kept K.C.G. out of school at times due to this belief and due to other medical problems. The DSS investigator requested that the child obtain a Child Medical Evaluation and a mental health evaluation. The father consented to the evaluations, but respondent refused. An *ex parte* order was entered that ordered respondent to cease her interference with the investigation and to have the child ready for her father to take her to the medical appointments. Respondent demanded a hearing on the *ex parte* order and following the hearing, the trial court awarded the father temporary custody. On appeal, the Court reviewed the statutory authority that granted custody to DSS and determined that the trial court did have jurisdiction to enter the non-interference order; however, since there was not a request for non-secure custody nor a juvenile petition filed, the trial court lack authority to enter the custody order.

In the Matter of K.D., B.G. and D.G., * (Unpub.) --- N.C. App. ---, 615 S.E.2d 96 (June 21, 2005) (Catawba County). Respondent parents appealed from permanency planning order making adoption the permanent plan. The Court of Appeals affirmed the trial court order. Respondents argued that the trial court erred by incorporating facts from the reports of the social worker and GAL without making its own findings of fact and that the findings of fact were not supported by sufficient evidence. In this case, the trial court correctly took portions of reports to include in its findings of fact without "broadly incorporating" the reports as its findings of fact. Because of this, the Court of Appeals held that the trial court had conducted a sufficient independent review. The Court further held that the trial court is not required to completely re-write facts taken from reports to show independent review. Respondent parents also argued that the trial court erred in not making findings of fact as required by N.C. Gen. Stat. § 7B-907 and abused its discretion by not ordering a concurrent plan of reunification. The Court of Appeals, relying on *In re J.C.S.*, 164 N.C. App. 96, 595 S.E.2d 155 (2004), held that as long as the trial court's findings of fact address the *relevant* provisions of the statute, it is not necessary to plainly address each provision. The court did not abuse its discretion in failing to make the plan

adoption concurrent with reunification because here were allegations of sexual abuse, the parents did not follow through with case plans and all children exhibit inappropriate sexual, and DSS did make reasonable efforts to reunify by providing Medicaid; making domestic violence and mental health referrals for the children and parents, allowing visitation with between the children and the parents, providing the mother with bus vouchers, conducting monthly treatment meetings and other such services.

In re K.D., S.D., D.D., * (Unpub.) --- N.C. App. ---, --- S.E.2d --- (May 17, 2005) (Lee County). Respondents appealed from permanency planning order that parental rights should be terminated and that the plan be changed from reunification to adoption. Respondent mother contended that there was not sufficient evidence to show that her parental rights should be terminated. The Court of Appeals affirmed the trial court's ruling holding that by finding that Respondent Mother failed to establish a safe home for the children within a reasonable amount of time, did not have stable employment and stopped taking medication, the trial court found enough evidence to show that an effort to reunify would "...be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time." Such a finding is sufficient to relieve DSS of reunification efforts under N.C. Gen. Stat. §7B-507(b). Respondent Father argued that he had ineffective assistance of counsel. The Court of Appeals did not agree and held that even though the father was incarcerated at the time of the hearing and his counsel did not make sure the father was present for the hearing, the father was not prejudiced because even if he was present, it was not likely that the court would have reached a different conclusion.

In the Matter of K.E.C., * (Unpub.) 169 N.C. App. 842, 612 S.E.2d 693 (April 19, 2005) (Henderson County). Respondent appealed from termination of her parental rights based upon neglect and willful abandonment. The Court of Appeals affirmed. Respondent first contended that the findings of fact and conclusions of law were not supported by the evidence. Some of the facts that Respondent assigned as error were subsidiary or evidentiary facts which do not weigh in on the evaluation of the factors under N.C. Gen. Stat. 7B-1111. With regards to the ultimate facts to which Respondent assigned error, the Court held there was clear, cogent and convincing evidence. The evidence that Respondent only saw the child once in five years and only made failed attempts to contact the child supported the ground that Respondent "willfully neglected" the child. In addition, Respondent did not provide support for the child before she was incarcerated, while incarcerated or after work release. Respondent claimed that she did not earn enough to pay the support order in the Divorce Decree. However, she did not challenge the amount at the time and therefore waived her right to claim she was not able to make the payments. In addition, the Court of Appeals has held that "work release affords a respondent 'an opportunity to provide for some portion of the cost of care of the child.'" Respondent also argued that she did not *willfully* neglect or abandon the child because petitioner removed her from the residence and prevented her contact with the child. The Court of Appeals held that neglect occurs when a child "does not receive proper care, supervision, or discipline from the juvenile's parent," or if the child "has been abandoned." As only one ground is needed for termination, and two grounds were found in this case, the grounds are upheld on appeal. Respondent lastly argued that it was not in

the best interests of the child to terminate her parental rights. K.E.C. is doing well with Petitioner and his new wife and although stability in a new family situation is not enough to show it is in the best interests of a child to terminate parental rights, the finding that Respondent willfully neglected and abandoned K.E.C. with this information is enough. Therefore, there was no abuse of discretion.

In the Matter of K.F. and M.F., * (Unpub.) 169 N.C. App. 842, 612 S.E.2d 694 (April 19, 2005) (Wilkes County). Respondent mother and Respondent father appealed from a permanency planning order ceasing reunification and approving a permanent plan for adoption; the Court of Appeals affirmed the trial court. Respondent mother first argued that the trial court abused its discretion in refusing to allow her motion for a continuance because her attorney was notified of his appointment late. The Court of Appeals held that this was without merit because in juvenile proceedings, “[t]he court may for, good cause, continue the hearing for as long as is reasonably required to receive additional evidence, reports, or assessments that the court has requested, or any other information needed in the best interests of the juvenile and to allow for a reasonable time for the parties to conduct expeditious discovery. Otherwise, continuances shall be granted only in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile.” None of these circumstances exist in this case. Next, the Court of Appeals held that the trial court did not err in referencing a social worker’s report in a finding of fact instead of specifically finding the facts with regards to DSS’s reasonable efforts. The Court of Appeals noted that it was better to summarize pertinent parts of reports than merely referencing them. The Court of Appeals also held that the permanency planning order complied with §7B-907(b) as the statute does not require a recitation of all factors but simply findings of fact relevant to the factors included in the statute.

In the Matter of K.J.H., * (Unpub.) --- N.C. App. ---, 620 S.E.2d 736 (November 1, 2005) (Wayne County). Respondent father appealed from a permanency planning order which awarded him custody, but continued visitation with the mother and ordered review hearings to continue. On appeal, respondent argued that the findings of fact did not support the conclusions of law and that the court erred in finding that respondent mother had no serious psychological problems. The Court held that respondent mother’s psychological evaluation, which reported that there was no indication that the mother had a mental disability, was competent and sufficient to support the finding that no serious problems were determined. The Court further held if supported by competent evidence, findings of fact are conclusive on appeal even if some evidence supports contrary findings. Respondent father also argued that the court erred in granting respondent mother increased visitation while criminal charges were pending against her for child abuse. However, the Court found no abuse of discretion in the granting of increased visitation. Finally, respondent father argued that the trial court’s decision to retain jurisdiction over the proceeding in ordering a review hearing was error. Although § 7B-907(c) states that “[i]f at any time custody is restored to a parent...the court shall be relieved of the duty to conduct periodic judicial reviews of the placement,” the Court held that this statute does not required that a case *must* be closed. Further support for this was found in § 7B-201 which states that “...jurisdiction shall continue until terminated by

order of the court or until the juvenile reaches the age of 18 or as otherwise emancipated, whichever occurs first.” The Court affirmed the trial court order.

In the Matter of K.J.H., * (Unpub.) --- N.C. App. ---, --- S.E.2d --- (December 20, 2005) (Wayne County). Respondent father appealed from a review hearing order which was entered while the above appeal was pending (*See In the Matter of K.J.H.*, November 1, 2005). The review hearing order differed from the permanency planning order that was affirmed in the case noted only in that it changed the supervising party for mother’s visitation from the maternal grandparents to the “maternal grandparents or their appropriate adult designee” and ordered that there was no need for further reviews. The Court of Appeals initially addressed the mother’s motion to dismiss the appeal as interlocutory and held that the review hearing was an appealable final order because it is an order “which in effect determines the action and prevents a judgment from which appeal might be taken” under N.C.G.S. § 7B-1001(2). By closing the case, the trial court terminated its jurisdiction over the order and made the order final and appealable. On appeal, respondent father argued that the trial court erred in entering the review order more than thirty days after the hearing, erred in making findings of fact not supported by competent evidence, erred in finding and concluding that it was in the child’s best interest to grant respondent-mother visitation and erred in awarding respondent-mother visitation supervised only by the maternal grandparents. The Court of Appeals held that although the order was entered two months after the hearing in violation of N.C. Gen. Stat. § 7B-907, respondent failed to show that he was prejudiced by the delay. With regards to the second argument, the Court of Appeals held that the trial court’s finding of facts were supported by competent evidence such as medical reports, DSS reports, GAL reports, psychological evaluations, statements by mother’s counsel, and statements by DSS. Respondent argued finally, that in light of the criminal charges pending against the mother, the court erred in concluding that supervised visitation would be in the child’s best interest. The trial court based its conclusion on evidence that the mother had no criminal record, attended parenting classes, attended therapy and had no significant psychological problems. The Court of Appeals held that these findings were sufficient to support the conclusion that visitation with the mother should continue.

In the Matter of K.L., * (Unpub.) 169 N.C. App. 842, 612 S.E.2d 694 (April 19, 2005) (Rutherford County). Respondent father appeals from permanency planning order granting guardianship to maternal grandparents. The Court of Appeals affirmed the trial court’s order. Respondent had physical custody of K.L., after K.L. was adjudicated abused and neglected. One month after getting custody, the child was placed in the custody of the maternal grandparents because Respondent left his other daughters alone with the 23 year-old boyfriend of his 14 year-old daughter when taking K.L. to West Virginia. One month later, Respondent told DSS that he could not provide for K.L. and did not want custody of her. One year later, the order was entered. Father argued that the trial court did not have personal jurisdiction over him because of a service defect. The Court of Appeals held that because he made a general appearance at court without objection to personal jurisdiction, he waived and defect in service. Father next argued that the court abused its discretion in awarding custody to the maternal grandparents but did not take exception to any of the findings of fact. Because of this, the findings are

conclusive on appeal and the Court of Appeals held that they supported the decision to grant custody to the maternal grandparents. Respondent also argued that the court did not comply with N.C. Gen. Sta. §7B-907(b) because the order did not specifically state the child could not be returned home within the next 6 months. However, the Court of Appeals held that it is not necessary to recite each criterion so long as the criteria are addressed and the findings are stated specially.

In the Matter of K.L.J.,* (Unpub.) 168 N.C. App. 239, 607 S.E.2d 55 (January 18, 2005) (Forsyth County). The Court of Appeals affirmed respondent mother's termination of parental rights but reversed the termination of respondent father's parental rights. Respondent father was incarcerated before K.L.J.'s birth and has remained incarcerated throughout the entire lifetime of the child. The respondent father visited with K.L.J. monthly when DSS brought him to the father's prison unit. While he did not pay child support out of his prison earnings, the respondent father gave the minor child a birthday card and a \$5.00 gift. The respondent father could not identify anyone to care for the minor child until he was released from prison but requested that DSS continue to care for K.L.J. until the respondent father's release from prison in 2006. The Court of Appeals rejected the respondent mother's argument that the trial court committed reversible error by failing to enter its written order within the statutorily mandated time of thirty days. The Court held that the respondent mother had not suffered prejudice that would warrant reversal of the trial court's order. Respondent father argued that the trial court erred in concluding there were grounds to terminate his parental rights based on his willful abandonment of the minor child for at least six consecutive months immediately preceding the filing of the petition. In reversing the trial court's order, the Court of Appeals noted that although the respondent father had been incarcerated for most of his child's life, incarceration alone does not determine a termination of parental rights decision. The Court pointed to the trial court's findings that the respondent father had contact with the child through sending letters and gifts, that he attended classes and that he actively attempted to find potential guardians for the child while he was in prison. The Court held that the trial court's findings of the number of letters sent by respondent father to K.L.J. alone was insufficient to support the conclusion that respondent father willfully abandoned his child. The Court also noted that the trial court found no willfulness on the part of the respondent father to support termination based on willfully leaving the minor child in foster care for twelve months and that because of the respondent's limited opportunities for employment in jail, no grounds existed to support termination on the grounds of willful failure to pay a reasonable portion of the cost of care.

In the Matter of K.L.S., D.L.C., C.M.C., * (Unpub.) --- N.C. App. ---, 615 S.E.2d 738 (July 19, 2005) (McDowell County). Respondent father appealed from a permanency planning order placing custody and guardianship of D.L.C. and C.M.C. with their maternal grandparents. The placement of K.L.S. was not at issue in this appeal. Respondent lives in N.Y., and Oswego DSS did not approve placement with him because he had failed to show he completed parenting classes and failed to follow the recommendations of his substance abuse evaluation. The trial court found that it would be "...inconsistent with the best interest of the...children to require [DSS] to provide

supportive services and make reasonable efforts to reunify...the children with any of the respondents.” Respondent argued that the findings of fact did not comply with N.C. Gen. Stat. § 7B-907(b). The Court held that because the finding of fact relevant in the appeal was a recitation of testimony and evidence submitted at trial, it was not a proper finding of fact by the trial court and therefore did not comply with N.C. Gen. Stat. § 7B-907(b) which requires that the trial court engage in “processes of logical reasoning.” Although the trial court is not required to specifically list out the requirements of 7B-907(b), it is required to make findings of fact as to the relevant factors. The Court of Appeals held that reciting testimony is not making a finding of fact. Because there are not appropriate findings of fact, the Court of Appeals remanded the case. In addition, the trial court incorporated the DSS report into its findings of fact. The Court of Appeals held in *In re M.R.D.C.* that a DSS report cannot be used “as a substitute for its own independent review.” Because of this, the DSS report alone cannot be considered a sufficient finding of fact to uphold the permanency planning order. Finally, respondent argued that he received ineffective assistance of counsel because he was repeatedly unable to contact his attorney. Because respondent failed to show that he was deprived of a fair hearing and failed to show what would have otherwise occurred at trial, this assignment of error was overruled.

In the Matter of K.N.N., * (Unpub.), --- N.C. App. ---, 615 S.E.2d 435 (July 5, 2005) (Iredell County). Respondent mother appealed from permanency planning order which changed the plan from a concurrent plan of placement with a relative and TPR to a sole plan of guardianship with a relative. Relying on *J.C.S.*, the Court of Appeals held that the mother’s appeal of this order was improper, and she should have appealed from the first order in which reunification efforts were ceased. The respondent-mother also contended that the permanency planning order did not comply with N.C.G.S. § 7B-907(b). The Court of Appeals held that although the order did not specifically enumerate those factors required by § 7B-907(b), the court did consider and make written findings of fact regarding the factors relevant to the case.

In the Matter of K.N.O. & A.R.O., * (Unpub.) --- N.C. App. ---, 620 S.E.2d 734 (November 1, 2005) (Catawba County). Respondent appealed from a permanency planning order changing the permanent plan to adoption; respondent was not present at trial and his counsel testified on his behalf. On appeal, respondent argued that the trial court committed reversible error when it failed to conduct a proper permanency planning hearing as required by § 7B-907 by accepting the unsworn statements of trial counsel and court reports as the only evidence in the hearing. His basic argument is that the trial court must receive sworn testimony at a permanency planning hearing. However, § 7B-907(b) states that the court “may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and most appropriate disposition.” Furthermore, although a court cannot broadly incorporate all reports as its only findings of fact or use them as a substitute for independent review, it may consider them in and incorporate them so long as it makes additional findings of fact. The trial court in this case made fifteen additional findings of fact. Respondent also argued that the trial court erred by failing to make specific and ultimate findings of fact in compliance with § 7B-907 and §7B-507. The

Court held that the trial court does not have to formally list the requirements of the statutes so long as they make the relevant findings of fact. Here, the trial court found that it was unlikely that the children would return to respondent within six months, that there were no suitable relative placements and other findings in accordance with the statutes. Likewise, the Court held that the trial court fulfilled the requirements of §7B-507. Respondent argued that the trial court erred in removing respondent's counsel and appointing substitute counsel one month before the permanency review hearing, thereby denying him effective assistance of counsel. The Court overruled this assignment of error because respondent failed to show that he was deprived of a fair hearing. The trial court continued the hearing to allow the new counsel to repair and the record indicated no damaging information.

In the Matter of K.R.S., --- N.C. App. ---, 613 S.E.2d 318 (June 7, 2005) (Chatham County). The Court reversed the termination of parental rights for failure to appoint a guardian ad litem for respondent mother. The trial court did not find dependency as a ground for termination, but the petition alleged dependency due to the mother's drug abuse problems and failure to follow through with treatment. Although the trial court terminated on the grounds of neglect and willful abandonment, the record indicated that the mother's ongoing substance abuse and mental illness were considered in determining whether grounds existed to terminate her rights. As a result, it was prejudicial error not to appoint a guardian ad litem in accordance with the statutory requirements.

In re L.B.D., --- N.C. App. ---, --- S.E.2d --- (January 4, 2005) (Mecklenburg County). The Court reversed this private termination of respondent father's parental rights after the trial court refused to allow respondent to participate in the termination proceedings. In this case the mother relinquished her rights in order to put her child up for adoption and named respondent Mungo as the father. The petitioner in this case is the adoption agency that contacted respondent about being the father, but due to miscommunication, no paternity test was performed at that time. Subsequently, the petitioner filed the termination petition naming only Mungo as respondent and alleged that he failed to pay child support. The agency filed a motion for a paternity test, and the results showed zero percent probability that Mungo was the father. Although the parties and judge viewed the results prior to hearing, the results were never offered into evidence. Further, at the hearing, Mungo and his attorney were present and attempted to offer evidence, but the trial court refused to allow them to offer evidence and declared that Mungo had no standing because of the paternity test results. On appeal, respondent argued that it was error for the trial court to refuse to allow a hearing or take evidence on the issue of paternity. Mungo was properly served with the petition and present at the hearing. The Court agreed that Mungo's due process rights were violated when he was refused an opportunity to be heard unless the trial court dismissed him as a party or dismissed the petition. In addition, the Court determined that there was insufficient evidence to support the findings of fact and conclusions of law since the paternity test results were never entered into evidence, but merely reviewed by the court prior to the hearing. The Court reiterated that N.C.G.S. § 8-50.1(b1), governing admissibility of paternity tests in civil actions, creates a *rebuttable* presumption and it was error to disallow respondent the opportunity to rebut the presumption of the test results. Finally, the Court clarified that

the trial court was without authority to proceed against any potential father except Mungo since he was the only putative father properly served, and he was improperly excluding from the termination of parental rights hearing.

In the Matter of L.C. and A.N., --- N.C. App. ---, 621 S.E.2d 208 (November 15, 2005) (Mecklenburg County). Respondent mother appealed the order that dismissed her motion to vacate the TPR order pursuant to Rule 60. The Court previously affirmed the order terminating respondent mother's parental rights [See *In re L.C.*, 164 N.C. App 598, 596 S.E.2d 473 (2004)]. After the TPR was affirmed, adoption petitions were filed and subsequently stayed as a result of this appeal with the children remaining in DSS custody. The standard of review of a Rule 60 motion is abuse of discretion but Rule 60 cannot be used as a substitute for appellate review. Based on the trial court's finding that Rule 60 was inapplicable and that respondent was attempting to circumvent the adverse appellate decision, the dismissal of the Rule 60 was appropriate.

In the Matter of L.C., I.C. and L.C., * (Unpub.) --- N.C. App. ---, --- S.E.2d --- (December 6, 2005) (Durham County). The Court reversed the trial court's order terminating respondent's parental rights because the court's conclusions of law merely reiterated the grounds upon which the termination petition were filed and because the order did not include the findings of fact on which the conclusions were based.

In the Matter of L.E.B., K.T.B., 169 N.C. App. 375, 610 S.E.2d 424 (April 5, 2005), *motion granted*, 616 S.E.2d 538 (2005), *discretionary rev denied*, 359 N.C. 632 (2005), *motion dismissed as moot*, 359 N.C. 632 (2005) (New Hanover County). Respondent mother appealed the termination of her parental rights and argued that it was reversible error that the order was not entered within the statutorily mandated thirty days. The termination order was not entered until over 180 days after the hearing, and the Court agreed that such a delay is prejudicial to all parties, necessitating the reversal of the TPR order and remand for new hearing. In recognition of the effect such a delay has on all parties involved in juvenile court proceedings, the Court held that a delay greater than six months is "highly prejudicial to all parties involved." Judge Timmons-Goodson writes a separate concurrence recognizing that previous analyses by the Court on this issue held that the appellant was not prejudiced; however, the Court failed to consider the harm to other parties, particularly the juvenile and their foster or adoptive parents.

In the Matter of L.G., * (Unpub.) --- N.C. App. ---, 615 S.E.2d 737 (July 19, 2005) (Catawba County). Respondent mother appealed from a termination of her parental rights arguing that the evidence was insufficient to support the findings of fact. The Court of Appeals affirmed. Respondent failed to assign error to the findings of fact that she challenges and because of this, the Court of Appeals held that the findings of fact are binding on appeal. Respondent also argued that the conclusions of law were not supported by the findings of fact. The trial court found that respondent had been ejected from drug treatment class, had tested positive for drugs, refuse to take drug tests and gave diluted drug test samples. The Court of Appeals held that these findings were sufficient to support the conclusion that respondent had failed to make reasonable progress in correcting the conditions that led to her daughters removal.

In re: L.L., --- N.C. App. ---, 616 S.E.2d 392 (August 16, 2005)(Johnston County). Respondent parents and DSS appealed the review order that granted the foster parents/intervenors custody. The Court reversed and remanded the case because of the nine-month delay in entering the order—the delay was prejudicial to the appellants who had to wait until the order was entered before pursuing their appeal; and the delay in entry was contrary to the plan of reunification and L.L.’s best interest. After L.L. was adjudicated neglected, the court ordered an expedited ICPC home study on relatives in Virginia and gave DSS custody. L.L. was placed with the Maples, a licensed foster family. DSS subsequently changed its plan to placement with relatives as opposed to foster care, and the Maples grew concerned about whether the relative placement was in the child’s best interest. An oral motion to intervene by the Maples was granted without objection of any party, although the written order was not entered until 15 months later. On the same day, the Maples filed a motion to termination parental rights. As a result of the TPR motion, DSS removed L.L. from the Maples. At the subsequent review hearing, the trial court placed L.L. in the custody of the Maples, ordered DSS to continue to work toward reunification, and attempted to retain jurisdiction over the case. DSS and the parents filed notices of appeal to the oral order, and DSS moved for a stay pending appeal that was denied. A motion for recusal was filed and denied. On appeal the parties argued that the judge improperly presided over the review hearing since she was not assigned to juvenile court; however, this argument was overruled because the parties agreed that she hear the case and there was no appeal from that order. Appellants also argued that the intervention was improper, but this issue was not preserved for appellate review since no one objected. The reversal in this case was due to the nine-month delay in entry of the order, but the Court also directed that on remand, the trial court must first give consideration to placement with the relatives in Virginia. The trial court failed to make specific findings of fact as to why placement with the relatives was not in the child’s best interest. There is a good discussion on the priority of relative placement as well as the logistics of an ICPC home study.

In the Matter of L.M.B.L., S.V.L.L., * (Unpub.) 169 N.C. App. 842, 612 S.E.2d 693 (April 19, 2005) (Robeson County). Respondent mother appealed the termination of her parental rights and alleged that the trial court abused its discretion by refusing to grant her motion to continue. The motion was made because the mother did not secure transportation to the hearing. The Court of Appeals held that the trial court did not abuse its discretion in refusing to grant the motion because a continuance will be granted only when “...reasonably required to receive additional evidence, reports, or assessments that the court has requested, or other information needed in the best interests of the juvenile and to allow for a reasonable time for the parties to conduct expeditious discovery. Otherwise, continuances shall be granted only in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile.” N.C. Gen. Stat. § 7B-803. The Court of Appeals held that the denial of the motion did not deny the Respondent her rights to due process or to parent because her failure to appear was due to her own negligence and therefore the appropriate standard of review was abuse of discretion.

In the Matter of L.M.C., --- N.C. App. ---, 613 S.E.2d 256 (June 7, 2005) (Chatham County). Respondent mother appealed the permanency planning order granting guardianship of her daughter to the current caretakers, J.M. and E.C. The Court vacated the order and remanded the case due to failure to appoint a guardian ad litem for respondent in accordance with N.C.G.S. § 7b-602(b)(1). Respondent has a long history of emotional instability due to depressive disorder and borderline personality disorder. DSS filed a dependency petition that respondent consented to in 2000, granting the paternal grandmother guardianship. However, two years later the grandmother died. DSS filed another dependency petition to which respondent consented that granted J.M. and E.C. temporary custody. At the subsequent review hearing, permanent custody was granted to the couple and at the next review hearing, the couple requested guardianship. The trial court granted their request and relieved DSS and GAL from further responsibility; it was from this order that the mother appealed. In her first argument respondent asserted that it was error to allow the couple to participate in hearings without filing a formal motion to intervene. The Court overruled this argument because the issue was not preserved for appellate review as respondent failed to object at the trial level. However, the Court agreed with respondent's second argument that the trial court failed to appoint a guardian ad litem despite the fact that her mental illness was the cause of her daughter's dependency.

In the Matter of L.O.K. et al., --- N.C. App. ---, 621 S.E.2d 236 (November 15, 2005) (Alamance County). Respondent mother was the object of a previous TPR proceeding that DSS voluntarily dismissed after resting its case. Respondent mother appealed the order from a second TPR proceeding, terminating her rights and the order was affirmed. Respondent's first argument is that the trial court erred in denying her motion to dismiss because under Rule 41(a)(1), DSS could not voluntarily dismiss without prejudice its first petition since it had already rested its case. Respondent argued that DSS needed to obtain a court order declaring the dismissal was without prejudice. Although the Rules of Civil Procedure apply in juvenile abuse/neglect proceedings, it is only to the extent that they do not conflict with the Juvenile Code and advance its legislative purpose. A holding that dismissal of a TPR petition precludes a second petition is contrary to the purpose of the Juvenile Code and would be contrary to children's best interest by preventing a permanent plan of care—if not returned to their parents, children would remain in foster care limbo. Respondent's argument concerning hearsay was overruled for failing to show prejudice. Respondent also argued that the evidence did not support the determination of neglect, but that argument was overruled. Finally, respondent argued that the poor recording of the hearing resulted in an inadequate transcript on appeal. This argument was overruled since respondent failed to take any measure to reconstruct missing testimony; therefore, she did not show prejudice.

In the Matter of L.T.M., K.R.M., C.R.M., * (Unpub.) --- N.C. App. ---, 620 S.E.2d 734 (November 1, 2005) (Cabarrus County). The Court affirmed the trial court order terminating parental rights on the grounds of failure to pay a reasonable portion of support. Respondents argued that the trial court failed to make sufficient findings to support its conclusion that respondents willfully failed to pay a reasonable portion of the cost of care for the children under § 7b-1111(a)(3). Before terminating on this ground, a

trial court must find that the parent has the ability to pay support. Respondent's argued that the trial court is also required to determine what constitutes a "reasonable portion." However, the Court held that there is no such requirement and the trial court's finding that the respondents had the ability to pay some amount greater than they did is sufficient.

In re M.A.L.,* (Unpub.) 167 N.C. App. 806, 606 S.E.2d 459 (January 4, 2005) (Johnston County). The Court of Appeals affirmed the respondent parents' termination of parental rights. The minor child was removed from the home when she was ten weeks old after DSS observed that she had a black eye, facial bruising and other unexplained bruising. Subsequent medical examinations revealed that the minor child had fractures in both of her right and left femurs, a fractured wrist bone, and healed rib fractures. Expert witnesses testified at the adjudication hearing that the injuries were not caused by accidental means and were consistent with child abuse. The Court of Appeals rejected their challenge to the trial court's finding of abuse as a ground for termination of parental rights as the trial court's findings of fact amply supported their conclusion. The Court of Appeals also affirmed the trial court's conclusion that it was in the minor child's best interests that the respondent parents' rights be terminated.

In the Matter of M.B. & E.W., * (Unpub.) --- N.C. App. ---, 619 S.E.2d 594 (October 4, 2005)(Mecklenburg County). Respondent parents appealed from an order terminating their parental rights based on the ground that the juveniles were placed in foster care for more than 12 months without a showing that reasonable progress had been made to correct the conditions that led to their removal. On appeal, respondents contend that the trial court erred in concluding that they willfully left the juveniles in foster care without making reasonable progress. In finding that willfulness does not require a finding of fault on the parent, and that willfulness is established when a parent has the ability to make reasonable progress but is unwilling to do so, the Court of Appeals held that respondents' failure to comply with the case plan of YFS in full supported a finding that they willfully left the juveniles in placement without making reasonable progress. The Court also held that some progress does not preclude a finding of willfulness. In affirming the trial court's order terminating parental rights, the Court of Appeals held that there was no abuse of discretion in the determination that it was in the best interests of the juveniles to terminate parental rights.

In the Matter of M.C., * (Unpub.) --- N.C. App. ---, 620 S.E.2d 734 (November 1, 2005) (Lenoir County). Respondent mother appealed from consent orders adjudicating M.C. neglected and requiring her to resume counseling, complete anger management and parenting classes, and allow DSS to remain on the case. Respondent argued that the trial court could not accept the consent agreement and finding of neglected based upon only one incident of inappropriate behavior. The Court held that § 7B-902 allows a trial court to enter a consent order on a petition alleging neglect where all parties are present, represented by counsel and the trial court makes sufficient findings of fact to support the order. Here, respondent and her counsel were both present and her assignment of error was overruled. Secondly, respondent argued that the trial court erred in ordering her to resume joint counseling, etc. At disposition, the trial court is governed by the best interests of the juvenile and is given the authority to design an appropriate plan to meet

the needs of the juveniles. The court did not abuse its discretion in setting out the above stated plan. The trial court order was affirmed.

In the Matters of M.I.S. and S.M.S., * (Unpub.) --- N.C. App. ---, --- S.E.2d --- (December 20, 2005) (Cabarrus County). The trial court terminated parental rights on grounds of neglect, willfully leaving children in foster care for twelve months without making reasonable progress and failure to pay a reasonable portion of support. The Court of Appeals affirmed. The Court of Appeals held that only one ground is necessary to support termination and that the trial court, in finding that respondent failed to complete his case plan, sufficiently made finding supported by evidence of the trial court's conclusion that respondent had failed to make sufficient progress in correcting the conditions that led to removal. Respondent father argued that the trial court failed to state affirmatively the standard of proof used in the termination proceeding. The Court of Appeals overruled this assignment of error because although N.C.G.S. § 1109(f) requires the trial court to state in its order that the findings of fact taken from the adjudicatory hearing were based upon clear, cogent and convincing evidence, the court here held a bifurcated hearing making the following statement sufficient-- "the following Findings of Fact based on clear, cogent and convincing evidence." Both respondents argued that termination was not the children's best interest. The Court of Appeals found no abuse of discretion because the trial court based this determination upon findings that the children came into custody with medical needs, inappropriate sexual behavior, and that respondents had failed to comply with case plans.

In the Matter of M.I.V. et al.,* (Unpub.) 168 N.C. App. 595, 608 S.E.2d 416 (February 15, 2005) (Wake County). Respondent mother appealed the termination of her parental rights to three of her children. The three minor children were placed into foster care and adjudicated neglected and dependent. The respondent mother subsequently showed enough progress towards meeting the court's directives that one of her minor children was returned to her. Less than a month after returning the minor child to the home, DSS received a complaint that he was being improperly supervised and upon investigation determined that he had marks on his head and neck consistent with choking. At the termination hearing, there was extensive testimony from multiple witnesses that the respondent spanked, yelled, cursed, slapped, threatened and disregarded her children on a regular basis. The respondent was unable to hold a consistent job and tested positive for marijuana while pregnant. The Court of Appeals rejected her challenge to termination, holding that there was clear and convincing evidence supporting the trial court's findings and that the findings supported the trial court's conclusion that the three minor children were neglected. The Court also held the trial court had not abused its discretion in determining that termination was in the best interests of the children.

In the Matter of M.J.G., 168 N.C. App. 638, 608 S.E.2d 813 (March 1, 2005) (Catawba County). The Court affirmed the order adjudicating M.J.G. neglected and the disposition ordering that reunification efforts cease. The child was born prematurely, necessitating admission to the neonatal intensive care unit. At the time of the birth, respondent mother was residing with the paternal grandfather of M.J.G. However, prior to the child's release from the hospital, respondent mother left the paternal grandfather's residence

without informing him of her where she would be residing. DSS obtained custody of M.J.G., who had never been in the mother's custody. Respondent mother's older daughter was adjudicated abused and neglected prior to M.J.G.'s birth and was also in DSS custody. Respondent mother tested positive for marijuana on the day of M.J.G.'s birth, she admitting using the drug on at least one day during her pregnancy, and refused to take a drug test the day before the birth although her case plan provided for drug screenings. On appeal respondent mother challenged several findings of fact of the adjudication and disposition orders. Although the Court concluded that several findings of fact were not supported by clear and convincing evidence, the remaining findings of fact did support the conclusion of law that the child was neglected. Although DSS and GAL reports had not been admitted into evidence, the Court found no error due to the informal nature of dispositional hearings and that the parties followed the local rules concerning the exchange of such reports. Although the mother had made some limited progress, the Court affirmed the disposition order that ceased reunification.

In the Matter of M.S., * (Unpub.) --- N.C. App. ---, 615 S.E.2d 737 (July 19, 2005) (Catawba County). The Court of Appeals affirmed the trial court's order ceasing reunification efforts. M.S. was removed from the care of his father on two occasions after an adjudication of neglect. In addition, respondent refused to allow M.S.'s GAL access to M.S. When respondent failed a series of drug screenings, M.S. was moved to a therapeutic foster home. Although the plan remained reunification for some time, the plan was changed to adoption when the trial court found that the father was becoming verbally harassing towards the social worker and was not complying with case plans and court recommendations. Respondent argues that the trial court erred in failing to appoint a guardian ad litem for M.S. because the appointment of the GAL does not appear in the record on appeal. However, the record was amended to include the appointment. He also argues that the trial court erred in failing to appoint him a guardian ad litem. Even though the original petition alleged dependency, it was based upon the fact that respondent had been evicted, was unable to pay rent, was unable to provide food, had left M.S. with an adjudicated sex offender and sent a note to M.S.'s school that "included language [of] suicidal ideation." In this case, dependency was not alleged due to any mental condition of respondent. Respondent also argued that the trial court lacked subject matter jurisdiction because M.S. had been returned to him on an occasion before; however, the court never terminated jurisdiction and according to N.C. Gen. Stat. § 7B-201, "jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 18 or is otherwise emancipated." Finally, respondent's argument that the trial court did not make sufficient finds of fact was without merit.

In the Matter of M.S., * (Unpub.) --- N.C. App. ---, 620 S.E.2d 736 (November 1, 2005) (Wilkes County). The Court affirmed the trial court's order terminating parental rights on the ground of neglect. Respondent's only arguments on appeal was that the trial court's findings of fact do not support its conclusion that M.S. was neglected and that the trial court erred in failing to conduct a separate "best interest phase." The Court held that it is presumed that in the absence of "some affirmative indication to the contrary, that the judge, having knowledge of the law, is able to consider the evidence in light of the

applicable legal standard and to determine whether grounds for termination exist before proceeding to consider evidence relevant only to the dispositional stage.”

In the Matter of M.S.B.,* (Unpub.) 168 N.C. App. 239, 607 S.E.2d 55 (January 18, 2005) (Harnett County). The Court of Appeals affirmed the termination of respondent father’s parental rights. The minor child and her siblings lived with their mother in a car until the mother relinquished custody to Harnett County DSS. Harnett County DSS contacted the minor child’s father and asked him to make a plan of care for her. The respondent father lived in Sampson County, so Harnett County DSS requested that the Sampson County DSS conduct a home study and determine whether custody should be given to him. The Sampson County DSS did not recommend giving the father custody of the child. The respondent father did not attend the review hearing or the permanency planning hearing. The Court of Appeals upheld the trial court’s termination of parental rights based on a finding of the ground of neglect. The Court of Appeals held that the trial court properly recognized the different stages and applicable standards in terminating the respondent’s parental rights and that the trial court had not abused its discretion in determining that the termination was in the best interests of the child.

In re M.T.G., * (Unpub.) --- N.C. App. ---, 615 S.E.2d 738 (July 19, 2005) (Lee County). Respondent father appealed an order ceasing reunification efforts. The Court of Appeals affirmed the trial court order. At the time custody was taken, M.T.G. was living with his father. M.T.G. was adjudicated neglected and respondent was ordered to undergo a psychological evaluation, participate in parenting classes, and undergo anger management. Respondent made progress towards reunification at the ninety-day hearing, but at the permanency planning hearing, the trial court found that respondent was manipulative and that domestic violence and psychological conditions of respondent made his home an unstable environment. The trial court ceased reunification efforts at that hearing. On appeal, respondent argued that the trial court’s findings of fact were not supported by competent evidence that that the trial court erred in finding that reunification efforts would be inconsistent with M.T.G.’s health, safety, and need for a permanent home. The Court held that the trial courts’ findings of fact were supported by clear, cogent and convincing evidence. Furthermore, the Court held that the court did not err in concluding that further reunification efforts would be futile as they considered the juvenile’s best interests pursuant to N.C. Gen. Stat. § 7B-507(a) and § 7B-907(c).

In re N.F., * (Unpub.) --- N.C. App. ---, --- S.E.2d --- (December 20, 2005) (Wake County). Respondent mother appealed the adjudication of abuse and neglect and the Court affirmed. Paternity was never legally established and respondent mother suffered from depression that interfered with her profession as an attorney. The child was taken to a clinic for vaccinations, and initially it appeared the child had an adverse reaction to the vaccines; however, after admission to the hospital for seizures, it was determined that the child had suffered abusive head trauma. Respondent testified that she had not shaken the child or abused him in any way, and some evidence indicated that the child was in the care of the putative father for a short period leading to the seizure. Respondent assigned error to several findings of fact and the Court determined the evidence presented did not support some findings of fact; however, it was not reversible error and enough findings

were supported to sustain the conclusions of law. Respondent argued that she was denied due process by asserting her Fifth Amendment right. This argument was overruled because the judge may use a party's exercise of the Fifth Amendment against self-incrimination to infer that truthful statements would have been unfavorable to the case. Respondent also argued it was error for the judge to make *ex parte* investigation into the symptoms of shaken baby syndrome. This assignment of error was overruled—respondent failed to object at trial or request a mistrial, and the investigation was not evidenced by any findings of fact.

In the Matter of N.M.B.,* (Unpub.) 167 N.C. App. 806, 606 S.E.2d 458 (January 4, 2005) (Buncombe County). The Court of Appeals affirmed the termination of respondent father's parental rights and dismissed the respondent mother's appeal of termination of her parental rights. The respondent parents were arrested for possession of drugs while taking a walk with the minor child in a stroller. DSS's petition alleging that the minor child was a neglected and dependent child was continued until the respondent parents' criminal proceedings were resolved. Respondent father pled guilty to misdemeanor possession of drugs and the charges against respondent mother were dismissed. DSS filed an additional petition claiming that the minor child was sexually abused and neglected based on the minor child's sexual knowledge and behavior and the minor's disclosure to a therapist that her father did sexual things to her. The trial court terminated the respondents' parental rights based on three statutory grounds: (1) neglect; (2) failure to correct or to show reasonable progress in alleviating conditions at home which led to DSS's initial involvement; and (3) failure to pay a reasonable portion of the minor's cost of care, even though both were financially able. The Court of Appeals dismissed the respondent mother's appeal because she did not file a brief. Respondent father pointed to assignments of error based on improper service of notice of the TPR hearing and the failure of DSS to attach to the TPR petition a copy of the order granting custody of the minor child to DSS. The Court held that the assignments of error were not properly before it as respondent father did not raise a timely request, objection or motion specifically addressing them in the trial court proceedings. The Court affirmed the termination of respondent father's parental rights based on failure to pay a reasonable portion of the minor child's cost of care. The Court of Appeals noted that combining the two phases of a TPR hearing is permitted so long as the appropriate standards of review are applied.

In the Matter of O.C. and O.B., --- N.C. App. ---, 615 S.E.2d 391 (July 19, 2005) (Mecklenburg County). Respondent mother appealed the order terminating her parental rights and the Court affirmed. The children were brought into custody due to respondent's drug abuse and adjudicated dependent after a mediated settlement. Respondent completed a drug program while in jail but was unsuccessful in her sobriety. She began but did not complete drug treatment six times over the course of the court case, remained unemployed, and did not complete other aspects of her case plan relating to education and housing. Respondent argued that it was error for the trial court not to appoint her a guardian ad litem due to her substance abuse history. The Court held that because there was neither an allegation of dependency as grounds in the motion to terminate parental rights nor any allegations that respondent was incapable of caring for

her children, she was not entitled a guardian ad litem. Respondent further argued that the TPR order should be reversed because she did not have a GAL for the underlying dependency adjudication. The Court rejected this argument and refused to expand its holdings regarding appointment of GAL for parents to include the proposition that a TPR order is reversible because a GAL appointment deficiency occurred earlier in proceedings. Respondent next argued that there was insufficient evidence to support the finding that she had not made reasonable progress. The Court reiterated the fact that this ground was amended so that it was not necessary to only look at the previous 12 months; as a result, it was not error for the trial court to make finding relating to the whole course of the proceeding to support this ground.

In the Matter of P.C.,* (Unpub.) 168 N.C. App. 595, 608 S.E.2d 415 (February 15, 2005) (Catawba County). The Court of Appeals affirmed the adjudication of the minor child as a neglected juvenile based on findings that she did not receive proper care from her parents and that she lived in an environment injurious to her welfare. DSS was contacted by the minor child's daycare center after the four-year old minor child touched another child inappropriately at her daycare center. When she was questioned about her behavior, she told daycare workers that her father touched her in a similar manner. Based on the minor child's statements during these interviews, DSS removed her from the home. Subsequent physical and psychological examinations of the minor child were inconclusive. When the minor child gave testimony in the chambers of the trial judge, she made several statements that conflicted with her prior accounts, was indecisive and unable to focus. The trial judge made no finding of abuse by the respondent father but found in the adjudication order that the respondent parents had been unwilling or unable to recognize the significant nature of their daughter's sexualized behaviors, that the respondents did not acknowledge the minor child's problems until after DSS filed the petition for adjudication, and that the respondent parents contributed to their daughter's sexualized behavior through their activities with the minor child. The trial court did not proceed with disposition but ordered psychological and sex offender specific evaluations of both parents. The psychologist reported to the court that the parents had the capacity to be adequate parents but would not recognize that their minor child had been sexualized and therefore the respondent parents most likely would be unable to protect the minor child from future abuse. The Court of Appeals upheld the trial court's adjudication as there was clear and convincing evidence that the minor child was sexualized and that the respondents failed to recognize the seriousness of their daughter's sexualized behavior. The Court rejected the respondents' assignment of error based on incomplete transcripts of the trial hearings as the transcripts were substantially complete. Finally, the Court held that the minor child's statements to the Child Mental Health Examination Provider were not hearsay and were properly admitted as the basis for the doctor's opinion.

In the Matter of P.L.P., --- N.C. App. ---, 618 S.E.2d 241 (September 6, 2005) (Buncombe County). Respondent parents appealed the termination of their parental rights and the Court affirmed the TPR order. Both parents argued that the evidence was insufficient to support grounds for TPR and the mother argued that the court lacked jurisdiction because she failed to receive proper notice of the motion for TPR. This assignment of error was overruled because two years had not passed since the most recent

petition was filed, and the previous action from over two years prior was “closed” since the child was returned to the mother. The mother also argued that the order should be reversed since it was not timely entered; however, she failed to show prejudice. The majority found sufficient evidence to support grounds for the termination and did not find error that the court considered the father’s past and current incarceration as contributing to grounds.

Judge Tyson **concurred** affirming the mother’s TPR order, but dissented as to the termination of the father’s parental rights because the abandonment ground was not “willful” as required. The father participated in all court hearings; he requested, but was denied visitation by DSS; and the social worker admitted that she made no effort to contact the father before or while in prison.

In the Matter of P.M., 169 N.C. App. 423, 610 S.E.2d 403 (April 5, 2005) (Wayne County). Respondent mother appealed the order adjudicating P.M. to be neglected and dependent. The Court affirmed the adjudication of neglect, but held that the evidence was insufficient to establish dependency because the availability of appropriate alternative childcare arrangements was not addressed as necessitated by the statutory ground. Respondent is the mother of four other children who had previously been adjudicated neglected after to the father’s sexual abuse of one of the daughters after respondent violated a safety plan with DSS that the father would not be allowed in the presence of the daughter he previously abused. The petition alleged neglect and dependency due to the prior adjudications of her children and lack of insight into their harm; however, P.M. was permitted to remain with respondent on the condition that her mother, the maternal grandmother of P.S., remain present in the home. The maternal grandmother left the home and respondent failed to notify DSS of this change. The Court held that the evidence of respondent violating court ordered protection plans on two occasions in conjunction with other findings of facts was sufficient to sustain an adjudication of neglect. The Court noted that the trial court failed to make appropriate findings concerning an alternative child care arrangement. Therefore, the Court reversed and remanded as to the conclusion of dependency for further findings on this issue.

In re R.A.H., --- N.C. App. ---, 614 S.E.2d 382 (July 5, 2005) (Randolph County). The Court reversed and remanded the order terminating respondent mother’s parental rights for failure to appoint a guardian ad litem for the child, R.A.H. Despite earlier adjudications of neglect and at some point, representation by a GAL volunteer, only the attorney advocate was appointed relating to the TPR proceeding. Three days into the trial, the attorney advocate was appointed GAL; however, prior to this time the record did not indicate a GAL appointed pursuant to NCGS § 7B-601 to independently investigate the needs of the juvenile. Despite the appointment of the attorney advocate, the Court held that the attorney advocate and GAL serve different roles. Instead of the delayed appointment, the trial court should have stopped the hearing and continued the matter to allow the GAL to proceed with investigation and recommendations.

In the Matter of R.A.L., * (Unpub.) --- N.C. App. ---, --- S.E.2d --- (December 6, 2005)(Cleveland County). The Court reversed the trial court’s order terminating parental

rights and remanded it for a determination of whether or not respondent was entitled to a guardian ad litem. Upon making a conclusion that there were grounds sufficient to terminate parental rights on the basis of neglect, the trial court found that respondent had used cocaine, had been a psychiatric patient, had been diagnosed with mental illnesses and had been diagnosed with a substance abuse addiction. Because these findings related to respondent's ability to care based upon mental illness or substance abuse, the trial court should have determined whether or not respondent should receive a guardian ad litem under Rule 17. In previous cases, this Court has held that a guardian ad litem must be appointed when dependency is alleged but not pursued as a ground for termination and when mental health issues and neglect are so intertwined that they cannot be separated. The appointment of a parental GAL is necessary to protect due process. Here, the respondent's mental illness was relevant to the case and the trial court should have held a hearing to determine whether respondent needed a GAL to protect her due process rights.

In the Matter of R.G., * (Unpub.) --- N.C. App. ---, 616 S.E.2d 692 (August 16, 2005) (Mecklenburg County). R.G. was adjudicated neglected and dependent due to respondent father's prior conviction for sexual abuse, respondent mother's use of alcohol, respondents' homelessness and their lack of means to support R.G. At a permanency planning hearing, the court found that it would not be possible for R.G. to return home within six months as respondents had made little progress and were still homeless. Parental rights were later terminated on the grounds of neglect, failure to provide substantial support and consistent care and willfully leaving R.G. in foster care for 12 months without making reasonable progress. Respondents appealed from this order and argued that the findings of fact were not supported by clear, cogent and convincing evidence. The trial court found that R.G. was adjudicated neglected, but failed to make findings as to the probability of repetition of neglect. Because of this, the Court of Appeals held that the trial court's findings of fact do not support the conclusion of law that R.G. was neglected. The second ground for termination was also overruled as the trial court did not cite statutory authority for the ground. The Court of Appeals held that the third ground, willfully leaving a child in foster care for 12 months without making reasonable progress, was supported by clear, cogent and convincing evidence and because only one statutory ground is necessary for termination, the trial court correctly moved to the dispositional stage where it did not abuse its discretion in terminating parental rights.

In the Matter of R.K.J., R.J., and W.J., * (Unpub.) --- N.C. App. ---, 616 S.E.2d 692 (August 16, 2005). Respondents, step-mother and father, appeal from an order adjudicating R.K.J. abused and R.J. and W.J. neglected. The appeal with regards to R.J. was moot as she had reached the age of majority. The Court of Appeals affirmed the adjudication order as to R.K.J. and W.J. Respondents first assigned error to several findings of fact which related to respondent-father's sexual abuse of R.K.J. and argued that they were not supported by clear, cogent and convincing evidence.

In re R.T.W., 359 N.C. 539, 614 S.E.2d 489 (July 1, 2005) (Orange County). This opinion resolves the conflict between the *Hopkins* and *Stratten* divergent line of cases, and specifically holds that a trial court does in fact retain jurisdiction to enter an order

terminating parental rights while a custody order in the same case is pending on appeal. The Supreme Court reversed the opinion of the Court of Appeals that had previously reversed the termination of parental rights order for lack of jurisdiction due to the pending appeal of the underlying custody case. The minor mother in this case became pregnant after being sexually abused by her older half-brother. DSS filed petitions with the minor mother as the juvenile due to neglect by her mother and a petition alleging dependency as to R.T.W., the minor mother's child. At the review hearing one month after the adjudication of dependency, the court ordered that reunification efforts cease and instructed DSS to file a TPR within sixty days. Respondent mother appealed this order, and during the pendency of the appeal, the TPR was granted and appealed.

To support the holding, the Court relied on legislative intent of Subchapter I of the Juvenile Code relating to abuse, neglect and dependency. Articles 2 through 10 address abuse/neglect in child custody proceedings and the opinion describes the flexibility of these custody orders due to the periodic reviews and that modification can occur due to changed circumstances or to promote the needs of the juvenile. To avoid continued legal limbo and promote permanency for children, statutes mandate DSS to initiate TPR proceedings in appropriate circumstances. Article 11 governs TPR, and NCGS §7B-1103 gives DSS standing to file TPR when given custody by the trial court. The Court overruled respondent's argument that if the underlying custody order was under appellate reviews, that DSS did not have standing to file the TPR. The statute does not require DSS custody to be "legally unassailable" and such an application would frustrate required timelines to provide for closure of juvenile custody proceedings. As to the argument of prejudice to the parents, each TPR must rely on an independent finding that clear and convincing evidence supports proper grounds to terminate, there is a best interest analysis, and parents are entitled to appeal TPR orders under NCGS §7B-1113.

In re S.B.M., --- N.C. App. ---, 619 S.E.2d 583 (October 4, 2005) (Durham County). The Court affirmed the TPR despite the five-month delay in entering the order because the respondent father failed to sufficiently show prejudice. The father is a sex offender who was in and out of prison between the initial adjudication of neglect and the filing of the TPR, and was incarcerated at the TPR hearing. Overall, the father failed to make reasonable progress in his case plan because he did not address the necessary issues during the time period where he was not incarcerated. Respondent argued that he was prejudiced by lack of finality in his relationship with his child before facing a potentially long sentence for first-degree sexual offense. The court rejected this argument, and found that he was not prejudiced by delay of his right to appeal or need for finality in light of his continuous incarceration. Failure to make reasonable progress was clear from the evidence and TPR was in the child's best interest as her permanent plan was adoption by relatives.

In re S.D., * (Unpub.) 169 N.C. App. 842, 612 S.E.2d 693 (April 19, 2005) (Guilford County). Respondent appealed from an order adjudicating S.D. neglected, claiming that the trial court abused its discretion. Respondent is S.D.'s maternal aunt who knew that her husband beat S.D. with a belt and forced S.D. to take off her clothes to "embarrass her and hurt her feelings." There were also substantiated allegations of sexual abuse

against Respondent's husband, who lived with Respondent and S.D. Based upon this evidence, the Court of Appeals held that the trial court did not err in adjudicating S.D. neglected under the definition set out in N.C. Gen. Stat. § 7B-101(15).

In re S.D.G. & T.L.G.,* (Unpub.) 168 N.C. App. 728, 609 S.E.2d 499 (March 1, 2005) (Wayne County). The Court of Appeals affirmed the termination of respondent mother's parental rights. Respondent mother admitted there was a factual basis for neglect and the trial court adjudicated the minor children neglected and dependent. Nearly eight months after the adjudication hearing, the respondent mother completed parenting classes and obtained a substance abuse assessment, which indicated that she had no substance abuse problem. However, the respondent mother failed to obtain a psychological evaluation prior to the termination hearing and the trial court terminated her parental rights. Respondent challenged the petition to terminate her parental rights as legally insufficient because it failed to allege sufficient facts and because it did not have a custody order attached to it. The Court of Appeals rejected the respondent's challenge to the sufficiency of the facts as she failed to make a motion before the trial court. The Court held that the failure to attach a custody order to the petition to terminate parental rights was error but that it did not require a reversal of the trial court's order. The respondent also contended that the trial court's conclusion of law stating that grounds existed to terminate her parental rights was insufficient to sustain its order terminating parental rights because it failed to state the legal basis for termination. The Court of Appeals noted that the trial court included in its findings of fact a statement that the respondent neglected the minor children. The Court held that this statement was more properly a conclusion of law and would be treated as such for the purposes of the appeal. Respondent mother argued that certain testimony of the Child Protective Services investigator was improperly admitted because it constituted inadmissible hearsay. The Court rejected this argument, holding that even if the testimony were improperly admitted, the respondent mother was not prejudiced. Respondent contested various findings of fact, asserting that they were not supported by evidence. The Court noted that while certain findings were not supported by clear, cogent and convincing evidence, the respondent asserted no prejudice and did not contest the trial court's determination that she neglected the children. The Court affirmed the trial court's termination of parental rights because the respondent did not contest the trial court's conclusion of law which stated that the conditions which existed when the children were in respondent's home were likely to reoccur if the children were returned to her custody and the children had improved substantially once removed from the respondent's custody.

In re S.M.W.,* (Unpub.) 169 N.C. App. 455, 612 S.E.2d 448 (April 5, 2005) (Rowan County). Respondent mother appealed the order terminating her parental rights. The Court of Appeals held that there was clear, cogent and convincing evidence supporting the trial court's finding of neglect in that there was substantial history of domestic violence and drug usage by the respondent. The domestic violence led S.M.W. to develop post-traumatic stress disorder. The trial court found that S.M.W. was neglected at the time of the termination proceedings and that there was a probability of repetition of neglect. The Court of Appeals held that these findings of fact were based upon clear, cogent and convincing evidence and justified termination based upon neglect.

In the Matter of S.N.M., D.G.F., S.U.M., * (Unpub.) --- N.C. App. ---, 620 S.E.2d 321 (October 18, 2005) (Mecklenburg County). The Court affirmed the order terminating respondent's parental rights on the grounds of neglect and willfully leaving her children in foster care for more than 12 months without making reasonable progress. On appeal, respondent argued that the trial court erred in failing to appoint her a guardian ad litem, that the trial court erred in failing to hold a bifurcated hearing, that the trial court did not file adequate petitions to terminate parental rights, that the petitioner, DSS, failed to show that respondent did not make reasonable progress, that petitioner failed to show that respondent willfully failed to support her children and that the trial court erred that it was in the best interests of the juveniles to terminate respondent's parental rights. The Court overruled the first argument and held that § 7B-602(b)(1) only requires that a guardian ad litem be appointed when the petition alleges dependency and the majority of the dependency allegations tend to show that a parent is incapable as a result of some debilitating condition listed in the statute of providing proper care and supervision. In this case, the petition to terminate parental rights alleged neglect, not dependency. In addition, although respondent's substance abuse problems were at issue, they were not the sole reason for termination and the court never alleged that respondent is incapable of caring for her children as a result of her substance abuse. Respondent's second argument that the trial court erred in failing to hold a bifurcated hearing was likewise overruled because the court is not required to hold two separate hearings so long as the court applies the correct evidentiary standards at adjudication and disposition. When the trial court is the finder of fact, there is a presumption that even when incompetent evidence is admitted, if competent evidence is also admitted, the court should only consider the competent evidence. The Court also overruled the argument that the petitions to terminate parental rights was inadequate; the petition provided sufficient facts to put respondent on notice of the grounds for termination pursuant to § 7B-1104. The Court held that because DSS submitted three "Reasonable Efforts" reports which included coordinating and supervising visits, meeting with respondent about her case plan, encouraging respondent to complete Drug Court recommendations and treatment at the Women's Commission that DSS had made reasonable efforts to reunify respondent with her children. Finally, the Court held that the trial court correctly found that respondent willfully left her children in foster care for more than 12 months without making reasonable progress. Respondent had the ability to show reasonable progress but was unwilling to do so; the Court held this is sufficient to support a finding of willfulness. For these reasons, the trial court's order was affirmed.

In re S.O.B-B., S.U.B-B., * (Unpub.) 169 N.C. App. 842, 612 S.E.2d 693 (April 19, 2005) (Robeson County). Respondent mother appealed two orders terminating her parental rights. The Court of Appeals reversed and remanded holding that the findings of fact were insufficient to support the grounds for termination. The minors were adjudicated neglected after Respondent allowed them to be in the presence of a known child molester. DSS placed the children with the paternal grandmother who filed the petition to terminate Respondent's parental rights based upon the fact that Respondent had willfully left the children in placement for 12 months without making reasonable progress to correct those conditions that led to removal (N.C. Gen. Stat. § 7B-

1111(a)(2)). The trial court terminated parental rights based upon this ground. The Court of Appeals reversed and held that to show willfulness, the court does not have to show fault of the parent but that “[w]illfulness can be found where a parent has made an attempt to regain custody of the child but has failed to exhibit ‘reasonable progress or a positive response toward the diligent efforts of DSS.’” Here, although the trial court stipulated the reasons for removal, they failed to make findings with regards to Respondent’s reasonable progress and because of this, the necessary conclusions of law cannot be drawn.

In the Matter of S.R.S. and D.N.S., *(Unpub.) --- N.C. App. ---, 614 S.E.2d 607 (June 7, 2005) (Halifax County). The Court of Appeals vacated and remanded the disposition order that gave legal custody and guardianship to the juveniles’ maternal grandmother after they were adjudicated neglected and abandoned for failure to appoint a guardian ad litem to the mother. Because the juveniles were adjudicated dependent, a guardian ad litem was required under Rule 17. Failure to appoint one results in new proceedings before the trial court.

In the Matter of S.T.G., *(Unpub.) --- N.C. App. ---, 616 S.E.2d 31 (August 2, 2005) (Rutherford County). Respondent appealed the order terminating parental rights and contended that the findings of fact made by the trial court were not supported by clear, cogent and convincing evidence. The trial court found that for the six months prior to the filing of the petition, respondent had the ability to communicate with the juvenile and failed to do so (only contacted juvenile 5 times within a two year period), respondent had the ability to pay support and failed to do so (only sent \$180 over a two year period), respondent had made no efforts to see the juvenile and respondent had been incarcerated for seven consecutive months. The Court of Appeals held that this evidence supported the conclusion that respondent has willfully abandoned the juvenile. Although incarceration may negate the willfulness requirement in some cases where a parent attempts to contact the juvenile, in this case, respondent made no attempt to contact the minor child. In addition, respondent’s inability to read and write did not prevent him from exploring other options to communicate and support his child and cannot be used to negate the willfulness requirement. Finally, the Court of Appeals held that the trial court did not abuse its discretion in determining that it was in S.T.G.’s best interest to terminate respondent’s parental rights..

In re S.W., *(Unpub.) --- N.C. App. ---, 613 S.E.2d 752 (May 17, 2005) (Buncombe County). Respondent father appealed the adjudication/disposition that continued custody with DSS rather than with Respondent’s father (S.W.’s grandfather). The Court of Appeals held that although N.C. Gen. Stat. § 7B-903(a)(2)(c) states that placement with a relative should be considered first, it also says “...unless the court finds that the placement is contrary to the best interests of the juvenile.” In addition, the statute states that the court must also considered whether or not it is in the best interests of the child to remain in his or her community. Because the ultimate plan was reunification with mother and Respondent’s father was in another county, it was not an abuse of the trial court’s discretion to hold that placement with Respondent’s father would frustrate the reunification process.

In the Matter of T.A.T., * (Unpub.) --- N.C. App. ---, 619 S.E.2d 594 (October 4, 2005) (Rowan County). Respondent mother appealed an order terminating her parental rights and the Court of Appeals affirmed. On appeal, respondent claimed that the district court abused its discretion in the adjudication portion of the TPR hearing by concluding that grounds for termination existed. Respondent claimed that the evidence was not sufficient to support the findings, but she did not assign error to any specific findings of fact and as such they are deemed binding on appeal. The facts found by the trial court both show that the juvenile was neglected and that neglect would continue in the future. The Court held that a finding of continuing neglect does not require that the continued neglect would occur in the same manner that led to removal. The prior adjudication of neglect and respondent's "occasional contact" with the juvenile while he was in custody and respondent's lack of employment, stable housing and income, taken together, support the conclusions of law that T.A.T. was neglected. The trial court order terminating respondent's parental rights was affirmed.

In the Matter of T.C., * (Unpub.) --- N.C. App. ---, 613 S.E.2d 532 (May 3, 2005) (Wilkes County). Respondent appealed from a permanency planning order ceasing reunification efforts. On appeal, Respondent contended that the order did not comply with N.C. Gen. Stat. §7B-907(a). The Court of Appeals agreed and reversed and remanded holding that the trial court must consider the factors of the statute and although it does not have to specifically recite every finding listed in the statute, it must making findings of fact to those factors. Here, the trial court did not explain why the child could not return home or why the child should stay in her current placement as required by N.C. Gen. Stat §7B-907(a).

In the Matter of T.C., T.C., T.C., T.C., * (Unpub.) --- N.C. App. ---, 615 S.E.2d 739 (July 19, 2005) (Wilkes County). Respondent mother appealed from a permanency planning order that changed the plan from reunification to adoption. The Court of Appeals affirmed. The issues on appeal were whether respondent's appeal was timely and whether respondent's notice of appeal was insufficient to confer jurisdiction upon the Court. The Court of Appeals held that the notice of appeal was timely in that it was filed 11 days prior to the entry of the written order. Although this was over 10 days from the oral pronouncement of the order, "rendering of judgment [in open court] establishes the point from which a party *may* appeal under [N.C. R. App. P.] 3[(c)], and the *entry* of judgment marks the beginning of the period during which a party *must* file written notice of appeal." (quoting *Stachlowski v. Stach*, 328 N.C. 276, 401 S.E.2d 638 (1991)). Because respondent's notice of appeal failed to specify the order from which the appeal was taken, reference the judge who entered the order and list the date the order was entered, the Court of Appeals held that the appeal should be dismissed for lack of subject matter jurisdiction but elected to review the appeal as a petition for writ of certiorari. The Court heard the appeal as a petition for writ of certiorari and held that the conclusions of law were supported by the findings of fact and affirmed the trial court order.

In the Matter of T.G. & R.J., * (Unpub.) --- N.C. App. ---, 617 S.E.2d 723 (September 6, 2005) (Mecklenburg County). The Court affirmed respondent mother's appeal from an

order terminating her parental rights. On appeal, respondent argued that the trial court lacked personal jurisdiction over her as there was no record of service of the summons and petition; however, respondent appeared in court and raised no objection to this matter. Because personal jurisdiction can be established by voluntary appearance before the court, the issue is waived. Respondent further argued that the findings of fact were not supported by the evidence. The Court of Appeals held that although some findings of fact were not supported by competent evidence, there were sufficient findings to terminate parental rights.

In the Matter of T.K., D.K., T.K. and J.K., --- N.C. App. ---, 613 S.E.2d 739 (June 21, 2005) (Mecklenburg County). Affirmed *per curiam* (December 16, 2005). The Court affirmed respondent mother's appeal from a permanency planning hearing that granted guardianship of the three oldest children to the maternal aunt and continued reunification with either or both parents as the plan for the youngest child, J.K. With respect to the order that ceased reunification as to the three oldest children, respondent argued that she had made progress in correcting the conditions that led to removal and it was error for the trial court to focus on children's well being in care as opposed to the parents' progress. Although evidence was presented that the mother had made some progress in addressing her substance abuse issues, the progress was not sufficient to ensure that the children could return to her care. The majority upheld the guardianship provision of the order. As to the mother's second argument, the majority held that at the permanency planning stage the best interest of the children are paramount—not parental rights.

Judge Tyson **concurred** with the majority that reunification efforts should continue as to the youngest child, but **dissented** with respect to the part of the order that granted guardianship. Because the guardianship order did not allow for visitation rights, the order effectively terminated respondent's parental rights without meeting the constitutional standard. Further, the trial court essentially delegated its authority to the therapist of T.K. when it allowed the therapist to determine whether visitation was in the child's best interest. After appeal to the Supreme Court due to the split decision, the majority opinion was affirmed, 360 N.C. 163 (2005).

In the Matter of T.L.T., --- N.C. App. ---, 612 S.E.2d 436 (May 17, 2005) (Rowan County). Respondent mother appealed the termination of her parental rights, and the Court reversed and remanded the case because the trial court failed to timely enter the order. The trial court entered its order seven months after the conclusion of the termination hearing. The Court found that the delay prejudiced respondent, the child, and foster/adoptive parents. Further, it was counter to the legislative intent of the statute not to resolve juvenile custody cases in a timely manner.

In the Matter of T.M.K., T.Q.M.M., and T.M.M., * (Unpub.) --- N.C. App. ---, 616 S.E.2d 31 (August 2, 2005) (Wayne County). Respondent's parental rights were terminated after her minor children were adjudicated neglected and dependent and she failed to complete court ordered domestic violence treatment and failed to complete parenting skills work. On appeal, respondent argued that the trial court erred in concluding that she neglected her children, and that the trial court also erred in

concluding that it was in the children's best interests to terminate parental rights. The Court of Appeals affirmed the trial court order. Respondent visited her children an average of 48 minutes per month since they were placed outside of the home, paid no support to the children even though she had the ability to do so, refused to cooperate with court orders and beat her eldest child. Because of this evidence and because respondent failed to comply with the dispositional plan, the Court of Appeals held that the trial court did not err in determining that respondent neglected her children. In addition, the Court of Appeals held that the trial court did not abuse its discretion in concluding that termination was in the best interests of the children as respondent had not maintained a job, shown an improvement in parenting skills nor completed the domestic violence program.

In the Matter of T.M.M., 167 N.C. App. 801, 606 S.E.2d 416 (January 4, 2005) (Pitt County). Respondent mother appealed an order adjudicating T.M.M neglected and dependent. T.M.M. was removed from his mother's care the day after his birth. At the adjudication hearing, DSS requested that the trial court take judicial notice of court orders and evidence submitted in the matters of T.S. and S.M., the older siblings. The trial court took judicial notice as requested and adopted the findings in orders entered by judges in prior orders. The mother had previously appealed the adjudication of the two older siblings, and the Court had remanded the case to the trial court to make findings of fact based on the evidence, and enter specific conclusions of law based on the findings [See *In re T.S.*, 163 N.C. App. 783, 595 S.E.2d 239 (2004)]. The Court of Appeals held that in this case as well as the siblings' case, the trial court failed to distinguish between findings of fact and conclusions of law. The trial court summarily declared the children to be neglected, but failed to reference specific statutory grounds. Since the prior order was previously ruled insufficient, the determination that T.M.M. was neglected based on the prior orders is also insufficient. [See also subsequent case, *In the Matter of T.S., S.M., & T.M.* below]

In the Matter of T.N.W., T.T.W., T.J.W., * (Unpub.) --- N.C. App. ---, --- S.E.2d --- (December 6, 2005) (Wake County). The Court affirmed the trial court's order terminating parental rights on the grounds of neglect and willfully leaving the juveniles in foster care for more than twelve months without making reasonable progress. On appeal, respondent argued that the trial court erred in concluding she neglected the children, in concluding that she willfully left the children in foster care without making reasonable progress, in finding that it was in the best interests of the children to terminate parental rights and in making findings of fact that were unsupported by clear, cogent and convincing evidence. The Court overruled the final assignment of error and found that the trial court made an adequate finding of neglect at the time of the proceeding. Neglect can be shown in less tangible ways than failure to provide physical necessities. Respondent was involved in domestic violence, did not maintain stable employment, was unable to maintain utilities, was unable to budget, did not pay rent and failed to fully comply with court orders. The Court overruled the second assignment of error and held that the trial court adequately found that grounds existed when conditions that led to removal remained unchanged. The Court held that the trial court did not err in finding that it was in the best interests of the juveniles to terminate parental rights.

In the Matter of T.R.P., --- N.C. App. ---, 619 S.E.2d 525 (October 4, 2005) (Wilkes County). The review order on appeal in this case was vacated and dismissed because the initial juvenile petition was not verified, despite the fact that there was no appeal from the adjudication/disposition order. On appeal of the review order, the mother argued that the trial court lacked jurisdiction to enter the review order since the initial petition was not verified. The majority opinion agreed that the subject matter jurisdiction was not waived and that the original petition never properly conveyed jurisdiction to the trial court.

Judge Levinson **dissented**, finding that the mother's failure to appeal the adjudication/disposition order barred her from challenging the court's jurisdiction to enter the subsequent review order. The fact that the review order was vacated should not affect the adjudication /disposition order—as it was not appealed, the appellate court did not have authority to vacate an order that was not properly before it.

In the Matter of T.S., * (Unpub.) 169 N.C. App. 455, 612 S.E.2d 445 (April 5, 2005) (Burke County). Respondent father appealed from a permanency planning order that changed placement plan to adoption. The Court of Appeals affirmed the trial court's order. T.S. was adjudicated dependent and placed with maternal grandmother while DSS retained legal custody. The trial court found that the maternal grandmother's home was not a permanent placement option and it was determined that the permanent plan would be adoption/placement with a relative because the mother had voluntarily relinquished her parental rights. The plan was later changed to adoption only. Respondent father claims that the trial court erred in changing the plan from adoption/placement with a relative to adoption because it did not perform an interstate home study of the grandmother's home. The Court of Appeals held that relative placement in § 7B-506 did not apply to permanency planning hearings following an adjudication and disposition that removed the juvenile from parental custody. The Court also noted that although there is a general preference for placing juveniles with relatives, the trial court's decision was guided by the best interests of the child and there was no abuse of discretion. Respondent also contends that the trial court failed to enter findings of fact required by N.C. Gen. Stat. §7B-907(b) in its order. The Court of Appeals held that the order does have to take into account the factors of the statute, but it does not have to "contain a formal listing of the §7B-907(b)(1)-(6) factors, expressly denominated as such." The Court of Appeals held that the order was sufficient under §7B-907(b).

In the Matter of T.S., S.M., & T.M., 167 N.C. App. 804, 606 S.E.2d 406 (January 4, 2005) (Pitt County). Respondent mother appealed the permanency planning hearing with respect to her three children and the Court vacated the order. The issue on appeal was whether the trial court has subject matter jurisdiction to conduct a permanency planning hearing while the appeal of adjudication and disposition orders were pending. Because the orders of adjudication as to each child were remanded for entry of sufficient findings of fact and conclusions of law, the underlying adjudication orders did not properly determine the children to be neglected or dependent. As a result, the Court held that the permanency planning order must be vacated.

In the Matter of T.S.A., D.S.G., * (Unpub.) --- N.C. App. ---, 616 S.E.2d 31 (August 2, 2005) (Union County). Respondent father appealed a permanency planning order placing custody of D.S.G. with D.S.G.'s maternal grandmother. Custody of T.S.A. was not at issue in this appeal. When custody was initially taken, the mother of the children had taken them from respondent's home in South Carolina. North Carolina trial court entered a Temporary Nonsecure Custody Order when the children were found alone in a hotel. Jurisdiction over the parties and the children was established when South Carolina DSS refused to take the case. Respondent continued to reside in South Carolina with his mother and stepfather. The children were adjudicated dependent and placed with the maternal grandmother. A second home study for respondent came back unfavorable due to respondent's history of unemployment. At a permanency planning hearing, legal custody was given to the maternal grandmother. Respondent appealed, contending that a third home study should have been completed. Respondent did not assign error to any of the findings of fact and because of this, they were deemed conclusive on appeal. The Court of Appeals held that the trial court did not err by grant the maternal grandmother custody. Respondent also argued that the trial court erred in granting legal custody to a non-parent without finding that respondent was unfit or had forfeited his constitutional right to parent thus depriving him of this constitutional right. This argument and the cases used to support this argument applied to Chapter 50 proceedings, whereas in juvenile proceedings (§7B), the best interest of the child is the paramount concern. Because of this, the Court of Appeals held that even when a parent may be deemed fit, the correct standard is the best interest of the child. The trial court found that it was in D.S.G's best interest to continue to live with her maternal grandmother. Respondent's constitutional right to parent was not terminated. Respondent also contended that the trial court committed reversible error by failing to grant him visitation rights and to make factual findings with regards to the visitation issue as requested by respondent's attorney. The Court of Appeals held that although the trial court erred in failing to make findings with regards to the visitation, respondent did not show that he was denied visitation nor that he was prejudiced. Finally, respondent argued that he was denied due process in that the record was not properly served. However, respondent appeared at all hearings and never challenged jurisdiction. The Court of Appeals held that respondent was not denied due process in that he actively participated in each hearing with counsel present and therefore waived his objection to personal jurisdiction. For these reasons, the Court of Appeals affirmed the trial court order.

In re T.W., L.W., E.H., --- N.C. App. ---, 617 S.E.2d 702 (September 6, 2005) (Harnett County). Respondent mother appealed the TPR order arguing failure to appoint a Rule 17 GAL after she was diagnosed with bipolar disorder and that the order was not timely entered. The Court agreed with her arguments and reversed the TPR order. The children came into care after the two older children disclosed sexual abuse by their father. Early in the case, the mother made a motion for a GAL, but the court declined to rule on the motion until after a psychological evaluation. The results indicated a diagnosis of bipolar disorder and that the mother required the daily support with decision making, particularly relating to care of children; however, the court failed to revisit the motion after receipt of the evaluation. Findings of fact in the TPR order indicate the trial court was aware of the mother's mental health issues despite not specifically citing dependency due to mental

illness as the TPR ground. Although signed *nun pro tunc* to the date of the oral decision, the written order was entered nearly one year after the completion of the TPR hearing. The need to show prejudice decreases as the delay between the TPR hearing and entry of order increases.

In the Matter of V.L.B., 168 N.C. App. 679, 608 S.E.2d 787 (March 1, 2005) (Burke County). The Court affirmed the termination of parental rights of respondent parents. Respondents moved from Michigan to North Carolina for the birth of V.L.B. DSS substantiated a report that the parents were residing in a home without electricity and that Michigan had terminated their parental rights as to their other children due to domestic violence by the father and the mother continuing to remain with him. A petition was filed and V.L.B. was placed in DSS custody upon release from the hospital after birth. The parties consented to an adjudication of dependency based on Michigan's prior terminations of parental rights, the parents' psychological diagnoses and lack of treatment. Disposition was continued to allow current psychological evaluations, and upon review thereof, the trial court ordered that reunification efforts cease and adoption to be the permanent plan. At the TPR hearing, the parents were represented by counsel and guardians ad litem. The court found grounds to terminate respondent parents' rights under NCGS §7B-1111(a)(9) due to their rights having been involuntarily terminated by a Michigan court and that the parents lacked the ability to establish a safe home for the child. On appeal, respondents did not dispute the TPR orders from Michigan, but argued that there was insufficient evidence presented to conclude that they lack the ability to establish a safe home. The Court overruled this argument and upheld the determination that it was in the best interest of the minor child that parental rights be terminated.

[For prior history, see *In re V.L.B.*, 164 N.C. App. 743, 596 S.E.2d 896 (2004) where the appeal was dismissed as moot]

In re W.W.,* (Unpub.) 169 N.C. App. 255, 611 S.E.2d 899 (March 15, 2005) (Harnett County). The Court of Appeals affirmed the trial court's permanency planning order that changed the plan to adoption for the minor child and ordered DSS to commence proceedings to terminate respondent father's parental rights. DSS filed a petition alleging W.W. to be neglected because he was not receiving necessary medical care. At the adjudication hearing, W.W. was adjudicated neglected. At the disposition hearing, custody of the child was awarded to DSS and the child was placed in the home of his maternal grandfather. At the review hearings, the trial court directed DSS to cease reunification efforts with the minor child's mother but plan for respondent father remained reunification conditioned on compliance with a case plan. At the first permanency planning, the trial court found that the father continued to show sporadic progress in complying with the case plan but that W.W. often returned to foster care smelling of smoke. The trial court gave the respondent father the opportunity to continue reunification so long as he maintained a smoke-free environment and showed that he understood the child's medical conditions. At the second permanency planning hearing, with the respondent father's consent, the trial court changed the permanency plan from reunification to guardianship with the minor child's paternal aunt. At the third permanency planning hearing, the trial court ordered that the plan for the minor child be

changed from guardianship to adoption and ordered DSS to start proceedings to terminate parental rights. It was from this order that respondent father appealed—not the order that ceased reunification efforts. Respondent father made numerous challenges to the trial court’s findings of fact. The Court of Appeals held that the trial court’s findings were supported by competent evidence on the record. Respondent father also argued that the trial court erred by ignoring the fact that DSS was granted custody of the minor child due to the mother’s wrongdoing and not his. The Court of Appeals rejected this assertion and held that the respondent father was one of the minor child’s primary care-givers and cannot be absolved of responsibility for the failure to ensure that the child received adequate medical care. The Court also noted that the petition did not specify which parent was responsible for the minor child’s inadequate medical care. Respondent father contended that the trial court abused its discretion in overruling his objection to the social worker’s opinion. The Court of Appeals held that since the social worker was not testifying as an expert, the trial court did not err by allowing her opinion into evidence. The Court noted that even if the trial court had erred in overruling the respondent father’s objection to the social worker’s comment, the burden was on the contesting party to establish that the trial court relied on the incompetent evidence in making its findings of fact and that respondent father had not met this burden. The Court of Appeals upheld the trial court’s conclusions of law as adequately supported by the trial court’s findings of fact. Respondent father argued that the trial court failed to consider and make the appropriate findings required by N.C. Gen. Stat. §7B-907. Finally, the Court of Appeals rejected the respondent father’s contention that the trial court was biased as respondent father provided no evidence and did not cite any authority.

In the Matter of Y.U., et. al., * (Unpub.), --- N.C. App. ---, 615 S.E.2d 434 (July 5, 2005) (Guilford County). Respondent mother appealed the order removing her minor children from the care of DSS and returning them to the custody of their father. The Court of Appeals affirmed the trial court order. Respondent mother’s appeal was ineffective as the arguments in her brief did not correspond with the assignments of error set out in the settled record on appeal. Respondent mother’s failure to brief any of her assignments of error caused them to be abandoned on appeal. The Court of Appeals noted that even if respondent-mother had properly preserved the issues for appeal, the argument that there was no competent evidence to support the findings of fact is without merit.

In the Matter of Z.T.B., --- N.C. App. ---, 613 S.E.2d 298 (June 7, 2005) (Burke County). The Court reversed this private termination of parental rights for failure to comply with the statutory mandates of N.C.G.S. 7B-1104, specifically for failure to comply with subsection (4) requiring the name of any person appointed as guardian of the person, and subsection (5) that requires the attachment of any existing custody order. The Court distinguished its holding from *In re Humphrey*, 156 N.C. App. 533, 577 S.E.2d 421 (2003) in which the Court declined to dismiss a TPR petition that failed to comport with the same statute requiring a statement that the petition was not filed to circumvent the U.C.C.J.E.A. absent a showing of prejudice. The Court determined that there was no cure to correct the failure to attach the custody order or provide facts regarding a guardianship proceeding; therefore, the petition was facially defective and failed to confer subject matter jurisdiction.

In his **dissent**, Chief Judge Martin disagreed with the majority's holding that it was unnecessary for respondent to show prejudice for petitioner's failure to comport with the factual allegations of N.C.G.S. § 7B-1104. He also asserted that the statutory violations were not properly preserved for appellate review.

In the Matter of the Change of Name From K.O.S. to M.O.B.,* (Unpub.) 168 N.C. App. 408, 607 S.E.2d 705 (February 1, 2005) (Johnston County).). The Court of Appeals affirmed the trial court order which granted T.S.'s (the alleged father) motion to set aside the change of name for the minor child born to respondent mother S.B.. At the time the minor child was born, the respondent mother was married to B.K. However, the respondent mother listed T.S. as the father on the minor child's birth certificate. T.S. filed an action in Wake County seeking temporary and permanent custody of the child and initiated a legitimation action in superior court on the same day. The Wake County District Court granted visitation rights to T.S. and entered an order requiring DNA testing to determine whether T.S. was the minor child's biological father. The DNA test results indicated that there was a 99.999% probability that T.S. was the minor child's biological father. In a prior proceeding, the respondent mother appealed the order for DNA Testing. The Court of Appeals held that it was error for the district court to order a paternity test as the filing of a legitimation action in the superior court divested the district court of subject matter jurisdiction. The Wake County Superior Court later granted summary judgment in T.S.'s favor and declared T.S. to be the legitimate father of the minor child. While the legitimation action was pending, the respondent mother filed a petition in Wake County to change the name of the minor child from K.O.S. to M.O.B. A clerk told the respondent mother that she could not petition to have the minor child's name changed while the legitimation action was pending in Wake County Superior Court. The respondent mother then filed a petition to change the minor child's name with the Johnston County Clerk of Court. An assistant clerk with Johnston County entered an order changing the name of the minor child from K.O.S. to M.O.B. T.S. filed a motion for relief from the name change with the Johnston County Clerk of Court and the respondent mother filed motions to strike and dismiss his motion on the ground that T.S. was not a party to the name change proceeding. The Johnston County Clerk of Court refused to rule on both parties' motions until the legitimation litigation was resolved in Wake County Superior Court. Both the respondent mother and T.S. appealed the clerk's decision to the Johnston County Superior Court. After a hearing, the Johnston County Superior Court found that there was sufficient acknowledgement of paternity to require notice to the T.S. and ordered that the Johnston County Clerk's order changing the name of the child be stricken and that the child's name be returned to K.O.S. Respondent mother appealed from this order. The Court of Appeals rejected respondent mother's arguments that T.S. was not a party to the name change proceeding. The statute requires the consent of both parents to change the name of the minor child. Although the legitimation action was not resolved until after the name change proceeding, T.S. was listed as the father on the birth certificate and had a 99.99% probability of being the minor child's biological father. The Court of Appeals noted that at the very least, T.S. was a proper party, if not a necessary party, and the trial court had the discretion to make him a party to the litigation.

State v. Ewell, 168 N.C. App. 98, 606 S.E.2d 914 (January 18, 2005), *cert. denied*, 359 N.C. 412, 612 S.E.2d 326 (2005) (Martin County). In this sexual abuse case, the medical expert improperly testified that in her opinion, it was probable that the victim was sexually abused. Absent physical findings, North Carolina law only allows expert medical testimony on child sexual abuse to indicate whether the child exhibits characteristics consistent with abused children. Medical experts may not testify as to the probability that the abuse occurred absent physical evidence to support a sexual abuse diagnosis because it is considered an impermissible opinion about the credibility of the alleged victim. The only physical indication of sexual activity of the minor in this case was a diagnosis for trichomonas; however, the expert testified that the physical exam neither proved nor disproved sexual activity. Defendant's attorney did not object to this testimony at trial; therefore, the Court reviewed the assignment of error under the plain error doctrine and vacated defendant's convictions because no other evidence was presented at trial beyond what the alleged victim told other witnesses. In a separate assignment of error, defendant argued it was error that his motion to dismiss was denied because the State failed to show that the defendant and the alleged victim were not lawfully married. However, the defense of marriage is only applicable to attempted statutory rape and statutory rape. In this case, defendant was charged with four other charges relating to sexual abuse. Due to the admission of the medical expert's testimony, defendant was granted a new trial.

Walker v. Walker, --- N.C. App. ---, --- S.E.2d --- (December 6, 2005) (Moore County). This case involved an action to enforce a separation agreement wherein defendant husband appealed the order that he specifically perform certain provisions of the agreement as well as the order denying his pretrial motions for summary judgment. On appeal defendant set out 119 assignments of error following a repetitive pattern that attempted to assign error to almost every finding of fact and conclusion of law. Although the court said there was nothing inherently wrong with assignment of error based on lack of supporting evidence and abuse of discretion, appellant failed to raise the issues on appeal; therefore, these assignments were abandoned. Another repetitive assignment was that a finding was "erroneous as a matter of law" does not identify the issues actually briefed on appeal. The Rules of Appellate Procedure require that assignments of error must identify the legal issues to be briefed. The appeal was dismissed for failure to properly assign error to questions briefed.

* This decision is unpublished pursuant to the Rules of Appellate Procedure, Rule 30(e). "An unpublished decision of the North Carolina Court of Appeals does not constitute controlling legal authority. Accordingly, citation of unpublished opinions in briefs, memoranda, and oral arguments in the trial and appellate divisions is disfavored, except for the purpose of establishing claim preclusion, issue preclusion, or the law of the case. If a party believes, nevertheless, that an unpublished opinion has precedential value to a material issue in the case and that there is no published opinion that would serve as well, the party may cite the unpublished opinion if that party serves a copy thereof on all other parties in the case and on the court to whom the citation is

offered. This service may be accomplished by including the copy of the unpublished opinion in an addendum to a brief or memorandum. A party who cites an unpublished opinion for the first time at a hearing or oral argument must attach a copy of the unpublished opinion relied upon pursuant to the requirements of Rule 28(g) (“Additional Authorities”). When citing an unpublished opinion, a party must indicate the opinion’s unpublished status.” Rule 30(e)(3).

KEYWORD INDEX FOR 2005 CASE SUMMARIES

--A--

Abandonment

Abuse of Discretion

Generally---*In re C.S.*

Adjudication

Right to appeal from order---*In the Matter of C.E.M.*

Adoption

Anders Brief

Not in an abuse/neglect/dependency case---*In the Matter of C.E.*

Appeals

By petitioner---*In re C.S.*

Prior pending appeal---*In the Matter of B.D.*

Properly before court---*In re S.D.G. & T.L.G.; In the Matter of A.E. & J.E.*

From interlocutory order--- *In the Matter of B.N.H; In the Matter of B.P., S.P. & R.T.; In the Matter of C.E.M; In the Matter of K.J.H.; In the Matter of K.N.N.; In the Matter of C.J.H.-D.*

Appeals Procedure (see also this index "Standard of appellate review")

Failure to properly follow the rules---*Walker v. Walker; In the Matter of A.N.P. & S.R.P; In the Matter of B.N., M.N., T.N., N.N., M.L.N*

Assignments of Error

Specificity of---*In the Matter of A.N.P. and S.R.P.; In the Matter of A.E. & J.E; Walker v. Walker; In re J.D.S.*

Abandonment--- *Walker v. Walker; In the Matter of A.E.,*

J.E.; In re B.A.A. & P.J.A.; In re Baby W., In the Matter of C.T.A., D.T.A.; In the Matter of K.L.; In the Matter of L.G.; In the Matter of L.M.C.; In the Matter of T.A.T.; In the Matter of T.S.A., D.S.G.

In brief must corresponde to settled record---*In the Matter of Y.U., et al.*

Dismissal of assignments of error from different order---*In the Matter of D.R.M., S.S.M., T.D.M.*

Attorney Advocate

Distinct role from Guardian ad Litem---*In re R.A.H.*

--B--

Best Interests

Generally--- *In re M.A.L.; In the Matter of M.I.V., et al.*

Bifurcated Hearing

Generally---*In the Matter of K.B.B. and K.A.B.*

Not necessary for TPR--- *In the Matter of J.B.; In the Matter of M.S.*

Brief

Failure to file--- *In the Matter of N.M.B.*

--C--

Case Plan

Generally--- *In the Matter of K.B.B. and K.A.B*

Compliance with supports reversal of TPR---*In the Matter of D.M.W.*

Cease Reunification

Generally---*In the Matter of J.G.A., E.M.P.*
Based on sexual abuse---*In the Matter of C.L. et al.*

Child Support

Ability to pay more than zero--- *In re J.D.S.*

Collateral Estoppel – See this index “Res Judicata”

Conclusion of Law

Defined---*In re S.D.G. & T.L.G.*

Supported by Evidence---*In re K.E.C., In the Matter of A.N.P., In the Matter of K.J.H.*

Concurrent Jurisdiction

Generally---*In re C.E.L.*

Trial court retains jurisdiction to enter TPR order while custody order pending on appeal---*In re R.T.W.*

Confrontation Clause

Not applicable in civil abuse/neglect proceedings---*In the Matter of D.R., In re B.D.*

Constitutional Rights – See this index “Fifth Amendment,” “Due Process,” “Fourth Amendment,” “Sixth Amendment” “Confrontation Clause” “Privacy/Right to Parent”

Consent Order

Entrance of--- *In the Matter of M.C.*

Contempt, Civil

Continuances

Motion for in juvenile proceedings---*In the Matter of K.F. & M.F.; In the Matter of L.M.B.L., S.V.L.L.*

No abuse of discretion---*In the Matter of J.B.*

In permanency planning hearing (PPH)---*In the Matter of K.F. & M.F.*

In TPR---*In the Matter of L.M.B.L., S.V.L.L.*

Of motion to be relieved of reunification efforts---*In re C.S.*

During criminal proceedings---*In the Matter of N.M.B.*

Conviction

Prior, as basis for adjudication of neglect---*In the Matter of A.E., J.E.*

Counsel

Entitlement to---*In the Matter of K.B.B. and K.A.B.*

Ineffective assistance of---*In re K.D., S.D., D.D.; In re D.D.M., In the Matter of K.L.S., D.L.C., C.M.C.; In the Matter of K.N.O. & A.R.O.*

Crawford v. Washington

Holding inapplicable in civil juvenile cases---*In the Matter of D.R.*

Criminal Charges

Relating to neglect--- *In the Matter of A.E. & J.E.*

Criminal Statute

Cross-examination

Generally---*In re J.W., K.W.*

Custody

Temporary custody order not an appealable “final order”---*In the Matter of C.J.H.-D.*

Burden of proof to modify custody---*In re J.D.C.*

Judicial custody proceedings compared to Ch. 50 custody proceedings---*In the Matter of T.S.A., D.S.G.*

--D--

Dependency

Generally--- *In the Matter of C.S., D.G., K.G.; In the Matter of*

J.W.F., D.D.P., and C.W.B.

No findings of fact to support---*In the Matter of E.C.; In the Matter of P.M.*

Discretion

Delegation of---*In re T.K., D.K., T.K., J.K.* (Tyson, dissenting)

Dismissal of Appeal

When no brief filed---*In the Matter of N.M.B.*

Disposition

“Best interest” control---*In the Matter of M.C.*

Disposition Order

Generally--- *In re J.M., D.M., K.M.*

Granting guardianship---*In the Matter of E.C.*

Ceasing reunification efforts---*In the Matter of M.J.G.*

Statutory mandates---*In the Matter of B.P., S.P., R.T.*

Domestic Violence

Generally--- *In the Matter of F.L.R.; In re S.M.W.; In the Matter of D.M.; In the Matter of F.L.R.; In re K.C.; In re M.T.G.; In the Matter of T.N.W., T.T.W.; T.J.W.*

Drug Use---See Substance Abuse

Due Process

Generally--- *In the Matter of L.B.D.; In the Matter of T.S.A., D.S.G.*

--E--

Evidence

Generally---*In the Matter of C.Y.P. & I.P.; In the Matter of D.D.H.; In the Matter of H.N.T. & J.E.A.M.; In the Matter of M.I.V., et al.; In the Matter of E.L.L.*

Admissibility

Opinion of Social Worker--- *In re W.W.*

Criminal record--- *In re B.A.A. and P.J.A.*

Failure to object--- *In re B.A.A. and P.J.A.*

DSS and GAL Reports--- *In the Matter of C.B.*

Prior adjudications--- *In the Matter of R.G.; In the Matter of J.A.D. & A.L.D.*

Prior court orders---*In the Matter of J.W. & K.W.*

Sworn testimony---*In the Matter of K.N.O. & A.R.O.*

Relevancy

Abuse/neglect of sibling(s)---*In the Matter of B.I.*

Evidence of past neglect---*In the Matter of F.L.R.*

Sufficiency for ceasing reunification--- *In the Matter of M.T.G.; In the Matter of B.I.*

Hearsay--- *In re J.M., D.M., K.M.*

Evidentiary Standard

Disposition hearing--- *In the Matter of M.J.G.*

Exclusion of Respondent from Courtroom

Proper--- *In the Matter of J.B.*

Expert Witness

Medical testimony---*State v. Ewell*

Basis for---*In the Mater of C.S., D.G., K.G.*

Bias--- *In the Matter of C.S., D.G., K.G.; In re W.W.*

Expenses

Respondent’s motion denied

Trial court’s discretion---*In the Matter of J.B.*

--F--

Failure to Thrive

Generally, evidence of neglect---*In re K.C.*

Fifth Amendment

Application in civil cases, inference that truthful statements unfavorable to case---*In re N.F.*

Final Appealable Order

General discussion---*In the Matter of B.N.H., In the Matter of K.J.H.*

Temporary Custody Order --- *In the Matter of C.J.H-D*

Findings of Fact

Generally---*In the matter of I.S.; In the Matter of J.G.A., E.M.P.; In the Matter of A.L. a/k/a A.H., L.L. a/k/a L.H.; In the Matter of B.S.J.; In the Matter of J.M., D.M, and K.M.*

Conclusive on appeal if no error assigned---*In the Matter of K.J.H., In the Matter of L.G., In the Matter of T.A.T.*

Failure to distinguish from conclusions of law---*In the Matter of T.M.M.; In the Mater of C.S., D.G., K.G.; In the Matter of K.L.S., D.L.C., C.M.C.*

More than a recitation of orders/reports---*In the Matter of F.M., J.M., Jr., and J.M.*

Must address relevant provisions of statute---*In the Matter of K.D., B.G., & D.G.*

Rule 52(a)---*In the Matter of K.F. and M.F.*

Subsidiary v. Ultimate---*In re K.E.C.*

Use of DSS and GAL reports---*In the Matter of K.D., B.G., and D.C.; In the Matter of C.Y.P. & I.P.*

Stipulation to--- *In the Matter of E.F.C.K. & C.F.W.*

--G--

Guardian ad Litem

Amendment of record to include GAL appointment letter---*In the Matter of M.S.*

Appointment for parents (Rule 17 GAL)

when dependency is alleged--- *In the Matter of A.D.L., J.S.L., & C.L.L.; In the Matter of B.M., M.M., et al. ; In the Matter of D.S.C.; In the Matter of S.R.S. and D.N.S.; In re A.D.W.; In the Matter of M.S.; In the Matter of C.B.; In the Matter of K.R.S.; In the Matter of L.M.C.*

failure to appoint when dependency alleged is prejudicial *per se*---*In the Matter of D.D.Y.*

when petition is amended to add dependency--- *In re D.D.Y.*

when dependency is dismissed---*In the Matter of J.N.*

for adjudication--- *In the Matter of C.B.; In the Matter of D.D.Y.*

not required without dependency allegation---*In the Matter of O.C. & O.B; In the Matters of As.L.G. & Au.R.G.; In re J.A.A. and S.A.A.*

not required when dependency alleged if dependency does not go to parent's incompetence---*In the Matter of M.S.*

failure to appoint for underlying proceeding does not affect TPR--- *In the Matter of O.C. & O.B.; In re E.T.S.*

when dependency is not alleged---*In re A.C.J. & P.A.G.S.; In the Matter of S.N.M., D.G.F., S.U.M.; In re T.W., L.W., E.H.; In the Matter of R.A.L.*

dependency allegation trigger for competency inquiry--- *In re J.A.A. and S.A.A.*

Appointment for minor child---*In re J.L.S., In the Matter of E.L.L; In the Matter of M.S.; In re R.A.H.; In the Matter of A.D.L., J.S.L. & C.L.L.; In the Matter of E.T.S.*

Guardianship

Without visitation---*In re T.K. et al; In the Matter of E.C.*
Standard of review for change in guardianship---*In re J.D.C.*
As the permanent plan--- *In re J.D.C.; In the Matter of K.L.*
At Disposition-----*In the Matter of E.C.*
At custody review hearing---*In the Matter of L.M.C.*

--H--

Hearsay

Generally--- *In the Matter of P.C.; In re B.A.A. and P.J.A.; In the Matter of B.S., D.G., K.G.; In the Matter of J.M., D.M., & K.M.; In re S.D.G. & T.L.G.*

Prejudiced by--- *In re S.D.G. & T.L.G.*

Exceptions

Child hearsay exception---*In the Matter of P.C.*

Medical diagnosis---*In the Matter of C.S, D.G., K.G.*

Business records--- *In the Matter of C.S., D.G., K.G.*

For purpose other than truth of matter asserted---*In re B.A.A. and P.J.A.*

--I--

Incarceration

Generally---*In the Matter of C.M.M. & L.R.W.; In re D.J.D. et al; In re P.L.P; In the Matter of S.B.M.; In the Matter of D.M.W.; In re K.D., S.D., D.D.*

Establishing paternity---*In the matter of I.S.*

Standing alone does not justify TPR-*In the Matter of K.L.J; In re P.L.P.(dissent)*

As evidence of neglect--- *In the Matter of B.N., M.N., T.N., N.N., M.L.N.*

Incorporation of GAL or DSS reports

Generally---*In the Matter of K.L.S., D.L.C., C.M.C.; In the Matter of C.L. et al.; In the Matter of K.D., B.G., & D.G.*

Into the order---*In the Matter of C.B.*

Failure to incorporate, generally---*In the Matter of C.Y.P. & I.P.*

Failure to incorporate not error---*In the Matter of M.J.G.*

Incorporation

Of prior orders---*In the Matter of J.S.H.*

Of prior order as basis for TPR---*In the Matter of B.D.*

Of interlocutory appeals---*In the Matter of B.P., S.P. & R.T.*

Indian Child Welfare Act

Generally--- *In the Matter of A.D.L., J.S.L., & C.L.L.*

Indigency

Injurious Environment

Interstate Compact

Home study---*In re L.L.*

Intervention

Without motion---*In the Matter of L.M.C.*

Investigation

Non-interference order---*In the Matter of K.C.G. & J.G.*

--J--

Judicial Notice

Proper for trial court to take judicial notice of prior order--- *In the Matter of J.B.; In the Matter of A.K.*

Jurisdiction - See this index “Concurrent Jurisdiction,” “Personal Jurisdiction,” “Subject Matter Jurisdiction”

Jurisdiction retained over juvenile returned to parent---*In the Matter of K.J.H.*

--L--

Legitimation

No standing to legitimate after parental rights terminated--- *Gorsuch v. Dees & A.B.D.*

--M--

Mental Health Records

Proper as evidence at TPR--- *In the Matter of J.B.*

Mootness of Appeal

Appeal rendered moot by entry of subsequent order--- *In the Matter of A.K.*

Death of child after TPR order does not render appeal moot --- *In re C.C. & J.C.; In re J.A.A. and S.A.A.*

Munchausen’s Syndrome by Proxy

Generally--- *In the Matter of A.E. & J.E.; In the Matter of K.C.G. & J.G.*

--N--

Name Change Proceedings

Parties to---*In the Matter of the Change of Name from K.O.S. to M.O.B.*

Neglect

Generally--- *In the Matter of P.C.; In the Matter of C.S., D.G., K.G.; In re S.D.; In the Matter of B.S.J.; In the Matter of C.A.A., S.Y.C.*

Failure to reference specific statutory grounds---*In the Matter of T.M.M*

Relevance of prior adjudications of neglect---*In the Matter of R.G.; In the Matter of B.I.; In the Matter of C.I.B., J.L.P., L.H.P.; In the Matter of C.S., D.G., K.G.; In re I.H.; In the Matter of J.S.H.; In the Matter of P.M.; In the Matter of T.A.T.*

Finding of continued neglect need not occur in same manner---*In the Matter of T.A.T.*

Single incident sufficient to support finding of---*In the Matter of MC.*

Incarceration as evidence of---*In the Matter of B.N., M.N., T.N., N.N., M.L.N.*

Insufficient evidence---*In re J.A.G.*

Insufficient evidence to support TPR ground---*In re C.C. & J.C.*

Non-interference Order---*In the Matter of K.C.G. & J.G.*

Notice and Service of Process

Petition to TPR---*In the Matter of D.A., Q.A. & T.A.; In the Matter of N.M.B; In re P.L.P.*

Sufficiency of

Failure to attach custody order to Petition to TPR---*In re S.D.B. & T.L.G.; In the Matter of N.M.B.*

For minor > 12 years old---*In the Matter of T.R.P.; In the Matter of C.M., J.M. Jr. and J.M.; In the Matter of J.B.*

To juvenile as party--- *In the Matter of C.M., J.M., Jr., and J.M*

Notice of Appeal

Timeliness of--- *In the Matter of T.C., T.C., T.C., T.C.*

Insufficiency of--- *In the Matter of T.C., T.C., T.C., T.C.*

--O--

Orders – See this index “Child custody order,” “Disposition order,” “Final Appealable Order,” “Non-interference Order,” “Permanency Planning Order,” “Termination of Parental Rights Order”

--P--

PKPA---*In re A.H.M.*

Parental Rights

Relinquishment of---*In the Matter of C.E.*

Paternity

Admissibility of paternity test evidence---*In the Matter of L.B.D.*

Permanency Planning

Ceasing reunification efforts---*In re K.D., S.D., D.D.; In the Matter of T.K., D.K., T.K., J.K.*

Role of best interests and parental rights---*In re T.K., D.K., T.K., J.K.; In re T.S.A. & D.R.G.*

Court may consider any relevant evidence (not just sworn testimony)---*In the Matter of K.N.O. & A.R.O.*

Permanency Planning Order

Appealability---*In the Matter of B.P., S.P., & R.T.; In the Matter of B.N.H., In the Matter of K.N.N.; In re I.N.P.; In re C.L.S.; In re I.N.P.*

Timeliness of appeal---*In the Matter of T.C., T.C., T.C., T.C.*

Notice of appeal---*In the Matter of T.C., T.C., T.C., T.C.*

Concurrent Plans--- *In re J.J.L, E.F.L., S.A.L.; In the Matter of K.D., B.G., and D.C*

Required contents--- *In the Matter of B.P., S.P., R.T.; In the Matter of B.S.J*

Timeliness of---*In the Matter of B.P., S.P., R.T.*

Factors to be considered (if relevant) pursuant to N.C. Gen. Stat §7B-907(a)---*In the Matter of T.S.; In the Matter of K.F. and M.F.; In the Matter of T.C.; In the Matter of K.L.; In the Matter of K.D., B.G., and D.C; In the Matter of K.N.N.; In the Matter of B.S.J.; In the Matter of K.N.O. & A.R.O.*

Best interests are paramount---*In the Matter of T.K., D.K., T.K. & J.K.; In the Matter of T.S.*

Findings of Fact--- *In the Matter of K.L.S., D.L.C., C.M.C.; In the Matter of A.L. a/k/a A.H., L.L. a/k/a, L.H.; In the Matter of T.C.*

Incorporation of reports--- *In the Matter of B.S.J; In the Matter of C.L., Jr., C.L., and C.L.*

Sufficiency of---*In the Matter of A.L. aka A.H., L.L. aka L.H.*

Ceasing reunification--- *In the Matter of C.L., Jr., C.L., and C.L.*

Not required prior to TPR---*In the Matter of J.B. & A.B.*

Personal Jurisdiction

Generally---*In the Matter of K.B.B. and K.A.B.*

Defect in service---*In re K.L.; In re T.S.A. & D.S.G.; In the Matter of T.G. & R.J.; In re A.B.D.; In the Matter of J.B.*

Waiver--- *In the Matter of C.I.B., J.L.P., L.H.P.; In the Matter of K.L.; In the Matter of T.G. & R.T.; In the Matter of T.S.A, D.S.G.*

Petition

Not verified---*In the Matter of T.R.P.*

Sufficiency of allegations---*In re Baby W*

Placement

Statutes requiring placement with a relative (see also Relative Placement)---*In the Matter of B.R.; In the Matter of T.S.; In the Matter of S.W.*

Plain Error

Poverty

Connection with failure to follow court orders---*In the Matter of As.L.G. & Au.L.G.*

Preemption (Federal)---*In re A.M.H.*

Prejudice (necessary to show)---*In the Matter of As.L.G. & Au.L.G.; In the Matter of Baby Boy M.*

Privacy/Constitutional Right to Parent---*In re Baby W.*

--R--

Reasonable Efforts

DSS--- *In the Matter of K.D., B.G., and D.G.; In the Matter of B.I.; In the Matter of S.N.M., D.G.F., S.U.M.*

Reasonable Progress

Generally--- *In the Matter of B.N., M.N., T.N., N.N., M.L.N.; In the Matter of A.N.P. and S.R.P.; In the Matter of J.W. & K.W.; In the Matter of Ap.P.R. & A.C.R.; In the Matter of D.M. (dissent)*

Failure to make reasonable progress not willful---*In re C.C. & J.C.; In re S.O.B.-B., S.U.B.-B.*

Recording inadequate

No prejudice--- *In re L.O.K. et al.*

Recusal

Issue not preserved---*In re L.L.*

Relative Placement

Priority generally--- *In re L.L.; In re K.C.*

At which hearings to consider---*In the Matter of B.R.; In re J.A.A. & S.A.A.*

Relinquishment not accepted---*In the Matter of C.E.*

Review Hearings

Appealability of order--- *In the Matter of K.J.H.*

Res Judicata

Permanency planning order not final adjudication of placement---*In re C.E.L.*

Reunification

Generally---*In re K.D., S.D., D.D.*

Using a “changed circumstances” standard---*In re C.S.*

Rule 17---See this index, Guardian ad Litem

Rule 41(a)(1)

Certain provisions not applicable because contrary to Juvenile Code---*In re L.O.K. et al.*

Rule 60

Inapplicable as substitute for appellate review---*In the Matter of E.C.; In the Matter of L.C. & A.N.*

--S--

Sixth Amendment

Confrontation clause inapplicable---*In the Matter of D.R.*

Service of Process – See “Notice and Service of Process”

Sexual abuse

Generally---*In re I.H.*

Prior Allegations of---*In re S.D.*; *In the Matter of C.M., J.M. Jr. and J.M.*; *In the Matter of R.G.*

As the basis of a permanency planning order---*In the Matter of C.L. et al.*

Shaken Baby Syndrome

Generally---*In the Matter of J.G.A., E.M.P.*; *In re N.F.*; *In the Matter of C.S., D.G., K.G.*

Simultaneous proceedings

Chapter 50 custody generally---*In the Matter of C.E.L.*

Standard of Appellate Review

Denial of Rule 60, abuse of discretion---*In re L.C. & A.N.*

Standard of Proof

In TPR---*In the Matter of M.I.S. & S.M.S.*

Standing

Former custodian---*In re A.M.H.*

For TPR, child resides with petitioner 2 years---*In re E.T.S.*

For TPR, putative father---*In re L.B.D.*

Subject Matter Jurisdiction –

After permanency planning order--- *In the Matter of K.J.H*

Over permanency planning while adjudication and disposition appeal pending--- *In the Matter of T.S., S.M., & T.M.*

Over TPR---*In re A.M.H.*; *In the Matter of B.M., M.M., et al.*; *In the Matter of J.B. & A.B.*; *In re J.D.S.*; *In the Matter of Z.T.B.*

Over TPR while appeal pending--- *In the Matter of C.M., J.M., Jr., and J.M*

UCCJEA--- *In re J.D.S.*

Duration of--- *In the Matter of M.S.*

Insufficient Notice of Appeal--- *In the Matter of T.C., T.C., T.C., T.C.*

No custody order without petition--- *In the Matter of A.E. & J.E.*

When petition not verified---*In the Matter of T.R.P.*

Substance Abuse

Generally, as grounds for neglect---*In the Matter of E.C.*; *In the Matter of H.N.T. & J.E.A.M.*; *In the Matter of J.A.A. & S.A.A.*; *In the Matter of J.S.H.*; *In the Matter of M.J.G.*; *In re S.M.W.*

Generally, as ground for dependency---*In the Matter of K.R.S.*; *In the Matter of O.C. & O.B.*

--T--

Termination of Parental Rights

Stages and standards---*In the Matter of M.S.B*; *In the Matter of N.M.B*; *In re S.M.W.*

Burden of proof (failure to meet)---*In the Matter of I.S.*

Best Interests---*In re K.E.C.*

Abuse of Discretion---*In re S.D.G. & T.L.G.*; *In re B.A.A., P.J.A.*; *In the Matters of M.I.S. and S.M.S.*; *In the Matter of E.L.*; *In the Matter of K.E.C.*; *In the Matter of M.S.B.*

Generally---*In the Matter of V.L.B.*

GAL appointment for minor child not necessary---*In the Matter of E.T.S.*

GAL appointment for parent is to protect due process (necessity of a hearing)---*In the Matter of R.A.L.*

Grounds, Abuse---*In re M.A.L.*

Grounds, Failure to provide stable housing---*In the matter of J.Q.F., D.D.P., C.W.B.*

Grounds, Neglect---*In re B.A.A. and P.J.A.*; *In the Matter of B.S.J.*; *In the Matter of D.D.H.*; *In the Matter of H.N.T. & J.E.A.M.*; *In the Matter of M.S.*; *In the Matter of S.N.M., D.G.F., S.U.M.*

Evidence supporting--- *In re S.M.W.*; *In re C.A.A. & S.Y.C.*; *In re K.E.C.*; *In re T.M.K., T.Q.M.M., T.M.M.*; *In re C.P.D., K.C.D., T.M.D.*; *In the Matter of R.G.*; *In re I.H.*; *In the Matter of T.N.W., T.T.W., T.J.W.*; *In the Matter of C.I.B., J.L.P., L.H.P.*; *In re L.O.K. et al.*; *In the Matter of J.Q.F., D.D.P. & C.W.B.*; *In the Matter of M.I.V. et al.*

Grounds, Willful abandonment---*In re A.M.H.*; *In re K.E.C.*; *In re S.T.G.*

Grounds, Willful failure to pay reasonable support despite being financially able to--- *In the Matter of Baby Boy M.*; *In re Baby W.*; *In the matter of J.Q.F., D.D.P., C.W.B.*; *In the Matter of K.E.C.*; *In the Matter of E.L.L.*

Evidence of, *In the matter of J.Q.F., D.D.P., C.W.B.*; *In the Matter of L.T.M., K.R.M., C.R.M.,*

Grounds, Willfully leaving child in foster care for 12 months w/o making reasonable progress--- *In the Matter of C.M.M. & L.R.W.*; *In the Matter of F.L.R.*; *In the Matter of H.N.T. & J.E.A.M.*; *In re: S.O.B-B. & S.U.B-B.*; *In the Matter of B.N., M.N., T.N., N.N., M.L.N.*; *In the Matter of A.N.P. and S.R.P.*; *In the Matter of D.M.*; *In the Matter of L.G.*; *In the Matter of A.P.R. & A.C.R.*; *In the Matter of R.G.*; *In the Matter of T.N.W., T.T.W., T.J.W.*; *In the Matter of C.A.A.*; *In the Matter of D.R.M., S.S.M., T.D.M.*

Willfulness defined, *In the Matter of M.B. & E.W.*; *In the Matter of C.T.A., D.T.A.*

Grounds, Failure to establish paternity or legitimize child---*In re Baby W.*; *In the Matter of C.M.M. & L.R.W.*

Grounds, Involuntary termination of parental rights in other state---*In the Matter of V.L.B.*

Hearing, Refusal to allow hearing or take evidence on the issue of paternity---*In the Matter of L.B.D.*

Incarcerated Parent---*In re S.B.M.*; *In the Matter of C.M.M. & L.R.W.*; *In the Matter of F.L.R.*; *In the Matter of I.S.*; *In the Matter of S.T.G.*; *In the Matter of K.E.C.*; *In the Matter of K.L.J.*

Insufficient Evidence---*In re C.C.*

Stating standard of proof--- *In the Matters of M.I.S. and S.M.S.*

Mootness, TPR appeal not moot after death of child---*In re C.C.*; *In re J.A.A. & S.A.A.*

One ground sufficient for termination---*In re B.A.A. and P.J.A.*; *In the Matter of B.N., M.N., T.N., N.N., M.L.N.*; *In the Matter of K.E.C.*

Permanency Planning Hearing (PPH) not necessary prior to TPR---*In the Matter of J.B. and A.B.*

Private TPR proceedings---*In re J.D.S.*; *In re J.L.S.*; *In re L.B.D.*; *In re Z.T.B.*

Relative placement, no requirement to consider---*In re J.A.A. & S.A.A.*

Stating standard or review---*In the Matter of L.M.B.L., S.V.L.L.*

Stipulation of facts permitted---*In the Matter of E.F.C.K. & C.F.W.*

Testimony

Abused children do not have to face abuser---*In the Matter of D.R.*

Child testimony, in chambers---*In the Matter of P.C.*

Termination of Parental Rights Petition

Factual sufficiency of--- *In the Matter of S.N.M., D.G.F., S.U.M.; In the Matter of I.S.*
Failure to attach custody order to Petition to TPR---*In re S.D.B. & T.L.G.; In re Z.T.B.*
Failure to conduct a reasonable inquiry prior to filing petition is not violation of N.C. Gen. Stat. Section 1A-1, Rule 11 where respondent can't show petition was factually insufficient, legally insufficient or filed for improper purpose--- *In re Baby W*
Failure to include findings of fact or make conclusions of law---*In the Matter of L.C., I.C., & L.C.*
Failure to give notice to juvenile > 12 years old---*In the Matter of C.M., J.M.Jr. and J.M.; In the Matter of J.B.*
Intervention by foster family---*In re L.L.*
Standing based on 2 years of child living with petitioners---*In the Matter of E.T.S.*
Subsequent filing after voluntary dismissal---*In re L.O.K. et al.*
Timing with respect to review hearings--- *In re J.B. & A.B.*
Timely filed, no prejudice---*In the Matters of As.L.G. & Au.R..G.*

Termination of Parental Rights Order

The need to show prejudice decreases as delay increases---*In re T.W., L.W., E.H.*
Reversal based upon delayed order (16 days) against legislative intent--- *In the Matter of A.D.L., J.S.L., & C.L.L.*
Must show prejudice from delayed order--- *In the Matter of A.D.L., J.S.L., & C.L.L.; In the Matter of F.L.R.; In the Matter of K.L.J.; In the Matter of C.J.B. and M.G.B.; In the Matter of D.R.; In the Matter of J.B.; In the Matter of J.A.D. & A.L.D.; In the Matter of S.B.M.*
Delay in entry-69 days, not prejudicial per se---*In the Matter of D.R.*
Delay in entry-5 months, prejudice albeit "generic ans susceptible to challenge"---*In the Matter of C.J.B. and M.G.B.*
Delay in entry-5 months, no prejudice---*In re S.B.M.*
Delay on entering order that is greater than 6 months is "highly prejudicial to all parties involved" ---*In the Matter of L.E.B., K.T.B.; In re T.W., L.W., E.H.*
Delay in entry-7 months--- *In the Matter of T.L.T.*
Delay in entry-9 months, prejudicial to all parties---*In re L.L.*
Delay in entry-250 days, no prejudice--- *In the Matter of C.I.B., J.L.P., L.H.P.*
Delay in entry-14 months, no prejudice---*In the Matter of Baby Boy M.*
Order based upon grounds supported by the same evidence pending on appeal is reversible---*In the Matter of B.D.*
Order drafted by petitioner proper--- *In the Matter of J.B.*
Conclusions of law--- *In the Matter of L.C., I.C. and L.C.*

Time requirements

Statutory requirement that TPR petition be filed w/ in 60 days of permanency planning is directory, not jurisdictional---*In the Matter of B.M., M.M., et al.*
No prejudice despite repeated violation of statutory timelines---*In the Matters of C.L.C. et al.*
Timeliness of hearing---*In re D.J.D. et al.*
Timeliness of order---*In the Matter of As.L.G. & Au.L.G.; In the Matter of A.D.L., J.S.L. & C.L.L.; In the Matter of K.J.H. (no prejudice, 2 months); In the Matter of K.L.J. (no prejudice)*

Transcript

No prejudice, failure to take steps to reconstruct missing testimony---*In the Matter of L.O.K.*

--U--

UCCJA

UCCJEA---*In re A.M.H.; In re J.A.S.*

Unfitness

--V--

Video Conferencing

Visitation

Failure to make findings regarding visitation, no prejudice---*In the Matter of T.S.A., D.S.G.*

While criminal charges are pending---*In the Matter of K.J.H*

Judicial function that may not be delegated---*In the Matter of E.C.*

--W--

Waiver of Counsel

Willfulness

Generally---*In re: S.O.B-B. & S.U.B-B.; In the Matter of B.N., M.N., T.N., N.N., M.L.N.; In the Matter of K.L.J.; In the Matter of A.P.R. and A.C.R.*

Does not equal fault---*In the Matter of C.T.A., D.T.A.*

Incarceration does not negate---*In re D.J.D. et al.; In the Matter of F.L.R.; In the Matter of S.T.G.*

Witnesses – see also “Expert Witness”

In the Matter of J.G.A., E.M.P.

Writ of Certiorari---*In the Matter of T.C., T.C., T.C., T.C.*

--X--

--Y--

--Z--