

2006 PUBLISHED CASE SUMMARIES¹

A Child's Hope, LLC v. John Doe, ---N.C. App.---, 630 S.E.2d 673 (COA05-679)(6/20/06). Petitioner adoption agency appealed the order denying termination of the father's parental rights. The Court of Appeals reversed after concluding that irrefutable evidence supported the requirements of N.C.G.S. §7B-1111(a)(5) that allows termination of parental rights for failure to legitimate a child or otherwise establish paternity prior to the filing of a TPR petition. The facts of this case are compelling due to the mother's effort to prevent the father from asserting his legal rights by insisting to the father that she had a miscarriage while asserting to others that the child was the result of a date rape in Chapel Hill. An affidavit filed with the TPR petition indicated that she had no knowledge of the father's identity; however, the father attempted to determine whether she in fact had a child, and even contacted DSS when a child was found abandoned. Genetic tests revealed that the abandoned child was not his and he was unaware of the birth of his child until served with a TPR petition after the mother finally revealed the biological father's name. Relying on precedent, the Court of Appeals held that the legislature did not intend an illegitimate child's welfare to depend upon whether or not the putative father is aware of the child's existence when a TPR petition is filed. See *In re T.L.B.*, 167 N.C. App. 298, 605 S.E.2d 249 (2004). Further, the Supreme Court recently strictly construed the statutory requirements relating to adoption to hold that consent of an unwed father is not required unless he has assumed some parental responsibility. See *In re Adoption of Byrd*, 354 N.C. 188, 552 S.E.2d 142 (2001). Although the Court of Appeals acknowledged that the mother in this case went out of her way to impede the father's rights, when the father was at all suspicious about the existence of a child, essentially he should have taken steps under N.C.G.S. § 7B-1111(a)(5) to protect his legal rights such as attempt to establish paternity; legitimate the child; or provide support for the mother and infant. (Majority: Chief Judge Martin, Levinson). Judge Jackson dissented with the majority opinion citing the father's efforts to assert his legal rights by offering to care for the child when born; staying in contact and assisting the mother regarding the pregnancy until deceived that she had miscarried; and diligently searching for a child because he was concerned about the mother's veracity. Citing the same cases used by the majority, the dissent asserts that the Supreme Court held that a biological mother should not be permitted to control the adoption process as to completely exclude the biological father. Additionally, filing "an affidavit to legitimate to legitimate an illusory child seems beyond the bounds of what we reasonably may expect of any man." The dissent would affirm the trial court's denial of the TPR petition. (Dissent: Jackson)

In re A.B., ---N.C. App.---, 635 S.E.2d 11 (COA05-1584)(10/3/06). Appellant mother had a current juvenile case pending in which her two children were adjudicated abused and neglected. DSS had custody and the children were physically placed with the paternal grandparents. The mother subsequently had another child, A.B., who remained hospitalized due to complications; however, the mother was unprepared for the child's discharge from the hospital. The parents agreed to allow DSS to assume custody of the

¹ Cases are in alphabetical order by juvenile's first initial inclusive through January 2, 2007 and were compiled by Deana Fleming, GAL Associate Counsel, and Alexandra S. Gruber, GAL Appellate Counsel.

newborn to be placed with her siblings. A.B. was adjudicated neglected and only the mother appealed. The Court of Appeals dismissed the argument of DSS and GAL that the appeal was moot since the paternal grandparents were granted legal guardianship in a later review order. Respondent argued that it was error for the court to find that the relevant time period considered at the hearing was the child's birth to the filing of the petition; however, evidence at this stage is limited to the petition allegations and the argument was overruled. In her next argument, respondent asserted error in the finding that "the minor child was living in the home where another child was seriously abused" since the minor child never literally lived in that home since she was discharged to DSS custody. Citing *In re McLean*, 135 N.C.App.387, 521 S.E.2d 121 (1999), the Court of Appeals held that a newborn who resided in the hospital during the relevant period may be determined to "live" in the parents' home for purposes of finding neglect due to risk of harm. The child was in the car of the parents while in the hospital. (Panel: Hunter, Martin, McCullough)

In re A.C.F., ---N.C. App.---, 626 S.E.2d 729 (COA05-764)(3/7/06). Mother appealed from termination order. Court of Appeals reversed, holding that the trial court erred in finding that Mother had failed to make reasonable progress where her child had not been "removed" from the home for 12 months prior to the filing of the motion for termination. In doing so, the Court addressed the interpretation of the terms "left," "removal," and the 12-month time frame in the context of the juvenile code. The Court determined that only a court order requiring a child to be placed in foster care or other out-of-home placement could trigger this particular ground for termination. The Court then reviewed the law with respect to the 12-month statutory period, and held that the 12-month period did not include the time during which the child was in a voluntary placement. Based upon this analysis, the Court concluded that Appellant's child had only been "left...in foster care" for approximately 10 months prior to the filing of the motion termination, and the Court reversed the termination order. (Panel: Levinson, McCullough, Elmore).

In re A.J.M., ---N.C. App.---, 630 S.E.2d 33 (COA05-504)(6/20/06). The Court of Appeals affirmed the adjudication of neglect based on inappropriate discipline that also named a relative as A.J.M.'s guardian of the person. The father consented to an adjudication of dependency due to his incarceration. In the year prior to the filing of the juvenile petition, DSS worked with the mother regarding her corporal discipline methods of using a belt to strike A.J.M. who had not yet turned two. A.J.M. was voluntarily placed with her paternal aunt and DSS developed a reunification case plan to allow for parenting classes, child support, supervised visitation and a mental health evaluation, but the mother did not successfully complete all requirements. The mother argued that specific findings of fact were not supported by the evidence, but these arguments were overruled in part due to the mother's own testimony. These findings supported the conclusion of law regarding neglect. In her final argument, the mother asserted lack of personal jurisdiction since the summons was not served on her; however, the mother's general appearance without objection waived the any insufficiency of process and was a submission to the court's jurisdiction. (Panel: Calabria, McGee, Geer)

In re A.K., 360 N.C. 449, 628 S.E.2d 753 (139PA05)(5/5/06). This case establishes that a parent's appeal from an adjudication of juvenile petition is not rendered moot due to the child's return to the parent's custody pending the appeal outcome. In this case, the older sibling of A.K. was adjudicated neglected to injuries that were likely intentionally inflicted, although the parents denied responsibility. At the fifth review hearing, the court granted guardianship to the paternal grandparent. Less than a year later, A.K. was born to the parents and DSS filed a juvenile petition that resulted in an adjudication of neglect based on the sibling's case history. The trial court granted DSS legal custody, but placed A.K. with her parents. While the adjudication and disposition order was on appeal, custody was restored to the parents. The Court of Appeals took judicial notice of the order that returned custody and dismissed the appeal as moot. On discretionary review, the Supreme Court agreed with the father's argument that an adjudication of neglect can result in collateral legal consequences despite successful reunification. For instance, the adjudication of A.K. could support a subsequent juvenile proceeding of any future siblings since it is statutorily relevant that a child lives in a home where another child was previously adjudicated neglected. In fact the adjudication of A.K. illustrates this point. Trial courts have broad discretion regarding the weight to give evidence of prior adjudications involving the same parties, and it is reasonable that more weight would be given to multiple prior adjudications. In addition to legal consequences, neglect adjudications can stigmatize a person in society and affect personal relationships. The dismissal of the appeal was reversed and remanded to the Court of Appeals (See *In re A.K.*, COA04-986-2). (Justice Martin)

In re A.K., ---N.C. App.---, 637 S.E.2d 227 (COA04-986-2)(8/1/06). The order adjudicating A.K. neglected was reversed due to insufficient evidence to support a finding that the child was at substantial risk of neglect. Pertinent case history includes that prior to A.K.'s birth, his sibling C.A.K. was adjudicated neglected due to injuries including numerous bone fractures and the fact that neither parent took responsibility for the injuries. However, at subsequent reviews, the parents were actively working their reunification plans. The trial court took judicial notice of the prior court orders in the sibling case and received no additional evidence. Appellant father argued that the court's sole reliance on the prior orders could not support a finding that A.K. was at substantial risk of injury, particularly since the most recent evidence and findings that he failed to acknowledge the cause of the older sibling's injuries were too remote in time. The Court of Appeals agreed as the adjudication order entered over a year prior is the only order that established the parents' denial of culpability based on clear and convincing evidence. Subsequent orders entered that found the parents continued to deny culpability were not subject to this higher burden of proof and no other evidence was presented. Even if collateral estoppel permitted the court the rely on every order entered to support the substantial likelihood of harm, the time lag precluded a finding of substantial risk of harm to support the adjudication of neglect. This case illustrates the necessity of presenting formal evidence to support an adjudication of a juvenile petition and is a caution to simply relying on underlying juvenile orders entered without using the clear and convincing standard.

In re A.P., ---N.C. App.---, 634 S.E.2d 564 (COA05-565)(9/5/06). The Court of Appeals dismissed the mother's appeal from a custody order that continued custody and placement authority with DSS but sanctioned placement with the child's biological father. This order maintained status quo, did not change custody, and was not immediately subject to appeal. (Majority: Elmore, Wynn) In a separate concurrence, Judge Levinson explained that in his opinion, the majority's reliance on *In re Weiler*, 158 N.C. App. 473, 581 S.E.2d 143 (2003) and *In re B.N.H.*, 170 N.C. App. 157, 611 S.E.2d 888, *disc. review denied*, 359 N.C. 632, 615 S.E.2d 865 (2005) was misplaced in that these cases involved permanency planning order while the case at bar was an appeal of a custody review order. In his opinion, custody review orders are not subject to appeal under N.C.G.S. § 7B-1001. Although the mother had a right to be heard regarding the physical placement of her child, the juvenile court has wide discretion regarding placement decisions without appeal of such decisions that prolong juvenile cases. The General Assembly did not intend that each intermediate trial court decision be subject to appeal. (Concurrence: Levinson)

In re A.P., ---N.C. App.---, 634 S.E.2d 561 (COA05-1105)(9/5/06). This case involves the same parties as above. The initial adjudication of neglect was based on the injurious environment created by the mother and legal father and DSS was given custody with placement authority. Genetic testing revealed a biological father who began legitimization proceedings and requested placement of the child. At a subsequent review hearing, the court granted the biological father custody, relieved DSS, and closed the case. The mother appealed this custody order argued that the trial court delegated its fact-finding authority by relying solely on the DSS report. The Court of Appeals agreed with the mother's assertion since no other evidence or testimony was offered to support the findings of fact and conclusions of law except the DSS report. Argument of counsel is not evidence and the court cannot make the necessary statutory findings regarding permanency planning orders without hearing evidence from all relevant parties. (Majority: Elmore, Wynn) In a separate dissent, Judge Levinson asserted that since the juvenile court "closed" the case, the juvenile court returned the parents to pre-petition status. The juvenile court does not have an "affirmative obligation" to return a child to the home from which he or she is removed before ceasing to exercise jurisdiction. As a result, the parents in this case may file a custody action under Chapter 50 for a judicial determination of custody between two parents. (Dissent: Levinson)

In re A.R.G., ---N.C. App.---, 631 S.E.2d 146 (COA05-1268)(6/20/06). The father's appeal from a permanency planning order was dismissed as interlocutory. The father appeared at the initial nonsecure hearing, but did not participate in subsequent proceedings or with a case plan after the child was adjudicated neglected and dependent. The original plan of permanency was reunification with the mother; however, after a year of insufficient progress, the plan was changed to adoption. The mother was killed in a car accident a month after this hearing, and the father became involved by appearing at subsequent reviews. Reunification with the father was never a permanent plan for the child, and he never requested visitation or had any other involvement except to advocate for the child to be placed with his mother. Because this order did not change the permanent plan for the child, but maintained the previous court directive, it is not subject

to appeal pursuant to the holding of *In re B.N.H.*, 170 N.C. App. 157, 611 S.E.2d 888, *disc. review denied*, 359 N.C. 632, 615 S.E.2d 865 (2005). (Majority: Levinson, Elmore) Judge Wynn dissented on the basis that this review order modified the father's custodial rights by changing the permanent plan to adoption and directed DSS to commence a termination of parental rights proceeding. Judge Wynn asserted that the trial court did not have subject matter jurisdiction because the record did not indicate compliance with the UCCJEA by filing an affidavit as to the status of the minor child pursuant to N.C.G.S. § 50A-209 and would vacate the order. (Dissent: Wynn)

In re A.R.H., ---N.C. App.---, 629 S.E.2d 925 (COA05-1507)(6/6/06). GAL for the child appealed a dismissal of a petition for nonsecure custody alleging abuse and neglect. Mother discovered her six-month old daughter limp and unresponsive and, at nonsecure, experts testified that the child's injuries were "non-accidental" and the child was likely a victim of shaken baby syndrome. Mother testified that the child had suffered several seizures and had an "undiagnosed blood disorder." The mother also testified that the child's injuries resulted from several falls and "bumps" the child received while in the home, and from a hit by a sibling with a plastic bat. Based on the testimony presented, the trial court found that the trial witnesses' explanations for the child's injuries ran the gamut from "I don't know what happened to this child" to "consistent...with shaken baby syndrome," and found that the petitioner had failed to carry its burden of proof by clear and convincing evidence. Appellant GAL argued that there was clear and convincing evidence presented in support of the petition, and that the trial court erred in dismissing the petition before the dispositional phase of the hearing by improperly admitting dispositional evidence at the adjudicatory phase of the hearing. The Court of Appeals affirmed the dismissal, noting the trial court's thorough review of the evidence presented. The Court further determined that Appellant GAL had failed to properly identify what "dispositional" evidence was improperly admitted at the adjudicatory phase of the proceedings, and dismissed GAL's assignment of error citing *Viar v. N.C. DOT*, 359 N.C. 400, 401 (2005) for the proposition that failure to comply with the Rules of Appellate Procedure subjected the assignment of error to dismissal. (Panel: Hudson, McCullough, Tyson).

In re C.B., J.B., Th.B., Ti.B., --- N.C. App.---, 636 S.E.2d 336 (COA05-1517)(11/7/06). The Court of Appeals reversed and remanded the adjudication order concluding that Th.B. was abused, neglected and dependent, and that his siblings were neglected and dependent. Respondent father spanked Th.B. with a belt leaving bruises; however, the majority concluded that the bruising did not rise to the level of "serious injury" under the statutory definition of abuse. As the neglect adjudication of the siblings was based on the fact that they lived in the home where another child was abuse, this portion of the order was also reversed. (Majority: Wynn, Tyson) The dissent agreed that the finding did not support the conclusion that Th.B. was abused; however, since all four children were adjudicated neglected based on inappropriate discipline, she would have affirmed the adjudication of neglect. (Dissent: Hudson)²

² Notice of Appeal based on the dissent has been filed with the Supreme Court.

In re D.H., C.H., B.M., C.H. III, ---N.C. App.--, 629 S.E.2d 920 (COA05-1501)(6/6/06). Appellant mother appealed an order terminating her parental right to her minor children. Mother, a drug addict, who suffered from various psychological disorders including post-traumatic stress and bipolar disorder, argued on appeal that the trial court's order should be reversed for failure to appoint her a Rule 17 GAL for the termination proceedings. The Court of Appeals affirmed the trial court's order. The Court noted that there had been no allegations of dependency at adjudication or in the petition for termination. The Court also noted that the trial court, while acknowledging the mother's "mental health issues" in its adjudication order, did not base its order terminating the mother's parental rights on those issues. The Court reviewed the 2005 statutory revisions to the appointment statute and observed that the revisions evinced the legislature's "intent to limit the appointment of a GAL for a parent." The Court then observed that neither the mother, nor her psychologist, who testified at the hearing, requested that a GAL be appointed, and that there had been no allegations or showing that mother was incompetent. (Panel: Tyson, McCullough, Hudson).

In re D.D.J. & D.M.J., ---N.C. App.--, 628 S.E.2d 808 (COA05-903)(5/2/06). Appellant mother appealed an order terminating her parental rights to her two children. Following adjudication of neglect, children were eventually placed with relatives in South Carolina. "Full custody" of the children was eventually granted to the South Carolina relatives, and the order specified that the case was closed. Several months later, DSS filed a petition for TPR as to both parents. The Court of Appeals vacated the order of termination, holding that the trial court lacked jurisdiction over the matter because the children were not residing in or found in North Carolina at the time the petition to terminate was filed. The Court held that DSS lacked standing to file the TPR petition pursuant to N.C.G.S. 7B-1101, in that DSS no longer had legal custody of the children. The Court rejected DSS' argument that the order changing custody had been entered by mistake and that the custody order, modified pursuant to N.C.R.C.P. Rule 60(a), had the effect of "undoing" the change in custody. The Court noted that Rule 60(a) could not be applied to correct a substantive problem with an order, and held that the TPR order was void for lack of subject matter jurisdiction. (Panel: Geer, Hudson, Tyson)

In re D.M.M. & K.G.M., ---N.C. App.--, 633 S.E.2d 715 (COA06-29)(9/5/06). The Court of Appeals reversed and remanded this order terminating parental rights due to the trial court's failure to hold the TPR hearing for over one year after DSS filed the petition seeking termination of parental rights. N.C.G.S. § 7B-1109(a) requires that the termination hearing be held no later than 90 days from the filing of the petition to protect parents' rights to prompt adjudication and is consistent with the Juvenile Code's purpose to prevent unnecessary separation of children and their parents. Although statutory timeline violations are not prejudicial *per se*, the longer the delay, the Court of Appeals is more likely to find prejudice to the parties. Both the appellant mother and her children were prejudiced by the delay of over one year in hearing the TPR petition requiring reversal. (Panel: Tyson, Wynn, Hudson)

In re D.R.S., W.J.S., ---N.C. App. ---, 638 S.E.2d 626 (COA06-504)(1/2/07). The termination of parental rights order was affirmed on appeal despite respondent mother's argument that subject matter jurisdiction was lacking since no summons was issued. This termination of parental rights hearing was actually the second attempt by DSS to terminate respondent's rights. In an earlier proceeding, the trial court found grounds to terminate but held that termination was not in the best interest of the children. The second motion to terminate parental rights related to this appeal was personally served on respondent mother at a permanency planning hearing. Since the motion to terminate parental rights was not filed until more than two years after the original action, service in accordance with Rule 4 of the Rules of Civil Procedure pursuant to N.C.G.S. § 7B-1102; however, personal service is an acceptable means of service under Rule 4. Respondent further argued that a summons should have been issued instead of a notice, but the Court of Appeals held that the statute does not require a summons. Remaining arguments were also overruled since the issues were not properly preserved for appellate review. (Panel: Levinson, Geer, Jackson)

In re D.S., S.S., F.S., M.M., M.S., ---N.C. App.---, 628 S.E.2d 31 (COA05-977)(4/4/06). Mother appealed an order terminating her parental rights to her five children. On appeal, Mother argued that failure to enter the order of termination within 30 days warranted reversal. The Court of Appeals reversed, holding that the seven-month delay in reducing the trial court's termination order to writing was prejudicial to all those involved, including the foster parents, children and the parents. (Panel: Tyson, McCullough, Levinson).

In re H.S.F., ---N.C. App.---, 628 S.E.2d 416 (COA05-1157)(4/18/06). Father appealed an order changing primary physical custody of the child from Father to Mother. Mother had primary custody of the child following the parents' divorce. The child was taken into nonsecure custody because of domestic violence between Mother and her new husband. At that time, the child was placed in the physical custody of Father and the paternal grandmother. At the adjudication/disposition hearing, the judge found that Mother and stepfather had rejected DSS' attempts to work with them, that Mother had been abusing prescription drugs for more than 10 years, that loaded weapons were kept at the Mother's home, and that the issues of domestic violence between Mother and stepfather were not being addressed. At disposition, the trial court placed legal custody of the child with both Mother and Father, and gave primary physical custody to Father with "physical placement" of the child to the paternal grandmother.

The parties later came back to court on cross motions for contempt with respect to the disposition order. The judge refused to hear the motions for contempt and told the parties the court would conduct a review hearing as to the status of the child. After some discussion, the parties agreed to have the child speak with the judge in chambers with the guardian ad litem present. The content of this conversation has never been revealed. Following testimony by Mother, Father's attorney called the paternal grandmother to the stand, at which point the judge told Father's attorney that he did not want to hear from the grandmother. The Father and maternal grandfather then testified, after which the judge indicated that he intended to change custody of the child because of Father's inability to

arrange a situation in which he could have physical custody of the child instead of the paternal grandmother. After Father's attorney argued that Father, in fact, was willing and able to take primary physical custody of his daughter, the court implied that the Father was not a suitable placement because he was not married. The trial court then proceeded to order that the parents continue to share joint legal custody, with primary physical custody to Mother and physical placement with the maternal grandfather.

The Court of Appeals rejected Father's argument that, once custody had been given to Father and no longer was with DSS, the trial court no longer had jurisdiction to conduct review hearings in the case. The Court noted that jurisdiction in juvenile cases continues until terminated or the child turns 18 or is emancipated. The Court also rejected Father's assertions that the judge's interview of the child in chambers warranted reversal, observing that Father had not objected to the court's examination of the child, but had instead remained silent. This, the Court wrote, precluded appellate review of the issue. The Court, however, reversed the trial court's order lack of evidence that it was in the child's best interests to place her with Mother, and because the disposition of placement with the maternal grandfather was not a statutorily authorized dispositional alternative. In so doing, the Court of Appeals noted that, by placing the child with Mother, but having primary physical placement of the child with the grandfather, the trial court implied that it did not believe Mother was a suitable and safe placement. The Court reversed and remanded the case for further proceedings. (Panel: Geer, McGee, Calabria)

In re H.T., ---N.C. App. ---, 637 S.E.2d 923 (COA06-177)(12/19/06). Respondent parents appealed the order terminating their parental rights, and the Court of Appeals affirmed after rejecting arguments alleging technical errors regarding notice, service, and other statutory delays. The child initially came into DSS custody due to domestic violence and substance abuse of the parents. The mother was unsuccessful with her substance abuse treatment, and the father had no contact or relationship with H.T. for the thirty-one month life of the case. Both parents argued improper service, but the arguments were overruled because they both participated in the hearing without objecting at trial. Pursuant to N.C.G.S. § 7B-1102(b)(1)(c), service was proper under Rule 5 of the Rules of Civil Procedure allowing for service on counsel since two years had not yet elapsed since the initial petition was filed, although it was close. Although the termination of parental rights petition minimally cited the statute, the petition also incorporated all previous court orders to allege sufficient facts to put the parties on notice. Respondent father alleged a series of statutory timeline errors, but only generally argued prejudice *per se*. No prejudice was shown in light of the father's lack of contact and relationship with the child. (Panel: Wynn, McGee, McCullough)

In re J.G.B., ---N.C. App.---, 628 S.E.2d 450 (COA05-918)(5/2/06). Appellant Mother appealed an order terminating her parental rights to her daughter. At the time her daughter was born, Mother was a minor. Child, who was deemed "medically fragile" and suffered from a seizure disorder, was placed in nonsecure custody in the same foster home as Mother. Mother was later moved to another foster home, but the child remained in the original placement. The Court of Appeals reversed the TPR order, holding that the trial court erred in finding the statutory ground of neglect existed at the time of the termination hearing. The Court noted that, where a parent did not have custody of the

child “for a significant period of time prior to the termination hearing,” the trial court must consider “evidence of changed circumstances and the probability of a repetition of neglect” in addition to evidence of prior neglect. The Court rejected Appellant’s argument that, since she was a minor for a portion of the twelve-month period prior to the termination petition, she was not capable of “willfully” leaving her child in foster care for that portion of time. The Court also rejected Mother’s argument that, because DSS was acting in her place *in loco parentis*, DSS was responsible for any lack of compliance with Appellant’s case plan. The Court, however, noted that the trial court had failed to adequately assess the effect Mother’s minority had upon the willfulness of leaving her child in care, and remanded the case for a determination of Mother’s reasonable progress during her minority. (Panel: McGee, Calabria, Geer).

In re J.J., J.J., J.J., ---N.C. App. ---, 637 S.E.2d 258 (COA05-1510)(12/5/06). In a split decision, the Court of Appeals affirmed the permanency planning order that ceased reunification efforts and changed the plan to custody with the maternal grandmother. At the adjudication, respondent mother stipulated to dependency of the children. As a basis for the change in plan, the trial court found that the mother could not properly care for her children without constant assistance that was not reasonably available. The trial court’s conclusions of law were properly supported by the evidence and appropriate findings of fact. The mother argued prejudicial delay in the entry of the order, but the majority found no prejudice. Further, the mother did not require appointment of a Rule 17 guardian ad litem as the petition did not allege any developmental disabilities or limitation affecting her parenting. (Majority: Hudson) The separate concurrence asserts that although entry of the order was not timely, the mother failed to show prejudice and that enforcing the statutory deadline by reversing the order would further harm the children with delay. The record clarifies that DSS and the judge had extended involvement in assisting the mother with reunification; however, the mother did not cooperate with the agency for assistance despite numerous services offered. Addressing the financial issue that constrained the mother from having round-the-clock in home assistance, the concurrence points out that this proceeding is not a termination of parental rights, but a change in permanent plan in the children’s best interest. (Concurrence: Wynn) The dissent disagreed with the time period between entry of the order and the last hearing, and found that the last hearing was in August 2004, not December 2004 per the majority, resulting in a seven month delay when entry in March 2005. As a result, he found prejudice to the mother due to decreased visitation. Further, he disagreed with the trial court’s reliance on the mother’s lack of financial means to get the constant assistance to allow her to meet the children’s needs to support the conclusion that ceased reunification efforts. (Dissent: Tyson)

In re J.M.W., E.S.J.W., ---N.C. App. ---, 635 S.E.2d 916 (COA05-1672)(10/17/06). The Court of Appeals affirmed the order terminating respondent mother’s parental rights. The mother had a history of incarcerations in which she was unable to provide appropriate alternate caretakers for her children. The children were temporarily placed with an out-of-state relative, but the placement disrupted and foster care was resumed. The trial court found four grounds to support termination including neglect; failure to make reasonable progress; willful abandonment; and failure to pay child support. On appeal, respondent mother only challenged two of the three grounds on which the trial

court terminated her rights. Since the uncontested grounds are sufficient to support the termination order, the order was affirmed without appellate review of the mother's arguments relating to the other grounds. The mother also argued it was error not to appoint a Rule 17 guardian ad litem; however, this argument was overruled as the petition did not alleged dependency due to mental health issues. It was not that the mother was incapable of providing care for her children, but that she willfully failed to provide the necessary care. (Panel: Wynn, McGee, McCullough)

In re J.N.S., ---N.C. App. ---, 637 S.E.2d 914 (COA06-395)(12/19/06). In this private termination of parental rights proceeding, the order was entered nearly six months after the hearing was completed. Respondent father successfully argued prejudice in part that it delayed his right to appeal and disallowed his relationship with his son since he was barred from communication since the order was rendered. Based on the precedent set in *In re L.E.B., K.T.B.*, 169 N.C. App. 375, 610 S.E.2d 424 (2005) and its successors, the Court of Appeals reversed the order due to the articulated prejudice of the delay. (Majority: Tyson, Bryant) In a separate concurrence, Judge Levinson took the opportunity to express his disagreement about the line of cases in which the remedy for untimely order entry is reversal, although recognizing the requirement that precedent be followed. His contention is that "prejudice" has essentially been recently misapplied in the termination of parental rights context. In both civil and criminal cases, the general definition of prejudice is whether the error in question had a "probable impact on the outcome of the proceeding." Since the error of untimely entry of order occurs after the hearing, it cannot impact the outcome of the court's decision. Further, reversal of orders based on delay does not remedy the late entry, but in fact cause further delay for the parties. Other options should be utilized to address untimely orders such an administrative calendaring to address the status of the order and writs of *mandamus*. (Concurrence: Levinson)

In re J.S.L., ---N.C. App.---, 628 S.E.2d 387 (COA05-768)(4/18/06). Parents appealed from an order terminating their parental rights. The Court of Appeals affirmed as to Mother, and reversed as to Father. Parents' three children came into care because of Mother's substance abuse and mental health issues, as well as domestic violence in the home. Mother argued that the trial court lacked personal jurisdiction to hear the TPR, that the trial court erred in admitting her mental health records into evidence, and that the trial court should have appointed a guardian ad litem. Father argued, among other things, that there was insufficient evidence to support the conclusion of law that he had willfully left his children in foster care for twelve months without showing reasonable progress towards correcting the conditions which led to removal of his children from the home. The Court of Appeals held that Mother had waived any deficiency of service of process by appearing and participating in the TPR hearing, and noted that she was represented by counsel. The Court further held that admitting Mother's mental health records was not error, and noted that Mother did not file a motion *in limine* or request an *in camera* review of the records at issue, but had just entered a general objection when the records were entered into evidence. The Court also rejected Mother's GAL argument, holding that no GAL was required because the motion to terminate parental rights did not allege dependency. In so doing, the Court observed that, although the 2005 amendments to the

North Carolina Juvenile Code were not applicable in this case, they evinced the legislature's intent to limit appointment of GAL's for parents. In holding that the order of termination should be reversed as to Father, the Court wrote that DSS had failed to carry its burden of proof, in that the order on appeals was "devoid of any finding that respondent was unwilling to make the effort to make reasonable progress in remedying the situation that led to the adjudication of neglect," and noting that evidence presented at the hearing was "directly contrary." Absent any findings as to the willfulness or lack of reasonable progress, the Court reversed the order terminating Father's parental rights. (Panel: Tyson, Hudson, Geer)

In re J.T.W., ---N.C. App.---, 632 S.E.2d 237 (COA05-1066)(8/1/06). The termination of parental rights order was reversed because the findings of fact did not show that appellant mother willfully failed to make reasonable progress to correct the conditions that led to the removal of J.T.W. When this child was taken into DSS custody, the family already had a history of instability with DSS and child was adjudicated neglected due to injurious environment. Findings of fact in the TPR order indicate that the mother made some progress, including completion of a residential treatment program; some employment history; although in arrears, did pay some child support; and at the time of the hearing, had appropriate housing and employment; however, the mother did not visit the child who had been in care since an infant. The majority opinion held that the findings do not support the conclusion that the child would be subject to an injurious environment if returned to the mother, the condition that led to the initial stipulation of neglect. Additionally, it was error for the court to find neglect as a termination ground since no findings of fact were made to indicate a likelihood of the repetition of neglect. The Court of Appeals rejected the mother's remaining arguments regarding procedural error. (Majority: Hudson, Bryant) Chief Judge Martin dissented and would have affirmed the termination order. Although evidence of parents' changed conditions is relevant at a TPR hearing, other factors including visitation are relevant. In his opinion, the mother effectively abandoned the child by not exercising visitation in addition to evidence of continued instability support the TPR order and a finding that a repetition of neglect would be probable. (Dissent: Martin)

In re K.D., ---N.C. App.---, 631 S.E.2d 150 (COA05-1027)(5/5/06). The Court of Appeals affirmed the adjudication order finding the minor child neglected that relieved DSS from reunification efforts, but reversed and remanded the dependency portion of the order. Appellant mother argued that the trial court violated her psychologist-patient privilege when it considered evidence from her psychologist. The Court of Appeals held that she waived any privilege by failing to object at trial. Additionally, N.C.G.S. § 7B-310 specifically provides that the psychologist-patient privilege is inapplicable regarding evidence of child abuse or neglect. An adjudication of dependency is twofold: (1) that the juvenile is in need of placement because the parent, guardian or custodian is unable to care for the juvenile; and (2) there is not an appropriate alternative childcare arrangement. In this case, the mother argued that she did provide for an appropriate alternative arrangement by voluntarily placing the child with her aunt. The order did not address the second prong of the statutory definition of dependency regarding whether an appropriate

alternative arrangement existed; therefore, it was necessary to remand for further findings. (Panel: Geer, McGee, Calabria)

In re K.D.L., ---N.C. App.---, 627 S.E.2d 221 (COA05-773)(2/21/06). Appellant Father appealed an order terminating his parental rights. Mother filed a private petition to terminate Father's parental rights. Father, who was incarcerated at the time the petition was filed, filed a motion for funds to take his deposition and for a continuance. The district court denied the motion, and entered the termination order. On appeal, Father argues that the trial court erred in denying his motion to be deposed because of his incarceration, and that the trial court erred in failing to enter the termination order within the 30-day time frame. The Court of Appeals affirmed the trial court's termination order, holding that, although parents should be afforded appropriate due process in termination proceedings, a determination of what process was due Father is dependent upon the three-part analysis set out in *Matthews v. Eldridge*, 424 U.S. 319 (1976): "the private interests affected by the proceedings; the risk of error created by the State's chosen procedure; and the countervailing governmental interest support use of the challenged process." After applying the *Matthews* balancing test, the Court of Appeals concluded that, given the "absence of any indication that the father's deposition testimony could have led to a different result in the TPR hearing," no deposition was constitutionally required. The Court of Appeals also rejected Father's argument regarding timeliness of entry of the TPR order, noting that Father had failed to demonstrate how such a delay was prejudicial to his position. (Panel: Tyson, Hudson, Geer).

In re K.H. & P.D.D., ---N.C. App.---, 627 S.E.2d 478 (COA05-655)(4/4/06). Father appealed from two permanency planning and review orders in which DSS was relieved of efforts to reunify Father with his child and stepchild. Father argued on appeal that the trial court erred in failing to appoint a guardian ad litem to represent him based upon his history of mental health and substance abuse issues. Father was diagnosed with multiple mental illnesses, including depression, bipolar disorder, and a personality disorder, and had been using crack cocaine for 20 or more years. The trial court noted Father's suicide attempt several months prior to the permanency planning hearings. The Court of Appeals majority reversed the trial court's order, noting that, even where there are no allegations of dependency, if a parent's mental health issues are so intertwined with the issues which brought the children into DSS custody, the trial court must appoint a guardian ad litem for the parent. (Majority: Hunter, Jackson). Judge Jackson, dissenting from the majority opinion, wrote that there had been no allegation of dependency in the TPR petition, and that Father's mental health was not "alleged as a significant factor" in the children's neglect. Judge Jackson noted that Father had not requested appointment of a GAL during the trial court proceedings. Jackson went on to write that, pursuant to Rule 17, "a trial court need only inquire into the competency of a litigant" when circumstances are brought to the court's attention which raise a "substantial question" as to the litigant's competency. (Dissenting: Jackson)

In re L.A.B., ---N.C. App.---, 631 S.E.2d 61 (COA05-1316)(5/5/06). The Court of Appeals affirmed this termination of parental rights pursuant to N.C.G.S. § 7B-1111(a)(9) that the mother was incapable of providing proper care and supervision of

L.A.B. due to untreated mental illness that interfered with the mother's ability to provide an appropriate home. The child was taken into DSS custody days after birth, and remained in foster care until the termination of parental rights. Psychological assessments of the mother indicated that she suffered from PTSD, ADHD, mood disorder and personality disorder, and recommended she participate in therapy and medication management. The mother was noncompliant in her mental health recommendations, could not maintain stable or clean housing, and suffered from hygiene issues that interfered with visitation. Additionally, the mother's parental rights had previously been terminated as to another child. A guardian ad litem was appointed to the mother when the TPR motion was filed who assisted her at the TPR hearing. On appeal, the mother argued it was error that a guardian ad litem was not previously appointed to her in light of the impact her mental health issues had on her parenting skills. The Court of Appeals dismissed her argument because the issue was not properly preserved; however, the panel further held that *In re O.C.*, 171 N.C. App. 457, 615 S.E.2d 391 (2005) already established that it is not prejudicial error for failure to appoint a guardian ad litem for a parent at the initial adjudication hearing when one is appointed at a subsequent termination of parental rights proceeding. Additionally, the Court of Appeals clarified the role of a parent's guardian ad litem to protect procedural due process rights. It is not expanded to the role of a "guardian of the person" to assist the parent in employment, training, housing or other provisions relating to care and maintenance. Even if the guardian ad litem had previously been appointed, the responsibility would not include assisting the mother in addressing her mental health issues. During the relevant time period between the child's birth and the TPR hearing, the mother was unable to demonstrate the ability to establish a safe home. (Panel: Geer, Tyson, Jackson)

In re L.B., ---N.C. App. ---, 639 S.E.2d 23 (COA06-483)(1/2/07). The Court of Appeals affirmed in part the permanency planning order granting guardianship to the current caretakers of L.B., but vacated the portion of the order that allowed supervised visitation in the guardians' discretion. The award of visitation rights is a judicial function and cannot be left solely in the discretion of a child's custodian or guardian. This appeal addressed several motions relating to appellate timelines before the merits were considered. As the Court of Appeals has begun to impose sanctions for Appellate Rules violations, this portion of the opinion is useful in explaining how the Court of Appeals considers such violations: "This Court does not treat every violation of the Rules of Appellate Procedure with a blunt instrument that eviscerates the work of an offending attorney, and potentially harms an innocent party. Rather, we examine violations of the Rules with a cautious eye and with the objective of promoting justice." As to the merits, respondent mother argued that the trial court lacked subject matter jurisdiction since the petition was signed and verified two days after the summons and nonsecure custody order were issued. The Court of Appeals held that the subsequent signing and verification cured this defect and the court obtained subject matter jurisdiction at that date. The permanency planning hearing was held two months late, but respondent failed to show prejudice with respect to the delay. Respondent argued that the findings of fact were insufficient to comply with N.C.G.S. § 7B-907(b), but the Court of Appeals overruled this argument since a formal listing of the statutory factors is not required. Further, it was proper for the trial court to incorporate DSS and GAL reports and make findings of fact

based on the reports. Finally, it was not error for the trial court to order respondent to complete a psychological evaluation. (Panel: Stephens, Steelman, Geer)

In re L.C., I.C., L.C., ---N.C. App. ---, 638 S.E.2d 638 (COA06-575)(1/2/07). The termination of parental rights order was affirmed in the second appeal of this case. The children initially came into Vance County DSS custody due to physical abuse by respondent father and improper supervision. The children were adjudicated abused, neglected and dependent. Although reunification was initially the permanent plan, the case was subsequently transferred to Durham County where the trial court changed the permanent plan to termination of parental rights or guardianship with a relative. The trial court determined at the termination hearing that respondent abused his children and the likelihood of repetition of such abuse was probable. The termination order was remanded because the conclusions of law only recited the grounds alleged in the petition, and did not conclude the grounds existed. The Court of Appeals left the decision of whether another hearing would be held on remand, and the trial court chose not to do so after finding the error was do to drafting—not that the trial court did not make appropriate conclusions of law. On appeal respondent father argued ineffective assistance of counsel since his attorney returned for the afternoon session late, and missed portions of the direct testimony. This error was overruled because respondent failed to show how his attorney’s lateness denied him a fair hearing. The introduction of his children’s mental health records was not error even if they contained inadmissible hearsay because respondent failed to show how the trial court improperly relied on such hearsay. Finally, it was not error that respondent’s parental rights were terminated as clear and convincing evidence was presented that respondent abused his children and repetition of such abuse was likely. In addition, it was in the children’s best interest that his rights be terminated. (Panel: Geer, Steelman, Stephens)

In re L.D.B., ---N.C. App.---, 626 S.E.2d 697 (COA05-519)(3/7/06). Father appealed the trial court’s permanency planning order which maintained legal custody of the child with her mother, denied Father’s visitation rights, and repeated the trial court’s prior orders directing that reunification efforts with Father cease. The Court of Appeals dismissed Appellant Father’s appeal as interlocutory. Noting that not every permanency planning order is appealable, the Court observed that the order appealed did not change the child’s permanent plan from reunification to adoption. The Court also noted that the order appealed merely repeated the earlier directive that DSS cease reunification efforts with Father. (Panel: Calabria, Hudson, Bryant).

In re M.C.T.-B., ---N.C. App.---, 629 S.E.2d 916 (COA05-1396)(6/6/06). Appellant Mother appealed an order adjudicating her daughter abused, neglected and dependent, and arguing that the trial court had relied upon inadmissible hearsay evidence and applied an improper standard to determine if the child was competent to testify. Appellant’s daughter was removed from her home following allegations of sexual abuse by her stepfather and brother. At adjudication, the child’s GAL moved to quash a subpoena requiring the child to testify, and the trial court found that the child was incompetent to testify. The trial court then admitted hearsay statements of the juvenile, offered through the DSS investigator, finding that these statements were more probative than “any other

evidence which could be procured through reasonable means, and that the general purposes of the rules and interests of justice would be best served” by admitting the hearsay statements. Mother did not make an offer of proof. The Court of Appeals held that the question of competency of a witness rests squarely with the trial court and that the trial court had not abused its discretion in granting the motion to quash. The Court further noted the well-established principle that, absent a showing of what the witness would have said had the witness been permitted to testify, there was no basis for such an assignment of error. With respect to the argument regarding hearsay testimony, the Court held that, even if the hearsay statements were not admissible, admitting the statements was harmless error given the wealth of additional evidence of neglect. (Panel: McCullough, Calabria, Steelman).

In the Matter of M.B., ---N.C. App.---, 635 S.E.2d 8 (COA 05-1642) (9/19/06).

The Court of Appeals affirmed the adjudication of neglect despite the father’s argument that the court lacked subject matter jurisdiction. The father and mother moved to North Carolina from New York when M.B. was still an infant to live with one of the father’s relatives. Arguments ensued at the residence between the parents, and the mother threatened the child. A safety plan was entered that the relative would care for the child, but the plan was unsuccessful. DSS filed a juvenile petition and a nonsecure custody order was entered. The court exercised temporary, emergency jurisdiction under the UCCJEA due to the mother’s threats to hurt the child. Subsequent to the adjudication, New York declined to exercise jurisdiction and the court made the temporary order granting custody to DSS a final order. The Court of Appeals affirmed the adjudication order and held that the trial court properly exercised its jurisdiction in accordance with the UCCJEA. The child was present in this state and the mother’s threats of harm created an emergent situation that was sufficient to invoke temporary, emergency jurisdiction. Further, the only other state that could exercise jurisdiction declined to do so. The Court of Appeals pointed out that the issue of temporary jurisdiction became moot since the parties remained in North Carolina for more than six months to allow home state jurisdiction. (Panel: Jackson, Calabria, Geer)

In re M.E., ---N.C. App. ---, 638 S.E.2d 513 (COA06-787)(1/2/07). This appeal is from a supplemental order entered that concluded that North Carolina was an inconvenient forum and transferred jurisdiction to Ohio. In a previous appeal of this case, the Court of Appeals vacated the portion of the custody order that transferred jurisdiction because the trial court failed to make appropriate findings of fact under the UCCJEA found in Chapter 50A of the North Carolina General Statutes. On remand, the trial court made seventeen specific findings of fact pursuant to N.C.G.S. § 50A-207 that allows a court to decline jurisdiction at any time if it determines that it is an inconvenient forum. The Court of Appeals concluded that the trial court did not abuse its discretion in finding and concluding that North Carolina was an inconvenient forum. The father who lived in Ohio was previously awarded custody and the child had lived in that state for three years where he received therapeutic services, went to school, and only the mother remained in North Carolina. (Panel: McCullough, Martin, Levinson)

In re M.N.C., ---N.C. App.---, 625 S.E.2d 627 (COA05-829)(2/21/06). Appellant Father appealed the order terminating his parental rights. On appeal, Father asserted that a number of findings of fact were not properly before the trial court because the facts were contained in the underlying neglect case and were not formally presented as evidence at the TPR hearing. Appellant also argued that the trial court erred in improperly characterizing conclusions of law as findings of fact, and that the trial court abused its discretion in terminating Appellant's parental rights. The Court of Appeals affirmed the trial court's order. In doing so, the Court reviewed a number findings of fact which were contained in the underlying neglect file. The Court noted that, although the trial court would have been better served by indicating to the parties that it was taking judicial notice of the underlying file, there is no requirement that the trial court make such a formal pronouncement. The Court further noted that, where a conclusion of law is improperly characterized as a finding of fact, the Court will treat it as a conclusion of law. Finally, the Court found ample evidence to support the trial court's determination that it was in the child's best interest to terminate Appellant Father's parental rights. (Panel: Smith, Bryant, Calabria).

In re R.R., ---N.C. App. ---, 638 S.E.2d 502 (COA06-122)(12/19/06). The Court of Appeals affirmed the termination of respondent father's parental rights. The child was born positive for cocaine, and DSS assumed custody. At that that time, the mother stated she became pregnant after a sexual assault. The mother also moved out of state, and made no effort to regain custody of R.R. The permanent plan was subsequently changed to adoption; however, respondent contacted DSS to indicate paternity was possible and asked for genetic testing. Although a paternity test was court-ordered, respondent never complied. Instead, respondent married the mother. The termination petition was directed at respondent and any unknown father. The court found at the termination hearing that it was unlikely that respondent was in fact the father as the child was bi-racial. On appeal, respondent argued that it was error for the court not to inquire about the paternity status. Although respondent met the statutory requirements for legitimation by marrying the mother, lack of paternity was not a ground alleged for termination. With respect to grounds, clear and convincing evidence established willful abandonment in that the child had been in foster care since birth and was at the time of the hearing four years old, and she had never even met her mother and respondent. Further, termination was in the child's best interest to effectuate the permanent plan of adoption by her foster parents. Respondent argued it was error that counsel was not appointed for him, but failed to contact the clerk to request one. Finally, he argued reversal based on the time lag between the filing of the termination petition and the hearing, but failed to establish prejudicial delay. (Panel: Elmore, Martin, Jackson)

In re S.N., ---N.C. App. ---, 636 S.E.2d 316 (COA06-127)(11/7/06). Respondent father appealed the termination of his parental rights, and the Court of Appeals affirmed. The child first came into care as an infant due to testing positive at birth for marijuana. The mother's rights were terminated as to four of her other children, and she continued to use marijuana untreated. Respondent father continued to reside with the mother despite being told by DSS that even if he was completely compliant with his case plan, reunification could not occur if he continued to reside with the mother who was

noncompliant. On appeal, respondent argued it was error to admit testimony from the social worker regarding statements made by his drug counselor. This argument was overruled as the Court of Appeals determined the statements were non-hearsay used to show respondent's knowledge of his case plan. In addition, respondent failed to show error that the court relied on these statements in reading its decision. The conclusion that respondent failed to make reasonable progress to correct the conditions that led to removal was supported by clear and convincing evidence. Since the original removal stemmed from the mother's substance abuse, respondent continued to reside with her, and her substance abuse issues remained untreated, it is evident that the conditions that led to the initial petition had not been corrected. (Panel: Geer, Calabria, Jackson)

In re S.N.H. & L.J.H., ---N.C. App.---, 627 S.E.2d 510 (COA05-1138)(4/4/06). Mother appealed the trial court's order terminating her parental rights to her two children. On appeal, Mother argued that the trial court's failure to hold the termination hearing within 90 days from the date of filing of the petition, and its failure to reduce the TPR order to writing within 30 days of the conclusion of the TPR proceedings were reversible error. Mother also argued that the order should be reversed because the trial court should have appointed her a guardian ad litem, that the trial court erred in taking judicial notice of prior orders and exhibits entered under "lower evidentiary standards," and that the trial court had improperly delegated its fact-finding duty when it directed DSS to draft the termination order. The Court of Appeals affirmed the order of termination. The Court first held that the trial court's delay in holding the termination hearing was a result of Mother's own attorney's request for a continuance to prepare for the hearing and, therefore, not error. The Court also rejected Mother's argument regarding timely entry of the TPR order, noting that Mother had failed to articulate in what manner the delay resulted in prejudice to her. In response to Mother's argument regarding appointing her a GAL, the Court of Appeals observed that the petition for TPR did not allege dependency, and that the trial court did not have a duty to hold a hearing to inquire into Mother's competency where the record failed to demonstrate that a substantial question as to Mother's competency existed. The Court of Appeals next held that the trial court did not err in taking judicial notice of prior orders and exhibits, noting that the trial judge is presumed to disregard any incompetent evidence, and that Mother's attorney had stipulated to the entry of the evidence from the underlying juvenile files. Finally, the Court rejected Mother's argument that the trial court erred in delegating the responsibility for drafting the order of termination, writing that it was accepted practice for the prevailing party in civil case to draft the court's order. (Panel: Steelman, Levinson, Jackson)

In re T.B., J.B., C.B., ---N.C. App.---, 629 S.E.2d 895 (COA05-1059)(6/20/06). The Court of Appeals vacated the termination of parental rights order on the basis that failure to attach a copy of an order awarding legal custody of the children to DSS pursuant to N.C.G.S. § 7B-1104 deprived the trial court of subject matter jurisdiction. Prior to the TPR hearing, appellant parents filed motions to dismiss for failure to comply with the statute. The trial court denied these motions and entered an order terminating parental rights. In order for DSS to have standing to file an action to terminate parental rights, DSS must prove that it has legal custody at the time the petition is filed. The Court of

Appeals pointed out that the omission of attaching the custody order was not fatal if the petition had been amended to attach the order, or that otherwise the custody order was part of the record. As a result, the reversal was based not only on the failure to attach the order according to statute, but by not subsequently resolving this omission in light of the parents' motions to dismiss on this issue. (Panel: Levinson, McCullough, Tyson)

In re T.M., ---N.C. App. ---, 638 S.E.2d 236 (COA06-79)(12/19/06). Respondent mother appealed the adjudication order finding neglect, and the Court of Appeals affirmed. At the onset, this case illustrates the necessity of following the Rules of Appellate Procedure. Respondent's appellate counsel was sanctioned for violating Rule 28(b)(5) regarding a non-argumentative statement of facts. The statement of facts were clearly argument and contained no cites to the record. As a result, the Court of Appeals assessed the costs of the appeal to respondent's appellate counsel as the sanction. Respondent had a history of DSS involvement due to her relationships marked by domestic violence, excessive drinking, and inappropriate discipline of T.M. leading up to the filing of the juvenile petition. On appeal, respondent failed to assign error to any conclusions of law thereby waiving any challenge to the court's conclusion of neglect. Respondent argued that it was error not to have the adjudication hearing within the statutory timeline of sixty days; however, the court continued the case for good cause in order for psychological evaluations to be completed. Although respondent argued that several findings of fact were not supported by the evidence, other unchallenged findings supported the conclusion that T.M. lived in an injurious environment. Respondent argued that admission of T.M.'s out of court statements constituted inadmissible hearsay, but failed to alleged specific prejudice. Respondent also argued it was error to admit psychological evaluations at disposition, but N.C.G.S. § 7B-901 permits the court to rely on written reports and other evidence. (Panel: Geer, Calabria, Jackson)

In re T.R.P., ---N.C. ---, 636 S.E.2d 787 (629A05)(11/17/06). The Supreme Court affirmed the Court of Appeals decision that a juvenile court does not have subject matter jurisdiction if the juvenile petition is not verified as required by N.C.G.S. § 7B-403(a). In this case, T.R.P. was taken into custody after he was removed from his home where a methamphetamine lab was located and respondent mother was uncooperative with the safety plan. T.R.P. was adjudicated neglected, and the case was reviewed according to statute. It was not until T.R.P. was ordered into the physical custody of her father that the mother appealed, and raised the issue of lack of subject matter jurisdiction due to the unverified petition. The majority distinguished verification of a petition from a mere ministerial or procedural act by asserting that the General Assembly intended the verification as a protection against invalid governmental interference as the agency must swear under oath as to the validity of the petition's assertions. Since dismissal in not *res judicata*, DSS is not precluded from refiling a juvenile petition in T.R.P.'s best interest. The dissent disagreed that verification of the petition invokes the court's subject matter jurisdiction looking to the statutory scheme of the Juvenile Code. The verification requirement is found in Article 4 governing venue and petitions—not in Article 2 governing jurisdiction. The petitioner should have been permitted to amend its petition by signing the verification under both N.C.G.S. § 7B-800 and the Rules of Civil Procedure. Although clearly the General Assembly intended to balance the rights of parents and

children, the dissent asserts that the majority's result minimally protects parents and could exponentially harm children. (Dissent: Newby, Parker, Brady)

In re T.S., III & S.M., ---N.C. App.---, 631 S.E.2d 19 (COA05-765)(6/20/06). The appeal is from an adjudication of neglect and dependency, and is the mother's second appeal of the adjudication order. The Court of Appeals reversed and remanded this case on April 20, 2004 with instructions to enter findings of fact based on the evidence, and appropriate conclusions of law based on the findings. See *In re T.S., III, & S.M.*, 163 N.C. App. 783, 595 S.E.2d 239 (2004). The trial court made findings of fact based on clear and convincing evidence that the children were exposed to domestic violence, drug use, and criminal activity; and that the parents refused to cooperate with DSS. These findings support the conclusion of law that the children were neglected. Appellant argued that the trial court failed to enter the order timely since it was not entered until five months after the hearing, and she was prejudiced by this delay because she was not allowed to visit her children. The majority dismissed her argument of prejudice after concluding that the delay did not preclude reunification with the children so long as the mother complied with court orders and her case plan. (Majority: Hudson, Geer). Judge Tyson dissented and asserted that the mother did specifically articulate prejudice to all parties as a result of the order's delay of entry. The delay in entry prevented the mother from entering her notice of appeal, is "highly prejudicial, and it bears consequences to the responsible party." (Dissent: Tyson)

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Proper as evidence at TPR--- *L.C. et al.*

Mootness of Appeal

Appeal not rendered moot by entry of subsequent order--- *A.K.*

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Neglect

Relevance of prior adjudications of neglect---*In re A.B.*

What constitutes “live” in home where other children adjudicated when newborn---*A.B.*

Due to abuse or neglect of other child in home---*C.B. et al.*

Notice and Service of Process

Personal service under Rule 4 in TPR---*D.R.S. & W.J.S.*

Service of TPR petition under Rule 5 proper because two years not elapsed---*H.T.*

TPR motion in the cause---*D.R.S. & W.J.S.*

Waiver by general appearance---*H.T.; J.S.L.*

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

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Paternity

As TPR ground---*A Child’s Hope, LLC v. John Doe*

Not alleged---*R.R.*

Permanency Planning

Ceasing reunification efforts---*K.H. & P.D.D.*

Distinguished from TPR---*J.J. et al.* (concurrency)

Permanency Planning Order

Appealability---*A.P., A.R.G.*

Guardianship granted---*L.B.*

Factors to be considered (if relevant) pursuant to N.C. Gen. Stat §7B-907(a)---*L.B.*

Formal listing of statutory factors not required---*L.B.*

Incorporation of reports---*L.B.*

Timeliness of entry---*J.J. et al.*

Timeliness of hearing---*L.B.*

Personal Jurisdiction

Waiver by general appearance---*A.J.M.*

Petition

Verified two days after summons issued cured defect---*L.B.*

Privilege

No psychologist-patient privilege in a/n/d cases---*K.D.*

Psychological evaluations

Admissibility proper at disposition---*T.M.*

Order of evaluation proper---*L.B.*

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Reasonable Progress—see **TPR grounds**

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 60(a)

Inapplicable to correct substantive problem in order---*D.D.J. & D.M.J.*

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

Shaken Baby Syndrome

Generally---*A.R.H.*

Standing

For TPR,

No longer in DSS custody---*D.D.J. & D.M.J.*

DSS must establish current custody---*T.B. et al.*

Subject Matter Jurisdiction –

Error for failure to attach custody order to TPR and not subsequently amend ---*T.B. et al.*

Inconvenient forum under UCCJEA---*M.E.*

Over TPR--- *D.D.J. & D.M.J.*

Petition not verified. Prejudicial error---*T.R.P.*

Defect cured when petition verified two days after summons issued---*L.B.*

Temporary emergency jurisdiction under UCCJEA---*M.B.*

Until child is 18 or otherwise terminated---*H.S.F.*

Substance Abuse

Generally, as grounds for neglect---*S.N.*

Subpoena

Motion to quash

No abuse of discretion---*M.C.T.-B*

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Termination of Parental Rights

Grounds,

Dependency

Generally---*L.A.B.*

Failure to establish paternity or legitimize child--- *A Child's Hope, LLC v. John Doe*

Only one ground necessary---*J.M.W. & E.S.J.W.*

Neglect

Abandonment by no visitation---*J.T.W.* (dissent)
Must find likelihood of repetition of neglect---*J.G.B.*; *J.T.W.*

Paternity

Generally---*A Child's Hope, LLC v. John Doe*
Not alleged as ground---*R.R.*

Willfully leaving child in foster care for 12 months without making reasonable progress

12 month period does not include voluntary placement--- *A.C.F.*
Effect of minority of parent---*J.G.B.*
Insufficient evidence---*J.S.L.*; *J.T.W.*
Continued residence with substance abusing parent---*S.N.*

Willful abandonment---*R.R.*

Incarcerated parent

Deposition not required---*K.D.L.*

Lack of subject matter jurisdiction

Children not found in state---*D.D.J.* & *D.M.J.*

Lack of standing

DSS without custody--- *D.D.J.* & *D.M.J.*

Minor parent, generally---*J.G.B.*

Termination of Parental Rights Petition

Notice pleading permissible---*H.T.*
Personal service permissible---*D.R.S.* & *W.J.S.*
Summons not required---*D.R.S.* & *W.J.S.*
Timely filed, no prejudice---*H.T.*

Termination of Parental Rights Order

Remand for insufficient order, no additional evidence---*L.C. et al.*
Reversal based upon insufficient evidence and findings of fact---*J.S.L.*; *J.T.W.*
Must show prejudice from delayed order---*J.N.S.*; *K.D.L.*; *S.N.H.* & *L.J.H.*
Prejudice shown---*J.N.S.* (see concurrence for additional discussion of prejudice)
Delay in entry-6 months, prejudicial---*J.N.S.*
Delay in entry-7 months, prejudicial---*D.S. et al.*
Order drafted by petitioner proper---*S.N.H.* & *L.J.H.*

Time requirements

No prejudice *per se*---*H.T.*
Timeliness of hearing
Prejudice established when over one year delay for TPR---*D.M.M.* & *K.G.M.*
No prejudice for two month delay of permanency planning hearing---*L.B.*
No prejudice established for delay in TPR hearing---*R.R.*; *S.N.H.* & *L.J.H.*
Timeliness of adjudication/disposition order
No prejudice to reunification services---*T.S.,III* & *S.M.*

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UCCJEA

Inconvenient forum---*M.E.*
Temporary emergency jurisdiction---*M.B.*

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Visitation

Error solely in guardians' discretion---*L.R.*

Judicial function that may not be delegated---*L.B.*

--W--

--X--

--Y--

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