

**CASE SUMMARIES
(IN ALPHABETICAL ORDER)**

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Unpublished decisions are noted by an * following the case name.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

Creel v. NC Dept. of Health and Humans Srvc., 152 N.C. App. 200, 566 S.E.2d 832 (August 6, 2002), *disc. review denied* ___ N.C. ___, ___ S.E.2d ___ (2003). The child through his guardian ad litem instituted a claim against NC DHHS for damages pursuant to the Tort Claims Act seeking remuneration for injuries that occurred while he was in DHHS custody and placed in foster care. The Tort Claims Act provides that a state agency may be sued directly in tort under certain circumstances. In this case the plaintiff was attempting to proceed under the analysis that the foster parents were agents of DHHS and through the doctrine of respondeat superior that DHHS was liable for the damages caused by their foster parent agents. The Court of Appeals upheld the dismissal of the claim clarifying that since an employment relationship did not exist between DHHS and the foster parents, DHHS could not be vicariously liable for the acts of the foster parents. Instead the foster parents volunteered for the task and the payments made to the foster parents by DHHS were merely reimbursements of the expenses they had accumulated from caring for the foster child.

David v. Ferguson, 153 N.C. App. 482, 571 S.E.2d 230 (October 15, 2002). The jurisdiction of the court pursuant to the UCCJEA and PKPA arose in a case in family court, but the question of jurisdiction is relevant to cases in abuse, neglect and dependency court. The PKPA applies to any custody determination made consistently with the provisions of the PKPA by the court of another state. In this case, the informal agreement made by the parties in the alternate state did not create jurisdiction in the courts of that state. The child had resided in North Carolina for more than six consecutive months prior to the commencement of the proceeding, and North Carolina had jurisdiction to hear the matter.

In re Allen,* (Unpub.) 152 N.C. App. 477, 567 S.E.2d 840 (August 20, 2002). Respondent appealed from the termination of his parental rights, however, the Court of Appeals affirmed the termination. The Court held that the respondent had willfully left his child in foster care for more than twelve months without correcting the problems that led to her removal by failing to accept responsibility for his violent actions, failing to regularly attend treatment sessions, and making little progress toward correcting the problems of violence and emotional abuse that the child witnessed and suffered. Contrary to respondent's allegations, the Court held that DSS had made diligent efforts to reunite respondent with his daughter, but the respondent was unwilling to correct the conditions that endangered his daughter.

In re America,* (Unpub.) 149 N.C. App. 488, 562 S.E.2d 470 (March 19, 2002). The father's parental rights were terminated to all three children and the mother's parental rights were terminated to two of the three children. The respondent parents appealed the termination orders and the Court of Appeals affirmed the termination.

The respondent parents argued the trial court was collaterally estopped from petitioning for termination based upon abuse and neglect when the earlier adjudication was based upon dependency only. The Court of Appeals disagreed, noting that the earlier adjudication was a result of a consent agreement and neither the issue of abuse nor neglect had been litigated previously. The father also argued the termination should be overturned since there was no evidence of neglect at the time the petition for termination was filed. However, because the children were not in the custody of the parents at the time the petition was filed, the evidence respondent requested was not possible to obtain. Instead, the evidence presented regarding the conditions in the home prior to the removal of the children, coupled with the subsequent refusal on the father's part to avail himself of prescribed treatment, led to the conclusion that the conditions of neglect would likely be repeated if the children were returned.

The mother argued that the trial court was equitably estopped from terminating her parental rights based upon her lack of payment for the children's support, claiming she was not given notice about the requirement. The Court of Appeals noted that she was in fact sent a notification about the requirement to pay support, that she was capable of working and making payments for more than six months during which the children were in foster care, and the payments she made to improve the house were not a substitute for payments to be made for the children's support when the house was in a habitable condition. The decision of the trial court was affirmed.

In re Anderson, 151 N.C. App. 94, 564 S.E.2d 599 (June 18, 2002). Cleveland Anderson appealed the termination of his parental rights and the Court of Appeals reversed and remanded. The error, which caused the Court to overturn the termination, was the omission of specific findings of the ultimate facts established by the evidence as required by Rule 52(a) of the Rules of Civil Procedure. N.C.G.S. § 1A-1, Rule 52(a)(1). The order stated in relevant part that "the grounds alleged for terminating the parental rights are as follows." Findings of fact cannot be a recitation of the allegations; instead, findings of fact must be specific findings of the ultimate facts established by the evidence. The requisite standard of evidence - clear, cogent and convincing - was also absent from the order.

In the Matter of Austen,* (Unpub.) 149 N.C. App. 677, 562 S.E.2d 606 (April 2, 2002). The termination of respondent mother's parental rights was affirmed where twice the amount of time required by 7B-1111(a)(2) had passed and the mother refused to cooperate with most of the case plan requirements.

In the Matter of B.A.,* (Unpub.) 149 N.C. App. 667, 562 S.E.2d 607 (April 2, 2002). In response to a petition alleging the children were neglected and dependent, the parents voluntarily signed a Memorandum of Judgment stipulating that the children were dependent. A subsequent court order gave unfettered discretion regarding the mother's ability to visit the children to the current custodian of the children. This delegation of the trial court's authority to the custodian was improperly given and the order was vacated. The trial court, not the custodian, is required to make findings as to whether the parent has forfeited his or her right to visitation and what is in the child's best interest regarding visitation with the parents.

In re Beer,* (Unpub.) 149 N.C. App. 232, 562 S.E.2d 304 (March 5, 2002). The parental rights of Fred and Gloria Beer were terminated to their young son. Both parents appealed. The Court of Appeals affirmed the termination.

The mother's rights were terminated on three grounds: the child was neglected pursuant to 7B-1111(a)(1); the child was left in foster care for more than twelve months without reasonable progress being made pursuant to 7B-1111(a)(2); and the mother had her rights regarding another child terminated and she lacked the ability or willingness to establish a safe home pursuant to 7B-1111(a)(9). The father's parental rights were terminated on the first two grounds listed above. The evidence presented to the trial court indicated that the parents completed the required tasks, but never made any progress as required by the court and the Juvenile Code. The tasks included finding jobs, attending GED courses, following through with service agreements to learn parenting skills, and visiting with the child. A court ordered psychologist determined that the parents were functioning at such a minimal level, demonstrating immature emotional development and an inability to make decisions in the best interests of the child, that it would be foolish to place the child back in their home. Although the Court of Appeals upheld the conclusion of the trial court as one being supported by clear, cogent, and convincing evidence, it warned against the practice of judges to summarily recite the evidence presented to them in the findings of fact rather than crafting findings of fact that demonstrate the trial court has consciously considered the evidence brought before it.

The Court of Appeals also upheld the disposition, which concluded that after three and a half years of unsuccessfully attempting to improve the parenting skills, it was in the best interest of the child to terminate the parental rights of both parents.

[This case is important as it demonstrates a court's recognition of the idea that just because a parent complies with all of the steps requested by DSS and the GAL, the parent may still be unable to properly care for the child.]

In the Matter of Bethea,* (Unpub.) 151 N.C. App. 597, ___ S.E.2d ___ (July 16, 2002). Respondent mother appealed from the termination of her parental rights to her three children. The Court of Appeals affirmed the termination after holding that the trial court did not err when it called witnesses and allowed them to testify after DSS had rested its case, nor when it used the evidence of past neglect in conjunction with current evidence of continued neglect.

Specifically, the trial court exercised sound discretion and did not deprive respondent of a fair trial by calling six additional witnesses after the parties had concluded their cases. The witnesses helped clarify previous testimony and develop the relevant facts, and did not shift the burden off the petitioner to prove its case. The respondent was offered an opportunity to cross-examine the witnesses and call rebuttal witnesses, if desired. Therefore, the trial was fair and impartial, and the termination was affirmed.

In re Brode, 151 N.C. App. 690, 566 S.E.2d 858 (August 6, 2002). The trial court invoked the emergency jurisdiction of the UCCJEA when presented with a petition alleging the child was neglected and dependent. The Court of Appeals held that the trial court acted properly in establishing emergency

jurisdiction, but it erred when it did not recognize that jurisdiction as temporary. The trial court should have contacted the state, which had already entered a custody order for this child, to see if that state intended to maintain jurisdiction or was willing to relinquish it to North Carolina in compliance with UCCJEA and PKPA.

In re Brown,* (Unpub.) 155 N.C. App. 220, 573 S.E.2d 773 (December 31, 2002). The trial court terminated respondent mother's parental rights on several grounds. The trial court concluded that the respondent had neglected her child, when she failed to maintain stable housing, did not complete parenting classes, obtained a psychological, but did not follow through with the required treatment, only visited her child six times in twenty months despite a weekly opportunity, and interacted inappropriately with him when she did visit him. During one visit, the respondent climbed the stairs outside the railing and called to her child to follow her. The Court of Appeals affirmed the termination on this ground.

The Court of Appeals also chose to review an additional ground, the respondent's failure to provide support for her child despite her ability to do so. The respondent argues that she was not "willful" in her failure to provide support for the child given that she suffers from mental illness. The Court of Appeals held that there was no evidence to suggest that her mental conditions rendered her incapable of forming willful intent or otherwise prevented her from contributing monies to the child's care.

The child's aggressive behaviors had decreased, his grades in school had increased and his hygiene had improved since being placed in foster care. The Court affirmed the decision that termination of respondent's parental rights was in the child's best interests.

In the Matter of Calleja,* (Unpub.) 149 N.C. App. 975, 563 S.E.2d 308 (May 7, 2002). The respondent mother appeals from an order terminating her parental rights. First, she argued that the reorganization of the Juvenile Code, which became effective July 1, 1999, prevents any evidence about events after that date from being admitted into cases that began prior to that date. The court quotes the arguments forwarded by the Guardian ad Litem Attorney Advocate in rejecting this assignment of error, as the courts will not assume that Legislature intended an absurd result in interpreting statutes. Next, the mother argued that she should be held to a different standard than most Americans because she cannot speak English, cannot make use of the medical providers in town, cannot obtain phone service easily, and is unfamiliar with our system. The Court rejected this argument, citing several key pieces of evidence which tended to show that the mother was willful in leaving her children in foster care for more than twelve months without making reasonable progress toward ameliorating the conditions which led to their removal. The evidence showed that the mother failed to attend individual therapy sessions with the Spanish-speaking therapist, failed to follow through on the services arranged by the Spanish-speaking pastor, failed to attend the doctor's appointments with her daughter whose hearing was now impaired due to the mother's neglect, and failed to discipline her children during the visitations that she did attend. Consequently, the Court of Appeals held that although the mother had made some improvements, she had failed to make substantial progress in other areas, and the order of termination was affirmed.

In re Clark, 151 N.C. App. 286, 565 S.E.2d 245 (July 2, 2002), *disc. review denied*, 356 N.C. 302, 570 S.E.2d 501 (2002). The respondent father's parental rights were terminated based upon two

of the grounds enumerated in 7B-1111: (1) that he failed to pay a reasonable portion of the cost of care for the child although physically and financially able to do so; and (2) that he was incapable of providing for the proper care and supervision of the child and that such inability would continue for the foreseeable future. The Court of Appeals agreed with the respondent father that the trial court erred in holding that sufficient grounds existed to terminate his parental rights, and the Court vacated the termination order.

The father was incarcerated at the time of the termination hearing, but was scheduled to be released approximately eighteen months later. He was present at the birth of the child, had attempted to communicate with the child since his incarceration, and had given several names of possible relative placements to DSS – none of which were investigated. The respondent father had paid nothing in support of the child; however, zero payments constitute a failure to pay a reasonable portion of the childcare cost only if the respondent is able to pay an amount greater than zero. The trial court did not make any findings of fact indicating that respondent was able to make payments at all, and therefore this ground was not supported by sufficient findings of fact to be sustained. The trial court also did not make any findings of fact which supported the ground that respondent was unable to provide for the child's care, other than stating he was incarcerated and the mother was incapable of providing for the child's care. There was no evidence of physical or mental illness or other disability that would prevent him from providing the child with care. Consequently, this ground was not supported by sufficient findings of fact and could not be sustained. Since all the grounds for termination alleged in the petition were found invalid, the Court of Appeals reversed the termination of parental rights as to respondent father.

In re Adoption of Cunningham, 151 N.C. App. 410, 567 S.E.2d 153 (July 16, 2002). DSS and the Guardian ad Litem filed separate motions to dismiss in response to the petitioners' adoption petitions of three children who had previously lived in their foster care home. The trial court conducted a hearing regarding the petitions and dismissed them. The petitioners appeal this dismissal and argue that the trial court erred in concluding that DSS did not consent to the adoption, that there was insufficient evidence to support the trial court's findings of fact and conclusions of law, and that the trial court erred in admitting some evidence and in excluding other evidence.

In regard to the issue of consent by DSS, the Court of Appeals affirmed the trial court's decision that DSS had not consented to the adoption. In dicta, however, the Court held that the trial court had full statutory authority to dismiss the petitions for adoption based on the best interests of the three minor children regardless of whether DSS had previously consented to the adoptions. After reviewing the evidence and the findings of fact, the Court of Appeals held that sufficient evidence was presented to establish the critical findings of fact; those findings which supported the conclusion that adoption of these three children by petitioners would not be in the children's best interests. Finally, the Court affirmed the decisions of the trial court regarding the evidence admitted and excluded. The dismissal of the adoption petitions was affirmed.

In re Deguzman,* (Unpub.) 151 N.C. App. 747, 567 S.E.2d 466 (August 6, 2002). The respondent mother appeals from the termination of her parental rights. The Court of Appeals affirmed the termination of parental rights, holding that the findings of fact supported the conclusion that the child was

neglected and dependent, grounds existed for terminating parental rights, and the child's best interests would be served by the termination of parental rights, where the mother failed to comply with the orders to receive substance abuse treatment, abandoned the child into the care of another for an extended period of time, and failed to make more than minimal contacts with the child before and throughout the trial court's supervision of the case.

In re Dockery,* (Unpub.) 151 N.C. App. 220, 573 S.E.2d 773 (December 31, 2002). The respondent mother was properly served with the summons on the underlying a/n/d petition, but the father could not be served at that time. The respondent father, who was represented by counsel, accepted service of the summons and the petitions after the hearing in which the three children were adjudicated neglected. Over a year after respondent father accepted service by summons on the underlying action, DSS filed a motion and petition for termination of parental rights as to both respondent mother and father. The mother signed a relinquishment for adoption, and DSS pursued the case against respondent father.

The respondent father argues that the service pursuant to G.S. § 1A-1, Rule 5(b) was improper, because he should have received personal service putting him on notice that his parental rights were in jeopardy. The Court of Appeals held that respondent father was properly served, because the respondent had received appropriate notice that his parental rights were in jeopardy in the underlying a/n/d action from his acceptance of those summons and petitions.

The other arguments raised by respondent relate to the sufficiency of the evidence related to the termination of his parental rights in regards to each of the three children. Generally, the respondent did not visit his children regularly, was not involved with their mental health treatment, did not attend parenting classes, failed to provide support for the children, and did not maintain contact with DSS to inquire about the children's well-being. The Court of Appeals reviewed all the evidence, found that there was clear, cogent and convincing evidence in each case, and affirmed the termination of respondent's parental rights.

In re Eckard II, 148 N.C. App. 541, 559 S.E.2d 233 (February 5, 2002), *disc. review denied*, 356 N.C. 163, 568 S.E.2d 192 (2002). After being ordered to reconsider their decision in light of the Supreme Court decisions *In re Pope* and *In re Dula*, the Court of Appeals made the same holding as it had the first time the case was before it. It reversed the trial court's order from the permanency planning hearing, which had ceased reunification efforts and chose adoption as the permanent plan for the child. The Court of Appeals then remanded the case to the trial court, ordered DSS to continue reunification, and forbid the trial court from factoring into any of its decisions the time that has passed during the course of this appeal.

The Court of Appeals began its analysis by differentiating the facts presented in this case from those found in *Pope* and *Dula*. The Court characterized the evidence presented by DSS and the respondent mother as "uncontradicted testimony," even though the GAL presented differing information upon which the trial court heavily relied in making its decision to relieve DSS of reunification efforts. The Court of Appeals next concluded that the trial court had not considered evidence of changed conditions as they

are required to do in a case involving prior neglect. The Court of Appeals relied on its previous decision in which it reviewed the evidence before the trial court and determined that the trial court's findings and conclusions were not supported by the evidence, even though evidence was presented both in favor of and contrary to those findings and conclusions. Third, the Court of Appeals held that trial court's order did not comport with 7B-907(b)(2) where the trial court determined that the child was not to return home and would remain with the foster family. The Court of Appeals stated the trial court had not considered the father as a potential placement; however, the trial court held that he had arrived onto the scene late, so he obviously had received some consideration. Finally, the Court reiterated the purpose of the juvenile code as emphasizing reunification and the autonomy of the family. The stated purpose contained no reference to providing juveniles with a safe and permanent home in a child centered time frame. The permanency planning hearing order was vacated and the case was remanded to the trial court for orders consistent with this opinion.

In re Faircloth, 153 N.C. App. 565, 571 S.E.2d 65 (November 5, 2002). The respondent appealed from the termination of parental rights to his four children. Respondent first argued unsuccessfully that the trial court judge should have recused himself. Respondent, however, did not meet his burden of showing through substantial evidence that the judge had such a personal bias, prejudice or interest that he would be unable to rule impartially. Respondent next assigned error to the trial court's refusal to appoint him another attorney. Although indigent parents are entitled to court appointed representation when their parental rights are being challenged, the current attorney met the obligations and respondent failed to show how counsel's performance was so deficient as to deprive respondent of a fair hearing.

Respondent also contends that the trial court erred in removing him from the court and denying him the opportunity to testify at the termination hearing when the respondent became belligerent and out of control. The Court of Appeals reiterated that the termination of parental rights hearing is a civil matter, not a criminal action and the rights to be present and testify are subject to "due limitations." The Court of Appeals looked to the tripartite test articulated in *Matthew v. Eldridge*, 424 U.S. 319 (1976), to determine if respondent's due process rights had been violated. Holding that the private interests affected by the proceeding weighed in favor of having the respondent present, the disruption that respondent caused weighed against having him present as the governmental interests were impeded by his presence, and that the risk of error was slight without respondent, the Court of Appeals determined that no prejudice was found by respondent's absence. Finally the respondent challenged some but not all of the grounds for terminating his parental rights. Since the court only needs to conclude that one ground exists to proceed to the best interests analysis, no error was found. The Court of Appeals affirmed the order of the trial court and Judge Tyson concurred in a separate opinion.

In re Fisher,* (Unpub.) 149 N.C. App. 667, 562 S.E.2d 606 (April 2, 2002). Respondent mother appeals the termination of her parental rights. The Court of Appeals countered each of her arguments and affirmed the termination. The Court of Appeals held that the denial of the respondent's motion to dismiss was within the trial court's discretion, given that there was no jury for the proceeding, and the trial court did not abuse its discretion where the evidence presented showed chronic drug abuse, lack of cooperation with DSS, and failure to develop a plan for care to begin after the respondent mother got out of prison. The Court also held there was no error in admitting the records from the Clean Start

Program in accordance with the business records exception to the hearsay rule. In affirming the trial court's decision that the termination was in the child's best interest, the Court stated "[t]he trial court is given great deference in determining the best interests of the minor . . . and its decision will not be disturbed absent an abuse of discretion."

In re Fletcher, 148 N.C. App. 228, 558 S.E.2d 498 (Jan. 2, 2002). After a termination of parental rights as to both mother and father, the Court of Appeals affirmed as to the mother and reversed as to the father.

The Court quickly dispensed with a technical error stating that although the trial court did not include the word "convincing" in its order, the use of the language "clear and cogent evidence" indicated the proper standard was applied to the evidence in this case.

The case against Ms. Fletcher proceeded on the grounds that she was incapable of providing for the proper care and supervision of the minor child due to mental illness pursuant to N.C.G.S. § 7B-1111(6) and the court held the child was thereby a dependent child. Multiple witnesses supported the grounds alleged and the Court of Appeals affirmed the decision of the trial court with respect to the mother's rights being terminated.

The case against Mr. Fletcher centered on the ground for termination of willfully leaving the child in foster care for more than twelve months without making reasonable progress toward correcting the conditions that led to the removal of the child pursuant to N.C.G.S. § 7B-1111(2). After reviewing the evidence presented to the trial court, the Court of Appeals did not find enough to support the conclusion that Mr. Fletcher willfully abandoned his child. The trial court received evidence to show that Mr. Fletcher was cooperative, he completed all parenting classes and mental health therapy sessions and attended all visits with the child. Mr. Fletcher testified he was in the process of formulating a plan for caring for his daughter without the assistance of his mentally ill wife. He further indicated his willingness to leave his wife if that would be required to facilitate his custody of the child. Although the Court of Appeals noted that the department of social services had directed Mr. Fletcher to formulate a formal plan to care for his child without his wife's assistance, the Court did not weigh heavily his failure to have completed this task prior to the termination hearing. The Court reiterated that compelling evidence is required to terminate parental rights and held that the record did not support clear and convincing evidence to establish any grounds for terminating Mr. Fletcher's parental rights.

In affirming the termination of the mother's parental rights and reversing the termination of the father's parental rights, the father retains his status as before the termination proceeding. Namely, he may continue to attend supervised visits and seek reunification with his child.

In re Gillespie,* (Unpub.) 153 N.C. App. 523, 570 S.E.2d 153 (October 15, 2002). The Court of Appeals affirmed the termination of respondent father's parental rights as being in the best interests of the children, where the father drove drunk with the children in the car, continued to abuse alcohol, sporadically attended AA meetings, committed domestic violence against the children's mother, refused to comply with the court orders to remain "smoke free" when around his son with respiratory problems,

failed to complete anger management and parenting classes, and failed to pay child support although able to do so.

In re Graham,* (Unpub.) 153 N.C. App. 323, 569 S.E.2d 736 (October 1, 2002). Respondent mother appeals from the termination of her parental rights. The respondent failed to comply with the requirements for proceeding *in forma pauperis* as prescribed by N.C.R. App. P. 6(b) and G.S. § 1-288. This error created a jurisdictional defect, but the Court of Appeals denied the motion to dismiss and considered the appeal as a writ of certiorari. The respondent also failed to assign sufficient errors such that the appeal on one of the grounds for termination was deemed abandoned. However, the Court of Appeals decided to review another ground for termination on its merits. After reviewing the extensive findings of facts made in the termination order, the Court of Appeals affirmed the termination of parental rights. This case, although unpublished, demonstrates the Court's reluctance to dismiss appeals in this legal arena for jurisdictional defects.

In re Gray,* (Unpub.) 152 N.C. App. 718, 568 S.E.2d 336 (September 3, 2002). The children were in care for fifteen months and the respondents made no progress toward correcting the neglectful conditions that led to their placement in foster care, nor did they provide support for the children. When respondent father was incarcerated for his felony drug activity, he requested visits with the children. The social worker suggested alternatively that he maintain contact with the children by sending letters and cards, but he did not avail himself of this opportunity.

After finding that grounds existed to terminate respondent's parental rights because respondent had neglected his children, the court decided to review alternate grounds for termination, even though the court was only required to find one ground to support the termination of parental rights. The Court of Appeals reviewed the findings of fact related to the failure of the respondent father to provide the children's cost of care and determined that the findings were also sufficient on this ground to support the termination of parental rights. The findings included language describing the arrearage owed, the amount the father had paid toward the care of his children (\$0), the range of pay from a car stereo installation job, the fact that the father had earned money from the sale of illegal drugs, and the current rate of pay during his incarceration (\$.40). All of these facts supported the conclusion that the respondent had the ability to pay support for the children, but had failed to do so.

In regards to the dispositional phase of the hearing, the best interests of the children warranted termination of respondent's parental rights, where he was serving time for a probation violation, had neglected the children, and the children had suffered from respondent's neglect in that one child had attachment disorder and all three had significant developmental delays.

In re Greene, 152 N.C. App. 410, 568 S.E.2d 634 (August 20, 2002). The respondent mother was diagnosed with Munchausen Syndrome by Proxy (MSBP), after she took her child to the emergency room on 25 occasions, made 60 office visits to pediatricians, obtained 143 prescriptions, and had her daughter admitted to the hospital 8 times during a two year period. The mother made no progress in her treatment and continued to exhibit symptoms of MSBP by "(1) being inappropriately dressed without undergarments so as to show others her private parts; (2) being loud, boisterous, and

threatening; (3) calling '911' after receiving a superficial laceration on her forearm that was not even bleeding; (4) obtaining tattoos and a tongue piercing when these actions were prohibited by her treatment program; and (5) admitting herself to a psychiatric hospital for depression and suicidal tendencies." Consequently, the trial court held and the Court of Appeals affirmed that respondent had failed to make any substantial change in the conditions that led to her daughter's removal, and there was a strong possibility the abusive behavior would be repeated if her daughter were returned. Therefore, grounds existed to terminate respondent's parental rights, even though there was no evidence that respondent induced her child's injuries, rather that respondent fabricated and exaggerated the child's medical conditions.

The Court of Appeals affirmed the determination that it was in the child's best interests that respondent's parental rights were terminated. After being placed in foster care, the child was taken to the doctor for wellness checks and treatment of minor infections, but she did not exhibit any of the exaggerated symptoms that her mother had previously reported to physicians. After an initial adjustment period, the child bonded with her foster parents and was able to disengage from her mother after visits much better than would be expected from a child her age. These factors, combined with the child's improved attendance at school and respondent's failure to comply with her treatment plan, led to the decision that it was in the child's best interests to terminate respondent's parental rights.

Finally, respondent argues that the court erred in conducting an *in camera* review of the documents contained in the DSS file, distributing some of the documents to the parties, and sealing the remainder for appellate review. The Court of Appeals held that the trial court acted properly in this decision and none of the sealed documents contained unique information, or would have shed any light on respondent's ability to care for her child. The termination of respondent's parental rights was affirmed.

In re Hall,* (Unpub.) 153 N.C. App. 323, 569 S.E.2d 735 (October 1, 2002). The respondent mother appeals from the decision in the permanency planning hearing to give guardianship of the child to the maternal aunt, who was serving as the child's caretaker. The Court of Appeals reaffirmed its prior rulings that an *Anders* brief does not extend to civil proceedings, even those that involve the custody of minors or the termination of parental rights. Therefore, the Court declined to review the record itself for error and only considered those errors properly raised by the respondent. The respondent argued that the trial court erred when it appointed the Alexander County attorney to represent her in the underlying case. Although this statute has subsequently been modified, at that time the appointment of the County Attorney was prohibited pursuant to G.S. § 7B-602. The respondent failed to object to this appointment at the trial court and failed to show prejudice from this appointment to the appellate court. The Court held that since no prejudice was shown, the appointment of the County Attorney did not constitute reversible error. The order granting the maternal aunt guardianship was affirmed.

In re Hardesty, 150 N.C. App. 380, 563 S.E.2d 79 (May 21, 2002). Petitions seeking to terminate respondent mother's parental rights were filed for all three of her children. The trial court affirmed the termination as to two of the children and reversed on the third.

The petition seeking termination, which was subsequently reversed by the Court, was abbreviated as compared to the other two petitions and did not state facts sufficient to warrant a determination that one or more grounds for terminating parental rights existed. It is not sufficient to merely state that the mother and unknown father were incapable of providing for the proper care and supervision of the juvenile, that the juvenile is dependent, and that the conditions are not likely to change in the foreseeable future without delineating the incapacity. The allegations in the petition must put a party on notice as to what acts, omission or conditions are at issue. The petitions for the two older children did not suffer from these omissions and the corresponding terminations of parental rights for those two children were affirmed.

In re Harvey,* (Unpub.) 152 N.C. App. 523, 570 S.E.2d 152 (October 15, 2002). The Court of Appeals reviewed two of the three grounds upon which the trial court terminated respondent mother's parental rights and affirmed the decision. The grounds were that: (1) the child was dependent and that dependency was likely to continue for the foreseeable future, and (2) the respondent had left the child in foster care for more than twelve months without making reasonable progress toward correcting the conditions that led to the child's removal. Because respondent raised only general exceptions to the grounds for termination, the findings of fact were binding upon appeal. The finding supported the order of termination, where the respondent made limited progress in controlling her mental illness and substance abuse issues while living in an institutional environment. However, in less structured environments respondent failed to consistently take her medications, exhibited erratic behavior, became defiant and violent, and failed to complete her substance abuse treatment. The child's progress while in foster care was characterized as "amazing" and "fantastic," and her best interests were served by terminating respondent's parental rights.

In re Hayes,* (Unpub.) 152 N.C. App. 718, 568 S.E.2d 336 (September 3, 2002). The respondent mother pled guilty to misdemeanor child abuse in the forced scalding injury of her child, but in a/n/d court she failed to accept responsibility for her actions that allowed the abuse to occur. She did not complete therapy, reiterated that there were no issues she needed to address, and maintained contact with the "boyfriend" who had abused her child, including relying upon him for transportation. The Court of Appeals affirmed the termination of respondent's parental rights.

In re Herndon,* (Unpub.) 151 N.C. App. 597, ___ S.E.2d ___ (July 16, 2002). The sole issue on appeal is whether the trial court erred when it denied respondent's motion to dismiss and rescheduled the hearing after the petitioner did not appear in court on the date scheduled for the termination of parental rights hearing. The trial court determined that the date had been changed from January 18, 2001, to January 11, 2001, and there was no record of the petitioner being informed of the change. Even if the petitioner had been present on January 11th, the trial court would have postponed the case to allow for a Guardian ad Litem to be appointed as was done in a later hearing. Consequently, the continuance of the case was consistent with the trial court's mandate to work substantial justice to the parties and to act in the best interests of the children and the termination was affirmed.

In re Irby,* (Unpub.) 149 N.C. App. 488, 562 S.E.2d 471 (March 19, 2002). Three years after an adjudication of neglect, the parental rights of Patricia Yarborough were terminated to her son. The

respondent mother appealed the termination. The Court of Appeals correctly and succinctly recited the appropriate standard of review for cases of this type and then followed this deferential standard in affirming the termination. The standard on review as articulated and followed by this Court was “if clear and convincing evidence in the record supports the trial court’s finding and conclusion that neglect continued to exist at the time of the termination proceedings, then our Court will not reverse the decision of the trial court, even though contrary evidence may be presented at the hearing.” *In re Allred*, 122 N.C. App. 561, 471 S.E.2d 84 (1996). The Court further affirmed the premise that even evidence presented that the parent loves the child “will not necessarily prevent the court from making a determination that the child is neglected.” *In re Montgomery*, 311 N.C. 101, 316 S.E.2d 246 (1984).

In the Matter of JKH, DWH, BTRH,* (Unpub.) ___ N.C. App. ___, ___ S.E.2d ___ (March 5, 2002). The children were adjudicated neglected in February of 1998 due to the domestic violence in the home and the substance abuse of the father. In September of 1998, petitions alleging sexual abuse were filed and the children were removed from the home. During the hearing, the father neither admitted nor contested the allegations of sexual abuse. The father consistently refused to cooperate with the treatment options presented to him and continued to delay payment of child support. The trial court terminated the parental rights of both parents on August 8, 2000. Only the father appealed. The Court of Appeals affirmed the termination holding that, despite evidence to the contrary, competent evidence supported the findings of fact and conclusions of law stated in the court order.

In re Jackson,*(Unpub.) 151 N.C. App. 747, 567 S.E.2d 467 (August 6, 2002). The respondent mother filed a Rule 60(b) motion requesting relief of the trial court from the order terminating her parental rights, when she failed to appear for the hearing, procure an attorney for the hearing, or respond to the petition for termination of parental rights conducted while she was incarcerated in Johnston County Jail for substance abuse charges. The trial court found that while the mother’s failure to appear and respond might have been excusable neglect, she failed to fulfill her burden under Rule 60(b) by showing that she had a meritorious claim. The Court of Appeals agreed and affirmed the denial of the Rule 60(b) motion, which effectively affirmed the termination of parental rights.

In re Johnston, 151 N.C. App. 728, 567 S.E.2d 219 (August 6, 2002). Respondent mother appeals from the termination of her parental rights. The Court of Appeals held that there was sufficient evidence to support the findings of the trial court, and that the findings support the conclusions of law. Therefore the findings of fact are binding on appeal. The respondent was consistently unable to demonstrate that she could appropriately care for her children despite her ability to recite the information she learned in parenting classes. The Court of Appeals held that attending the classes and reciting the information is insufficient. Instead the parent must show that she can care for the children and use what she learned in the classes.

The respondent assigns additional error to the trial court’s admission of evidence regarding a child with special needs and the respondent’s inability to care for that child. Although that child was not named in this petition, the information regarding how another child in the same home was treated is relevant to the determination of whether the termination of parental rights is an appropriate conclusion. “It is of critical importance for the trial court to have a thorough understanding of any circumstance that reasonably

impacts the children and is related to the grounds for termination.” The Court of Appeals affirmed the termination of parental rights.

In re Kennedy,* (Unpub.) 151 N.C. App. 748, 567 S.E.2d 468 (August 6, 2002). The respondent parents appeal from an order terminating their visitation rights to their three minor children. The standard of review from an appeal of this type of order is abuse of discretion. The Court of Appeals affirmed the order and held there was sufficient evidence to support the findings of fact that the parents failed to use the visitations to bond with their children, that the parents questioned the children about the foster parents’ care, that the parents encouraged the children not to listen to their foster parents, that the older children were physically and emotionally upset before and after visitations, and that the younger child had no recollection of the parents. These findings supported the conclusion that visitations between the children and the parents should cease. Therefore, the trial court did not abuse its discretion in ordering the same.

In re Killian,* (Unpub.) 151 N.C. App. 748, 567 S.E.2d 467 (August 6, 2002). The Court of Appeals affirmed the termination of a mother’s parental rights to her six children. After an extensive history of substantiated reports of abuse, DSS took the children into custody and placed them in foster care, where they remained for two and a half years before DSS filed for TPR. The first issue before the Court of Appeals was whether the trial court had erred in making a finding of fact regarding the mother’s sporadic attendance and inappropriate participation in parenting classes, when some of the evidence supportive of the finding was properly excluded. The Court held that the finding of fact was based upon clear, cogent and convincing evidence, because the same information was properly admitted during a later portion of the hearing. The Court of Appeals further held that the children were in foster care for more than twelve months, that the mother had not made reasonable progress toward reunification with the children, and the failure to make reasonable progress was willful. Therefore, the grounds existed to terminate the mother’s parental rights and it was in the best interest of the children that this action be taken.

In the Matter of Kitchen,* (Unpub.) 150 N.C. App. 437, 563 S.E.2d 641 (May 21, 2002). The trial court dismissed the termination petition as to the putative father *ex mero motu* due to lack of proper personal service. Henderson County DSS appealed from this dismissal. The Court of Appeals succinctly overturned the trial court’s dismissal, holding that the putative father had waived his defense of improper service when his response to the petition failed to state this issue as an affirmative defense, as he had thereby made a general appearance.

In re K.M.A., S.L.A.,* (Unpub.) ___ N.C. App. ___, 563 S.E.2d 308 (May 7, 2002). Parents appeal from the order adjudicating their two children abused and neglected. The Court of Appeals held that the trial court did not err when it admitted evidence of the respondent father’s prior convictions for felony sexual abuse, since the current situation is similar to the incident that supported the conviction. The respondent’s failure to make an offer of proof as to what the father’s relative would have said, if she were allowed to testify, prevented the respondent from meeting his burden of showing such an omission was prejudicial. The evidence met the clear, cogent and convincing standard when evidence included the statements from one of the victims implicating her father as the abuser, the physical

evidence of sexual abuse, the father met six of the nine characteristics for a sexual offender, the father had previously been convicted of felony sexual abuse, and the mother was unable to protect the children from the abuse. The Court of Appeals affirmed the adjudication.

In re Lacey,* (Unpub.) 153 N.C. App. 811, 571 S.E.2d 87 (November 5, 2002). The respondent mother challenged the termination of her parental rights with the sole argument that the conditions of neglect were not found to exist at the time of the termination. "In the absence of evidence of neglect at the time of the termination hearing, the court may nonetheless terminate rights if there has been a prior adjudication of neglect, and it finds by clear and convincing evidence that repetition of neglect is probable if the child is returned to the parent." The respondent was in prison for her complicity in the sexual abuse of her two children, which resulted in one child's pregnancy by respondent's husband, and the respondent was not scheduled to be released until the children were either over the age of eighteen or almost eighteen. During her incarceration, respondent was unable to provide proper care, discipline, and supervision, which constituted neglect. Holding that the neglect was likely to continue, the Court of Appeals affirmed the termination of respondent's parental rights.

In re Locklear, 151 N.C. App. 573, 566 S.E.2d 165 (July 16, 2002). The Court of Appeals overturned the termination of parental rights, citing the insufficient findings of fact as the essential problem. The child was adjudicated neglected due to the respondent mother's failure to appropriately care for the child and her pattern of leaving the child with friends, claiming she would return in a few hours but not returning for several days. The order that came from the termination hearing was very brief and failed to state findings of fact that were adequately specific. The findings of fact listed by the trial court were merely conclusive statements that the respondent had "failed to cooperate with the Department of Social Services for the return of the juvenile," that the respondent had "willfully left the juvenile in the custody of the Department in foster care for at least twelve months," and that the respondent "has paid no child support towards the care of the juvenile." Instead, the Court indicated the trial court should have detailed the information that led to these conclusions. For example, the findings should include a determination that the respondent had the ability to pay support and was not, or that the respondent had failed to address the concerns surrounding the care of the child and list the specific conditions that respondent had not met. The case was reversed and remanded to allow the trial court to hear additional evidence and to produce an order in compliance with this opinion.

In re Masters & Molina,* (Unpub.) 150 N.C. App. 713, 564 S.E.2d 318 (June 4, 2002). Respondent mother appeals the termination of her parental rights to her two children. The Court of Appeals affirmed the termination, holding that the trial judge acted properly in declining to recuse himself from the proceedings, the trial court did not err in taking judicial notice of the contents of the court records, testimony from the social work program manager at DSS of Cumberland County was properly admitted as a lay witness, and the evidence was sufficient to support the findings of fact and conclusions of law.

In re Matherly, 149 N.C. App. 452, 562 S.E.2d 15 (March 19, 2002). The child, who was the subject of this petition, was found living in neglectful conditions in a motel room with seven other children. Alamance County DSS took her into care. Her then fifteen-year-old mother was living in

Arizona and the father could not be determined. The respondent mother later returned to North Carolina and made some effort to regain custody of the child, but the respondent never completed any of the tasks in the case plan. Termination of parental rights was ordered on the grounds that (1) the child was willfully left in foster care for more than twelve months without making reasonable progress, (2) the respondent had failed to pay child support, (3) the child was born out of wedlock and the putative father had not established paternity, and (4) the respondent is incapable of providing care for the child in the foreseeable future.

The Court of Appeals overturned the termination of parental rights and remanded the case to the trial court for further proceedings. The Court held the order failed to state the appropriate standard for evidence in abuse, neglect and dependency cases, which is “clear, cogent, and convincing evidence.” The Court further directed the trial court to carefully consider the meaning of the words “willfully” and “incapable” in determining whether sufficient evidence supports the grounds for termination that were alleged in the petition. In particular, the Court indicated the “trial court must make specific findings of fact showing that a minor parent’s age-related limitations as to willfulness have been adequately considered.”

In re McBroom,* (Unpub.) 153 N.C. App. 527, 570 S.E.2d 152 (October 15, 2002). The putative father appeals the termination of his parental rights. Grounds for the termination were quickly affirmed, when the Court reviewed the evidence and concluded that the father had abandoned the child years before the father was incarcerated. The father further argued that a burden of proof was improperly placed upon him during the dispositional phase of the termination of his parental rights. The Court of Appeals, referring to well established precedent, reiterated that no burden exists during disposition. Instead, the trial court is directed by the statute to terminate the parental rights, if grounds are found, unless the best interests of the child do not support the termination. In this case, the language of the trial court did not indicate that the burden had been shifted to the respondent, and the decision was affirmed.

In re McNeil,* (Unpub.) 153 N.C. App. 523, 570 S.E.2d 152 (October 15, 2002). In November of 1998 the trial court concluded that it would not be in the best interests of the child to have her father’s parental rights terminated, but that it would be in her best interests to have her mother’s parental rights terminated. This decision was based in part upon the father’s efforts to communicate with the child during his incarceration; the efforts included registering the child for presents with the “Angel Tree.” However, after the father was released on probation, he did not comply with the court ordered substance abuse treatment, he tested positive for cocaine about 1/3 of the time, he failed to maintain contact with DSS and inquire about the child, and he failed to pay any support while financially able to do so. In June of 2000, DSS filed a second petition to terminate his parental rights. The trial court held that grounds existed to terminate his parental rights, and it was in the child’s best interests to do so. The Court of Appeals affirmed this decision.

In re Mills, 152 N.C. App. 1, 567 S.E.2d 168 (August 6, 2002), *cert. denied*, 356 N.C. 672, ___ S.E.2d ___ (2003). The mother and respondent father separated but remained married for several years. During that time the mother gave birth to three additional children whose legal father is respondent since he was still legally married to the mother at the time. The respondent was excluded,

however, as the biological father for any of the children. The majority of the panel held that respondent's actions provided clear, cogent and convincing evidence that he neglected the children when he never requested visitation, did not provide the children with support, and did not send the children any gifts, cards or other acknowledgement. Therefore, a ground for terminating his parental rights was properly found and it was in the best interests of the children that respondent's parental rights be terminated.

The entire panel of the Court of Appeals agreed that the trial court erred in finding that the respondent neglected his children by failing to appear at the adjudication hearing for the previous petition of neglect against the mother, as he was not served and not aware of the existence of the children at that time. The Court of Appeals remanded the case to the trial court to strike this finding of fact and the corresponding conclusions of law. Even without that finding and conclusion, the majority of the panel affirmed the rest of the order.

Judge Tyson, writing the dissent, argued that there was not clear, cogent and convincing evidence to support the termination. He emphasized the presumption of paternity in North Carolina for the husband when children are born during a marriage, the public policy consideration of not bastardizing children, and the burden on DSS to prove sufficient facts to establish that the termination of parental rights was proper. The respondent petitioned the NC Supreme Court for a writ of certiorari on September 11, 2002, but the petition was denied on February 7, 2003.

In re Mitchell, 356 N.C. 288, 570 S.E.2d 212 (October 4, 2002). The NC Supreme Court reversed the majority opinion of the Court of Appeals, 148 N.C. App. 483, 559 S.E.2d 237 (February 5, 2002), for the reasons stated in the dissent authored by Judge Hunter and thereby affirmed the termination of parental rights. During the hearing, the guardian ad litem stated that the trial court, having found that grounds existed to terminate parental rights, should now look to the respondent parent for evidence as to why the parental rights should not be terminated. The trial court indicated that the guardian ad litem had the information "generally" correct; however, this vague terminology with nothing further is not sufficient to show the trial court applied an improper burden to the respondent. In fact, the trial court gave full opportunity for all parties to present evidence during the best interests phase of the hearing, although no evidence was presented. The trial court then concluded that based upon the evidence it had already received it was in the best interests of the child to terminate the parental rights. Although a burden is placed on the petitioner in the initial phase of the hearing to show that grounds exist to terminate the parental rights, the second phase of the hearing, when the court determines if the termination is in the child's best interests, does not require a burden to be placed upon any party. Instead, the court may hear all relevant evidence and make its determination as to what is in the child's best interests. The NC Supreme Court affirmed the decision of the trial court to terminate respondent's parental rights.

In the Matter of Monroe,* (Unpub.) 149 N.C. App. 232, 562 S.E.2d 303 (March 5, 2002). Respondent's appeal from the termination of his parental rights was dismissed because it raised issues for the first time on appeal, and it failed to present any assignments of error.

In the Matter of Morris,* (Unpub.) 149 N.C. App. 972, 563 S.E.2d 100 (April 16, 2002). Three out of five parents appealed the termination of their parental rights to four children, who are the subjects of this case. The Court of Appeals disagreed with the first argument brought by respondents, holding that although the tapes of the proceeding were inaudible and a transcript could not be completed, the respondents allege no error for which a transcript would be helpful. The remaining arguments revolved around the sufficiency of the evidence to support termination based upon various grounds for the termination. The Court of Appeals found none of respondents' arguments to be persuasive and held that sufficient evidence was presented to the trial court to support its findings of fact and the conclusions of law. Therefore, the termination of the parental rights to all four children was affirmed.

In re Mosley,* (Unpub.) 149 N.C. App. 972, 563 S.E.2d 100 (April 16, 2002). In a private TPR action, the Court of Appeals upheld the termination of the father's parental rights based upon the ground of abandonment for more than six months. In so doing, the Court reiterated that the evidentiary standard of "clear, cogent and convincing" was interchangeable with the "clear and convincing" standard.

In re Murray,* (Unpub.) 149 N.C. App. 975, 563 S.E.2d 307 (May 7, 2002). The father appealed the adjudication order and the concurrent termination order. The sole issue properly before the Court was whether the neglect existed at the time the termination proceeding came before the trial court, as is required. The father continuously, and up until the date of the hearing, failed to visit with the child and did not enroll in training sessions to learn to care for his son's special needs. Holding this failure constituted continued neglect, the Court of Appeals affirmed the termination.

In re Oxendine,* (Unpub.) 153 N.C. App. 200, 569 S.E.2d 32 (September 17, 2002). The respondent parents medically neglected their son by failing grasp the gravity of his condition, missing numerous doctor's appointments, and providing inadequate care. All of these factors led to the child's admission to the hospital to regain weight and strength before his chemotherapy could resume. After the child was placed in foster care, the parents continued to fail to attend appointments and rarely called to inquire about his condition. The Court of Appeals affirmed the termination of respondent parent's parental rights on the grounds of medical neglect.

In re Pawley,* (Unpub.) 148 N.C. App. 716, 562 S.E.2d 117 (February 19, 2002). The private TPR was overturned when the Court of Appeals held that the petitioner had not used due diligence to serve the respondent by personal service or certified mail before proceeding to service by publication. The petitioner failed to attempt service in the county of respondent's last known address and failed to contact respondent's parents for further information as to his current location. The termination of parental rights order was reversed, even though the motion to set aside the judgment was filed nineteen months after the termination of parental rights was ordered, the child had no significant contact with respondent for four years, and the child had been adopted; all because due diligence was not used in serving the respondent with the petition for termination of his parental rights.

In re Pierce, 356 N.C. 68, 565 S.E.2d 81 (June 28, 2002). The mother appealed from the termination of her parental rights. The majority of the panel at the Court of Appeals overturned the

termination, but a dissenting opinion gave rise to this appeal as of right before the Supreme Court of North Carolina.

The Supreme Court affirmed the majority of the Court of Appeals and vacated the termination of parental rights. The ground upon which the mother's parental rights were terminated was N.C.G.S. § 7A-289.32. It provides that the court may terminate the parental rights of a parent who willfully leaves his or her child in foster care placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the child. (This statute is no longer in effect and has been replaced by the N.C.G.S. § 7B-1111.) The Supreme Court framed the essential issues as (1) What constitutes the twelve-month period prescribed in the statute ("within 12 months"), and (2) to what extent may a court consider evidence of reasonable progress that occurs outside the twelve-month period?

After weighing various options, the Court determined the 12-month requirement does not limit the trial court's consideration of relevant evidence to that which occurred during the twelve months immediately after separation. Instead, the twelve months immediately preceding the petition were the most current and would most accurately reflect the progress, or lack thereof, of the parent. Therefore, under the old statute, 7A-289.32, the trial court should have used the evidence of the mother's conduct 12 months prior to the filing of the petition to determine if grounds existed to terminate her parental rights. Only if grounds existed to terminate based upon the mother's lack of reasonable progress during these 12 months, would the court find that grounds existed to terminate the parental rights and proceed to the dispositional phase of the hearing, where all the evidence of the parent's conduct can be considered to determine what is in the child's best interests.

The Court employed this newly prescribed limitation on the trial court's decision in this case and found that the trial court had not received enough information during the twelve months prior to the filing of the petition to support a ground for termination of the mother's parental rights. Consequently, the decision of the Court of Appeals to overturn the termination of parental rights was affirmed.

In a footnote, the Supreme Court noted that this result could not be repeated under the current statutes, as the words "within 12 months" were eliminated from this ground for termination in the corresponding section of the new statute (7B-1111(a)(2)). "Thus, under current law, there is no specified time frame that limits the admission of relevant evidence pertaining to a parent's "reasonable progress" or lack thereof."

In re Jakel Pittman, 149 N.C. App. 756, 561 S.E.2d 560 (April 16, 2002), *cert. denied*, 123 S. Ct. 1799 (2003). Both parents appeal the trial court's order, which relieved DSS of further reunification efforts with the parents. The respondents first contend the statement signed by the mother, in which she stated she rocked and bounced the child too hard and hurt her baby, violates her Fifth Amendment right against self-incrimination because it was obtained without the benefit of Miranda warnings. The essential issue is whether Miranda is applicable to civil cases, and the Court of Appeals concluded it was not. The Fifth Amendment is relevant to criminal proceedings and consequently the

protections afforded by Miranda are applicable only to criminal proceedings. During the Court's analysis of this point, the Court noted the constitutionally protected interest in being a parent, but emphasized that "the common thread running throughout the Juvenile Code . . . is that the court's primary concern must be the child's best interest." Using a deferential tone, the Court analyzed the evidence presented to the trial court and held that sufficient evidence was presented to support the findings, and those findings support the conclusions. Therefore, the decision of the trial court to relieve DSS of reunification efforts was affirmed.

In re James Pittman, 151 N.C. App. 112, 564 S.E.2d 899 (June 18, 2002), *cert. denied*, 123 S. Ct. 1799 (2003). The sole issue on appeal was whether an order signed by a judge after her term had expired was a valid order. The judge who signed the order heard the underlying case approximately two and a half months prior to her signing the order, but she signed the order one and a half months after her term had expired. The Court of Appeals followed the well-settled law in this area and overturned the termination.

In re Player,* (Unpub.) 155 N.C. App. 220, 573 S.E.2d 774 (December 31, 2002). In the appeal from the termination of his parental rights, respondent father argued that the trial court abused its discretion in denying his motion to continue the case until after the conclusion of his criminal trial for the acts of abuse he committed on the child, who is also the subject of the underlying a/n/d petition. Defendant argued the denial of the motion to continue required him to choose between testifying at the a/n/d hearing and jeopardize his appeal of the criminal case, or not testify and jeopardize his parental rights. The Court of Appeals held that the trial court did not abuse its discretion in denying the motion, where the respondent failed to show harm from the denial given that he testified at the criminal trial and was convicted. The remaining errors were abandoned by respondent. The Court of Appeals affirmed the termination of respondent's parental rights.

In re Poole, 357 N.C. 151, 579 S.E.2d 248 (May 2, 2003). The majority for the Court of Appeals overturned the adjudication and disposition order and held that according to the provisions of the UCCJEA, both parents must be served before the trial court has subject matter jurisdiction and can proceed with adjudication. *In re Poole*, 151 N.C. App. 472, 568 S.E.2d 200 (July 16, 2002). The dissenting opinion, authored by Judge Timmons-Goodson, did an excellent job of refuting the majority's decision and articulating the correct application of the UCCJEA. The North Carolina Supreme Court recently reversed the decision of the Court of Appeals for the reasons stated in the dissent.

The dissent, which is the current law, held that the trial court had subject matter jurisdiction over the matter because one of the parents was properly served with notice of the proceeding. It is not necessary for both parents to be served to have subject matter jurisdiction. The court obtained personal jurisdiction over the mother when she was properly served with notice of the hearing, but the court did not obtain personal jurisdiction over the father until he appeared in the court some time later. Nevertheless, the court had authority to conduct the hearing and proceed with the case, because it had obtained service on one parent and therefore subject matter jurisdiction over the case.

The UCCJEA only applies to those cases in which the court of another state is potentially involved with the child. In this case, there was no other state that had a claim upon this case and the UCCJEA did not apply to these proceedings.

Furthermore, after analyzing whether the father's due process rights had been violated, Judge Timmons-Goodson held, and the NC Supreme Court agreed, that no violation had occurred. The decision of the trial court was affirmed.

In re Quick,* (Unpub.) 149 N.C. App. 489, 562 S.E.2d 470 (March 19, 2002). Six children constitute the subject of this appeal. All six children have the same father; four of them have one mother, and the remaining two have another mother. At the time the children were taken into care, the children were living in a two-bedroom trailer with their father and his girlfriend (mother of the two youngest children). Five of the children were adjudicated abused and all six were adjudicated neglected. The improper discipline, which constituted the abuse, left visible scars on the children's bodies. Over the course of three years in foster care the parents failed to make reasonable progress toward reunification. Their parental rights were finally terminated in August 2000 based upon numerous grounds. The parents appeal the termination.

After detailing the severe abuse and atrocious living conditions under which the children suffered before being taken into care by Harnett County DSS, the Court of Appeals made short work of affirming that sufficient evidence supported the termination of parental rights for all three parents. The Court emphasized that "[e]xtremely limited progress is not reasonable progress," and positive response on the part of the parents seeking reunification entails not only positive efforts, but also positive results. Finally, the Court recognized that "the fundamental principle underlying North Carolina's approach to controversies involving child neglect and custody is that the best interest of the child is the polar star."

In re Ramsey,* (Unpub.) 151 N.C. App. 597, ___ S.E.2d ___ (July 16, 2002), *appeal dismissed* 356 N.C. 302, 570 S.E.2d 729 (2002). The respondent mother appeals the termination of her parental rights in a private action brought by the custodians of the children who have been caring for the children since September 1996. The relevant issue in the appeal derives from respondent's argument that the trial court erred when it independently procured her criminal record, and she did not have an opportunity to object to its admission or rebut the information contained therein. The Court of Appeals held the respondent's due process rights were not violated by the trial court's conduct when respondent herself freely reviewed her criminal history for the court. In addition, the criminal history of a parent may not be relevant to the issue of abandonment, as was raised in the petition, but is relevant to the determination of what is in the child's best interests. For this and other reasons, the termination was affirmed.

In re Reagan,* (Unpub.) 152 N.C. App. 477, 567 S.E.2d 840 (August 20, 2002). The Court of Appeals affirmed the termination of respondent's parental rights, where the respondent had made some progress in addressing her mental health problems, but had not made reasonable progress under the circumstances in correcting the conditions that led to her daughter being placed in foster care for over twelve months.

In re Rocha & Locklear,* (Unpub.) 150 N.C. App. 717, 565 S.E.2d 112 (June 18, 2002). This case presented an unusual situation in that the appeal was from the termination of parental rights to one child while the other child's case was not yet completed. Despite the interlocutory nature of this appeal, the Court of Appeals agreed to hear the appeal because it affected the respondent mother's substantial rights. The Court quickly dispensed with respondent- mother's arguments and affirmed the termination; neither the insufficient service of process argument nor the insufficient evidence argument was persuasive. Most notably, the Court clearly stated that the ground of abandonment was not precluded by the lack of visitation offered to respondent mother when the visitation was terminated due to respondent mother's failure to comply with the case plan and complete drug treatment.

In re Scharfenberger,* (Unpub.) 154 N.C. App. 742, ___ S.E.2d ___ (December 17, 2002). The sole ground for terminating respondent mother's parental rights was her failure to pay a reasonable portion of the cost of care of the minor child for six months preceding the filing of the petition. The Court of Appeals affirmed the termination, because respondent failed to make error appear on the face of the record. No transcript was provided to the Court, no references to the transcript page numbers or assignments of error were contained within the brief, and no authority was used to support the arguments.

In re Shaw, 152 N.C. App. 126, 566 S.E.2d 744 (August 6, 2002). Service by publication was sufficient, where the address of respondent was unknown and could not with due diligence be ascertained, and where the respondent did not forward any argument as to how petitioner (DSS) could have located him during this time. In addition to challenging the service of process, the respondent argued the trial court lacked authority to enter an adjudication of neglect when it did not conduct an evidentiary hearing. The Court of Appeals agreed that respondent father was one of the parties to the action and because he was not represented in the consent order, an adjudicatory hearing should have taken place. The requirement of N.C.G.S. § 7B-902 that all parties are present includes even those parties who whereabouts are unknown and are consequently served by publication. Therefore, the order was invalid and the case was remanded for further proceedings. The Court clearly stated that an adjudicatory hearing need not take place when all parties to an action enter into a consent agreement, and the trial court makes sufficient findings of fact.

In re Simato & Holden,* (Unpub.) 152 N.C. App. 477, 567 S.E.2d 840 (August 20, 2002). The respondent mother argues on appeal that there was insufficient evidence to terminate her parental rights on either of three grounds alleged in the petition, which pertained to her. The respondent mother did not complete any of the recommendations in any of the three psychological evaluations, she did not maintain stable housing or employment, she did not maintain contact with the social worker, nor did she inquire about her children's well being. Relying both upon the evidence presented by DSS and the contents of the GAL's report, the Court of Appeals held there was sufficient evidence to support the trial court's decision and the termination of parental rights was affirmed.

In re Simone,* (Unpub.) 154 N.C. App. 520, 572 S.E.2d 443 (December 3, 2002). The respondent mother appealed from an adjudication of neglect and abuse. The respondent made several arguments

for reversal of the adjudication, however, the Court of Appeals reviewed the arguments and affirmed the decision. The Court held that it was not error for the child's testimony to be admitted regardless of whether she was sworn, because the respondent failed to object at the trial court, and even errors of constitutional magnitude are waived when the complaining party fails to object in the court below. Second, even though the trial court failed to make any findings of fact regarding the detrimental effect on the child of the respondent's conduct in hitting and kicking the child, the only inference that could be drawn from these facts was that the child suffered from physical, mental, or emotional impairment. Consequently, the findings were sufficient to support the conclusion that the child was neglected. Third, the court may conclude that the child was abused, even though the petition alleged neglect only, since the pleadings and the evidence adduced at trial supported this relief, and the court has authority to grant the necessary relief to the prevailing party. The remaining arguments involved the admission of evidence in accordance with the NC Rules of Evidence and are not worthy of review here. The adjudication of abuse and neglect and the disposition placing the child in the custody of DSS was affirmed.

In re S. Smith,* (Unpub.) 149 N.C. App. 232, 562 S.E.2d 304 (March 5, 2002). Both of the children who constitute the subject of this appeal were born testing positive for cocaine. The mother admitted to using cocaine, lacked permanent stable housing, did not participate in prenatal care, lacked funding to support the children, and did not have adequate infant supplies for the baby. Consequently, the children were removed from the mother's custody and adjudicated neglected juveniles. The petition seeking the termination of the mother's parental rights alleged four grounds, all of which were found to exist by clear, cogent, and convincing evidence. The trial court then ruled it was in the children's best interest to have the parental rights terminated. The mother appealed.

The Court of Appeals affirmed the trial court's decision. The Court determined that one of the findings of fact was in direct conflict with evidence produced at the hearing. The trial court found that the trailer the mother currently lives in has "no provision for heat and it is not suitable as a home for the child." The Court of Appeals found that to be in direct conflict with the testimony from the social worker who said the trailer would be suitable even though it did not have heat, since it was July now and heat would not be needed for a few months. The Court of Appeals held, however, that the remaining findings of fact were supported by sufficient evidence, and those findings, even without the one they overruled, did support the conclusion that parental rights should be terminated.

In re J. Smith,* (Unpub.) 151 N.C. App. 297, 565 S.E.2d 280 (July 2, 2002). The Court of Appeals dismissed the appeal as moot, where a subsequent trial court hearing rectified any errors alleged in the appeal.

In re Stratton, 153 N.C. App. 428, 571 S.E.2d 234 (October 15, 2002), *disc. review denied*, 356 N.C. 436, 573 S.E.2d 512 (2002). The respondent parents appealed to the Court of Appeals for an injunction preventing the immunization of their ten children and overturning the trial court's order directing that the children be immunized, citing religious objections. This case presented the first time that the statute mandating immunizations, N.C.G.S. § 130A-157, has been judicially interpreted since its inception in 1967. The Court of Appeals granted the injunction pending its decision. It did not, however, reach the issue of whether the religious objection was bona fide, as the parents' conduct in

regards to their children had compromised their parental authority over the children. The ten children were discovered living in squalor with inadequate nutrition, clothing, heat, medical care and education. The children were adjudicated neglected and dependent. Given the woefully inadequate care the children had received while in respondents' care, the respondents' constitutionally protected status of parental authority was greatly compromised. The order of the trial court directing the children be immunized was affirmed.

In the Matter of Thomas,* (Unpub.) ___ N.C. App. ___, ___ S.E.2d ___ (March 19, 2002). The parental rights of Keva Thomas were terminated to her two children. The respondent mother appeals the termination. The Court of Appeals affirmed the termination.

The trial court concluded that the parental rights should be terminated based upon three grounds, but since only one ground is necessary, the Court of Appeals affirmed the decision of the trial court on one of the three grounds without reaching an analysis of the other two grounds. The Court of Appeals held the evidence presented to the trial court supported the conclusion that the rights should be terminated. The evidence showed that the respondent mother failed to cooperate with DSS to engage in treatment, continued to allow contact between the abuser of one of the children and that child, failed to recognize the significance of the trauma to the child, and failed to maintain consistent visitation. The Court of Appeals further held that the trial court did not abuse its discretion in determining that the best interests of the children required the parental rights be terminated.

In the Matter of Torrence,* (Unpub.) 152 N.C. App. 477, 567 S.E.2d 840 (August 20, 2002). The respondent father appealed the termination of his parental rights and argued that (1) he did not receive proper notice of the hearing and (2) that it was not in the child's best interests to terminate his parental rights. The Court of Appeals reiterated an earlier holding that the notice requirements of G.S. § 7B-1108 do not apply when a hearing has been continued. The Court further held that it was in the child's best interest to terminate the parental rights, when the child had never met the respondent, the respondent had his parental rights terminated to four other children, and the respondent had failed to improve any of the conditions that led to those children's removal.

In re Trull,* (Unpub.) 149 N.C. App. 972, 563 S.E.2d 499 (April 16, 2002). In affirming the termination of respondent mother's parental rights, the Court of Appeals cited the holding in *Ballard*, 311 N.C. at 714, 319 S.E.2d at 231-32, that in addition to the evidence surrounding the initial charge of neglect, the court "must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect."

In re Whitley,* (Unpub.) 153 N.C. App. 811, 571 S.E.2d 87 (November 5, 2002). Respondent mother appealed the termination of her parental rights. She did not, however, challenge any of the trial court's findings other than the finding that the termination was in the child's best interest. The Court of Appeals questioned whether it would have determined that those findings were supported by clear, cogent, and convincing evidence, but declined to rule since this issue was not properly before it. The finding that was challenged was supported by clear, cogent, and convincing evidence, and the trial court did not abuse its discretion in terminating the respondent's parental rights.

In re Williams, 149 N.C. App. 951, 563 S.E.2d 202 (May 7, 2002). The respondent father appealed from the termination of his parental rights. The child was born out of wedlock and has never seen his father, who is currently serving a thirty-four to seventy-seven year sentence.

This case presents an issue of first impression in North Carolina regarding the Indian Child Welfare Act (ICWA). The respondent argues that the termination should be overturned because the order did not comply with the requirements of ICWA, which requires the trial court to conclude beyond a reasonable doubt that continued custody by the parent is likely to result in serious emotional or physical damages to the child. 25 U.S.C.A. § 1912(f) (2002). This evidentiary standard differs greatly from the clear, cogent and convincing standard for state court proceedings. In this case, however, the respondent father offered no evidence that he was an American Indian entitled to the Act's protection. Following the Nebraska Supreme Court's decision, the North Carolina Court of Appeals adopted the requirement that "a party to a proceeding who seeks to invoke a provision of the . . . Act has the burden to show that the [A]ct applies in the proceedings." *In re Interest of J.L.M.*, 451 N.W.2d 377, 396 (Neb 1990). Since the respondent had failed to meet that burden, this assignment of error was rejected.

Respondent also argued the case should be dismissed because the trial court lacked personal jurisdiction over him as he did not have minimum contacts with the state of North Carolina. The Court held that although the respondent did not have minimum contacts with North Carolina, those are not always required when fair play and substantial justice do not require them. As has been the case with children born out of wedlock, the father's failure to demonstrate his commitment to the child and his inability to carry out his parental responsibilities led the Court to the conclusion that "traditional notions of fair play and substantial justice" are served by claiming personal jurisdiction over the respondent.

The Court swiftly rejected respondent's argument regarding insufficient service of process when an official from the prison signed for the letter and the respondent filed a motion for an attorney eighteen days after service.

Finally, respondent takes issue with the court allowing the child to testify in chambers without the respondent. Since the child had never met his father and doing so in the court setting could cause harm to him, and since the respondent's attorney was present during the hearing in chambers, the Court rejected this argument and affirmed the termination of parental rights.

In re Williamson,* (Unpub.) 151 N.C. App. 748, 567 S.E.2d 465 (August 6, 2002). Respondent mother appeals from the termination of her parental rights to her three younger children. The older child's case was handled separately. The Court of Appeals held that the trial court did not err when it considered information contained in the court file that pertained to the older child for the purposes of assessing the living environment of the three younger children. Evidence of abuse or neglect suffered by a juvenile living in the same home as the juveniles who were the subjects of the petition was relevant and properly admitted. The trial court did not err in considering evidence of respondent's failure to comply with the orders of the court imposed on the respondent during the course of the case of the older juvenile. Furthermore, the court is permitted to take judicial notice of the court file before it.

The Court further held that there was clear, cogent and convincing evidence to support the findings of fact and the findings supported the conclusions of law, when the respondent failed to get a psychological evaluation and substance abuse assessment and comply with the treatments prescribed, the respondent failed to adhere to the requirements of the battered women's shelter by maintaining the confidentiality of the location from her abusive husband, the respondent failed to protect the children from sexual abuse, and the respondent failed to obtain treatment for the children's speech difficulties. The termination order was affirmed.

In re Wood,* (Unpub.) 155 N.C. App. 220, 573 S.E.2d 774 (December 31, 2002). DSS and the GAL appealed the trial court's dismissal of a termination of parental rights petition. The Court of Appeals held that the trial court did have to state the standard of proof it employed, when deciding it had not found sufficient evidence to support any grounds for termination of respondents' parental rights.

Jeffries v. Moore, 148 N.C. App. 364, 559 S.E.2d 217 (February 5, 2002), *cert. denied*, 356 N.C. 663, 576 S.E.2d 323 (2003). A child was born to a mother who, while married to her husband, was engaged in sexual relations with another man. In an effort to establish his paternity, the boyfriend moved the court to require the husband, and therefore presumptive father, to submit to a paternity test. The trial court denied the motion and dismissed the case, relying upon *Johnson v. Johnson*, 120 N.C. App. 1, 461 S.E.2d 369 (1995), *reversed* by, 343 N.C. 114, 468 S.E.2d 59 (1996) (per curiam). The Court of Appeals held that the holding in *Johnson* was so narrow that it did not encompass all the issues presented to the trial court, and therefore a dismissal of the entire case was unnecessary. *Johnson* merely prevents an alleged parent from seeking to challenge the presumption of legitimacy by compelling a blood test be completed. In the case at bar, other information was presented to the trial court which challenged the presumption of legitimacy, such as, the correlation between the date the sexual relations between the mother and the boyfriend began and the projected conception date and the skin color of all the parties involved. The Court of Appeals reversed and remanded.

State of NC ex rel. Davis v. Adams, 153 N.C. App. 512, 571 S.E.2d 238 (October 15, 2002). The defendant in this action sought relief pursuant to Rule 60(b) from a paternity order after a paternity test excluded him. Although he had previously signed a Voluntary Support Agreement and Order claiming paternity of the child, his motion came after the one-year time period had expired and was therefore not timely. The order was affirmed.

State v. Carrilo, 149 N.C. App. 543, 562 S.E.2d 47 (April 2, 2002). Defendant appeals his conviction of first-degree murder of an infant. The first-degree murder conviction was obtained under the felony murder provision with the underlying felony being felony child abuse. The defendant was sentenced to life in prison without parole.

Three of defendant's arguments are worth summarizing here. First, defendant unsuccessfully argued that he did not provide supervision for the infant and therefore could not be found guilty of felony child abuse. The Court of Appeals found guidance for the definition of "caretaker" from the Juvenile Code, which defines it as "an adult member of the juvenile's household." N.C.G.S. § 7B-101(3). Further, the

situation was one the legislature clearly intended to be prohibited by the governing statute. Second, prior incidents of defendant's violent conduct were properly admitted pursuant to Rule 404(b) of the Rules of Evidence. Finally, a compact disc presentation entitled "The Mechanism of Baby Shaking Syndrome" was properly admitted as illustrative evidence.

State v. Corbett, 154 N.C. App. 713, 573 S.E.2d 210 (December 17, 2002). Defendant appealed his conviction of second degree sexual offense and the finding of an aggravating factor that defendant "took advantage of a position of trust" in fondling and penetrating his stepdaughter for about four years beginning when she was twelve. Defendant argued that the State failed to prove the element of force in the charge of second-degree sexual offense. The Court of Appeals affirmed the conviction citing several authorities, which provided that the force involved in the sexual abuse of a child by a parent constitutes "constructive force" and satisfies the element of force in a criminal prosecution. "The youth and vulnerability of children, coupled with the power inherent in a parent's authority, creates a unique situation of dominance and control in which explicit threats and displays of force are not necessary to effect the abuser's purpose." In this case, the evidence that satisfied the element of force was the same evidence that was used to constitute the aggravating factor that defendant abused his position of trust. Therefore, defendant's sentence, which included the aggravating factor, was reversed and the case was remanded for re-sentencing.

State v. Flaskrud, 148 N.C. App. 710, 559 S.E.2d 286 (February 19, 2002). Tina Bright gave birth to a child and executed a Mother's Affirmation of Paternity. Defendant executed a Father's Acknowledgement of Paternity. Defendant later discovered he was not the father of the child and moved the court to set aside its previous order establishing paternity pursuant to rule 60(b) of the rules of civil procedure. The trial court declined to rule on that motion and ordered the parties to submit to DNA testing. The mother appealed.

The Court of appeals held it was error for the judge to order DNA testing since *res judicata* bars further inquiry into the question of paternity when it has previously been established by court order. The trial court may, however, grant the 60(b) motion to set aside the previous paternity order and then order DNA testing. Reversed and remanded.

State v. Lowe, 154 N.C. App. 607, 572 S.E.2d 850 (December 17, 2002). Although this is a criminal case, the issue raised regarding the admission of evidence under the excited utterance exception to the hearsay rule is relevant to cases in abuse, neglect and dependency court. The statement made by the child who did not testify at trial described the abuse he suffered and the abuse he witnessed his mother and friends suffer at the hands of the defendant. The statement was taken by the detective at the hospital emergency room a few hours after the events took place, and the statement was made in response to the detective's question of what happened. The Court of Appeals reiterated the well-established principle that the time for excited utterances can be substantially longer in children than adults as children are more likely to remain excited for longer after a startling or traumatic event. Furthermore, the availability of a hearsay declarant does not preclude the admission of the hearsay evidence under the excited utterance exception. In other words, the trial court did not have to first find that the child was unavailable to testify to admit the excited utterance.

State v. O'Connor, 150 N.C. App. 710, 564 S.E.2d 296 (June 18, 2002), *motion denied*, 356 N.C. 173, 567 S.E.2d 144 (2002). A portion of an expert witness's report was admitted into evidence and shown to the jury. Within this portion of the report, the expert characterized the child-victim's statements about the sexual abuse he suffered as credible. This admission constituted plain error and the defendant was awarded a new trial. Experts are permitted to testify to the credibility of children in general, but are prohibited pursuant to Rules 405 and 608(a) to remark on the credibility of a particular child witness; the determination of credibility belongs within the province of the jury.

State v. Patterson, 150 N.C. App. 393, 563 S.E.2d 88 (May 21, 2002). Defendant appeals his conviction of several sexual offenses and the corresponding sentences. The Court of Appeals affirmed the trial court's admission of prior bad acts pursuant to Rule 404(b) when the abuse of his older daughter involved acts and patterns of behavior similar to the abuse suffered by the victim in the current case. The majority of the Court also affirmed the consecutive sentence, holding that the evidence presented by DSS from its confidential records used to rebut the defendant's false statements regarding his employment history did not constitute abuse of the trial court's discretion.

State v. Smith, 355 N.C. 268, 599 S.E.2d 786 (March 7, 2002). A jury found James Russell Smith guilty of second-degree murder for causing the death of his girlfriend's two-year-old child by shaking the child and causing blunt force trauma. The Court of Appeals held that there was insufficient evidence of malice and ordered the trial court to enter a conviction of manslaughter instead of second-degree murder. The Supreme Court reversed the decision of the Court of Appeals based upon the reasons articulated in the dissent from the Court of Appeals. The author of the dissent at the Court of Appeals, Judge John Tyson, stated that the facts of this case, which included shaking a young child, were sufficient to support the finding of malice and thereby supported a conviction of second-degree murder.

State v. Stancil, 355 N.C. 266, 559 S.E.2d 788 (March 7, 2002). The defendant was convicted of sexual offense against a child-victim. Testimony from a pediatrician was admitted in which the pediatrician stated the victim was "sexually assaulted and [that there was] also maltreatment, emotionally, physically and sexually." The defense failed to object at trial, and the Supreme Court reviewed for plain error. Although the Supreme Court held the prosecution failed to lay a proper foundation for the evidence, the error was not so great as to cause the jury to reach a different verdict than it otherwise would have reached. Therefore, the conviction was upheld.

State v. Starnes, 152 N.C. App. 150, 566 S.E.2d 814 (August 6, 2002), *cert. denied*, 356 N.C. 311, 571 S.E.2d 209 (2002). Although this is a criminal case, the issue raised regarding the admission of evidence pursuant to 404(b) is relevant to cases in abuse, neglect and dependency court. The Court of Appeals found no error in the trial court's admission of evidence of the defendant's prior abuse of his biological daughter. The prior bad acts that were admitted showed a common plan or scheme in that defendant abused young, female family members who were in his care when no one else was around. Additionally, both assaults were similar in nature. Therefore the evidence regarding the abuse against his biological daughter was properly admitted in the trial of his stepdaughter and current victim.

State v. Stokes, 150 N.C. App. 211, 565 S.E.2d 196 (May 21, 2002), *reversed* ___ N.C. ___ (June 13, 2003). Defendant was convicted of first-degree felony murder and felonious child abuse and sentenced to life imprisonment without the possibility of parole. The Court of Appeals granted defendant a new trial on grounds related to his 5th and 6th Amendment rights, however, the NC Supreme Court reversed this decision and affirmed the conviction. Relevant to this summary (and contained within the Court of Appeals decision) is the holding that the evidence of the child's prior injuries, as well as the testimony from a doctor who was an expert on battered child syndrome, was properly admitted.

State v. Williams, 154 N.C. App. 176, 571 S.E.2d 619 (November 19, 2002). Defendant appealed his conviction of felonious child abuse and misdemeanor assault inflicting serious injury. In regards to the conviction for felonious child abuse, defendant argued that the element of "serious physical injury" had not been satisfied. The facts presented to the jury were as follows, the child was beaten on her buttocks with a board multiple times and the pain inflicted was severe. At school, employees noticed she was walking funny, and she was sent to the school nurse. She had a large bruise and an open, oozing sore. The child was taken to the hospital, where her mother met her and became extremely upset upon seeing her child's injuries for the first time. For several days afterwards, the child had difficulty sitting, walking, and going to the bathroom. At the time of the trial, the mother testified that the child still had scars on her buttocks. The Court of Appeals held that viewed in the light most favorable to the state, as is the standard of review from denials of motions to dismiss, the evidence was sufficient for a jury to reasonably infer that the injury inflicted by defendant caused the child "great pain and suffering, and thus satisfied the statutory element of 'serious physical injury.'"

* 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)