

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Unpublished decisions are noted by an * following the case name.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.

Foley v. Foley, 156 N.C. App. 409, 576 S.E.2d 383 (March 4, 2003) (Wilkes County). In this custody case, issues regarding the UCCJEA were raised which are pertinent to practice in abuse, neglect and dependency court. Briefly, the Court of Appeals held that the trial court couldn't infer subject matter jurisdiction based upon a consent order in which all parties agree to the court's jurisdiction. The provisions regarding subject matter jurisdiction are provided in N.C.G.S. § 50A-201, and the court either meets these requirements or it is lacking this jurisdiction. Given that there was insufficient information presented to the Court of Appeals upon which it could determine whether subject matter jurisdiction existed, the order was vacated and remanded.

In re Alexander, --- N.C. App. ---, --- S.E. 2d --- (June 17, 2003) (Orange County). DSS filed a termination of parental rights motion but did not comply with the mandates of N.C.G.S § 7B-1106.1 for providing notice. These requirements are mandatory. Even if the constitutional due process mandates have been met, the movant must still comply with the statutory requirements. The case was reversed and remanded for a new hearing.

In re Ascencio,* (Unpub.) --- N.C. App. ---, --- S.E. 2d --- (August 5, 2003) (Chatham County). Respondent father pled guilty to attempted first-degree sexual offense and indecent liberties with his son. He was sentenced to 94 to 122 months' imprisonment. In a separate action, his parental rights were terminated and he appealed. Respondent argued the trial court erred when it declined to admit evidence during the best interests phase of the termination hearing about a potential placement with his sister. The Court of Appeals quickly dispensed with this argument, holding that the issue of placement with respondent's sister was not relevant to the inquiry into the child's best interests. Respondent additionally argued that the trial court erred in speaking to a undisclosed person about this case where respondent did not have an opportunity to cross-examine this person. Following the well-established precedent of presuming in favor of correctness of the proceedings, the Court held that respondent had failed to show error where the identity of the person, topic of discussion, and effect on the case were unknown from the record. The facts surrounding the incident led the Court to believe that the trial court consulted someone on a procedural issue, one which would not be subject to respondent's cross examination. The termination was affirmed.

In re Baker, --- N.C. App. ---, --- S.E. 2d --- (June 17, 2003) (Johnston County). Respondent parents appeal the termination of their parental rights. Respondent father neglected to include a copy of his notice of appeal in the record on appeal, but he made a subsequent motion requesting the Court of Appeals add the notice of appeal in the record, the Court granted the motion and thereby had jurisdiction to hear his appeal. Respondents also failed to assign error to a key finding of fact, however, the Court exercised its authority pursuant to Rule 2 of the Appellate Rules and elected to review the merits of the arguments.

The family had an extensive history with DSS dating back to 1990 including 16 reports of suspected abuse or neglect, five substantiations (one involving sexual abuse), and two previous petitions of abuse or neglect. In the most recent incident, the child was removed from the home after whip marks were observed on his backs, legs and arms that left bruises. When DSS went to investigate the incident, respondent mother yelled at the juvenile blaming him for DSS involvement. Both parents generally argue that they have made reasonable progress in addressing the conditions that led to the children's removal. The Court disagreed and reiterated a common precedent that limited progress is not reasonable progress. Respondents attended a one-day workshop on discipline, but respondent mother refused to participate in counseling, would not agree to change disciplinary methods, and lied on a diagnostic test. In addition to attending the one-day workshop, respondent father attended anger management classes, but he expressed a limited understanding of the concepts and at the termination hearing continued to discuss whipping the children as a means of discipline. The Court held that ample evidence was presented that a ground for termination of parental rights existed and affirmed the decision.

In re Betts,* (Unpub.) 155 N.C. App. 776; 574 S.E.2d 501 (January 7, 2003) (Cumberland County). The child in this case came into the care of DSS upon the death of his mother. The putative father had not taken any action to legitimate the child, was currently in prison for sex offense charges on the child's older sibling, would not be released until five years after this child reached majority, and had failed to provide any support for the child while incarcerated, even though financially able to do so. The respondent had provided some support for the child prior to his incarceration in the form of diapers, medication, and other necessary items. None of the respondent's family members were willing to serve as a placement resource for the child, however, respondent had secured a possible adoptive family through a fellow inmate.

The trial court terminated respondent's parental rights, and respondent appealed. The Court of Appeals gently scolded the trial court for not making any findings of fact and instead taking judicial notice of the underlying juvenile court file. Since, however, the respondent had failed to include any of the underlying court file except the "Permanency Planning Review Order" in the Record on Appeal, the remaining trial court proceedings were presumed to be regular and correct. The Court held that even though the father expressed a love for his child and had provided a potential adoptive resource, he had failed to identify error on the face of the appeal. Therefore, based upon the record before it, the Court found no error and affirmed the termination of respondent's parental rights.

In re Burkes,* (Unpub.) --- N.C. App. ---, --- S.E. 2d --- (June 17, 2003) (Guilford County). Through a series of irregularities and errors the transcript was not timely prepared. Petitioner moved to dismiss the appeal and the trial court granted the dismissal. In the same order the court denied respondent's request to dismiss the termination order or grant a new trial that was requested because the audio recordings were indecipherable and a transcript could not be produced. Respondent appeals from this order.

Respondent argued in support of her motion for a new trial or to dismiss the termination order that a verbatim transcript was necessary for appellate review. The Court of Appeals held that where respondent has not specified what assignments of error she would raise on appeal, it

cannot determine that a verbatim transcript is necessary to protect respondent's right to an appeal. In regards to respondent's failure to comply with the Rules of Appellate Procedure in securing a transcript, the Court held that respondent had substantially complied and that many of the circumstances were beyond respondent's control. Reasoning that the case involved issues of Constitutional import, the Court exercised its authority under Rule 2 to suspend the rules and reinstated the appeal. The Court included very specific instructions about the deadlines for complying with the Appellate Rules beginning with the mandate date of the opinion. This summary provides students of appellate procedure a good overview of the timelines involved with procuring a transcript, although this section was crafted for this particular case and does include some differences from standard practices.

In re Carter,* (Unpub.) --- N.C. App. ---, 578 S.E.2d 2 (March 18,2003) (New Hanover County). The respondent father appealed the termination of his parental rights. The respondent had not enrolled in or completed any parenting classes or anger management programs, either during his stay in prison in South Carolina or since his release. The Court of Appeals left undisturbed the finding of the trial court that the respondent remained a danger to the safety of his children as evidenced by his denial or minimization of his culpability in the children's prior injuries. After extensively quoting a well written order including findings of facts, conclusions of law and a decretal section, the Court of Appeals affirmed the termination of parental rights based upon the appellant's failure to assign error to any findings of fact thereby making them conclusive on appeal, to argue issues in his brief (thereby abandoning them), and to cite authority for his arguments in his brief (thereby abandoning them).

In re Clark, --- N.C. App. ---, --- S.E. 2d --- (July 15, 2003) (Stokes County). The child in this case was first removed from respondent's custody after sustaining injuries from being dropped on the floor during a domestic dispute. The respondent mother moved numerous times, changed jobs frequently, failed to comply with any portion of the DSS service agreements, did not attend any of the permanency planning meetings, and exhibited behaviors indicating an inability to appropriately supervise her children. The child was adjudicated neglected in September 1998, the order was signed in August of 2000, the petition for termination of parental rights was filed in November 2000, the termination hearings were conducted on six different dates throughout 2001 and 2002, and the order terminating respondent's parental rights was finally signed in February of 2002. Respondent appeals from this order. A year and a half later the Court of Appeals issued its opinion affirming the termination.

Respondent first argued that the absence of an affidavit pursuant to N.C.G.S § 50A-209 divested the trial court of subject matter jurisdiction. The Court held that in the current case where the court noticed the omission, gave DSS five days to rectify the situation, and entered its decision after the filing of the affidavit, there was no error. The Court also held that the omissions of testimony in the transcript due to the flipping over of the tapes was very brief, and that the malfunction of the microphone causing the exclusion of part of a witness's testimony was not prejudicial error. The respondent declined to exercise her rights under Rule 9(c)(1) of the Appellate Rules to file a narrative of the omitted portions of testimony not captured in the transcript. Without a showing that the omissions of testimony from the transcript prejudiced the respondent, the Court rejected this assignment of error. Finally, the Court affirmed the trial court's decision that sufficient grounds existed to terminate respondent's parental rights holding

that there was sufficient evidence that leaving the child in foster care in excess of twelve months was willful.

In re Clayton,* (Unpub.) --- N.C. App. ---, --- S.E. 2d --- (July 15, 2003) (Wilkes County). No brief was filed for DSS or the GAL. Respondent appeals from an order adjudicating her son as neglected and abused. The respondent argued that the trial court erred in denying her discovery motion without examining the documents *in camera* and that the trial court erred in continuing the case. Respondent filed a set of interrogatories with DSS, received no response, and filed a motion to compel. The trial court denied the motion to compel and allowed a protective order filed by DSS. Discovery pursuant to N.C.G.S § 7B-2901 requires the trial court conduct an *in camera* review “if there is a possibility that such evidence might be *material. . . and favorable* to [that party].” (Citations omitted) In this case, respondent requested names and contact information for anyone possessing knowledge or documents related to the juvenile’s condition. The Court of Appeals held that the trial court was not required to hold an *in camera* review because the request was general and respondent did not indicate how the records would be material or favorable to her position. In regards to respondent’s second argument that the trial court erred in continuing the case, the Court found no error when the continuance was for good cause, which included the opportunity for respondent to present her case. The order was affirmed.

In re Crippen,* (Unpub.) --- N.C. App. ---, 582 S.E.2d 81 (July 1, 2003) (Gates County). Respondent appealed the private termination of his parental rights, arguing that the trial court erred in granting petitioner’s motion to amend the termination petition, in finding sufficient grounds to terminate his parental rights and in determining that the termination was in the child’s best interests. The Court of Appeals found no error and affirmed the decision. Specifically, the Court held that the trial court acted properly in granting the motion to amend the termination petition to conform to the evidence presented during the course of the hearing where the respondent did not object to the admission of evidence as not relevant to any issue presented by the original petition and where the evidence supported the amendment. Grounds for the termination were supported by the evidence where one of the grounds was abandonment and the evidence showed that the respondent had failed to schedule any visits with his child from July 1999 until the hearing on the termination petition. Finally, respondent’s lack of interest in his child, failure to provide for the son, and inability to care for himself without the intervention of social workers all led to the conclusion that the child’s best interests would be served by termination of respondent’s parental rights.

In re Davis I,* (Unpub.) --- N.C. App. ----, 577 S.E.2d 717 (March 4, 2003) (Davidson County). At the adjudication hearing, the parties stipulated that the two children were neglected and dependent. In addition to the stipulation, DSS presented additional evidence that the respondent was unwilling to accept assistance or provide a safe environment for her children. A summary order was entered from the adjudication, and the disposition was scheduled at another time. A different judge presided over the disposition, and this judge ordered that the children should have unsupervised visitation with King, who is the father of one of the children and who has offered to care for both children rather than have the children placed separately.

The respondent mother appealed and argued that the trial court erred in entering a dispositional order prior to the filing of the adjudication order. Although the trial court does not have jurisdiction to enter a disposition without an adjudication, in this case, the adjudication did take place and a summary order was entered; only the formal order was absent from the court file at the time of the disposition. The Court of Appeals held this was not error and noted that this case occurred prior to the new requirement that court orders be filed within 30 days of the hearing. The Court also found no error in two different judges presiding over the different hearings, where the judge who presided over the disposition had before her the stipulations as to the underlying facts and the summary order from the adjudication hearing. The Court further held that the trial court did not err in awarding visitation with both children to the father of one child, who was a stranger to the other child. In this case, the home study was favorable, the father provided financially for his family through odd jobs while he continued to search for more consistent employment, and the father was addressing the concerns noted by the mental health assessment, including marijuana use. The Court affirmed the disposition.

In re Davis II,* (Unpub.) – N.C. App. ---, 579 S.E.2d 521 (May 6, 2003) (Davidson County). Respondent mother appeals from a custody award to the child’s father. Although the child was placed in the custody of DSS, the award of custody occurred pursuant to Chapter 50. The sole argument on appeal is whether the trial court abused its discretion in making the custody award. The Court of Appeals held that the custody award was properly within the trial court’s discretion where the mother was easily overwhelmed by the child’s behavior, the mother did not set appropriate boundaries for the child or use appropriate discipline, and the child’s behavior was much better in school and at home after living with his father.

In re Derreberry,* (Unpub.) --- N.C. App. ---, --- S.E. 2d --- (September 2, 2003) (Buncombe County). The trial court adjudicated the child neglected and the child was subsequently removed from the home. After his removal he disclosed information that launched an investigation for sexual abuse. An additional petition alleging sexual abuse was filed and adjudicated. The respondent parents appeal this order.

In regards to the parents’ first argument on appeal, the Court held that the child’s out of court statements were not hearsay when not offered to prove the truth of the matter asserted, as was the case when the statements were used to show that the child had sexual knowledge inappropriate for a child his age. The Court also held that the parents’ failure to object to the Child Medical Exam (CME) as hearsay removed this issue from consideration before the court, because plain error does not apply to civil cases. The parents argued that the expert witnesses were not reliable, but the Court of Appeals held that the trial court acted within its discretion in qualifying the witness as an expert. Despite the parents’ contention that there was insufficient evidence to support the trial court’s order, the Court of Appeals held that the decision was fully supported by competent evidence.

The most intriguing facet of the case was the discussion about self-incrimination. The Court of Appeals made several rulings within this portion of the opinion, many of which were articulated more comprehensively in this case than had been seen previously. First, the testimony of the psychologist regarding the parents’ acknowledgement of responsibility does not compel the respondents to do anything, and therefore does not require self-incrimination. Second, a finding

of fact in a dispositional order that the parent had not acknowledged their responsibility for the harm the child suffered does not require self-incrimination. Third, the plain language of the Fifth Amendment confines the prohibition against compelling self-incrimination to criminal cases. Fourth, the court may order someone into therapy and this does not constitute a compulsion to incriminate oneself. Finally, and perhaps most significantly, the trial court cannot be “precluded from inquiring into the willingness of the parent to act in the best interest of the child, which includes consideration whether the parent recognizes that a problem existed previously that resulted in abuse or neglect.” If the inquiry results in incriminating statements, those statements might not be admissible in a criminal case, but that does not affect the statements admission into the civil abuse, neglect or dependency case. The Court of Appeals affirmed the order.

In re Doyle,* --- N.C. App. ---, S.E. 2d --- (July 15, 2003) (Gaston County). The Gaston County Guardian ad Litem Program appealed the trial court’s dismissal of a petition to terminate parental rights. The child was first noticed by DSS when he tested positive for cocaine at birth. He was taken into DSS custody at that time, but later released to respondents. He was again removed at age five and adjudicated neglected. Several months later the trial court ceased reunification efforts and a petition to terminate parental rights was filed. The trial court concluded that the evidence presented regarding the period twelve months prior to the filing of the petition did not meet the clear, cogent and convincing standard as required by law. The Court of Appeals affirmed the trial court’s first conclusion that evidence must be presented of continued neglect, including the twelve months prior to the filing of the petition. Evidence of past neglect was admitted and was relevant, but evidence of past neglect alone was insufficient to support a ground for the termination of parental rights. In the instant case, after DSS had been relieved of reunification efforts, the social worker assigned to the case changed six or seven times and respondent never met several of the workers. There was also credible evidence that respondent had tried to contact her social worker and see the child, but the calls had not been answered. The Court of Appeals noted the discretion the trial court has in reviewing the evidence and weighing its credibility and declined to disturb the opinion of the trial court.

In re Estes, --- N.C. App. ---, 579 S.E.2d 496 (May 6, 2003) (Iredell County). Respondent mother appeals the termination of her parental rights. The dispositive issue on appeal is whether the failure of the trial court to appoint a guardian ad litem to respondent constitutes reversible error. N.C.G.S § 7B-1101 requires the appointment of a guardian ad litem to a parent if the parent is under eighteen or if it is alleged that the parental rights should be terminated pursuant to ground 6, the parent’s incapability to care for the child due to one of several reasons, including mental illness. The majority of the allegations in the motion for termination centered on respondent’s “irrational behavior and thought patterns;” the underlying petition of neglect and dependency alleged that respondent was a paranoid schizophrenic with a history of mental illness; a review order relieved DSS of reunification efforts due to respondent’s “mental instability;” and DSS argued at the termination hearing that respondent was incapable of properly caring for her child due to “mental illness.” The Court of Appeals held that the mandatory language of the statute requires a guardian ad litem to have been appointed to respondent, respondent bore no burden in requesting the appointment nor in objecting to the omission of the appointment, and there is no requirement that respondent show she was prejudiced by the omission of the appointment in order to prevail on appeal. The Court

expanded the requirement beyond the plain language of the statute to require that even if ground number 6 is not specifically alleged, when “the allegations in the petition or motion to terminate parental rights tend to show that the respondent is incapable of properly caring for his or her child because of mental illness, the trial court is required to appoint a guardian ad litem to represent the respondent at the termination hearing.” The order terminating parental rights was reversed.

In re Foster,* (Unpub.) --- N.C. App. ---, --- S.E. 2d --- (August 5, 2003) (Johnston County). The legal father relinquished his parental rights, and the putative biological father passed away before paternity was established. DSS petitioned for termination against respondent mother and the unknown father. The trial court granted the termination for both, and respondent mother appealed. The Court of Appeals affirmed the termination and held that there was sufficient evidence to show that the child had been neglected and the neglect would likely continue. The circumstances which led to the child’s removal included “respondent’s inability to maintain a stable and safe living environment for juvenile as well as respondent’s abuse of alcohol.” After examining the complete record, the Court held that the respondent’s “life is no more stable now than it was when juvenile was removed from her custody.” Despite her involvement with AA, the respondent continued to deny she had a drinking problem and received two citations for DWI. The best interests of the child also warranted the termination as he had greatly improved his cognitive abilities and socialization since coming into care and the permanent plan for him was adoption.

In re Gainey,* (Unpub.) --- N.C. App. ---, 582 S.E.2d 81 (July 1, 2003) (Guilford County). Respondent mother appeals the termination of her parental rights. Respondent has been known to the agency since 1980 and has been in treatment on and off since that time. She has alternatively been diagnosed with bipolar disorder and paranoid schizophrenia. The incident that led to the child’s removal from the home involved allegations that the mother was withholding water from the child, because she claimed it had been poisoned by demons. Respondent barricaded herself and the child in the home when DSS tried to investigate and check on the safety of the child, requiring police intervention to gain access to the child. Since that incident, respondent has consistently failed to comply with court orders compelling her to seek mental health treatment and to take the appropriate medication. The Court of Appeals held that the findings of fact were presumed correct since the respondent had not excepted to any of the findings, but nevertheless reviewed the evidence and found it sufficient. The Court affirmed the trial court’s decision that the termination was in the best interests of the child.

In re Giles,* (Unpub.) --- N.C. App. ---, 580 S.E.2d 98 (May 20, 2003) (Edgecombe County). The petition to terminate respondent mother’s parental rights alleged that “respondent had failed to take any action to protect [the child] from being sexually abused by his father following her discovery of a videotape of sexual abuse.” Respondent stipulated that the child was an abused and neglected child, but argued that it was not in his best interests to terminate her parental rights. On appeal, respondent argued that despite her stipulations, there was no evidence of continued neglect. However, the trial court found that respondent had prematurely terminated her therapy sessions and had refused to accept responsibility for her son’s abuse. After affirming that grounds existed to terminate respondent’s parental rights, the Court held that the severity of

the abuse and the special care needed to help the child placed termination of respondent's parental rights squarely within this child's best interests.

In re Graham,* (Unpub.) --- N.C. App. ---, 580 S.E.2d 98 (May 20, 2003) (Mecklenburg County). After DSS in Gaston County became involved with the family, the family moved to Mecklenburg County where DSS began again to provide services for the mother and children. The mother's failure to cooperate led to the removal of the children from her home. Respondent mother did not appear in court, did not visit with her children, nor did she make efforts to complete any portion of her case plan until almost the end of the case, and even then she made only rudimentary efforts. Although respondent failed to properly assign error to the underlying findings of fact making those findings conclusive on appeal, the Court reviewed those findings and found sufficient evidence supported them. The termination of parental rights order was affirmed on all five grounds.

In re Harton, 156 N.C. App. 655; 577 S.E.2d 334 (March 18, 2003) (Burke County). The respondent mother appeals from a permanency planning order, which relieved DSS of reunification efforts and set the permanent plan for the children as custody and guardianship. Respondent first argued that the trial court erred when it did not require DSS as custodian of the children to present evidence instead of relying on written reports. In this case, respondent called the DSS workers as witnesses herself and cross-examined them. The court also heard testimony from school officials and public safety officers. The Court of Appeals held that in these circumstances sufficient evidence had been presented to the trial court for it to make a decision.

Respondent next argued that the trial court had failed to comply with the requirements of N.C.G.S § 7B-907(b) by not making the statutorily required findings of fact. The trial court made one finding of fact that respondent had no intention of separating from her husband to protect the children from further domestic violence, and then adopted the reports of DSS and the GAL as the remaining findings of fact. The Court of Appeals held that the order did not meet the specific statutory criteria, the permanency planning order was vacated, and the case was remanded to the trial court.

In re Heck,* (Unpub.) --- N.C. App. ---, 580 S.E.2d 98 (May 20, 2003) (Lee County). The Court of Appeals affirmed the termination of respondent mother's parental rights to her two children. Throughout the court supervision of the case, respondent failed to regularly attend visitations with her children, did not establish a stable home and maintain steady employment, and did not attend the mental health sessions aimed at helping her with her substance abuse issues. The Court of Appeals was not swayed by respondent's argument that the trial court erred by incorporating prior orders, court reports, and other related documents into the termination order. In addition to these reports, the trial court also heard evidence at the termination hearing and made findings of fact within the termination order that did not merely reference prior orders, but were descriptive of the situation. Even though some of the findings of fact were mislabeled as conclusions of law, the findings were sufficient to support the termination of parental rights. The Court reiterated that "a pronouncement by the trial court which does not require the employment of legal principles will be treated as a finding of fact, regardless of how it is denominated in the court's order." Citations omitted.

In re Hendren, 156 N.C. App. 364; 576 S.E.2d 372 (March 4, 2003) (Wilkes County). The child in this case was not placed in DSS custody; however, the holding in this termination of parental rights matter has a direct impact on cases in abuse, neglect and dependency court. The mother in this case petitioned to have the biological father's rights terminated, alleging that the father neglected the child and that the father abandoned the child. The respondent father argued that his lengthy incarceration prevented any more contact. The Court of Appeals disagreed on both grounds and affirmed the termination. It held that incarceration alone does not negate a father's neglect of his child. In the current case, the father took affirmative steps not to be present at the termination of parental rights hearing because such a move might jeopardize some of the privileges he enjoyed in federal prison. This fact, in combination with the lack of meaningful contact between the father and child for the past five years, provided clear, cogent and convincing evidence of both grounds alleged in the petition. The trial court also determined and the Court of Appeals affirmed that it was in the child's best interest for the father's parental rights to be terminated.

In re Hensley,* (Unpub.) --- N.C. App. ---, 580 S.E.2d 97 (May 20, 2003) (Buncombe County). Respondent mother appealed the order terminating her parental rights to three of her children. The Court of Appeals affirmed the decision and found that "ample evidence" supported the termination on ground 2 - the parent willfully left the child in care outside the home for more than twelve months without making reasonable progress. Respondent failed to comply with the disposition order and subsequent order when she did not maintain stable housing and employment, did not follow through with therapy for domestic violence, skipped visitations without notice, and attended parenting classes, but failed to demonstrate appropriate parenting skills. Within the analysis, the Court reiterated that alcoholism does not preclude a finding of willfulness. The Court also affirmed the trial court's determination that it was in the children's best interest to terminate respondent's parental rights.

In re Hinshaw,* (Unpub.) --- N.C. App. ---, --- S.E. 2d --- (September 16, 2003) (Randolph County). Respondent father appealed the adjudication of abuse and neglect. Respondent was involved in an altercation with his male roommate while the two were drinking. The juvenile got between the two men and tried to break up the fight. Respondent fired a pistol near the juvenile and killed the male roommate. The Court of Appeals held that these facts supported the trial courts findings of fact and conclusions that the juvenile was abused and neglected. Abused because the respondent fired a pistol near his son that created or allowed to be created a substantial risk of serious physical injury to the child by other than accidental means. Neglected because the respondent had a history of these altercations, respondent disregarded the juvenile's safety in discharging a weapon near him, and respondent's use of alcohol increased the risk to the juvenile in this situation. All of these factors led to the conclusion that the juvenile lived in an environment injurious to his welfare. The Court affirmed the adjudications.

In re Hobson,* (Unpub.) --- N.C. App. ---, 581 S.E.2d 832 (June 17, 2003) (New Hanover County). Respondent mother appeals the permanency planning order in which the trial court ordered that reunification with respondent was not in the child's best interests and gave custody of the child to her paternal grandparents. Respondent first argued that it was error for the trial court not to enter the order within thirty days of the hearing as required by N.C.G.S § 7B-907(c). The Court of Appeals held that, while it was error, it was harmless error where, as here, (1) the

order did not sever an existing relationship since the child had not been in her custody for some time, (2) respondent's rights of visitation were unaffected by this order, and (3) respondent had the opportunity to file a motion to review the case pursuant to N.C.G.S § 7B-906(b).

Respondent next argued that the trial court erred in not conducting a permanency planning hearing with the statutorily mandated time frame. The Court rejected this argument in short order when it determined that the reason for the delay was to ensure that respondent had adequate counsel. Respondent challenged the findings of fact, but the Court of Appeals held that there was sufficient evidence that respondent had not complied with previous court orders, had not abided by the terms of the case plan, had not demonstrated an ability to parent the child safely, and had not made her home safe for the child. The Court also affirmed the finding and conclusions that it was in the best interests of the child to be placed with the paternal grandparents. Finally, respondent argued that the trial court did not comply with the requirements of N.C.G.S § 7B-907(c) in making the appropriate findings of fact. However, the Court held that even if the trial court had omitted the finding it was not in the child's best interests to return home within six months, that the "omission did not prejudice respondent, since the other findings adequately support the decision" to place the child with her paternal grandparents.

In re Hopkins,* (Unpub.) --- N.C. App. ---, 579 S.E.2d 520 (May 6, 2003) (Burke County). The Court of Appeals vacated a permanency planning order where the trial court did not include findings of fact as required by statute. N.C.G.S §§ 7B-907(b), 7B-907(c) and 7B-507(a) require that specific findings of fact be made during permanency planning hearings when the child is not being returned a parent. The trial court made two findings of fact, neither one of which addressed the requirements prescribed by statute. The Court declined to reach the issue of whether the permanent plan of adoption was appropriate.

In re Humphrey, 156 N.C. App. 533; 577 S.E.2d 421 (March 18, 2003) (New Hanover County). In this private action for termination of parental rights, there are three issues relevant to this summary. First, the denial of a motion to continue will not be disturbed absent a showing of abuse of discretion with the burden on the party seeking the continuance to show that granting the continuance would have furthered substantial justice. The respondent mother, in this case, failed to provide sufficient evidence to support her argument. Second, normally the petition or motion for termination of parental rights must include a statement that it was not filed for the purposes of circumventing the UCCJEA. N.C.G.S § 7B-1104(7). However, the omission of this requisite statement was not fatal where the trial court recognized the omission in its order and noted that the petition did include a reference to a civil custody action going on in another county within North Carolina. The inclusion of the other active case regarding the child indicated that no deception was intended. Third, the Court of Appeals held that when proceeding to terminate parental rights on the ground of neglect (N.C.G.S § 7B-1111(a)(1)) with the assertion being abandonment, the statutes do not require the abandonment to have occurred for six consecutive months prior to the filing of the petition. The six-consecutive-month requirement for abandonment is found in the ground for willful abandonment at N.C.G.S § 7B-1111(a)(7), but is not pertinent to the neglect ground, even when the allegation is neglect due to abandonment. In this case, the Court held that the mother had neglected by way of abandoning the child for six years and the termination of parental rights was affirmed.

In re Hutchins,* (Unpub.) --- N.C. App. ---, 582 S.E.2d 725 (July 15, 2003) (Buncombe County). In a private case, the respondent father appealed the termination of his parental rights. The child had been living with her maternal aunt for several years prior to the filing of the petition, which sought the termination of respondent's parental rights. During that time, the contact between respondent and the child was sporadic, respondent paid no child support, respondent joined the military and moved to Georgia without notifying petitioners, and respondent was discharged from the military and hospitalized with paranoid schizophrenia. The Court affirmed the termination.

In re Ivey, 156 N.C. App. 398; 576 S.E.2d 386 (March 4, 2003) (Iredell County). Iredell County Department of Social Services took non-secure custody of three children and was working to reunite these children with their family. During the course of involvement with the family, the parents had another child. At the permanency planning hearing for the three older children, the court relied upon the report from the GAL and DSS to make its decision and not only relieved DSS of reunification efforts, but also ordered DSS to take non-secure custody of the infant. The respondent parents appealed. The Court of Appeals agreed with the respondents and vacated the part of the order that directed DSS to take the infant into non-secure custody. The trial court cannot execute an order for a child over whom it has no jurisdiction. Since the infant was not named on any of the petitions, the court did not have jurisdiction over that child. There is a narrow exception to the requirement that a petition be filed prior to the court issuing a non-secure custody order, but this case did not fall into that exception. In order to take a child into non-secure custody without a court order, there must exist reasonable grounds to believe that a juvenile is abused, neglected, or dependent and that the juvenile would be injured or could not be taken into custody if it were first necessary to obtain an order. N.C.G.S. § 7B-500. Although this portion of the order was vacated, the Court of Appeals was careful to state that this action should not be considered to overturn any subsequent petitions or orders regarding the fourth child.

This case clearly settles the question of a court considering a report from the GAL or DSS to make its decision during a permanency planning hearing. The trial court considered both of these reports in the process of deliberating the issues presented at the permanency planning hearing, but did not admit the reports into evidence. The parents had prior notice of these reports, and therefore the opportunity to rebut any of the information presented in either report. The Court of Appeals found no error in this process and referred to numerous places in the juvenile code where the trial court is given the ability to consider any information that will aid it in its review.

Finally, the Court of Appeals held that the respondents had failed to preserve for appeal other questions regarding hearsay evidence. The Court of Appeals also confirmed that “Neither homelessness nor joblessness will *per se* support a finding of abuse or neglect.”

In re Kale,* (Unpub.) --- N.C. App. ---, 582 S.E.2d 726 (July 15, 2003) (Iredell County). Respondent mother appeals the termination of her parental rights to the last of six children previously in her custody. She argues that there was insufficient evidence to support any of the grounds for termination. The Court of Appeals disagreed, holding that her prolonged substance

abuse problem, the termination of parental rights to other children, her continued regular contact with her abuser, and her minimization of the effect of the domestic violence on the child all support the conclusion that she neglected her children at the time of the hearing and that neglect was likely to continue. The Court quickly dispensed with respondent's other arguments holding that her due process rights were protected in hearing, the purpose of the juvenile code was not violated by the termination of her parental rights, the trial court used the correct evidentiary standard, and the two part process of terminating parental rights does not require two separate hearings.

In re Laney, 156 N.C. App. 639; 577 S.E.2d 377 (March 18, 2003) (Iredell County). The respondent mother attempted to appeal from the adjudication of neglect of her two children and the subsequent dispositional order. Respondent gave oral notice of appeal on the day of the adjudicatory hearing, which was ineffectual because written notice of appeal is now required. Respondent then filed written notice of appeal fourteen days after the adjudicatory hearing and seven days before the adjudicatory and temporary dispositional order were entered. The trial court continued the disposition and held a separate dispositional hearing within sixty days of the adjudicatory hearing (and within sixty days of the entry of the adjudication order). In determining whether respondent had properly filed a notice of appeal, the Court of Appeals found that the final hearing had not even occurred, much less had a final order been entered, at the time the last notice of appeal was filed. The order adjudicating the children neglected and entering a temporary disposition was not a final order and could not give rise to an appeal. Since the dispositional hearing was held within sixty days of the adjudication order, the final order in the case was the dispositional order, after which a notice of appeal was not filed. Therefore, respondent had not timely filed any notices of appeal from the final order and the appeal was not properly before the court.

Respondent argued in her reply brief for a more expansive interpretation of the pertinent statute. If a disposition is not made within sixty days (60) after entry of the adjudication order, the appellant may give written notice of appeal within seventy days (70) of that order. N.C.G.S § 7B-1002. Respondent argued this statutory language meant that she could file a notice of appeal anytime within those seventy days, but the Court of Appeals, recognizing this as an issue of first impression in this state, disagreed. The Court held that the plain language of the statute indicated that the window of opportunity for filing a notice of appeal in these cases was within ten days beginning the day after the sixty days have run.

The Court further held that filing appellate entries after the final dispositional order was entered did not constitute a notice of appeal. Respondent, recognizing herself that the appeal was premature, filed a writ of certiorari but only as to the adjudication of neglect and the temporary dispositional order. No writ of certiorari was filed from the final dispositional order, and the Court denied certiorari on the adjudication and temporary dispositional order because the final dispositional order was not before it and any decisions the Court made would be irrelevant as to the final outcome of the case. The appeal was dismissed, however, the Court noted in *dicta* that the evidence at trial supported the findings of fact and conclusions of law in the final dispositional order.

In re Ledbetter, --- N.C. App. ---, 580 S.E.2d 392 (June 3, 2003) (Buncombe County). After determining that the order from which respondent appealed is a permanency planning order, even though it was not titled as such, the Court of Appeals held that the order did not contain the statutorily mandated findings of fact. The order was missing any findings regarding “[w]hether it is possible for the juvenile to be returned home . . . within the next six months . . .” as required by N.C.G.S § 7B-907(b)(1). It also omitted any explanation as to why the child was transferred from his current placement to his father as required by N.C.G.S § 7B-907(b)(4). The Court determined that the order was insufficient, and looked to the precedent of *Eckard* and *Dula* in reversing and remanding the case rather than merely remanding it for further findings of fact.

In re Liberato,* (Unpub.) --- N.C. App. ---, 582 S.E.2d 80 (July 1, 2003) (Buncombe County). Respondent mother appeals the termination of her parental rights and argues on appeal that the termination of her parental rights will not serve the best interests of the children, because their current relative placement is permanent and the termination would deprive the children of further support from the respondent. The Court of Appeals held this argument was “not supported by the record or law” when respondent had failed to provide a reasonable portion of support prior to the termination hearing and the respondent cited no evidence in the record to support her contention that the trial court abused its discretion in holding that the termination was in the children’s best interests.

In re Lint,* (Unpub.) --- N.C. App. ---, 581 S.E.2d 832 (June 17, 2003) (Haywood County). The respondent mother appeals the award of custody of her two children to the maternal grandmother. Respondent first argues that the court erred by permitting her son to testify as he was an incompetent witness. The Court of Appeals disagreed and reiterated that a witness is competent at any age as long as he is capable of expressing himself and capable of understanding the duty to tell the truth. The Court held that any evidence of undue influence implicated the child’s credibility but not his competency to testify. Respondent next argued that the testimony by the expert witnesses was impermissible hearsay because it included the child’s statements about his sexual abuse. Most of the experts testifying about the child’s statements corroborated the child’s statements and the testimony was, therefore, not hearsay. The statements made to Dr. Brown were permissible under the medical diagnosis exception to the hearsay rule. Holding that all of the evidence was properly admitted, the Court of Appeals affirmed the custody order of the trial court.

In re Mason,* (Unpub.) --- N.C. App. ---, 578 S.E.2d 326 (April 1, 2003) (Cumberland County). The respondent father stipulated to the allegations in the termination petition and that grounds existed to terminate his parental rights. The trial court continued the disposition for ninety days, and then determined that it was in the child’s best interests that respondent’s parental rights be terminated. The Court of Appeals held that the trial court did not abuse its discretion in making this decision, when respondent made efforts to comply with the terms for return of his child that “were at the very last minute” including making the first child support payment four days prior to the hearing.

In re McCabe, --- N.C. App. ---, 580 S.E.2d 69 (May 20, 2003) (Onslow County). The natural and legal father of the child filed a domestic petition for custody of the child. Shortly thereafter, the child was admitted to a hospital and the respondent mother indicated that the child was

experiencing cyanosis (“blue spells”). The treating physicians diagnosed the child’s condition as being possibly induced by respondent. DSS took the child into care, and at the nonsecure hearing, the court placed the child with her father. The child was subsequently adjudicated abused and neglected, and respondent appeals this order.

After providing an extensive review of Munchausen syndrome by proxy, the Court of Appeals affirmed the adjudication of abuse and neglect based upon the clear, cogent and convincing evidence that was presented to the trial court which supported its findings of fact and conclusions of law. The trial court heard from three physicians about Munchausen syndrome by proxy, the high risk of morbidity and mortality, the numerous painful and invasive procedures that the child underwent in an effort to diagnose the blue spells, and the absence of symptoms when the child was not in the exclusive care of respondent. Even though there was evidence of another potential cause of the blue episodes, a doctor testified that the two conditions were not mutually exclusive. The trial court weighed the conflicting inferences and determined that the child was the victim of Munchausen syndrome by proxy, and the Court of Appeals affirmed the adjudication.

In re McKinney, --- N.C. App. ---, 581 S.E.2d 793 (June 17, 2003) (Orange County). The child was adjudicated neglected and dependent. DSS filed a document entitled “Motion in the Cause” aimed at terminating the parental rights. The document, however, did not request any relief. The title of the document did not describe the relief sought, the motion did not “reference any of the statutory provisions governing termination of parental rights,” and the portion of the motion following the standard language “Now wherefore the petitioner respectfully prays the court” was blank. When no relief is sought, the trial court does not have subject matter jurisdiction to hear the dispute. Subject matter jurisdiction is an issue for the appellate courts regardless of whether the litigants properly raised the error below. In this case, the respondent complained about the omission of the requested relief, however, the trial court proceeded to terminate respondent’s parental rights. The order was vacated.

In re Morales, --- N.C. App. ---, --- S.E. 2d --- (August 5, 2003) (Sampson County). The two children who are the subject of this case were adjudicated abused and neglected after information about the sexual abuse of one of their siblings was brought to light. Respondent parents appealed the adjudication of abuse as to one daughter and the adjudication of neglect as to the other. Respondents argued that the trial court admitted hearsay over their objection; however, they failed to assign error to this finding, and it was not properly preserved for appeal. Respondents also argued that statements concluding that the child had been sexually abused were improperly admitted. Respondents, however, failed at the trial court to object to identical testimony presented by another witness. Their objection was therefore waived, and any information not properly objected to before the trial court is not properly preserved for appellate review. Finally, respondents argued that the trial court erred in denying their motions to dismiss at the close of petitioner’s evidence and at the end of the trial. The Court of Appeals disagreed. By the close of the petitioner’s evidence, it was clearly established that the child had sexual knowledge far in excess of what was age appropriate, indicating that she had been abused. In respondents’ arguments in favor of the motion to dismiss, they complained about the effect of a video they sought to be admitted. The Court held that they “cannot complain simply because the

trial court saw their evidence in a different light than they intended.” The adjudications were affirmed.

In re Northington,* (Unpub.) --- N.C. App. ---, 580 S.E.2d 430 (June 3, 2003) (Burke County). The children were found unsupervised when one was wandering naked in the neighborhood, one was found at another residence 150 yards away across a cow pasture, and one was found face down in the home after the swing turned over on her. Respondent mother appeals the termination of parental rights as to these three children. Respondent argues on appeal that she completed her case plan, that she had no knowledge of a subsequent case plan, that the trial court had insufficient evidence to support its findings of fact and that the trial court erred by taking judicial notice of prior adjudications on other children. The evidence before the trial court included testimony from two workers about the subsequent case plan and the mother’s knowledge of it. The court also incorporated portions of the report from the mother’s psychological evaluation in which the doctor stated that the mother’s “dramatic, angry and volatile personality style increases the likelihood of continued conflict in her home” and “past neglectful patters [would continue] if [the children] were returned to her custody.” The trial court reviewed additional evidence that respondent had neither enrolled in nor completed the substance abuse or domestic violence programs as required by the case plan and previous court orders. Therefore, the Court of Appeals held that there was sufficient evidence that the grounds for termination of parental rights existed at the time of the hearing.

There was no indication from the trial court’s order that it had considered the prior adjudications on other children in its decision to terminate respondent’s parental rights as to these three children. However, the Court stated that if the trial court had considered this evidence, it would have been appropriate as a “prior adjudication of neglect would be relevant to the probability that it will reoccur.”

In re Oxendine,* (Unpub.) --- N.C. App. ---, 579 S.E.2d 522 (May 6, 2003) (Robeson County). Respondent mother appeals the termination of her parental rights to two children. Although respondent failed to assign error to any of the findings of fact and they were therefore presumed to be correct and supported by evidence, respondent argued that there was not clear, cogent and convincing evidence to support any of the grounds for terminating her parental rights. Focusing the analysis on ground two, willfully leaving the child in foster care for more than twelve months without making reasonable progress. . . , the Court of Appeals held that there was sufficient evidence to support this ground for termination where respondent exposed her children to sex acts, failed to protect them from sexual abuse, and effectively refused to break off contact with her father with whom she had fathered one or more of the children and by whom the children had been abused.

In re Padgett, 156 N.C. App. 644; 577 S.E.2d 337 (March 18, 2003) (Pender County). The respondent mother appeals from orders adjudicating the two children neglected and awarding custody to their maternal grandparents who reside in Alaska. While in respondent’s care, the children missed medical appointments, were left unattended and unsupervised, and were found padlocked in rooms without access to food (the household refrigerator was also padlocked) and without access to the bathroom. The respondent argued that there was not sufficient evidence to support the conclusion that the children were neglected. The Court of Appeals disagreed,

however, and held that the evidence supported the conclusion that the “children’s physical, emotional, and mental well-being were impaired or in substantial risk of being impaired because of improper care.” The Court further held that it was unnecessary to find whether DSS should continue to make reasonable efforts, because the custody was not continued with DSS and the requirements of N.C.G.S § 7B-507 were not triggered. Finally, the Court of Appeals held that the respondent’s procedural due process rights were not impaired when the children were placed with their maternal grandparents in Alaska making visitation with their mother difficult. The respondent received the appropriate notice of the hearing; this type of hearing includes the possibility that visitation will be discussed; and respondent was given an opportunity to be heard during the hearing. The adjudication of neglect and award of custody to the maternal grandparents was affirmed.

In re RTW,* (Unpub.) --- N.C. App. ---, 580 S.E.2d 98 (May 20, 2003) (Orange County). Respondent mother appealed an order entered 1 November 2001 and an order entered 31 December 2001. Neither order was titled with the type of hearing (adjudication, disposition, review) nor did either order include a cite to the relevant statute (N.C.G.S §§ 7B-905, 906 or 907). The Court of Appeals concluded that the 1 November 2001 order was likely the adjudication and disposition order on the petition alleging neglect and dependency based upon the information contained in the order and wording in the previous order. Based upon similar reasoning, the Court determined that the 31 December 2001 order was the requisite review hearing.

Respondent successfully argued that the trial court had erred by not including sufficient findings of fact in the review order in compliance with the governing statute, N.C.G.S § 7B-906. The Court of Appeals held that while the trial court could rely upon the written reports of DSS and the GAL in making its findings, incorporation of those reports was insufficient. The case was remanded to the trial court for appropriate findings of fact. The Court was unable to review the remaining assignments of error without the appropriate findings of fact. Since a permanency planning hearing must take place within 30 days of a review order that determines “that reasonable efforts to eliminate the need for the juvenile’s placement are not required or shall cease,” and no such hearing had taken place, the Court of Appeals urged the trial court to also conduct such a hearing.

In re Redmon,* (Unpub.) --- N.C. App. ---, --- S.E. 2d --- (August 5, 2003) (Buncombe County). In a private termination of parental rights action, the father filed a petition. The respondent mother left the child with the father in 1996. She took her other two children with her and moved into a house with a known and untreated sex offender. The other children were later permanently removed from her care based upon neglect, including the failure to supply them with adequate food, medical care and safety. After chronic substance abuse, the mother was hospitalized in a psychiatric hospital and diagnosed with borderline personality disorder of the highest level. Respondent challenged several findings of fact. The Court of Appeals reviewed each finding in detail, and although some findings were not supported by the evidence none of those erroneous findings were determined prejudicial to respondent given the great weight of the evidence articulated in the remaining undisturbed findings of fact. The Court affirmed the termination.

In re Resor,* (Unpub.) --- N.C. App. ---, --- S.E. 2d --- (August 5, 2003) (Guilford County). The trial court determined it was in the children's best interests that custody be given to the children's father, that it was not in the children's best interests to be returned to their mother, and that the case was closed from further review. Respondent mother appeals arguing that the trial court must review the case within ninety days as required by N.C.G.S § 7B-906(b)(1-5), and therefore the case cannot be closed. The Court of Appeals disagreed and held that where, as here, custody of the children were returned to a parent, the court had no obligation to conduct further review. It did not matter if the children were removed from one parent and not restored to that parent, the relevant inquiry was whether the children were returned to a parent.

In re Schoen,* (Unpub.) --- N.C. App. ---, --- S.E. 2d --- (August 5, 2003) (New Hanover County). Respondent mother appeals the adjudication of neglect and the continuing nonsecure custody of her son. Respondent first argues that the evidence did not support the initial placement of the child in nonsecure custody and the subsequent maintenance of the child in nonsecure custody. Substantial evidence was presented to the trial court that the respondent continued to reunite with her husband despite several instances of domestic violence. Respondent filed a domestic violence protective order (DVPO) and dropped it, required the school to prevent contact between the husband and her son and initiated the contact herself, and promised DSS that she would keep the two separate for the child's protection and the next day violated the spirit of that agreement. The Court of Appeals held that the trial court was correct in determining that respondent had a pattern of disregarding the risk posed to the child by her husband and that this warranted the child remaining in nonsecure custody.

The Court further held that the trial court's findings were supported by competent evidence and that the adjudication of neglect was proper where the pattern of behavior created doubt that respondent would protect her son from violence. Despite the absence of contact between respondent's husband and her son for seven out of the nine months prior to the hearing, the mere threat of continued violence presented by the resumed contact was causing the child emotional harm. This harm was evidenced by the child's request for his teacher's assistance in building a bomb, his claim of stealth powers, and his story about the weapons stash in his closet, all of which were to protect his mother from future harm. The effect of domestic violence and the threat of future domestic violence given the mother's refusal to enforce any of various means to separate herself and her son from the abuser constituted neglect. The Court noted that respondent has the ability to regain custody of her son by complying with the court order, attending counseling and implementing a protection plan that would keep her son safe.

In re Shermer, 156 N.C. App. 281; 576 S.E.2d 403 (March 4, 2003) (Wilkes County). This termination of parental rights was vacated by the Court of Appeals. Neither DSS nor GAL filed a brief in this case. The record on appeal was missing pages of one order and portions of another critical court order were illegible.

Both juveniles involved in this case were found to be neglected in June of 1999. Respondent father was incarcerated at the time of the original adjudication. The petition to terminate his parental rights was filed in June of 2000, but the hearing was not held until September of 2001. The respondent father was released from prison in July 2001. The respondent demonstrated his commitment to reuniting with the children by engaging in two visits with his children,

attempting another visit, living with his mother, and enrolling in a vocational training program. The trial court found that respondent had failed to complete several portions of his case plan, including his failure to maintain employment, failure to contact the social worker each week, failure to participate in therapy sessions with either child, failure to pay child support, failure to attend parenting classes, and failure to obtain a drug and alcohol assessment. Despite these findings, the Court of Appeals held that adequate time had not elapsed for a fair assessment of respondent's progress in regards to fulfilling the components of the case plan. The social worker had not completed the home study of the father's home nor had the results of the psychological evaluation become available. The Court of Appeals held that the ground for terminating respondent's parental rights due to neglect was not supported by the evidence since the pertinent inquiry is not merely whether neglect occurred, but whether the neglect occurred at the time of the proceeding and was likely to reoccur.

Turning to the second ground for termination of parental rights, whether the respondent had willingly left the children in foster care without making reasonable progress toward ameliorating the conditions that led to the removal of the children, the Court of Appeals held that clear, cogent and convincing evidence could not be found to support this ground. The Court of Appeals reiterated the analysis first introduced by *In re Pierce*, 356 NC 68 (2002), in which the critical period of inquiry for the adjudication of the ground was the twelve months preceding the date of the filing of the petition. The language referenced in the governing statute has since been removed, but was applicable at the time the petition in this case was filed. Similarly, the Court of Appeals held that the ground alleging the respondent had willfully abandoned his children for more than six months was not supported by sufficient evidence. Consequently, the order terminating parental rights was reversed.

In re Sims,* (Unpub.) --- N.C. App. ---, 578 S.E.2d 328 (April 1, 2003) (Union County). Respondent father appealed the termination of his parental rights to his son, but not to his daughter. Respondent argued that there was not sufficient evidence to terminate his parental rights on any of the four grounds found by the trial court. The Court of Appeals focused its review of the evidence on the ground of neglect and held that there was sufficient evidence to support this ground where the child was placed in DSS care in September of 1999 and respondent had only visited with him seven or eight times, respondent was unwilling to take the child into his home, the alternative placement suggested by respondent was found to be inappropriate, and respondent had not provided any resources for the care of his child. Although the Court reviewed the evidence as to the other grounds, it noted that only one ground need be found to terminate respondent's parental rights. After concluding the analysis as to the grounds for termination, the Court reviewed respondent's arguments related to whether the termination was in the child's best interest. Respondent's contentions that his mother's willingness to take the child and his savings of \$800 indicated that the family unit was likely to reunite. Given the minimal contact respondent had with his child while the child was in care, the lack of contact between the child and the grandmother (offered as a placement resource), the grandmother's inability to financially care for the child, the child's wishes to remain in foster care, the foster family's willingness to adopt this child and his little sister, and the bond between the siblings; the Court of Appeals held that the trial court did not abuse its discretion in finding that the termination of parental rights was in the child's best interests.

In re Smith,* (Unpub.) --- N.C. App. ---, 582 S.E.2d 81 (July 1, 2003) (Guilford County). The respondent father appeals the termination of his parental rights. The children were removed from the home after an incident in which he severely physically abused one of the children, which led to his conviction for felony child abuse and his incarceration on that charge. The Court of Appeals affirmed the termination and held that the DSS Court Summary read into evidence was properly admitted, since the proper foundation had been laid for the business records exception to the hearsay rule, that the findings of facts and conclusions of law which were presumed correct supported one of the grounds for termination, and that it was in the children's best interests to have their parental rights terminated.

In re Poole, 357 N.C. 151, 579 S.E.2d 248 (May 2, 2003) (Cumberland County). 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, the NC Supreme Court agreed with Judge Timmons-Goodson that no violation had occurred. The decision of the trial court was affirmed.

In re Souther,* (Unpub.) --- N.C. App. --, 577 S.E.2d 718 (March 4, 2003) (Wilkes County). The respondent mother appeals from a permanency planning hearing in which DSS was relieved of further reunification efforts. Neither DSS nor the GAL filed a brief in this case. The Court of Appeals also noted that the DSS report and the GAL report filed at a pivotal hearing were omitted from the record on appeal and were therefore not before the Court.

The Court of Appeals affirmed the trial court's order after thoroughly reviewing each argument raised by the respondent. The Court held that the evidence supported the findings of fact made by the trial court, and these findings complied with the statutory requirements of a permanency planning hearing. The findings of fact provided sufficient support for the conclusions of law,

even when excluding the findings of fact to which the respondent objected, namely that the children's behavior had improved since being placed in foster care and that the oldest child expressed a desire not to return to respondent's custody during an unrecorded conversation in chambers. The Court reiterated that failure to object to a ruling by the trial court waived appellate review of that decision, that plain error analysis does not apply to cases outside the criminal arena, and that dispositional and review hearings are informal in regards to the admission of evidence. Finally the Court held that a typographical omission of the date of a previous hearing did not indicate the trial court ignored the information obtained during that hearing, when findings of fact included information presented during that hearing.

In re Stovall,* (Unpub.) --- N.C. App. ---, 577 S.E.2d 718 (March 4, 2003) (Onslow County). In this private termination of parental rights action, the respondent father, who was incarcerated at the time of the hearing, had failed to contact the child, send any letters to the child, or inquire about the child's well being from 1987 until the filing of the termination of parental rights petition in July of 2001. The respondent had also failed to provide any support, although he was financially able to do so, and in fact, the respondent had drained the child's savings account of \$5,000 prior to being incarcerated. The Court of Appeals reiterated the conclusion that a parent's incarceration alone "neither precludes nor requires a finding of willfulness;" however, a parent's failure to communicate or support a child during incarceration constitutes "clear willful abandonment." The Court of Appeals affirmed the termination of respondent's parental rights.

In re Stratton, --- N.C. App. ---, --- S.E. 2d --- (August 5, 2003) (Mecklenburg County). Respondent father appeals the adjudication of neglect and dependency as to his ten children. One child aged out by the time the appeal was before the court. The Court of Appeals held that the father's appeal as to these adjudications was moot, given that the respondent's parental rights had subsequently been terminated. Therefore, any determination in this action would have no effect on the placement of the children or any reunification efforts. In holding as it did, the Court emphasized the trial court's independent determination that the children had been neglected. The trial court chose not to rely upon the earlier adjudications, but instead made an independent assessment as to whether the children had been neglected and then terminated the parental rights based on this assessment. The Court dismissed the appeal for mootness. Respondent mother filed a brief in this appeal, but did not give notice of appeal. Her brief was stricken and her case was dismissed as not properly before the court.

In re Stumbo, 357 N.C. 279; 582 S.E.2d 255 (July 16, 2003) (Cleveland County). The essential inquiry was whether the trial court erred in granting a non-interference order. In this case, the Cleveland County Department of Social Services (CCDSS) received an anonymous report of a naked two-year-old in the driveway of a home. The worker arrived at the home approximately two hours later and was refused an opportunity to speak to the child alone. CCDSS requested a non-interference order, and the trial court granted the request. The parents appealed. In a divided decision, the Court of Appeals affirmed the action of the trial court. The parents appealed to the NC Supreme Court, which reversed the Court of Appeals and held that the non-interference order was invalid. The NC Supreme Court, however, was split over the analysis that should be used to reach that result.

The majority of the Justices declined to reach the Constitutional inquiry and concluded, “As a matter of law that the anonymous report was insufficient to invoke the extensive power and authority permitted by the General Assembly to the county departments of social services.” They determined through a statutory analysis that “it is incumbent on the trial court to first ascertain whether a report of abuse, neglect, or dependency triggering the statutory mandates has been made” before granting a non-interference order. The remaining three Justices concurred in the decision, but arrived at this decision after wading through the Constitutional issues presented by this case, namely the Fourth Amendment protection against governmental intrusion into a private residence.

In re Thompson,* (Unpub.) --- N.C. App. ---, 583 S.E.2d 428 (August 5, 2003) (Rowan County). Respondent’s child was taken into custody by DSS after he sustained a severe head injury while in respondent’s care from being repeatedly hit by a table leg when he was two and a half months old. The injuries resulted in permanent damage and the child remains a special needs child. Respondent pled guilty to felony child abuse and spent four months in jail. During that time she entered detox for her addiction to Oxycotin, but has since continued to abuse the substance. After her release from jail, respondent completed parenting classes, the PACT program, a psychological evaluation, and visited with the child. Respondent did not, however, demonstrate an understanding of the child’s special needs, did not interact appropriately during visits, did not perform the child’s therapy activities, and did not have a plan of care for the child to provide for his needs on a continuing basis. The trial court terminated respondent’s parental rights. Respondent mother appeals this order. The Court of Appeals affirmed the termination holding that there was sufficient evidence to support the grounds found by the trial court and that the trial court acted within its discretion in concluding that the child’s best interests warranted a termination of respondent’s parental rights.

In re Valdez,* (Unpub.) --- N.C. App. ---, 581 S.E.2d 833 (June 17, 2003) (Randolph County). Respondent mother and father appealed the termination of their parental rights to five children. The children were removed from the home in 1997 due to starvation, lack of medical attention, insufficient clothing, extremely poor hygiene, and danger presented by the children being allowed to ride unrestrained in a vehicle with the respondent father driving while intoxicated. The children were adjudicated neglected, the parents separated, and DSS tried to reunify the children with both of the parents individually. The respondent mother lived transiently from one house to another staying with friends and family members, and she never maintained employment for an appreciable length of time. The respondent father continued to drink and missed the last day of the termination hearing due to this problem. The Court of Appeals held that there was clear, cogent, and convincing evidence that the children were neglected, that the children were likely to continue to be neglected, and, in the case of one of the children, that the child had been in foster care for over twelve months without either of the parents making reasonable progress at correcting the conditions that led to his removal. The Court also affirmed the trial court’s decision that after four years, it was in the children’s best interest to have the parental rights terminated.

In re Vaughn,* (Unpub.) --- N.C. App. ---, 578 S.E.2d 710 (April 15, 2003). (Harnett County). Respondent mother appeals the termination of her parental rights to two children. The Court of Appeals affirmed the termination holding that the dispositional phase of the case did not require

a separate hearing, that the evidence presented during the hearing supported the findings of facts, and that the findings supported a ground for terminating respondent's parental rights.

Respondent had left her children in care for thirty-six months, much longer than the statutorily required twelve months; and during this time she had failed to make reasonable progress by continuing to relapse into drug use and by failing to address her underlying mental illness.

In re Weiler, --- N.C. App. ---, 581 S.E.2d 134 (June 17, 2003) (Wilkes County). There were no briefs filed in this case by DSS or by the GAL, and the case was reversed. DSS filed a motion to dismiss arguing that the order from which respondent appealed was not a final order. The Court of Appeals denied the motion to dismiss and held that because the order changed the permanency plan from reunification to termination it constituted a dispositional order and thereby satisfied N.C.G.S § 7B-1001(3), even though there was a previous dispositional order entered after the adjudication.

Respondent argued on appeal that the findings of fact did not support the conclusions of law and efforts at reunification should continue. The Court of Appeals agreed and held that the findings did not comply with the statutory mandates of N.C.G.S § 7B-507(b). One of the findings that could have been considered to fulfill this requirement was actually a conclusion of law, although it was labeled as finding of fact. The other finding that would be closest to meeting the requirement described the respondent's attitudes toward DSS and toward the children and her repetitive switching of jobs and residences. The Court held that none of these behaviors were inconsistent with the juvenile's health, safety and need of a permanent home. Without sufficient findings to support the conclusion that reunification should cease, the order was reversed.

In re Yocum, --- N.C. App. ---, 580 S.E.2d 399 (June 3, 2003) (Rowan County). In a private termination action the respondent father's parental rights were terminated. The majority of the Court of Appeals affirmed the termination holding that the respondent had "demonstrated a pattern of neglect toward the minor child" when he never paid any child support before or during his incarceration even though able to do so, he rarely visited the child, he often scheduled visits and failed to show, he sent no acknowledgement of the child's birthday or any holiday, and he had an opportunity to register the child for a Christmas gift program that would cost him nothing, but did not register the child. The mother had relinquished her rights to the child in favor of the child being adopted, and the trial court held it was in the child's best interests for the respondent's parental rights be terminated so that the adoption could proceed. The trial court relied upon its finding that while incarcerated, respondent had not written his daughter, arranged for her to receive Christmas gifts through the prison's angel Program, or paid any child support to petitioner. The majority found that these findings of fact were sufficient and affirmed the termination. The dissent concluded that the trial court did not have clear, cogent, and convincing evidence that respondent's parental rights should be terminated because there was evidence presented to the trial court that suggested the petitioner had interfered with the respondent's ability to see his child. Quoting a 1978 case that held "[I]ncarceration, standing alone, is neither a sword nor a shield in a termination of parental rights decision," the dissent argued that the trial court "failed to make a finding of existing neglect at the time of its order." At the time of writing this summary, the notice of appeal has been given to the NC Supreme Court and both parties have submitted briefs.

State v. Every, --- N.C. App. ---, 578 S.E.2d 642 (April 15, 2003). This criminal case marks a development in the law regarding indecent liberties with children and may provide some increased protection for child victims. The Court of Appeals held that a defendant need not be in the physical presence of a victim to take indecent liberties with him or her. Specifically the Court stated that “the use of electronic technology [which] enables the defendant to effectively carry out conduct: (1) that would constitute the taking of an indecent liberty if done in the victim's actual presence; (2) to substantially the same degree that could have been achieved in the victim's actual presence, he may be deemed constructively present by the law for purposes of proving the taking of indecent liberties with a child. Accordingly, we hold that defendant's use of the telephone placed him in the victim's constructive presence at the time he took the indecent liberties.”

State v. Liberato, 156 N.C. App. 182; 576 S.E.2d 118 (February 18, 2003). The defendants’ conviction of felony child abuse was affirmed where the evidence was clear that defendant was the sole custodian for the child during the time the injuries were sustained, and the injuries were neither accidental nor self-inflicted in nature.

State v. Shepherd, 156 N.C. App. 69; 575 S.E.2d 776 (February 4, 2003). The evidentiary issues reached in this appeal are of interest to this summary, even though this is a criminal case, as the Rules of Evidence are the same for criminal and civil proceedings. In this case the expert witness testified that, even though there are rarely physical findings in these cases, there were some tissue changes which could be attributed to the sexual abuse that was disclosed by the victim. The expert witness also reviewed the child’s medical history, behavioral changes, and the child’s knowledge of the sexual acts that was way beyond the presumed understanding of a child her age. The behavior changes included sleep disturbance, sexualized behavior in school, fear, and post-traumatic stress symptoms. The doctor concluded that “there ha[d] been sexual contact that was inappropriate.”

In response to defendant’s arguments on appeal, the Court of Appeals held that (1) the proper foundation had been laid for the expert witness to testify, where the opinion was based upon the medical history of the child and the physical findings; (2) the child’s statements made to the doctor were not inadmissible hearsay, where the statements were not offered for the truth of the matter asserted; and (3) the doctor’s statements related to preventing the child from having contact with the perpetrator were not a conclusion of guilt by the doctor, rather this protection was offered in the context of treatment for the child. The conviction was affirmed.

* 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).