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JUVENILE LAW UPDATE

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Abuse, Neglect, Dependency

- Findings. Incorporation of the petition’s allegations does not constitute proper findings of fact.
- Nature of adjudication. Dismissal of the petition only with regard to the father was error even though allegations did not relate to the father’s conduct.

In re S.C.R., __ N.C. App. __, 718 S.E.2d 709 (November 15, 2011).

Facts: Respondent mother appealed from the order adjudicating her child dependent and neglected, placing the child in DSS custody, ceasing reunification efforts, and ordering a permanent plan of adoption or guardianship.

Held: Reversed and remanded.

1. The findings of fact were insufficient because the trial court improperly incorporated the allegations in the petition as its findings and failed to make its own independent findings.
2. The trial court erred in dismissing the petition with respect to the father on the basis that he was not involved in actions alleged in the petition. The court of appeals “caution[ed] trial courts to carefully distinguish between an adjudication proceeding, and termination of parental rights proceedings.” The first addresses the status of the child, while the second focuses on the conduct of each parent individually.
3. The trial court may not order a permanent plan at a disposition hearing for which notice of a permanency planning hearing has not been given.
4. The trial court erred by failing to address visitation in the disposition order.

- Dispositional findings. Placing children in DSS custody without a finding that they needed more adequate care or supervision was error and required remand.

In re S.H. __ N.C. App. __, 719 S.E.2d 157 (November 15, 2011).

Facts: A younger child had been removed from the home after suffering cardiac arrest as a result of starvation. Evidence also showed that the three remaining children were disciplined inappropriately and had never received medical attention. The court adjudicated the three children neglected and placed them in the custody of DSS. The children had been residing with a maternal aunt, a therapeutic foster parent. Respondents appealed.

Held: Affirmed in part; remanded in part.

1. The court of appeals affirmed the adjudication, finding that the evidence – which included evidence of neglect of the youngest child – was sufficient to support the trial court’s findings and conclusions.
2. The court also affirmed the substance of the trial court’s disposition conclusion that it was contrary to the children’s best interest to return to the parents’ home.
3. The trial court erred, however, by placing the children in DSS custody without making the finding required by G.S. 7B-903(a)(2) – that the children needed more adequate care or supervision than they could receive in the parents’ home.

- Waiving review hearings. In waiving review hearings, the year that the child must have lived with a relative may include periods spent in the homes of more than one relative.
- Parents' superior rights. Constitutional argument about granting custody to a non-parent cannot be made for the first time on appeal.

In re T.P. __ N.C. App. __, 718 S.E.2d 716 (November 15, 2011).

Facts: After the child was adjudicated dependent, respondent mother retained legal custody on the condition that physical placement remain with the maternal grandmother. Later, placement was changed to the home of the paternal grandparents. At a permanency planning hearing the court ceased reunification efforts and changed the permanent plan to relative placement, custody, and guardianship. At a subsequent review, the court granted legal and physical custody to the paternal grandparents, with whom the child had lived for about nine months, and waived further reviews.

Held: Affirmed.

1. After finding that most (but not all) of the findings of fact were supported by the evidence, the court of appeals held that the conclusion that placing custody with the paternal grandparents was in the child's best interest was based on sufficient findings that were supported by the evidence.
2. Because respondent had not objected at trial to the finding that she had acted inconsistently with her protected parental status, the appellate court would not address whether the trial court properly applied the best interest standard. A constitutional issue not raised at the trial level will not be considered for the first time on appeal.
3. The court rejected respondent's argument that the trial court erred in waiving review hearings because the child had been with the paternal grandparents less than one year. The court of appeals held that when combining the time spent in the home of the maternal grandmother with the time the child had lived with the paternal grandparents, the child had "resided with a relative" for at least one year, as required by G.S. 7B-906(b)(1).

Termination of Parental Rights

- Waiver of counsel. A respondent's waiver of the right to counsel in a termination action is not governed by G.S. 15A-1242, which applies only in criminal cases.
- Role of respondent's GAL. The court of appeals should determine whether the role of respondent's GAL in a termination action is one of assistance or substitution.

In re P.D.R., __ N.C. __, 723 S.E.2d 335 (April 13, 2012).

Facts: Respondent mother repeatedly failed to follow through with a mental health evaluation. In both the underlying dependency and neglect proceeding and the termination of parental rights action the trial court appointed a guardian ad litem for respondent. At the termination hearing respondent's attorney made a motion to withdraw, and respondent indicated that she wanted to represent herself. The court made some inquiry about respondent's understanding. When questioned by the court, respondent's guardian ad litem responded that she would leave that question up to the court. Later the GAL questioned the sufficiency of the court's inquiry and the

mother's understanding of the waiver, and the court conducted further inquiry. The court then allowed respondent to waive her right to counsel, and after a hearing respondent's rights were terminated.

Court of Appeals: Respondent appealed and the court of appeals reversed, holding that the trial court abused its discretion in allowing respondent to waive counsel, erred by not conducting an adequate inquiry consistent with the one required by G.S. 15A-1242 in criminal cases, and erred by failing to determine whether respondent was competent to represent herself.

Held: Reversed and remanded.

1. The Supreme Court held, as a matter of statutory interpretation, that the requirements in G.S. 15A-1242 for a criminal defendant's waiver of the right to counsel have no application in a termination of parental rights proceeding. The opinion is silent with respect to the proper procedure and standard for a party's waiver of the right to counsel in a termination action.
2. The Supreme Court remanded to the court of appeals to decide whether the role of respondent's guardian ad litem in a termination of parental rights action is one of assistance or substitution. The court of appeals did not address the role of respondent's guardian ad litem in relation to the waiver of counsel, because both petitioner and respondent took the position that the decision belonged to respondent. In the Supreme Court, however, both petitioner and respondent argued that the GAL's role was one of substitution, not assistance, and that the decision about waiving counsel belonged to the GAL, not the respondent.

- Jurisdiction when motion filed during appeal. Filing a motion to terminate parental rights while an appeal in the underlying case is pending does not deprive the trial court of jurisdiction in the termination case when the court takes no action "exercising jurisdiction" before the appellate court's mandate issues.

In re M.I.W., __ N.C. __, 772 S.E.2d 469 (January 27, 2012).

Facts: The court of appeals, in an unpublished opinion, affirmed an order terminating respondents' rights. The court rejected respondents' argument that the trial court lacked subject matter jurisdiction in the termination action because the motion in the cause was filed while respondents' appeal of the disposition order in the underlying case was pending.

Held: The Supreme Court affirmed (with two justices dissenting).

1. Interpreting the language in G.S. 7B-1003(b), the court distinguished between "having" jurisdiction and "exercising" jurisdiction, holding that the statute did not deprive the trial court of jurisdiction during the appeal, but prohibited the court only from exercising jurisdiction and conducting hearings.
2. In the juvenile court context, exercising jurisdiction "requires putting the court's jurisdiction into action by holding hearings, entering substantive orders or decrees, or making substantive decisions on the issues before it." The trial court's entering two orders to continue the hearing in the termination case did not violate G.S. 7B-1003(b).
3. Because the trial court did nothing that constituted exercising jurisdiction until after the mandate issued and the 15-day period in which a petition for discretionary review could have been filed passed, the court did not err in denying respondents' motion to dismiss the termination action and did not violate G.S. 7B-1003.

- Verification of petition. Social worker's verifying the petition before it was signed by the DSS attorney did not deprive the trial court of subject matter jurisdiction.

In re M.M., __ N.C. App. __, 720 S.E.2d 417 (December 6, 2011).

Facts: Verification of a petition to terminate respondent's rights was signed by the social worker. Four days later it was signed by the DSS attorney, and two days after that it was filed. On appeal from an order terminating her rights, respondent argued that the trial court lacked subject matter jurisdiction because the petition was not properly verified and the social worker could not have verified a petition that was not in existence when she signed the verification.

Held: Affirmed.

1. Nothing in the record established that the petition was not in existence when the social worker signed the verification.
2. Respondent did not show any failure to comply with Rule 11 or the Juvenile Code in regard to signing and verification of the petition.

- UCCJEA. Where a N.J. court had awarded custody to the mother, who then moved to N.C., and the father remained in N.J., the court here lacked subject matter jurisdiction to terminate the father's rights, in the absence of findings pursuant to G.S. 7B-203.

In re J.A.P., __ N.C. App. __, 721 S.E.2d 253 (January 17, 2012).

Facts: After a court in New Jersey awarded custody to the mother, she and the child moved to North Carolina. Several years later the mother filed an action to terminate the father's rights, and the court here entered an order terminating his rights. The father appealed, arguing that the N.C. court did not have jurisdiction under the UCCJEA.

Held: Vacated.

1. The court of appeals rejected the mother's argument that the father's jurisdictional argument should not be considered because no custody order was in the record. The court pointed out that it was the mother's duty under G.S. 50A-209 to file a copy of the custody order and that her pleading on its face made clear that a custody order had been entered in N.J.
2. Because no N.J. court had determined that it no longer had exclusive continuing jurisdiction or that N.C. was a more convenient forum, and no court here or there had determined that no party resided in New Jersey, N.C. lacked jurisdiction to modify the N.J. order.

- GAL for child. When respondent files an answer to a termination petition, court's failure to appoint a GAL for the child is reversible error.
- Attorney advocate not sufficient. Appointment of only an attorney advocate, without a GAL, is not sufficient.

In re J.L.H., __ N.C. App. __, __ S.E.2d __ (November 15, 2011) (originally reported as unpublished).

Facts: In a private action by the child's mother to terminate the father's rights, the father filed an answer many months after the petition was filed. The trial court appointed an attorney advocate,

but not a guardian ad litem, for the child. The court adjudicated grounds, made best interest findings, and ordered the termination of respondent's rights.

Held: Reversed and remanded.

1. A respondent's filing of an answer denying material allegations of a petition to terminate parental rights, regardless of when the answer is filed, requires appointment of a guardian ad litem for the child.
2. Failure to appoint a GAL for the child when one is required is reversible error.
3. Appointment of an attorney advocate does not satisfy the requirement that a guardian ad litem be appointed for the child [*citing In re R.A.H.*, 171 N.C. App. 427 (2005).]

- Prior neglect. Evidence of past neglect and continued instability in housing and employment after release from prison supported a conclusion that the neglect ground existed.

In re C.G.R. __ N.C. App. __, 717 S.E.2d 50 (October 18, 2011).

Facts: One child came into care and was adjudicated neglected after police raided the home where he and respondent lived with others and where police found drugs, large amounts of cash, and guns. The other child, born while respondent was in prison, was adjudicated dependent. An order terminating respondent's rights in relation to the older child was reversed and remanded. DSS filed new motions seeking termination in regard to both children. After a hearing the court adjudicated three grounds, including neglect, for terminating respondent's rights to the younger child. Without taking additional evidence the court amended its first order regarding the older child and terminated respondent's rights in relation to him. Evidence and findings related to respondent's unstable housing and employment since her release from prison; her lack of insight into the children's needs and the effect of her actions on the children; uncertainty about respondent's ability to acquire stable housing or employment; and the fact that the older child suffered from PTSD.

Held: Affirmed.

1. Evidence and findings supported the neglect ground for termination in younger child's case.
2. In the case of the older child, the court should have taken evidence and made findings regarding conditions and events since the entry of the first termination order. However, the evidence and findings in the younger child's case applied equally in the older child's case and were sufficient to support adjudication of the neglect ground. The court cited *In re Safriet*, 112 N.C. App. 747(1993), which held that remand for findings is unnecessary when all of the evidence supported such findings.

- Effect of father’s name on birth certificate. Father’s name on child’s birth certificate, when father and mother were not married, created rebuttable presumption that he had established paternity of the child either judicially or by affidavit.
- Dismissal of petition. Unchallenged findings of fact supported trial judge’s conclusion that no alleged ground for termination had been proved by clear and convincing evidence.

In re J.K.C., __ N.C. App. __, 721 S.E.2d 264 (January 17, 2012).

Facts: After years of DSS involvement, lack of success in dealing with substance abuse issues, and the children’s being in and out of foster care, the mother relinquished to DSS. The guardian ad litem filed a petition to terminate rights of the father, who was serving a 9-year prison sentence and was due to be released in early 2013. At the conclusion of the evidence the trial court dismissed the petition, finding that none of the alleged grounds had been established by clear and convincing evidence. The guardian ad litem appealed.

Held: Affirmed.

Following are some of the factors the court of appeals cited in upholding the trial court’s order dismissing the petition.

1. Neglect. After finding that there was a prior adjudication of neglect, the trial court properly considered respondent’s actions and changed conditions since then – including respondent’s substantial compliance with his case plan, keeping in contact with DSS, completing substance abuse and other courses available to him, and sending gifts to the children through his mother – and did not find a substantial probability of a repetition of neglect.
2. Willfully leaving the child in care without making reasonable progress. Factors were the same or similar to those above for neglect.
3. Failure to pay cost of care. Respondent earned \$1.00 a day and had money in an account from relatives, but provided no support for the children. However, the record included evidence that respondent had written to DSS about providing support for the children and was informed that it could not be arranged because he was earning less than minimum wage.
4. Failure to establish paternity. Noting that petitioner’s burden with this ground is difficult because it involves proving negatives, the court pointed to the fact that the children’s birth certificates had been amended to indicate respondent as the father. Although no affidavit or order of paternity was presented, DSS in its reports referred to respondent as the biological, not the putative father. The court articulated a new presumption – appearance of the father’s name on the children’s birth certificate creates a rebuttable presumption that his paternity has been established by affidavit or court order. Here the presumption was not rebutted.
5. Dependency. There was no evidence that respondent was incapable of providing care and supervision due to a condition specified in the statute or any similar cause or condition. Respondent’s incarceration was not sufficient to establish this ground. Note: In addressing this ground, the opinion refers to an earlier version of the statute that did not include the wording “or any other cause or condition . . .”

- Non-support ground. In a private tpr, the nonsupport ground requires proof of a court order or agreement for the payment of support.
- Abandonment. Abandonment did not exist when, during the relevant 6-month period, respondent was ordered not to contact the children and filed an action seeking visitation.

In re D.T.L., __ N.C. App. __, 722 S.E.2d 516 (February 21, 2012).

Facts: After respondent was released from prison, his children’s mother obtained a protective order that prohibited him from contacting her or the children. In November 2010 respondent filed a civil custody action seeking secondary custody and generous visitation. In February 2011 petitioner filed a petition to terminate respondent’s rights. The court adjudicated the grounds of willful nonsupport and willful abandonment, and terminated respondent’s rights.

Held: Reversed.

1. In a private action, the nonsupport ground under G.S. 7B-1111(a)(4) requires proof of either a court order or an agreement between the parties providing for the payment of child support. In this case no agreement or order was alleged, introduced into evidence, or found as a fact.
2. The trial court’s findings did not support its conclusion that respondent willfully abandoned the children during the six months immediately preceding the filing of the petition, because
 - a. respondent was under a court order not to have contact with the children, and
 - b. respondent’s filing of a civil action seeking visitation with the children established that he did not intend to forego his role as a parent.

- Paternity. When a question of paternity arises in a termination of parental rights case, the court is required to order paternity testing under G.S. 8-50.1.
- Appeal. Respondent’s appeal was not moot, because an order terminating his rights could have collateral consequences.

In re J.S.L., __ N.C. App. __, 723 S.E.2d 542 (February 7, 2012).

Facts: The child’s mother filed a petition to terminate the parental rights of both the putative father and any unknown father. The putative father filed an answer denying paternity and moving for DNA paternity testing. The court denied the motion, proceeded with the termination proceeding, adjudicated two grounds, and terminated respondent’s rights.

Held: Reversed and remanded.

1. The trial court erred when it denied respondent’s motion for paternity testing. When respondent denied paternity, a question of paternity arose and the court was required, under G.S. 8-50.1(b1), to order paternity testing. If the court had found after testing that respondent was not the child’s father, dismissal of the petition would have been required.
2. The order terminating respondent’s rights did not render his appeal moot. Termination has collateral consequences, such as being the partial basis for termination of a parent’s rights to another child under G.S. 7B-1111(a)(9).

- Amendment of pleadings. Allowing motion to amend pleadings was not prejudicial error.
- Neglect ground. Evidence was not sufficient to establish neglect by an incarcerated father.

In re G.B.R., __ N.C. App. __, __ S.E.2d __ (May 1, 2012).

Facts: In Nov. 2009 the children were adjudicated neglected based on conditions in the mother’s home, when respondent father was incarcerated. The disposition order continued custody with DSS, directed orders to the mother, and did not mention the father. In May 2010 a permanency planning order ceased reunification efforts with respect to both parents. DSS filed termination motions in July 2010 alleging the neglect ground. Respondent filed an answer denying the material allegations and made a Rule 12(b)(6) motion to dismiss, which the court denied. Before the hearing, respondent was released early from prison and became employed. The court allowed DSS’s motion to amend the petition to conform to evidence that respondent was involved in a 2006 adjudication that the children were neglected. The court adjudicated the neglect ground and terminated respondent’s rights.

Held: Reversed.

1. Allowing the motion to amend to conform to the evidence was error, based on *In re B.L.H.*, 190 N.C. App. 142, *aff’d per curiam* 362 N.C. 674 (2008). However, the petition put respondent on notice that his rights might be terminated on the basis of neglect, and the court made no findings based on the subject matter of the amendment, so the error was not prejudicial.
2. Findings did not support the conclusion that respondent neglected the children. Evidence and findings focused almost solely on respondent’s incarceration. There was no evidence of his circumstances since his release or that would show a likelihood of a repetition of neglect. Evidence did show that he wrote many letters to the children while incarcerated; he was fully employed and earlier was on work release; he had insurance and his own apartment; he did not drink alcohol or use any medication; he had no relationship with the mother; and in prison he completed an anger management course, a character education course, a human resource development program, and a 16-week “father accountability” class.

- Complete order required after remand. When an order is reversed and remanded, the order is defunct and the trial court must enter a new entire, complete order upon remand.

In re A.R.P., __ N.C. App. __, 721 S.E.2d 725 (January 17, 2012).

Facts: In an earlier opinion the court of appeals reversed a termination order and remanded for additional findings on the question of willfulness with regard to the ground of willfully leaving the child in foster care, etc. [G.S. 7B-1111(a)(2)] In a new order, the trial court incorporated by reference the transcript of a hearing, made new findings about willfulness, and made a “supplemental” conclusion of law. This order did not include the findings and conclusions or decree from the original order.

Held: Reversed and remanded for entry of a complete order.

1. Incorporation of an entire transcript into an order does not constitute a finding of fact. (In addition, the transcript was not included in the record on appeal.)
2. When the first order was reversed and remanded, it became ineffective. The trial court was required to enter an entirely new and complete order and could not assume that the provisions of the first order were somehow incorporated into its new order.

DELINQUENCY

- Intake. The intake interviews mentioned in G.S. 7B-1702 are required only when additional information is needed in order to evaluate the DJJDP intake factors.

In re T.H., __ N.C. App. __, 721 S.E.2d 728 (January 17, 2012).

Facts: The juvenile was adjudicated delinquent for simple assault and common law robbery. When the complaint was filed with juvenile services, the juvenile was already on probation, a law enforcement officer had investigated the case and interviewed the alleged victim, and the victim had made a written statement about the event and twice identified the juvenile in a photographic line-up. After talking with the complaining officer, but without interviewing the juvenile or the alleged victim, the court counselor approved the complaint for filing as a petition. After the adjudication and disposition, the juvenile gave notice of appeal. The transcript from the March 2010 hearing was not delivered until April 2011.

Held: Affirmed.

1. The court of appeals rejected the juvenile's argument that G.S. 7B-1702 should be strictly construed to require, in every case, that the court counselor interview the juvenile and the alleged victim unless it is impossible to do so.
2. The addition to the statute of the phrase "if practicable," in 1998, gave court counselors more flexibility in how they evaluate whether a petition should be filed. That wording means that the statute requires the suggested interviews only when additional evidence is needed in order to evaluate the matter according to the DJJDP intake factors.
3. Here, additional information was not required and the court counselor complied with G.S. 7B-1702 in assessing the complaint and approving it for filing.
4. Delay in production of the transcript was not presumptively prejudicial. Factors in determining whether a delay violates due process are the same as those for pre-trial delay in a criminal case: length of delay; reason for delay; respondent's assertion of his right to speedy action; and prejudice resulting from the delay. In this case, the juvenile's attorney was partly responsible for the delay, he did not specifically assert a right to a speedy trial [appeal], and he was not "particularly prejudiced" by the delay.

- Witnesses. State's failure to disclose the identity of an eyewitness before the day of the hearing and the court's failure to grant a continuance were prejudicial to the juvenile.

In re A.M., __ N.C. App. __, 724 S.E.2d 651 (April 17, 2012).

Facts: Before the adjudication hearing, the juvenile filed a motion pursuant to G.S. 7B-2300(b) to require petitioner to disclose a list of witnesses and their prior records. The petitioner provided names of some witnesses, but the court did not rule on the motion. On the day of the adjudication hearing, petitioner revealed the identity of a witness who would testify that she had seen the juvenile set the fire he was charged with setting. Petitioner's attorney claimed to have learned of the witness just that day and said the juvenile's attorney had been given a chance to speak to the witness. The court denied the juvenile's motion for a continuance. The witness's testimony, including that she had received a subpoena months earlier, made clear that petitioner (though

perhaps not the individual prosecutor) knew of the witness long before the hearing date. The juvenile was adjudicated delinquent and given a Level 2 disposition.

Held: New hearing.

1. Petitioner's failure to disclose the identity of the eyewitness before the day of the hearing and the court's failure to grant a continuance or otherwise deal with the problem were prejudicial to the juvenile and required a new hearing.
2. The juvenile satisfied requirements for showing that the error was prejudicial, i.e., that a different result would have been reasonably possible if the error had not occurred. With prior notice the juvenile might have been able to impeach the witness, might not have been adjudicated delinquent for setting the fire, and might not have received the disposition he received.

- "Alford admission". Trial court did not err in accepting the juvenile's "Alford admission."
- Continuances. Denial of juvenile's motion for a continuance before disposition was not error when the juvenile did not show how he was prejudiced.

In re C.L. __ N.C. App. __, 719 S.E.2d 132 (November 15, 2011).

Facts: Based on an agreement between the prosecutor and the defense, the juvenile appeared in court for entry of an *Alford* admission to misdemeanor possession of stolen property. The court asked the juvenile a series of questions and informed the juvenile of the most restrictive possible disposition. The juvenile stated that he understood the admission arrangement and also admitted having committed the offense. On appeal the juvenile asserted that the trial court failed to determine that his *Alford* admission was the juvenile's informed choice and committed error by denying the juvenile's motion for a continuance before the disposition hearing.

Held: Affirmed.

1. After noting that G.S. 7B-2405(6) affords juveniles "all rights afforded adult offenders" except those then mentioned in the Juvenile Code, the court of appeals evaluated the trial court's actions pursuant to G.S. 15A-1022, in the article entitled "Procedures Relating to Guilty Pleas in Superior Court," rather than under G.S. 7B-2407, the Juvenile Code provision for accepting a juvenile's admission. The court held that the trial court basically complied with G.S. 15A-1022 and had not erred in accepting the juvenile's *Alford* admission.
2. Trial court did not err in denying juvenile's motion for a continuance. The disposition was as the parties agreed and there was no indication that the juvenile would have other evidence.

- Proof of "force". Except when abuse is by a parent (or similar person), the "force" element of second degree sex offense requires proof of either actual or threatened physical harm.
- Constructive force. Juvenile's threats to disclose other children's embarrassing secrets and their sexual conduct were not sufficient to establish constructive force.

In re T.W., __ N.C. App. __, __ S.E.2d __ (June 5, 2012).

Facts: The juvenile instigated and engaged in various sexual activities with other boys around his age. While the boys may have participated willingly initially, when they tried to say "no," the juvenile threatened to disclose their secrets (*e.g.*, bedwetting) and the sexual conduct. He did not inflict or threaten physical harm. The juvenile was adjudicated delinquent for the offense of

indecent liberties between minors, three counts of second degree sexual offense, and three counts of crimes against nature. On appeal the juvenile challenged only the second degree sexual offense adjudications, arguing that the state failed to prove either actual or constructive force, a necessary element of the offense.

Held: Affirmed in part; reversed and remanded in part.

The court of appeals reversed the adjudications for second degree sexual offense, holding that the trial court should have granted the juvenile's motion to dismiss those charges, and remanded for entry of a new disposition order.

1. The threat of exposing the victims' secrets and their sexual conduct, without proof of actual or threatened physical harm, was not sufficient to establish constructive force for purposes of second degree sexual offense.
2. When a parent uses his position of power to force his child to engage in sexual acts, proof of neither actual nor threatened physical harm is required, because the threat is inherent in the relationship. That kind of relationship did not exist in this case.

- Adjudication after transfer hearing. The trial court did not err when it announced its adjudication and disposition decisions immediately after the transfer hearing.
- Required findings. Absence of required written findings from adjudication and disposition orders and the order denying release pending appeal required remand.

In re J.J., Jr., __ N.C. App. __, 717 S.E.2d 59 (October 18, 2011).

Facts: The petition alleged and the trial court (after a two-day hearing) found probable cause for first degree sex offense. The state sought transfer, and at a later date the court conducted a transfer hearing at which it heard additional evidence from the state and the juvenile. In closing arguments, the two sides requested different dispositional alternatives. Immediately after that hearing, the court announced that it retained jurisdiction, found beyond a reasonable doubt that the juvenile was delinquent for first degree sex offense, and committed the juvenile to a youth development center. The juvenile made no objection and gave oral notice of appeal. Appellate entries did not indicate whether the juvenile was to be released pending appeal.

Held: No prejudicial error in part; vacated and remanded in part.

1. Nothing in the Juvenile Code requires the court to conduct entirely separate probable cause, transfer, and adjudicatory hearings.
2. Conducting all three hearings in one proceeding was not error, so long as the juvenile's rights set out in G.S. 7B-2405 were protected. There was no indication in this case that any of those rights were violated, and the juvenile did not indicate that there was other evidence he would have presented and or show any prejudice.
3. Failure of the adjudication order to state findings that were made "beyond a reasonable doubt," although stated verbally in court, required remand.
4. Although the court did not follow the statutory procedure for conducting a disposition hearing, it complied in substance if not in form, and the juvenile failed to show how the disposition might have been different if the court had followed the correct procedure.
5. Failure of the disposition order to include required findings required remand.
6. The court's failure to make written findings to support its oral denial of the juvenile's release pending appeal required remand.

- State's right to appeal. In a delinquency case, the State may appeal an order suppressing evidence only if the order terminates the prosecution.
- Relevant statute. The applicable statute is G.S. 7B-2604(b). G.S. 15A-979(c) (state's appeal of order suppressing evidence in criminal case) does not apply in delinquency cases.

In re P.K.M., __ N.C. App. __, 724 S.E.2d 632 (March 20, 2012).

Facts: Police received word that 12-year-old P.K.M. was among a group of juveniles who vandalized a vacant building. At school, P.K.M. was taken from the principal's office to the school resource officer's (SRO's) office to meet with the SRO and the detective investigating the vandalism. During the meeting P.K.M. made incriminating statements. After a petition was filed alleging that P.K.M. was delinquent, the trial court granted the juvenile's motion to suppress those statements, based on *J.D.B. v. N.C.*, 141 S.Ct. 2394 (2011) (holding that a juvenile's age is a relevant factor in determining whether a juvenile is "in custody"). The State gave notice of appeal and certified under G.S. 15A-979(c) that the appeal was not for purposes of delay and that the suppressed evidence was essential to the State's case.

Held: Appeal dismissed.

1. The State's right to appeal in a delinquency case is governed by G.S. 7B-2604(b) and includes appeal of an order granting a motion to suppress only if the order terminated the prosecution of the petition.
2. Here, the trial court did not dismiss the petition, the State did not argue in its brief that it could not proceed with the prosecution, the record suggested there was other evidence of the juvenile's involvement, and the State did not petition for certiorari.