

## Addendum

### **JUVENILE LAW UPDATE**

(Case Decided October 6, 2006)

- **Termination of Parental Rights: Evidence and findings were sufficient to support neglect ground for terminating parental rights.**

**In re D.M.W., \_\_\_ N.C. \_\_\_, \_\_\_ S.E.2d \_\_\_ (10/6/06), reversing per curiam, 173 N.C. App. 679, 619 S.E.2d 910 (10/18/05).**

**Facts:** When respondent was incarcerated in early June 2003, she placed the child with the child's grandmother, who then placed the child with respondent's sister. In early July 2003 DSS obtained custody and filed a petition when the sister contacted DSS to say that respondent had not come for the child on her expected release date and that she, the sister, could no longer care for the child. On August 11, DSS located respondent, who was in jail, and respondent entered into a case plan that addressed substance abuse, domestic violence, parenting skills, housing, and employment issues. At the adjudication hearing on August 13, 2003, respondent stipulated to the facts alleged in the petition, and the court adjudicated the child to be neglected and dependent ["as to respondent"]. At disposition, the court adopted the case plan. Respondent was released on August 22 and met with the social worker three days later. Respondent began but did not complete substance abuse treatment and refused to obtain domestic violence counseling. She was incarcerated at least six times while DSS had custody of the child and never visited the child between periods of incarceration. While incarcerated she attended some domestic violence and parenting classes and completed a drug treatment program. DSS filed a petition to terminate respondent's rights in February 2004, and on August 24, 2004, the court entered an order terminating her rights on the grounds of neglect and failure to pay a reasonable portion of the cost of the child's care. At the time of the termination hearing, respondent was incarcerated but expected to be released within a few weeks and live with her mother.

The court of appeals reversed the trial court's order, holding that neither ground was supported by sufficient findings supported by clear, cogent, and convincing evidence. With respect to neglect, the court of appeals noted that while incarcerated respondent had complied with substantial parts of the case plan and that there was no requirement that she do so through the specific resources to which DSS had referred her. She had started working in the kitchen and had completed some course work toward getting her GED. There was not, the court of appeals said, clear and convincing evidence to support the trial court's finding of a probability of a repetition of neglect if the child were returned to respondent. (Because the supreme court did not address the second ground, failure to pay a reasonable portion of the cost of the child's care, the reasoning of the court of appeals with respect to that ground is not set out here.)

**Holding:** Reversed.

The supreme court, *per curiam*, reversed for reasons stated in the dissenting opinion in the court of appeals. That opinion would have affirmed the trial court on the basis of the neglect ground. It found that the majority's findings that respondent had completed substantial parts of the case plan were not supported by the record. The dissent had pointed to respondent's failure to maintain contact with DSS, to provide DSS with any information about the steps she had taken while incarcerated, to visit the children or work on the case plan when she was not incarcerated, or to achieve any of the goals that the actions in the case plan were designed to accomplish. In addition the dissent had noted that respondent presented no evidence that would have enabled the trial court to determine the effectiveness of the programs she did attend while incarcerated.