

District Court Judges' Fall Conference
Winston-Salem, NC
October 14, 2011

Juvenile Law Update



Janet Mason
School of Government
UNC at Chapel Hill
October 14, 2011

Child's Guardian ad Litem

[J.H.K.; A.N.L.]

A Child's Advocate
In Court

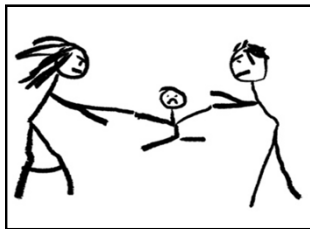


1. Where?
2. How?
3. Who?

Abuse and Neglect: Adjudication

[A.N.L.]

Domestic Violence



Abuse and Neglect: Disposition

[D.L.]

Kinship Care

In re K.J.D.
(2010)



1. safe placement
2. "sanctioned" by court
3. power of attorney

Joint Appeal of Two Orders

[J.R.C.]

1. ceasing reunification efforts
 2. terminating parental rights
- (G.S. 7B-1001)



TPR: Multiple Grounds

[C.I.M.]

- only one ground is necessary
- best interest factors now require findings of fact



TPR: Neglect Ground
[J.H.K.-2]

1. current neglect, or
2. prior neglect + likely repetition if child returned to parent



N.C. Supreme Court Review Pending

- ? Jurisdiction if TPR filed while appeal pending [M.I.W.]
- ? Accepting parent's waiver of right to counsel [P.D.R.]



2011 Legislation

S.L. 2011-295 (H 382), effective 10/1/11



1. consent order if attorney present and authorized
2. stipulations written or on the record
3. paternity and relative inquiries at disposition
4. timely entry of disposition order
5. "placement responsibility" clarified
6. PP hearing schedule clarified
7. standard for changing guardianship
8. service of motion in tpr and change in Rule 5 (S.L. 2011-332)

9. petitioner to send tpr notice of hearing
10. extension of time for answer or response
11. unknown parent: diligent search / no GAL
12. evidence at tpr adjudication
13. evidence and findings at tpr disposition
14. court's authority post-tpr
15. selection of adoptive parents
16. reinstatement of parental rights



Delinquency



Custodial Interrogation
[J.D.B. (U.S. Sup. Ct.)]

Juvenile's age is relevant when determining whether juvenile is "in custody."



Juveniles and the
U.S. Supreme Court

- **1989: Stanford v. Kentucky**
Capital punishment for crime committed at age 16 or 17 did not violate evolving standards of decency or constitute cruel and unusual punishment.
- **2005: Roper v. Simmons**
Execution of a person who was under age 18 at the time of a capital crime is prohibited by Eighth and Fourteenth Amendments.
- **2010: Graham v. Florida**
Constitution does not permit sentencing a juvenile offender to life in prison without parole for a non-homicide crime.

School Search

[T.A.S. (appeal pending)]

- scope
- individualized suspicion
- imminent danger
- investigation
- “degrading, demeaning, highly intrusive”



Larceny from Golf Club
[D.B.]

- Sufficiency of petition
- Is victim a legal entity capable of owning property?



Motion to Suppress

During **Terry stop and frisk**, officer may not physically search solely to learn identity [D.B.]

Motion to Dismiss

Anonymous tip was not sufficient to justify **investigatory stop**. [A.J. M.-B.]



Assault by Pointing Gun
[N.T.]

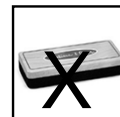
- In G.S. 14-34, “gun”
1. means “firearm”
 2. does not include air rifle



Disposition: Dismissal

[A.J. M.-B.]

- Dismissal is a dispositional option [G.S. 7B-2501(d)]
- The dismissal does not “erase” the adjudication.




Disposition: Restitution
[D.A.Q.]

Court must find



1. best interest of juvenile
2. fairness (to juvenile)

Compensation and fairness to the victim are not primary



N. C. Supreme Court Review Pending

? Before a juvenile testifies in his own case, must trial court inform juvenile of privilege against self-incrimination? [J.R. V.]



2011 Legislation

- Custodial Interrogation
S.L. 2011-329 (S 241) (12/1/11)
- Juvenile Records
S.L. 2011-277 (S 135) (12/1/11)
- Department Consolidation
Sec. 19.1, S.L. 2011-145 (H 200) (1/1/12)
- Alternatives to Detention
Section 17.6 of S.L. 2011-145 (H 200)