

THE COUNCIL QUARTERLY

News and Views from the Council of Juvenile Court Judges of Georgia

Riding the Pine

A Letter from the President

By Honorable Cliff Jolliff
Judge, Juvenile Courts of Hall and Dawson Counties

Happy New Year! I hope all of you had a joyous holiday season, and are ready to tackle the challenges before us. The legislature will be in session as you read this, and we will already be hard at work on HB 182. Please continue to talk to your local legislators to educate them on the benefits of state funding of our salaries. We are talking about \$5 million in the first fiscal year to make this happen. Please call Eric or me with any comments or concerns for this and any other legislation that emerges during the session.

We have enlisted the help of the superior court judges as we prepare a child support bill to clarify our ability to set support in deprivation cases. Also, Judge Velma Tilley has been named to a DHR task force that is studying the CPS process in response to the problems which have been recently publicized involving DFCS.

Thanks to many of you who have agreed to participate in the study of how we spend our time as judges. This will give us good information for future use in determining the need for additional judgeships or resources, as well as a better comparison of our work around the state. I know our part time judges are enjoying the prospect of the full timers preparing time sheets again!

My thanks to all of you, who give so much of your time and energy to the juvenile courts of Georgia, and I look forward to seeing you on the island in March, to talk about our successes!
Cliff

Congratulations and Acknowledgements

A reception was held December 4, 1999 to honor Judge **Herbert Crane** upon his retirement after 28 years as a juvenile court judge in Bartow County. Our best wishes to Judge **Crane**, who will continue to serve in senior status.

The Council is pleased to welcome new staff personnel **Lori Lovingood**, who will be the Model Court Coordinator. Lori, who has been the Court Administrator in the Appalachian circuit, has extensive juvenile court experience and a master's degree in public administration. She will be originating the **Model Courts Project**, an effort to assist Georgia's juvenile courts to develop model practices in deprivation cases, in keeping with the aspirational guidelines developed by Georgia and the National Council of Juvenile and Family Court Judges. Please join in welcoming Lori to the Council staff.

Case Law Update

By Honorable Robert Rodatus
Judge, Juvenile Court of Gwinnett
County

The following cases can be found in the weekly summary of opinions in the Fulton County Daily Report. All citations are to the Appellate Case Number and to that publication.

Termination - Evidence

Termination of the father's parental rights was supported by evidence that he had been in jail during most of the child's life and had made no attempt to maintain a relationship with the child. The Court of Appeals also rejected the father's claim of error in that he was given no notice that failure to legitimate the child would result in termination of his rights, since the termination was not based on that failure.

In the Interest of J. K., A99A0434, 99 FCDR 2676 (6/25/99).

Termination - Service of Process

Upon termination of her parental rights, the mother complained that the trial court improperly allowed her to be served by publication rather than by personal service. Where DFCS presented evidence regarding its unsuccessful efforts to locate the mother during the year in which the child was in custody, including searching for the mother's address in telephone directories and in state and local government records, contacting area jails, and calling each contact number listed in the mother's DFCS file, the Court of Appeals held that service by publication was proper.

In the Interest of M. J. B., A99A0859, 99 FCDR 2805 (7/6/99).

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Termination - Relative Placement

The termination of the mother’s parental rights was upheld based upon evidence of positive cocaine and marijuana tests at the child’s birth, the mother’s homelessness, and her failure to meet the requirements of the reunification plan. However, the Court of Appeals reversed the trial court finding that there was no suitable placement for the children within their family, since the paternal grandfather had expressed willingness to care for the child at the termination hearing. Though the grandfather had not previously contacted the department regarding the child, it was incumbent upon DFCS to perform an investigation before the court could determine that there was no suitable relative placement for the child.

In the Interest of N. B. et al., A99A1525, 99 FCDR 2884 (7/15/99).

Termination - Evidence

Termination of the mother’s parental rights was supported by evidence that the mother failed to contact the children or provide financial support while they were in foster care, failed to undergo Court ordered drug testing, and was unable to protect the children from the father’s physical abuse.

In the Interest of W. M. and K. M., A99A1279, 99 FCDR 2999 (7/26/99).

Termination - Evidence

Termination of the mother’s parental rights was supported by evidence that the mother suffered from mild retardation, seizures and several personality disorders; refused to attend counseling; and lacked parenting skills. The evidence also showed that the children were being harmed by languishing in temporary care. In upholding the termination, the court noted that, although the mother was married to a man who could provide assistance in caring for the children, he was not the children’s father, so that the decision of whether the children would be safely cared for at home depended on the mother’s ability to care for them herself.

In the Interest of A. S. H., A99A1054, 99 FCDR 3087 (8/10/99).

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Committee Updates



Children with Special Needs	Permanency Planning	Grants	Legislative
<p>The committee met January 21 at the council office to discuss early identification and intervention in cases of children with special needs in the juvenile court system. Also in attendance were special guest representatives from the Georgia Department of Education and the Georgia Department of Public Health. The next committee meeting will be during the Spring Seminar.</p>	<p>The Permanency Planning Department of the National Council of Juvenile and Family Court Judges is one of the sponsors of a satellite broadcast presentation, Model Court Practices in Abuse and Neglect Cases on Thursday, February 10. All judges are encouraged to view the broadcast. Visit the sponsor's website at www.juvenile.net/org/model for downlink sites in your area or call (606) 622-6671 for further information.</p>	<p>The Council received a total of \$1.3 million in funding to be distributed among the participating counties. The budget consists of \$1.1 million in federal funds and \$200,000 in state appropriated funds. The federal dollars are provided under the Juvenile Accountability Incentive Block Grant (JAIBG) Program.</p> <p>Grants were awarded to all 105 counties that applied for funding. Grant awards ranged between \$2,000 to \$60,000.</p>	<p>A bill to reorganize the juvenile code, HB 1112, was introduced by Representative Mary Squires of Gwinnett County. The bill seeks to make the code more user-friendly by placing related code sections together and otherwise arranging sections in a more logical fashion than the patchwork that is currently in place. In addition, where the code now refers variously to children as individuals, juveniles, persons, etc., the bill standardizes</p> <p>(continued page 7)</p>

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Termination - Evidence

Termination of the mother's parental rights was supported by her repeated arrest and incarceration before and after the child's birth, her failure to comply with the reunification plan, and that fact that the child had bonded to his foster family.

In the Interest of B. M. L., A99A1451, 99 FCDR 2091 (8/3/99).

Termination - Evidence

Termination of parental rights was supported by evidence of the parents' long criminal records and repeated incarcerations, substance abuse, and failure to comply with the reunification plan.

In the Interest of F. C. and D. L. C., A99A1242, 99 FCDR 3092 (8/9/99).

Reunification

The Court of Appeals affirmed an order approving DFCS' decision to cease reunification efforts. The mother had not sought drug and alcohol abuse treatment and paid no child support as required by the reunification plan. Further, she had moved out of state and had little contact with the children. The father had stopped working toward the reunification plan's goals, visited the children infrequently, and cohabited with women who were convicted felons and addicted to drugs and alcohol. Interestingly, this case had previously appeared before the Court of Appeals, but was remanded because "the parents had made improvements and had accomplished many of the goals included in the case plan."

In the Interest of R. U. et al., A99A1236, 99 FCDR 3093 (8/10/99).

Criminal Law - Battered Persons Syndrome

Although the Supreme Court found the trial judge had properly excluded expert testimony on battered persons syndrome, it did envision rare situations in which evidence of "cultural background" would be relevant to assist the jury in understanding why the accused acted in the way they did, and where such beliefs could include a fear of imminent physical harm so as to support a defense of justification.

Nguyen v. State, S99G0014, 99 FCDR 3416 (9/20/99).

Criminal Law - Defendant's Presence

The Supreme Court reversed the defendant's murder conviction because, during an in chambers hearing regarding juror communication with a courtroom spectator, the defendant was absent. The defendant's attorney purported to waive the defendant's right to be present, but the waiver was ineffective, since the defendant neither agreed to the waiver when it occurred nor acquiesced to it later.

Pennie v. State, S99A0553, 99 FCDR 3335 (9/13/99).

Criminal Law - Video Tape

Failure to inform a defendant that his statement was being video taped did not interfere with his knowing and voluntary waiver of his Miranda Rights regarding the statement, including any comments he made after interrogators left the room.

Davis v. State, S99A1156, 99 FCDR 3439 (9/13/99).

Custody - Contempt - Confidentiality

The Supreme Court reversed a finding of criminal contempt against an attorney who had allegedly revealed confidential information regarding a custody case to the media, but affirmed an order restraining the attorney from disclosing confidential information from the juvenile court files and records. Cases transferred from the superior court to the juvenile court for investigation and determination are subject to the same confidentiality rules as those originating in juvenile court.

In Re: Burton, S99A1179, 99 FCDR 3417 (9/20/99).

Custody - Modification

The Court of Appeals reversed an order changing primary physical custody from the mother to the father, holding that the mother's relocation out of state was not a sufficient change of condition to warrant the

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modification. On remand, the trial court was instructed to hear evidence regarding whether the father's visitation rights should be modified because of the move.

Ofchus v. Isom, A99A1384, 99 FCDR 3257 (8/30/99).

Delinquency - Designated Felony

Following his delinquency adjudication, A.Q.H. claimed that the trial court failed to make the necessary findings before placing him in restrictive custody under the designated felony statute. The Court of Appeals disagreed.

In the Interest of A. Q. H., A99A1741, 99 FCDR 3378 (9/8/99).

Delinquency - Evidence

The Court of Appeals reversed a delinquency adjudication for possession of marijuana while on probation because the adjudication was based on test results which were not part of the record and which were admitted by the trial court without any foundation to support them.

In the Interest of J. L., A99A1304, 99 FCDR 3301 (8/31/99).

Delinquency - Obstruction

While loitering in a known drug area, J.T. fled after an officer approached him. When the same officer asked him to stop on later occasions, J.T. fled each time. Upon his adjudication as delinquent for obstruction of an officer in the lawful discharge of duty, J.T. claimed that the adjudication was in error because the officer had no justification for stopping him. The state argued that the first stop was legal because J.T. was violating an ordinance against loitering in a known drug area, but the Court of Appeals rejected the argument because the ordinance was never introduced into evidence. Because neither the first nor any subsequent encounters involved a violation of the law and were otherwise insufficient to raise the suspicion of criminal activity, the officer had no reason to stop the J.T, and J.T. could not be adjudicated delinquent for obstruction.

In the Interest of J. T., A99A2051, 99 FCDR 3289 (8/30/99).

Delinquency - Prior Acts

The Court of Appeals affirmed an adjudication of delinquency for the offense of child molestation after determining that, though the trial court had erred by refusing to permit cross examination of the victim's grandfather regarding the grandfather's past false accusations of molestation, the error was harmless due to the overwhelming evidence of the juvenile's guilt.

In the Interest of M. G., A99A0966, 99 FCDR 3305 (9/2/99).

Delinquency - Probation Revocation

The evidence did not support finding that the children had violated a condition of probation by staying out past curfew since the state did not offer certified copies of the previous adjudications or the orders imposing probation and curfew as conditions.

In the Interest of B. K. and R.K., A99A0850, A99A0851, 99 FCDR 3380 (9/7/99).

Deprivation - Custody

Upon their divorce, parents were named joint legal custodians of the child, with physical custody placed in the mother. When the mother became unfit, the child was adjudicated deprived, and custody placed in DFCS. After DFCS placed the child with her half-sister's paternal grandparents, the father objected that he had been improperly denied custody. The Court of Appeals noted that the father had failed to object when custody was first given to DFCS, and rejected his appeal. The Court of Appeals observed that, following the order of custody to DFCS, any placement order by the court was merely exhortatory, and not binding.

In the Interest of C. A. C., A99A1129, 99 FCDR 3353 (8/30/99).

Immunity - Community Service

Following a school prank, Hazelwood was punished by being made to clear weeds using a pair of scissors. When the punishment injured his wrist, Hazelwood sued the coach who ordered it. The coach, who was entitled to immunity absent a showing of actual malice, won a motion for summary judgment because no evidence of actual malice was shown, only ill will. Ill will in devising a demeaning punishment was

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insufficient in itself to pierce the coach's immunity.
Adams v. Hazelwood, S99G0493, 99 FCDR 3322 (9/13/99).

Termination - Evidence

Termination of parental rights was supported by evidence that the mother was impaired by low cognitive functioning and a personality disorder, and that she failed to comply with the case plan goals in important respects. Moreover, the younger child's psychiatric problems were not only created by the mother's neglect, but exacerbated by lack of permanency. The mother's recent achievements and stability were outweighed by her deficiencies.

In the Interest of B. L. S. and M. J. S., A99A0949, 99 FCDR 3259 (9/1/99).

Custody - Modification

The trial court order changing primary physical custody from the mother to the father was reversed since the mother's remarriage and relocation out of state was insufficient to support a change of condition.

McCrae v. McCrae, A99A0829, 99 FCDR 3509 (9/20/99).

Abortion - Parental Notification

The trial court's denial of the minor's petition to waive parental notification was proper, since the child was neither mature and informed enough to make the decision herself, nor was she afraid that her parents would abuse or harm her if they discovered her pregnancy.

In the Interest of E. H., A00A0224, 99 FCDR 3512 (9/17/99).

Deprivation - Reunification

The mother, who suffered from endometriosis, objected to a court order adopting a DFCS case plan which did not include reunification efforts. The decision to terminate reunification efforts was based on the evidence the mother neglected her children, was addicted to pain medication, had no means of support, and had failed to comply with previous reunification plans. In upholding the trial court order, the Court of Appeals held that the mother's severe medical condition did not excuse her behavior and was not the sole cause of the neglect.

In the Interest of K. M., A99A1632, 99 FCDR 3513 (9/15/99).

Termination - Evidence

The termination of parental rights was affirmed based on evidence that the mother had tied the six year old to a hotel bed with telephone cords, cut his forehead and chanted about God and the Devil, while the father, who was serving a life sentence for murdering the child's maternal grandmother, improperly spent the child's trust money.

In the Interest of J. H., A99A1550, 99 FCDR 3721 (10/7/99).

Termination - Evidence

The termination of parental rights was affirmed based on evidence that the mother, whose rights to two other children had already been terminated, was homeless, addicted to alcohol and cocaine, unable to work due to depression, and was serving a fifteen year probated sentence for shop lifting.

In the Interest of J. M. S. M., A99A1712, 99 FCDR 3727 (10/6/99).

Termination - Evidence

The termination of the father's parental rights was affirmed based on evidence of his history of domestic violence, current incarceration and inability to provide a stable home environment.

In the Interest of T. T. and T. T., A99A2463, 99 FCDR 3728 (10/12/99).

Divorce - Modification

The wife's petition for modification of a custody agreement was properly dismissed because she failed to comply with the separation agreement requirement that custody disputes be mediated as a condition precedent to filing suit.

Gould v. Gould, A99A1609, 99 FCDR 3729 (10/6/99).

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Termination - Evidence

Termination of the mother's parental rights was affirmed based on evidence that she had surrendered her son to another family to raise for ten years, during which time she had little contact with him and provided almost no financial support. Further, it was found that the child would suffer emotional harm if separated from the family that had cared for him most of his life.

In the Interest of A. W., A99A0906, 99 FCDR 3652 (10/6/99).

Termination - Evidence

Termination of the father's parental rights was affirmed based on evidence that he had spent most of the last decade in jail, had a history of criminal activity and drug use, and failed to pay child support or to contact the child.

In the Interest of T. L. H., D. M. B. and D. T. B., A99A1393, 99 FCDR 3656 (9/29/99).

Termination - Jurisdiction

The Court of Appeals case held that the mother should have filed a petition for termination of the rights of the biological father of her child in superior court instead of juvenile court, in keeping with In the interest of M.C.J., 236 Ga. App. 225, 511 S.E.2d 533 (1999), which held that all deprivation proceedings between parents must originate in superior court to insure they are not disguised custody disputes over which the juvenile court has no jurisdiction. The precedents relied upon in this case were subsequently overruled by the Supreme Court.

In the Interest of M. M., A99A1161, 99 FCDR 3657 (9/29/99).

Criminal Law - Right to Counsel

The defendant was convicted on charges of child molestation after a trial in which he represented himself. The Court of Appeals overturned the conviction upon evidence that the trial court, without any independent examination, relied on the public defender's determination that the defendant did not qualify for appointed counsel, and did not investigate whether the defendant diligently had attempted to retain an attorney.

Martin v. State, A99A1343, 99 FCDR 3700 (10/5/99).

Termination - Jurisdiction

The Supreme Court reversed the Court of Appeals holding in ruling that not all deprivation and termination cases between parents are per se custody which must be filed in superior court. The ruling reversed the line of cases beginning with W.W.W., 213 Ga.App. 732 (1994) and In the Interest of M.A., 218 Ga.App. 433 (1995).

In the Interest of M.C.J., S99G0742, 99 FCDR 3781 (10/18/99).

Custody - Procedure

After the custodial mother filed suit for contempt and modification, the case was transferred based on improper venue, and the father counterclaimed, seeking sole custody of the child. Because the father failed to file his petition for change of custody separately and in the mother's county of residence, the father's motion should have been dismissed or transferred.

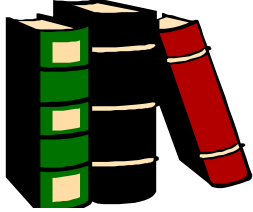
Roach v. Kapur, A99A2210, 99 FCDR 4047 (10/28/99).

Delinquency - Transfer

Following her involvement in an armed robbery where a cohort held a knife to the throat of the victim, the fourteen-year-old defendant's case was transferred to superior court. The transfer to superior court was affirmed because, despite the fact that the juvenile did not wield the weapon, there was evidence that she committed the offense in that she cooperated and otherwise participated in the venture. In addition, the court found that the juvenile's unresponsiveness to previous psychological treatment and her lack of concern over the serious pending charges was indicative of nonamenability to treatment in the juvenile system.

In the Interest of J. L. B., A99A1418, 99 FCDR 3907 (10/19/99).

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Deprivation - Evidence

The Court of Appeals affirmed a finding of deprivation and award of temporary custody to a family member based on evidence that the teenaged mother could not support herself or the baby or provide care for the child's medical condition. The court further found that placement with a family member would facilitate a plan of reunification since the mother also lived there.

In the Interest of D. A., A99A2484, 99 FCDR 4047 (10/28/99).

Termination - Evidence

Termination of the mother's parental rights was reversed, and the case was remanded for establishment of a reunification plan. The Court of Appeals found that the mother's past misconduct did not support a finding of present unfitness. Although she had a criminal and drug abuse history, the mother had attended counseling and had obtained gainful employment and housing. The court found further that termination was not in the 10 year-old child's best interests because of her strong emotional bond to her mother.

In the Interest of K. M., A99A1156, 99 FCDR 3872 (10/19/99).

Termination - Evidence

Termination of the father's parental rights was affirmed based on evidence that he was in prison for cocaine distribution and subject to deportation as an illegal alien upon his release. The court further found evidence supporting termination in his failure to communicate with his children during seven years when he fled the country to avoid prosecution, and in the fact that the children are thriving in foster care and barely remember or recognize their father.

In the Interest of R. H. and L. H., A99A1755, 99 FCDR 3994 (10/28/99).

Termination - Evidence

Termination of the mother's parental rights was affirmed over the mother's claim that there was insufficient evidence to support it. The Court of Appeals considered the mother's long-term failure to comply with case plans, especially her absence during the majority of scheduled visiting times, and rejected her claim. Her claim that hearsay evidence was improperly admitted was also rejected as, at most, harmless error.

In the Interest of J.L.T., et al., A99A0795, 99 FCDR 4181 (11/4/99).

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such references so that the term "child," which is defined in §15-11-2, is used uniformly throughout the juvenile code.

The bill, which is based largely on materials developed by the Council, arose from a special subcommittee of the House Judiciary Committee that is charged with studying Georgia's juvenile justice system. **Eric J. John** assisted Representative Squires in presenting HB 1112 to the House Judiciary Committee this week, and the committee passed the bill unanimously. The bill was then presented in the House, where it passed, again, by a unanimous vote.

The Council has developed a cross-referenced guide to the reorganized juvenile code, which you may obtain by contacting Lynn Brewer at (404) 657-5026 or lynnkelly@mindspring.com.

If you have questions regarding the reorganization bill or any other legislative matters, please call Eric J. John or Lynn Brewer at (404) 657-5020.

E-MAIL UPDATE: As we continue working to develop an accurate list of e-mail addresses, please note the following additions and corrections:

- Judge Richard Brooker - doughertycojvct@mindspring.com
- Judge Quintress Gilbert - quintress@email.msn.com
- Judge Sammy Jones - jonessj@mindspring.com
- Judge Ken Poston - mcposton@mindspring.com
- Judge Lindsay Tise - lindsaytise.cscj@hoffice.net
- Judge Billy Shaw Abney - awabsa@aol.com

IF YOU HAVE FURTHER ADDITIONS OR CORRECTIONS, PLEASE CONTACT LYNN BREWER AT lynnkelly@mindspring.com.



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Delinquency - Lesser Included Offense

C.S.G. was adjudicated delinquent for committing acts which, if performed by an adult, would constitute battery and making terroristic threats. The evidence, that C.S.G. beat the victim and then brandished a pistol and warned the victim to "watch his back," was sufficient to establish the offense. C.S.G. objected to the adjudication for having made terroristic threats because he had been charged instead with aggravated assault. The Court of Appeals held that making terroristic threats was a lesser included offense of aggravated assault, so that C.S.G. was notified of the possibility that he could be adjudicated delinquent on the offense.

In the Interest of C.S.G., A99A1784, 99 FCDR 4277 (11/9/99).

Support - Contempt

Upon the mother's motion for modification of child support, and after finding that the father underreported his income, the trial court doubled the monthly payment and ordered the father to pay \$17,000 in arrearages. When he failed to pay the arrearage, the father was held in contempt. The Court of Appeals reversed the contempt finding, holding that the \$17,000 judgment was an impermissible retroactive modification of a child support order.

Rose vs. Thorpe, A99A2278, 99 FCDR 4349 (11/16/99).

Support - Res Judicata

DHR sought to enforce an Indiana order for child support arrearages, where the ex-husband discovered years after the divorce that he was not the child's father. The Court of Appeals held that the Full Faith and Credit Child Support Order Act required enforcement of the Indiana order and recognition of the paternity determination despite DNA testing establishing that the ex-husband was not the child's biological father.

DHR vs. Pinter, A99A1600, 99 FCDR 4350 (11/18/99).

**Upcoming
Events:**

**Spring
Seminar
3/26 - 3/29**
St. Simons
Island, GA

HOTEL
REGISTRA-
TION BY
FEB. 25 --
REGISTER
w/ ICJE BY
MARCH 10

**Fall Seminar
9/24 - 9/27**
Brasstown
Valley,
Young
Harris, GA

Council of Juvenile Court Judges of Georgia
230 Peachtree Street, N.W.
Suite 1625
Atlanta, Georgia 30303

