

RECENT NEW MEXICO OPINIONS RELATED TO CHILDREN

The Supreme Court and the Court of Appeals have issued a number of published opinions relating specifically to children. Since July 2011, these have included the following:

Supreme Court

Diamond v. Diamond, 2012-NMSC-022. The Supreme Court interpreted the Emancipation of Minors Act to authorize partial emancipation.

Chatterjee v. King, 2012-NMSC-019. A same sex partner may have standing to pursue joint custody of a child. In this case, the facts pleaded by the petitioner were sufficient to confer standing on her as a natural mother under the Uniform Parentage Act.

Freedom C. v. Brian D., 2012-NMSC-017. The Supreme Court addressed certain issues under the Kinship Guardianship Act, in particular the extent to which both parents must meet the prerequisites of §40-10B-8(B) before guardianship can be granted, in this case to the grandparents. Also, the fact that one parent lives in the same house as the kinship guardian does not necessarily preclude application of the KGA.

Court of Appeals - Abuse and Neglect

State ex rel. CYFD v. Laura J., slip op. filed 9/26/12. While affirming termination of the Mother's parental rights under the Children's Code, the Court of Appeals held that the Child's cousin, who had intervened in the children's court, had standing to appeal. This cousin had sought to be considered for placement purposes. The appellate court held that CYFD did not make reasonable efforts to locate relatives for placement, as required by §32A-4-25.1(D), and remanded so that CYFD could consider whether the cousin could serve as an appropriate placement for the child.

State ex rel. CYFD v. Carl C., 2012-NMCA-065. The Court of Appeals held that evidence that either the mother *or* the father perpetrated the abuse was sufficient for a court to conclude that action or inaction of the child's parent, guardian or custodian caused the abuse, and it was not necessary to specifically find which parent caused the abuse.

State ex rel. CYFD v. Steve C., 2012-NMCA-045. The petition filed by CYFD under the Abuse and Neglect Act had alleged neglect. At the close of the adjudicatory hearing, CYFD asserted that there was sufficient evidence presented to support a finding of abuse. The court considered this to be a motion to conform to the evidence, granted the motion and, without further hearing, found that Father had neglected and abused the children. The Court of Appeals concluded that the court erred in not following §32A-1-18(A), which requires the court to hear the additional issues, and that it was a violation of due process for Father to be denied the opportunity to present a defense on the new charge.

Court of Appeals - Juvenile Justice

State v. Antonio T., slip op. filed 12/13/12. When a school vice principal interrogated a high school student suspected of being intoxicated, she conducted the interrogation in her office in the presence of a police officer. The Court of Appeals concluded that this was an investigatory detention but that §32A-2-14 did not apply because the vice principal was not acting to assist law

enforcement beyond her duties as a school administrator. Miranda warnings were not required even though the child's statements to the vice principal were used against him in the delinquency case.

State v. Nanco, 2012-NMCA-109, cert. granted 10/12/12. The Court of Appeals held that, under the Children's Code, a child who was found not guilty of being a serious youthful offender but was adjudicated as a delinquent offender was not entitled to presentence commitment credit against his commitment to CYFD.

State v. Carlos A., 2012-NMCA-069. Carlos' status as a minor did not render his consent to search the car he was driving involuntary. Carlos argued that juveniles are entitled to expanded rights under the Fourth Amendment and that the police officer requesting the search was required to inform him that he had the right to deny consent. The Court of Appeals disagreed, holding that minors have no greater rights than adults in the context of consent to search. Section 32A-2-14 only protects *statements* made during an investigatory detention (see *State v. Javier M.*, 2001-NMSC-030), and Carlos did not argue that his consent to search was a statement.

State v. Leticia T., 2012-NMCA-050, cert. granted 5/11/12. The Court of Appeals held that the warrantless search of the Child's trunk should have been suppressed for lack of exigent circumstances. The Court, however, agreed with the lower court on the denial of Child's motion to dismiss. Child argued for dismissal because the preliminary hearing was not timely held; the Court of Appeals agreed that the hearing was not timely but ruled that dismissal was not required under Rule 10-144. Child also moved to dismiss because her trial was not held within the time limits in Rule 10-243. Since she was tried as a youthful offender, the Court held that Rule 5-604, which no longer contains a specific time limit, applied instead. The Court encouraged the Rules Committee to revisit which rules should apply in youthful offender cases.

State v. Oscar Castro H., 2012-NMCA-047. When a delinquency petition is submitted to a grand jury on a notice of intent to seek adult sanctions, a "no-bill" requires that the charges be dismissed without prejudice.

State v. Candace C., 2012-NMCA-030. The Court of Appeals held that an officer may administer field sobriety tests if the officer has reasonable suspicion that a driver was driving impaired. Section 32A-2-14, which, under *State v. Javier M.*, 2001-NMSC-030, requires that a child subject to an investigatory detention be advised of his or her right to remain silent, does not require the officer to advise a minor of a right to withhold consent to FSTs. Similarly, in *State v. Randy J.*, 2011-NMCA-105, the appellate court held that Child's responses during the field sobriety tests, results of the blood tests and Child's implied consent to the blood test are not statements subject to suppression under §32A-2-14(D).