

Summary of In re Stumbo, NC Supreme Court decision filed July 16, 2003

Cleveland County Department of Social Services received an anonymous report of an unsupervised two-year-old naked child in the driveway of a house. When a CPS caseworker went to investigate some two hours later, the parents refused to allow her to privately interview the child or his siblings. Cleveland County DSS then filed a petition under G.S. # 7B-303 alleging that the parents were obstructing/interfering with the CPS investigation.

At the obstruction/interference hearing, no information was provided as to how long the child was outside unsupervised; the character of the surrounding area; or evidence related to the effort of the caseworker to interview the children in private, and the parents' refusal to allow her to do so. The trial judge, focusing her inquiry exclusively on whether the parents had interfered with the investigation, concluded that they had, and ordered the parents not to obstruct/interfere with the CPS investigation. The parents, arguing their right under the Fourth Amendment to be free from unreasonable searches and seizures, appealed the trial court's order to the N.C. Court of Appeals, which, in a divided decision, affirmed the order of the trial court. The parents then appealed that decision to the N.C. Supreme Court, again arguing their rights under the Fourth Amendment.

Without addressing the constitutional issue, the N.C. Supreme Court, in its majority opinion, found from its review of prior cases that conduct determined to constitute neglect was either severe or dangerous conduct, or a pattern of conduct potentially or actually causing injury to the juvenile. The Court also found that the investigative requirements of N.C.G.S. # 7B-302 are triggered only if the facts of any report, if taken as true, satisfy the definition of abuse, neglect, or dependency under N.C.G.S. # 7B-101. The Court concluded that **the anonymous report of a naked two-year-old unsupervised in the driveway did not, standing alone, constitute a report of abuse, neglect, or dependency.** Therefore, the investigative mandate of N.C.G.S. # 7B-302 was not properly invoked. Since there was no basis for the investigation, there could be no basis for the trial court's order issued up on a petition pursuant to N.C.G.S. # 7B-303 charging the parents with obstruction/interference. As an aside, the Court stated that if there had been a complaint of a pattern of lack of supervision of the child or other credible evidence that indicated a serious failing on the part of the parents to look after the child, then such conduct could have risen to the level triggering the investigative mandate of N.C. G.S. # 7B-302.

The Stumbo decision has implications for CPS practice by county departments of social services. Before ordering parents not to obstruct or interfere with a CPS investigation, a trial court must first determine whether there has been sufficient evidence presented at the obstruction/interference hearing to support the triggering of the investigative requirements of N.C.G.S. # 7B-302. This requires a county DSS, when seeking an obstruction/interference order, to make certain that sufficient evidence is presented at such a hearing to demonstrate that the facts surrounding the report would meet the definitions under N.C.G.S. 7B-101 before proceeding to evidence of the parents; conduct that constitutes obstruction/interference.

In Concurring opinion, Justice Martin held that the Fourth Amendment does apply to CPS investigations and interviews of juveniles in private. He wrote that a trial court must find that there are reasonable grounds to believe that a child is abused or neglected before issuing a noninterference order over a caretaker's objection for DSS to search a home or interview a juvenile in private. However, too much emphasis should

not be placed upon this opinion by county departments of social services, as it is a minority opinion. More importantly, county departments of social services should be aware of, place more emphasis upon, and comply with Senate Bill 421 that was recently passed by our General Assembly and signed into law on July 4, 2003 as G.S. 7B-302(h). It addresses Fourth Amendment issues implicit in CPS visits to a home by county departments of social services and reads as follows:

“(h) The director of the director’s representative may not enter a private residence for investigation purposes without at least one of the following:

- (1) The reasonable belief that a juvenile is in imminent danger of death or serious physical injury.
- (2) The permission of the parent or person responsible for the juvenile’s care.
- (3) The accompaniment of a law enforcement officer who has legal authority to enter the residence.
- (4) An order from a court of competent jurisdiction.”