Juvenile Court Practice and Procedure

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I. Legislation

The most dramatic changes in juvenile court procedures were accomplished by legislation. There were four statutes in all. Perhaps the single most significant alteration in the juvenile justice system was accomplished by an act which amended several sections of the Juvenile Court Code dealing with the apprehension, custody and release of "status offenders."[1] "Status offender" is the nationally used label for a child who is alleged to have committed an offense which would not be a crime if committed by an adult. In Georgia Juvenile Court Code terminology, these are the "unruly children," *i.e.*, the truant, ungovernable, runaway, curfew-violating, or bar-patronizing children.[2] In essence, these amendments limit both the length of time and type of facility in which an unruly child may be detained. A prime purpose of the new law was to end the practice, particularly in the more remote areas of the state, of holding status offenders in common jails.[3]

The second significant statute amended the jurisdiction of the juvenile courts to include children up to the age of eighteen, rather than seventeen, who are alleged to be deprived.[4] When the Juvenile Court Code was originally enacted in 1971, the intent was that the following year these courts would take jurisdiction over all children under the age of eighteen who were alleged to be delinquent, unruly, or deprived. Primarily due to limited resources, legislative attempts to implement this jurisdictional extension have failed and the age limit had been held to seventeen.

Another act confers upon the juvenile courts the power to order emergency mental hospitalization for juveniles.[5] This statute anticipates the possibility that the U.S. Supreme Court may declare unconstitutional certain portions of the Georgia Mental Health Code which pertain to the

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1. Ga. Code Ann. §24A-1402 to -1404 (Supp. 1977).
2. *See* Ga. Code Ann. §24A-401(g) (Supp. 1977).
3. *See* Ga. Code Ann. §24A-1403(4) (Supp. 1977).
4. Ga. Code Ann. §24A-401(c)(3) (Supp. 1977).
5. Ga. Code Ann., ch. 24A-41 (Supp. 1977).

commitment of children.[6] In *J. L. v. Parham*,[7] a three-judge federal court declared unconstitutional those portions of the Georgia Mental Health Code which permitted a parent to "voluntarily" commit his child without a due process hearing on the issue of the child's mental status. This case is currently pending before the Supreme Court.[8] In essence, the statute simply provides for a due process hearing on the issue of the child's need for treatment. The order automatically expires six months from its entry unless, after another hearing, a similar term of treatment is deemed necessary.[9]

The third new statute makes "certain technical corrections" in an attempt to clarify the juvenile court's jurisdiction in view of the changes in the superior court's responsibilities accomplished by the 1977 Adoption Act.[10] These amendments recognize the jurisdiction of the superior courts to terminate parental rights in adoption proceedings and also provide that acknowledgment of a written consent by the parent before the juvenile court is no longer required when there is a parental surrender which complies with the provisions of the new adoption law.

Finally, the child abuse reporting law has been changed in several significant aspects.[11] First, the category of persons for whom the duty to report is mandatory now also includes psychologists and day care personnel. In addition, all other persons are now encouraged to report suspected abuse, neglect, exploitation, or sexual assault of children and would be immunized from liability, provided the report was made in good faith. Furthermore, the legislature has now provided for sanctions upon a failure to report by anyone required to do so under the statute. Any such person who knowingly and wilfully fails to report shall be guilty of a misdemeanor.[12]

II. Delinquency Proceedings

As in previous survey articles, the delinquency decisions of this year have been divided according to procedural stages: investigatory; the detentional hearing; the transfer or waiver hearing; the adjudicatory hearing; and the dispositional hearing.

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6. Ga. Code Ann., chs. 88-4, 88-5, and 88-25 (Supp. 1977). Ga. Code Ann. §24A-4101 (Supp. 1977) expressly provides that the new procedure authorized in the juvenile courts "is cumulative and is not to be used in lieu of present methods of providing treatment for mentally ill children either under this Title or under [the Mental Health Code in the probate courts], but it is only to be used in the event that these other methods are not available." Ga. Code Ann. §24A-4101 (Supp. 1977).

7. 412 F. Supp. 112 (M.D. Ga. 1977).

8. Probable jurisdiction noted, 45 U.S.L.W. 3777 (U.S. May 31, 1977) (No. 75-1690).

9. Ga. Code Ann. §24A-4110(b) (Supp. 1977).

10. Ga. Code Ann., ch. 74-4 (Supp. 1977).

11. Ga. Code Ann. §74-111(a) (Supp. 1977).

12. Ga. Code Ann. §74-111(d) (Supp. 1977).

A. The Investigatory Stage

Although not styled as a juvenile case, *Riley v. State*[13] was a most significant decision concerning the special procedures required in order to insure the admissibility of a juvenile's confession. The defendant was fifteen years old at the time he was arrested for aggravated assault, later changed to murder. Although he was apprised of his *Miranda* rights with his mother present, there was no evidence that the parent was separately advised of her child's rights. The juvenile was questioned both then and the following day while he was in detention and ultimately gave an incriminating statement. The juvenile argued on appeal that under *Freeman v. Wilcox*[14] both a child and his parent must be advised of the right to counsel and the privilege against self-incrimination. The Georgia Supreme Court overruled *Freeman* "[t]o the extent [that it] can be read to require an automatic exclusion, if the parent is not separately advised . . . ."[15] Instead, the court adopted a totality of the circumstances test citing *West v. United States.*[16] In *Riley* Mr. Justice Ingram recited the nine factors used to determine voluntariness under the *West* test[17] and concluded that the trial court's ruling admitting the confession was justified.

C. J. v. State[18] was a case of first impression in Georgia regarding the taking and use of a juvenile's fingerprints during the investigation of a crime. Georgia Code Ann. §24A-3503 (1976) provides that no child under thirteen shall be fingerprinted except for the purpose of comparison when an officer has discovered latent fingerprints while investigating a crime and has probable cause to believe that they are those of that particular child. C. J. was a twelve-year-old who, under local court policy, was routinely fingerprinted when he was arrested and processed for an alleged burglary. Moreover, his fingerprints were kept on file, again in clear violation of the statute.

In *C. J.* police officers went to a house in Atlanta to investigate a murder. There they learned that the victim-neighbor had heard gunshots and had gone to investigate some movement in the shrubbery at the rear of the

13. 237 Ga. 124, 226 S.E.2d 922 (1976).

14. 119 Ga. App. 325, 167 S.E.2d 163 (1969).

15. 237 Ga. at 128, 226 S.E.2d at 926.

16. 399 F.2d 467 (5th Cir. 1968), *cert. denied* 393 U.S. 1102 (1969).

17. According to the Fifth Circuit Court of Appeals, nine of the factors which must be analyzed by a court in determining the voluntariness of a juvenile's confession are as follows: (1) age of the accused; (2) his education; (3) his knowledge of the substance of the charges against him and his rights to consult with an attorney and remain silent; (4) whether he was allowed to consult with relatives, friends or an attorney, or was held incommunicado; (5) whether he was interrogated before or after formal charges had been filed; (6) methods used in the interrogations; (7) length of interrogations; (8) whether he had refused to give statements on prior occasions; and (9) whether he has repudiated an extrajudicial statement at a later date.

18. 138 Ga. App. 710, 227 S.E.2d 445 (1976).

house. Upon his approach, a gun had been fired from the bushes, killing him. During further investigation, the police found small fingerprints on a window sill and on a 12-gauge shotgun, the murder weapon, which had been taken in the burglary of the house. There was no identification of the assailant although police surmised he was a juvenile. The investigating officer subsequently requested information, including fingerprints, from the juvenile court regarding any juvenile committing a burglary in that area of town.

Three weeks later, C. J. was arrested burglarizing a house one-half block away. The officer was notified and a comparison of C. J.'s fingerprints in his file with the latent prints taken from the site of the burglary-homicide proved positive. The officer then questioned C. J., and the juvenile made certain incriminating statements.

The court of appeals reluctantly concluded that §24A-3503 was violated both in the taking and preservation of the juvenile's fingerprints.

> While we are aware of complaints of law enforcement agencies as to the unnecessary restraints placed upon law enforcement and protection of society, we cannot pass upon the constitutionality or even the advisability of the artificial limits created by protecting the identity of a 12-year-old suspected of murder but not similarly protecting the identity of a 13-year-old purse snatcher or auto joy rider. Though it would appear less unreasonable to classify by degree of crime rather than by age in order to protect identity of juveniles, this is a matter for the General Assembly and not the courts.[19]

However, the court proceeded to find that even though these acts constituted primary illegalities under the "fruit of the poisonous tree" doctrine, there was no exploitation which would taint the incriminating statements and render them inadmissible.

B. The Detention Hearing

Despite the comprehensive nature of the revision of Georgia juvenile court procedure which occurred in 1971, a glaring loophole in that statute has been its lack of any provisions for a probable cause hearing upon a child's arrest and detention. The only pertinent provision is Ga. Code Ann. §24A-1401 (1976) which provides:

> A child taken into custody shall not be detained or placed in shelter care prior to the hearing on the petition unless his detention or care is required to protect the person or property of others or of the child or because the child may abscond or be removed from the jurisdiction of the court or because he has no parent, guardian, or custodian or other person able to provide supervision and care for him and return him to the court when

19. *Id.* at 712, 227 S.E.2d at 447.

> required, or an order for his detention or shelter care has been made by the court pursuant to this Code.

Five years ago, in an attempt to fill this gap, Judge Clark in *T. K. v. State*[20] had observed, by way of dicta, that "the detention hearing serves a function analogous to a commitment hearing in the criminal process dealing with adults." As of yet, there has been no legislative response to this problem, but a Fifth Circuit Court of Appeals case decided this year would seem to mandate a finding of probable cause at the detention stage.

In *Moss v. Weaver*,[21] the federal court of appeals declared unconstitutional a Florida statute which is identical to the wording of the Georgia detention statute.[22] Relying upon the U.S. Supreme Court decision in *Gerstein v. Pugh*,[23] the federal court observed:

> A finding of probable cause—*i.e.*, of facts and circumstances "sufficient to warrant a prudent man in believing that the [suspect] had committed or was commiting an offense"—is central to the [Fourth] Amendment's protections against official abuse of power. Pretrial detention is an onerous experience, especially for juveniles, and the Constitution is affronted when this burden is imposed without adequate assurance that the accused has in fact committed the alleged crime.[24]

The Fifth Circuit Court of Appeals, however, did note in *Weaver* that the standard of proof in a probable cause inquiry is "low": the appropriate standard is even less than a preponderance of evidence test. Furthermore, the probable cause hearing need not be adversarial,[25] and hearsay or otherwise incompetent testimony may be considered. In short, it now seems clear beyond dispute that Georgia juvenile courts must begin examining probable cause during the detention hearing.

Once a juvenile is apprehended and charged with a delinquent offense, under Ga. Code Ann. §24A-1402(d) (Supp. 1977), he is entitled to "the same right to bail as adults." As a matter of first impression, the issue of bail was raised in two cases during the survey year. In both cases the juvenile's attempt to secure bail proved unsuccessful. Despite the fact that the juvenile's attorney had claimed that he did not present evidence on his motion for a bond because the juvenile court had indicated that it would not grant bail, the court of appeals held in *J. B. v. State*[26] that this did not excuse the requirement of a record showing error in refusal. In *R. T. M. v. State*,[27] the court summarily rejected any error in denying bail due to mootness.

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20. 126 Ga. App. 269, 273, 190 S.E.2d 588, 591 (1972).
21. 525 F.2d 1258 (5th Cir. 1976).
22. FLA. STAT. ANN. §39.03(3)(c) (1976).
23. 420 U.S. 102 (1975).
24. 525 F.2d at 1260.
25. *Cf.* T.K. v. State, 126 Ga. App. 269, 190 S.E.2d 588 (1972).
26. 139 Ga. App. 545, 228 S.E.2d 712 (1976).
27. 138 Ga. App. 92, 225 S.E.2d 510 (1976).

C. *The Transfer Hearing*

Only one case during this decisional year, *K. G. W. v. State*,[28] involved the jurisdictional thicket occupied by both the superior and juvenile courts when a juvenile is alleged to have committed a capital offense. The fifteen-year-old juvenile was arrested in Virginia upon a runaway warrant issued by the juvenile court. En route back to Georgia, the juvenile confessed to having killed his parents, and the sheriff subsequently swore out felony warrants charging him with their homicides. A preliminary hearing was then held and the juvenile was bound over for trial in the superior court. The juvenile urged that because he was originally arrested as a result of process issued by the juvenile court, that court had assumed jurisdiction over him.[29] The court of appeals rejected this argument, finding that the first process initiated on the *murder* charge emanated from the superior court system; therefore, the juvenile could have been tried there without reference to the juvenile court and any pending charges there. However, in this particular case, the superior court, after the bind-over hearing, entered an order transferring the trial of the murder charge to the juvenile court. Thereafter, the superior court attempted to withdraw and vacate its previous transfer order. The court of appeals reversed, holding that once an order transferring a case is entered, jurisdiction immediately is lost. The only method by which this prosecution could proceed again in the superior court would be as a result of a transfer hearing in the juvenile court under Ga. Code Ann. §24A-2501 (1976).[30]

D. *The Adjudicatory Hearing*

The Juvenile Court Code sets time limits upon the scheduling of hearings and filing of process. If a child is to be held in detention, then a petition must be filed within 72 hours[31] and an adjudicatory hearing must be scheduled within ten days thereafter.[32]

In *J.B.H. v. State*,[33] the detention hearing was held on December 17; the petition alleging delinquency was not filed until December 29; and the adjudicatory hearing was held on December 31. On a calendar days computation, the petition and adjudicatory hearing were not timely; on a "working days" computation they were. The court of appeals construed the Code to require a calendar days interpretation.

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28. 140 Ga. App. 571, 231 S.E.2d 421 (1976).

29. It is now well recognized under Relyea v. State, 236 Ga. 299, 300, 223 S.E.2d 638, 639 (1976), that in areas in which both courts have concurrent jurisdiction, "whichever court first takes jurisdiction over the matter . . . may retain it." *See also* McGough (Henritze), *Persisting Problems of Juvenile Court Practice*, 23 MERCER L. REV. 341, 349-355 (1972).

30. *See* J.W.A. v. State, 233 Ga. 683, 212 S.E.2d 849 (1975).

31. GA. CODE ANN. §24A-1404(e) (1971).

32. GA. CODE ANN. §24A-1701(a) (1971).

33. 139 Ga. App. 199, 228 S.E.2d 189 (1976).

More importantly, the court held that the time limits imposed by the Code are jurisdictional. In what was the last masterful opinion by Judge Clark in the area of juvenile law, the case was reversed and dismissed as a violation of the juvenile's speedy trial rights under the U.S. Constitution. As Judge Clark observed:

> Examination of the judicial progeny spawned in the five years since [the enactment of the Juvenile Court Code] develops this result: most of the appeals stemmed from an apparent desire by our juvenile court jurists to render their decisions according to what they considered to be the best interest of the individual child then before the court. Application of this protective function has caused many reversals as our appellate court followed the dictates of the statute. In brief, on a one-to-one basis a judgment from the heart may be more suitable for the child, but reversals by the appellate court stemmed from the necessity of complying with procedures dictated by the Juvenile Court Code. [However,] this does not imply that there is an incompatibility between recognition of the individual child's welfare and fulfillment of his constitutional rights.[34]

R.T.M. v. State[35] was a close case involving corroboration of an accomplice's testimony in which the appellate court basically deferred to the trier of fact. *R.D. v. State*[36] is worth noting as a perfect illustration of that bane of defense lawyers' existence, the hearsay exception to explain conduct. In essence, though the officer's hearsay statements identifying the defendant as the burglar would be highly prejudicial to a jury, according to the court of appeals the juvenile court judge can be relied upon to disregard it as having no probative value.

E. The Dispositional Hearing

In *J.B. v. State,*[37] the court of appeals reaffirmed that the Juvenile Court Code contemplates a two-fold trial process: separate hearings on the issue of guilt or innocence and on the issue of appropriate disposition. Here the court reversed where the juvenile court failed to hold a dispositional hearing but, apparently, instead simply concluded at the end of the adjudicatory hearing that the child was in need of correction.

The proper scope of a juvenile court's authority upon the commitment of a delinquent child to the Department of Human Resources continues to be a source of appellate intervention. The trial court in *In re R.D.*[38] committed a juvenile and further stipulated "that he not be released into a

34. *Id.* at 200, 228 S.E.2d at 190. In J.T.G. v. State, 141 Ga. App. 184, 233 S.E.2d 40 (1977), the court followed J.B.H. v. State, again reversing because of a failure to comply with the Code's time limits.

35. 138 Ga. App. 92, 225 S.E.2d 510 (1976).

36. 138 Ga. App. 440, 226 S.E.2d 289 (1976).

37. 139 Ga. App. 545, 228 S.E.2d 712 (1976).

38. 141 Ga. App. 843, 234 S.E.2d 379 (1977).

community-based program." The court of appeals held that this attempted limitation must be construed as only "exhortatory" and has no binding effect upon the Department, which has the exclusive responsibility for implementing a specifically tailored plan of rehabilitation. Of similar import is *In re A.S.*,[39] in which the juvenile court ordered the Department of Human Resources to enroll a child in the "Montanari Residential Treatment Center in Hialeah, Florida." The court of appeals held this order directory and not mandatory.

T.S.I. v. State[40] is the most recent case dealing with the nature of a probation revocation hearing. Judge Deen held for the court that, unlike adult probation revocation hearings,[41] "slight" evidence of probation violation is insufficient to authorize revocation of a juvenile's probation. A finding of delinquency through parole or probation violation must be upon proof beyond a reasonable doubt. However, on the particular facts of this case, the court found that this higher standard of proof was satisfied, and the revocation judgment was affirmed.

Of final significance in this area is *Rossi v. Price*[42] which concerns the power of the juvenile courts to entertain motions to set aside judgments. After a guilty plea was entered by the youth, the juvenile court committed him to the Department of Human Resources. Thereafter, counsel for the juvenile filed a petition to vacate the order alleging that there had been fraud in the inducement of the plea and newly discovered evidence indicating innocence. The motion was denied by the juvenile court which held that when it lost custody over the child, it lost the power to alter its order. Counsel for the juvenile then filed a petition for mandamus in the superior court for an order directing the juvenile court to entertain the petition.

Although the superior court held that it had no appellate jurisdiction over the juvenile court, it indulged in a little free advice, noting that, in its opinion, the juvenile court had erred in concluding that it lacked original jurisdiction. The court of appeals was in total agreement. Mandamus is unavailable in these circumstances, and the superior courts exercise no appellate jurisdiction over the juvenile courts. However, Ga. Code Ann. §24A-2801 (1976) provides that "(a) An order of the court shall be set aside if: (1) it appears that it was obtained by fraud or mistake sufficient therefor in a civil action, or . . . (3) newly discovered evidence so requires." Thus, the juvenile court does have jurisdiction to entertain such petitions. If it errs in refusing to exercise its power, the proper remedy is by appeal to the court of appeals.

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39. 140 Ga. App. 865, 232 S.E.2d 145 (1977).
40. 139 Ga. App. 775, 229 S.E.2d 553 (1976).
41. *See* Dickerson v. State, 136 Ga. App. 885, 222 S.E.2d 649 (1975).
42. 237 Ga. 651, 229 S.E.2d 429 (1976).

III. Custody Cases

A. *Deprivation Cases*

In *Cox v. Mills,*[43] a mother filed a habeas corpus action seeking custody of her minor children from certain relatives. The superior court transferred the custody dispute to the juvenile court. The appellate opinion is not exactly clear on this point, but apparently the juvenile court found against the mother concluding that she had forfeited her rights to custody by not acting more promptly to regain custody of her child. Consistent with other custody decisions this decisional year, the court held that since the record did not show a forfeiture under Ga. Code Ann. §74-108 (1973) or unfitness, the mother must prevail in a dispute with a nonparent. Thus, upon proper referrals from the superior court, the juvenile court is required to apply the same standards prevailing in the superior courts in adjudicating rights of custody.

Sanchez v. Walker County Department of Family & Children Services has produced five separate appellate decisions and is now the most important course of litigation in the area of deprivation jurisdiction in the juvenile courts.[44] In the last supreme court decision[45] the court of appeals was reversed on the single issue of whether the time limitations for process and hearings established for "detained" children by Ga. Code Ann. §24A-1701(a) (1976) applied to deprived children who are held in shelter care for their own safety. The supreme court held that the time limitations govern all children who are under restraint for whatever reason and further held that these limitations are jurisdictional. However, Mr. Justice Ingram observed: "If, for some reason these procedural safeguards are not [followed], dismissal of the petition would be without prejudice. Another petition can be filed without delay if there is reason to believe the child is being neglected or abused."[46] It should also be noted in conjunction with this case that the 1977 amendments of Ga. Code Ann. §24A-1403 (Supp. 1977)[47] were intended to remove the time limitations upon a detention hearing for deprived children. However, *Sanchez* would apparently still require that an adjudicatory hearing be held within 10 days after a petition alleging deprivation is filed where such child is held in shelter care or otherwise withheld from the parents' custody by order of the court.[48]

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43. 238 Ga. 374, 233 S.E.2d 353 (1977).

44. 135 Ga. App. 891, 219 S.E.2d 583 (1975), *rev'd,* 235 Ga. 817, 221 S.E.2d 589 (1976); 138 Ga. App. 49, 225 S.E.2d 441 (1976), *rev'd,* 237 Ga. 406, 229 S.E.2d 66 (1976); 140 Ga. App. 175, 230 S.E.2d 139 (1976). *See* McGough & McGough, *Annual Survey of Georgia Law; Juvenile Law and the Juvenile Court System,* 28 Mercer L. Rev. 153, 164 (1976).

45. 237 Ga. 406, 229 S.E.2d 66.

46. *Id.* at 411, 229 S.E.2d at 70.

47. 1977 Ga. Laws 1237.

48. Ga. Code Ann. §24A-1701 (1971).

The remainder of the court of appeals decision in *Sanchez*,[49] which was left intact by the supreme court, considers several important issues. First, the mother complained that after the petition alleging child abuse was filed by the County Department of Children Services in the Walker County Juvenile Court, the caseworker went across the state line to Chattanooga where the child was being held in a hospital and returned the child to Walker County. The mother urged that this was "kidnapping" and, hence, that the Georgia juvenile court lacked jurisdiction to hear the deprivation case. Citing *Ker v. Illinois*[50] and *Frisbie v. Collins*,[51] the court of appeals held that a court's jurisdiction is not impaired due to the fact that a party has been brought before it as a result of an unlawful abduction. Furthermore, the domicile of an illegitimate child is that of his mother who was a resident of Walker County; therefore, the jurisdiction of the juvenile court was proper.

The mother also urged that her constitutional rights were violated when she was interrogated about her life history and background by three social workers who did not at any point inform her of her right to have counsel present. As Judge Clark observed: "Even if these proceedings were construed to be similar to a criminal case, it must be noted that this question was not in the nature of 'custodial interrogation' and therefore *Miranda* warnings were not required."[52]

B. Termination of Parental Rights Proceedings

This year there were six termination of parental rights decisions which reached the merits.[53] Only one of these decisions, *R.C.N. v. State*,[54] resulted in a reversal of a termination order; indeed, this is the first case in which termination has been disapproved by the appellate courts of Georgia. For this reason, it merits some discussion.

The evidence adduced in the termination hearing showed that the mother was a sixteen-year-old who was unemployed except for odd jobs and occasional babysitting; that she had missed several appointments to see her child; and that she had changed addresses several times but was now "settled" in a mobile home with her boyfriend to whom she "anticipated a possible marriage." On the positive side, the mother had been in no legal difficulty since the initial hearing when evidence was

49. 138 Ga. App. 49, 225 S.E.2d 441 (1976).

50. 119 U.S. 436 (1886).

51. 342 U.S. 519 (1952).

52. 138 Ga. App. at 54, 225 S.E.2d at 445.

53. Milford v. Maxwell, 140 Ga. App. 85, 230 S.E.2d 93 (1976); Busbee v. Georgia Dept. of Human Resources, 140 Ga. App. 365, 231 S.E.2d 137 (1976); *In re* A. A. Mc., 140 Ga. App. 786, 232 S.E.2d 104 (1976); Roberts v. State, 141 Ga. App. 268, 233 S.E.2d 224 (1977); Banks v. Department of Human Resources, 141 Ga. App. 347, 233 S.E.2d 449 (1977); and R.C.N. v. State, 141 Ga. App. 490, 233 S.E.2d 866 (1977).

54. 141 Ga. App. 490, 233 S.E.2d 866 (1977).

presented that she had aided and abetted the escape of a prisoner; she had no indications of alcohol or drug usage; and she planned to marry. Except for a slightly more thorough documentation there, this case is virtually indistinguishable from *Roberts v. State*[55] in which Judge Marshall's panel affirmed termination of parental rights.

In *R.C.N. v. State,* Judge Smith evinced a much more conservative approach toward these cases than have other members of the court. As he cautioned:

> While the state may not sit blindly idle as a child suffers unconscionable hardship, neither may it blithely intercede simply because the child's lot is substandard. A mother's failure fully to live up to societal norms for productivity, morality, cleanliness and responsibility does not summarily rob her of the right to raise her own offspring, nor does it end the child's right to be raised by its own mother.[56]

Judge Smith then accentuated what was previously thought to be innocuous dictum in *Elrod v. Hall County Department of Family & Children Services*[57] and apparently would refuse termination unless there is a showing of moral unfitness, physical abuse, or abandonment. In the fourteen appellate decisions in this state involving termination of parental rights,[58] there was a wide variety of circumstances approved as a basis for termination including, but certainly not limited to, moral unfitness, physical abuse, or legal abandonment. Indeed, it may be persuasively argued that the legislature enacted the liberal grounds for termination of parental rights in Ga. Code Ann. §24A-3201 (Supp. 1977) in response to the appellate courts' rigid construction of the adoption law.[59] There is no indication that the legislature intended to permit any "child's lot" to be substandard under the Juvenile Court Code. To the contrary, the purpose section of the Code provides that:

> [E]ach child coming within the jurisdiction of the court shall receive, *preferably* in his own home, the care, guidance, and control that will conduce to *his welfare and the best interests of the State,* and that when he is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which they *should* have given him.[60]

There are several significant cases involving procedural aspects of termi-

55. 141 Ga. App. 268, 233 S.E.2d 224 (1977).

56. 141 Ga. App. at 491, 233 S.E.2d at 867.

57. 136 Ga. App. 251, 220 S.E.2d 726 (1975).

58. *See* McGough & McGough, *Juvenile Law and the Juvenile Court System,* 28 MERCER L. REV. 153, 164-68 (1976).

59. *See, e.g.,* the courts' treatment of the abandonment ground in Brazell v. Anderson, 113 Ga. App. 15, 146 S.E.2d 921 (1966); Glendinning v. McComas, 186 Ga. 345, 198 S.E.2d 535 (1939).

60. GA. CODE ANN. §24A-101 (1976) (emphasis supplied).

nation cases. *In re J.B.*[61] involved the issue of the jurisdiction of the juvenile court to entertain termination petitions when personal service could not be effected upon putative fathers. The juvenile court had held that it lacked jurisdiction to terminate the parental rights of putative fathers even though neither had evidenced any interest in the child; nor were their whereabouts known. The court of appeals reversed. Judge Marshall said:

> By placing the child in the stable environment of permanent adoptive parents the best interests of the child will be served. To delay such placement indefinitely until the father can be located and his paternity established, or to leave the adoption open to contest by the putative father should he subsequently appear would not serve those interests. Where the putative father is only that, and where he has not shown any interest in the child and the state had made every reasonable effort to locate or notify him, and where termination and adoption proceedings would be delayed indefinitely until he could be located (if ever), his rights (if any) become secondary to the welfare of the child.[62]

Thus, service by publication is statutorily and constitutionally authorized if the putative father's address is unknown and cannot be ascertained with reasonable diligence.[63]

In *Nix v. Department of Human Resources*,[64] the supreme court held that an indigent parent whose parental rights have been terminated by an order of a juvenile court is entitled to a paupered transcript of the proceeding in order to take an appeal. In *Crook v. Georgia Department of Human Resources*,[65] the court of appeals imposed the requirement of findings of fact and conclusions of law upon the juvenile courts in termination actions. Among other things, observed Judge Webb, "[I]n a determination [*sic.*] case the juvenile court judge finds himself in a quagmire of conflicting priorities. If he is required to make the explicit statutory findings, the tendency to rely upon individualistic and subjective notions of morality or sociological advantage will be lessened."[66]

In re L.L.W.[67] presented the novel issue of a parent's right to have his attorney interview his children prior to a termination of a parental rights hearing. On due process grounds, the court of appeals vacated the juvenile court's order permitting the interview. As Judge Webb concluded:

> An affirmative answer to that question, 'Is it well with the child?' should not be risked by requiring the child to submit privately and alone to an

61. 140 Ga. App. 668, 231 S.E.2d 821 (1976).
62. *Id.* at 673, 231 S.E.2d at 824.
63. Note that the rights of putative fathers in adoption proceedings under the new 1977 Adoption Law are treated similarly. GA. CODE ANN., ch. 74-4 (1977).
64. 236 Ga. 794, 225 S.E.2d 306 (1976).
65. 137 Ga. App. 817, 224 S.E.2d 806 (1976).
66. *Id.* at 819, 224 S.E.2d at 807.
67. 141 Ga. App. 32, 232 S.E.2d 378 (1977)..

interview by his father's counsel. We fail to see that justice would be promoted thereby, and do envision the perils thereto by such procedure. The father's rights provided by the Juvenile Court Code are adequate and proper to insure him a fair hearing.[68]

68. *Id.* at 34, 232 S.E.2d at 380.