

SUPREME COURT OF OREGON

State ex rel. Department of Human Services v. Simmons, 342 Or. 76

149 P.3d 1124 (2006) · No. SC S53149 · Decided December 14, 2006

SUMMARY

The Oregon Supreme Court reviewed a termination of parental rights proceeding involving a mother's substance abuse, mental health conditions, and medical needs. Applying de novo review, the court held that the evidence did not clearly and convincingly establish that the mother was unfit and unable to provide minimally adequate parenting at the time of trial, and it reversed the Court of Appeals.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Gillette, J.; De Muniz, Chief Justice; Carson, Justice; Gillette, Justice; Durham, Justice; Balmer, Justice; Kistler, Justice
JURISDICTION	Oregon
DECIDED	December 14, 2006
DOCKET	SC S53149
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The mother petitioned the Oregon Supreme Court for review of a Court of Appeals decision affirming an order terminating her parental rights. The Supreme Court reviewed the record de novo.
STANDARD OF REVIEW	De novo review of the record in a parental-rights termination proceeding; termination grounds must be established by clear and convincing evidence.
PRECEDENTIAL VALUE	Published, precedential Oregon Supreme Court opinion
PARTIES	Dana Jo Simmons v. State ex rel. Department of Human Services

TOPICS

- termination of parental rights
- parental rights
- family law procedure
- family law

PRACTICE AREAS

- family law
- termination of parental rights
- parental rights

QUESTIONS PRESENTED

1. Whether the state proved by clear and convincing evidence that the mother was unfit under ORS 419B.504 at the time of the termination trial.
2. Whether the mother's successfully treated history of drug abuse, improved physical condition, personality traits, and parenting deficiencies constituted a condition seriously detrimental to the child.
3. Whether the evidence established that integration of the child into the mother's home was improbable within a reasonable time because the relevant conditions were unlikely to change.

HOLDINGS

1. In a parental-rights termination proceeding under ORS 419B.504, the court must assess the parent's conduct and conditions, and their effect on the child, as they exist at the time of the termination trial; evidence that grounds existed earlier is insufficient without evidence that they continued at trial.
2. ORS 419B.504 establishes a two-part test: the state must prove that the parent is unfit because of conduct or a condition seriously detrimental to the child, and must also prove that integration of the child into the parent's home is improbable within a reasonable time because the conduct or conditions are unlikely to change.
3. The state failed to prove by clear and convincing evidence that the mother was presently unfit under ORS 419B.504. Her successfully treated drug history, improved physical health, and parenting deficiencies and personality traits did not establish a condition seriously detrimental to the child at the time of trial.
4. A court may not base termination on what a parent might do because of a diagnosed condition; it must determine how the parent's actual behavior or condition affects the child.

KEY QUOTATIONS

"the foregoing statute "sets out a two-part test for determining whether to terminate parental rights, both parts of which must be met before the court orders termination." (342 Or. at 145)

"None of the evidence that the state presented pertaining to mother's parenting after child was removed, and particularly after mother began her recovery in earnest in February 2002, shows clearly and convincingly that mother's parenting is so inadequate as to be seriously detrimental to child, thereby justifying termination of mother's parental rights." (342 Or. at 1139)

FACTUAL BACKGROUND

The mother had a long history of serious medical problems, prescription-opioid abuse, and related instability that substantially impaired her parenting before the child was removed in June 2001. The child witnessed the mother's drug use, was sometimes unable to awaken her, and became parentified, anxious, and incontinent. By the October 2003 termination trial, however, the mother had completed inpatient and outpatient treatment, remained free from substance abuse for approximately 20 months, maintained suitable housing, improved physically and psychologically, and participated in counseling and supervised visits. The child had improved substantially in foster care, and the evidence showed that the mother and child continued to have a loving

relationship, although the state alleged that the mother's personality traits and parenting deficiencies remained seriously detrimental.

PROCEDURAL HISTORY

The circuit court terminated the mother's parental rights in January 2004 under ORS 419B.504. The Court of Appeals initially affirmed without opinion. The Supreme Court vacated and remanded for reconsideration in light of *State ex rel. SOSCF v. Stillman* and *State ex rel. Department of Human Services v. Smith*. On remand, the Court of Appeals again affirmed, and the Supreme Court reversed both the appellate and circuit court decisions.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment of the circuit court terminating the mother's parental rights and the Court of Appeals decision affirming that judgment were reversed. The case was remanded to the circuit court for further proceedings.

CASES CITED

- *State ex rel. Dept. of Human Services v. Simmons*, 203 Or. App. 279, 125 P.3d 66 (2005)
- *State ex rel. SOSCF v. Stillman*, 333 Or. 135, 36 P.3d 490 (2001)
- *State ex rel. Dept. of Human Services v. Smith*, 338 Or. 58, 106 P.3d 627 (2005)
- *State ex rel. Dept. of Human Services v. Simmons*, 196 Or. App. 787, 106 P.3d 699 (2004)
- *State ex rel. Dept. of Human Services v. Simmons*, 338 Or. 374, 110 P.3d 113 (2005)
- *State ex rel. Dept. of Human Services v. Rardin*, 340 Or. 436, 447, 134 P.3d 940 (2006)
- *Simons et ux v. Smith*, 229 Or. 277, 280, 366 P.2d 875 (1961)