

SUPREME COURT OF ALASKA

Chloe O. v. State, Department of Health & Social Services, Office of Children's Services

Chloe O. v. State, Dep't of Health & Soc. Servs., Office of Children's Servs., 309 P.3d 850 (Alaska 2013) · No. S-14771 · Decided September 20, 2013

SUMMARY

The Alaska Supreme Court reviewed the termination of Chloe O.’s parental rights to her daughter, an Indian child under the Indian Child Welfare Act. The court held that review of the trial court’s active-efforts finding was limited to evidence presented at the remand hearing, and affirmed the finding that the Office of Children’s Services made active but unsuccessful efforts by clear and convincing evidence. The court also upheld the finding that returning the child to Chloe would likely result in serious harm and declined to remand for consideration of ineffective assistance of counsel.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Bolger, Justice; Fabe, Chief Justice; Winfree, Justice; Stowers, Justice; Maassen, Justice
JURISDICTION	Alaska
DECIDED	September 20, 2013
DOCKET	S-14771
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order terminating the appellant's parental rights to her child after a remand hearing concerning the evidentiary standard for the Indian Child Welfare Act active-efforts finding.
STANDARD OF REVIEW	Factual findings in CINA cases are reviewed for clear error, legal determinations are reviewed de novo, and the active-efforts determination is a mixed question of fact and law. A factual finding is clearly erroneous when, after reviewing the record in the light most favorable to the prevailing party, the court is left with a definite and firm conviction that the trial court was mistaken.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

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QUESTIONS PRESENTED

1. Whether appellate review of the trial court's active-efforts finding was limited to evidence presented at the remand hearing or could include evidence from the original termination trial.
2. Whether clear and convincing evidence supported the trial court's finding that OCS made active but unsuccessful efforts to reunify Chloe with her child.
3. Whether the trial court erred in finding beyond a reasonable doubt that the child would likely suffer serious physical or emotional harm if returned to Chloe's custody.
4. Whether the case should be remanded for the trial court to investigate a potential ineffective-assistance-of-counsel claim concerning the remand hearing.

HOLDINGS

1. When reviewing a trial court's decision, the appellate court considers the evidence presented to that trial court; because the testimony from the original hearing was not presented to or judicially noticed by the court on remand, it was not considered in reviewing the remand court's active-efforts finding.
2. The trial court did not err in finding by clear and convincing evidence that OCS made active but unsuccessful efforts to provide remedial and rehabilitative services designed to prevent the breakup of the Indian family.
3. The trial court did not err in finding beyond a reasonable doubt that returning the child to Chloe's custody would likely result in serious physical or emotional harm.
4. The Supreme Court declined to remand for an ineffective-assistance inquiry because the proposed claim would not succeed and another remand would cause unacceptable delay in achieving permanency for the child.

KEY QUOTATIONS

"Courts review OCS's reunification efforts on a case- by-case basis because "no pat formula exists for distinguishing between active and passive efforts." (-12-)

"Generally, active efforts entail a social worker taking a parent through the steps of a reunification case plan, rather than simply devising a plan and requiring the parent to develop his or her own resources." (-12-)

"We AFFIRM the trial court's order terminating Chloe's parental rights to Ashanti." (-19-)

FACTUAL BACKGROUND

OCS took custody of Chloe O.'s fifteen-month-old daughter after investigating Chloe's substance abuse, mental-health problems, suicide attempts, assaultive conduct, and exposure of the child to unsafe situations. OCS developed a case plan requiring substance-abuse and mental-health services, testing, parenting classes, visitation, and stable housing and employment, and its social workers repeatedly referred Chloe to assessments, treatment programs, case management, and counseling. Chloe repeatedly missed testing and treatment appointments, declined mental-health services for substantial periods, left or was discharged from treatment programs, and continued to use drugs. The child was an Indian child for purposes of the Indian Child Welfare Act, so termination required proof of active reunification efforts by clear and convincing evidence and proof beyond a reasonable doubt that returning the child would likely cause serious physical or emotional harm.

PROCEDURAL HISTORY

The superior court terminated Chloe O.'s parental rights after finding that the child was in need of aid, that Chloe had not remedied the conditions placing the child at risk, and that termination was in the child's best interests. The court initially found that OCS had made active efforts to reunify the family by a preponderance of the evidence, rather than the required clear and convincing evidence. The Alaska Supreme Court remanded the case for a limited hearing on that issue; on remand, a different superior court judge found by clear and convincing evidence that OCS had made active but unsuccessful reunification efforts. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Sherman B. v. State, Dep't of Health & Soc. Servs., 290 P.3d 421, 427-28 (Alaska 2012)
- Christina J. v. State, Dep't of Health & Soc. Servs., 254 P.3d 1095, 1103-04 (Alaska 2011)
- Barbara P. v. State, Dep't of Health & Soc. Servs., 234 P.3d 1245, 1253 (Alaska 2010)
- Maisy W. v. State, Dep't of Health & Soc. Servs., 175 P.3d 1263, 1267-69 (Alaska 2008)
- Pravat P. v. State, Dep't of Health & Soc. Servs., 249 P.3d 264, 270, 274 (Alaska 2011)
- Dale H. v. State, Dep't of Health & Soc. Servs., 235 P.3d 203, 210 (Alaska 2010)
- Stanley B. v. State, DFYS, 93 P.3d 403, 408-09 (Alaska 2004)
- S.B. v. State, Dep't of Health & Soc. Servs., 61 P.3d 6, 10 (Alaska 2002)
- Paula E. v. State, Dep't of Health & Soc. Servs., 276 P.3d 422, 430 (Alaska 2012)
- A.A. v. State, Dep't of Family & Youth Servs., 982 P.2d 256, 261 (Alaska 1999)
- A.M. v. State, 945 P.2d 296, 306 (Alaska 1997)
- Lucy J. v. State, Dep't of Health & Soc. Servs., 244 P.3d 1099, 1114 (Alaska 2010)
- Wilson W. v. State, Office of Children's Servs., 185 P.3d 94, 101-02 (Alaska 2008)
- E.A. v. State, Div. of Family & Youth Servs., 46 P.3d 986, 990 (Alaska 2002)
- N.A. v. State, DFYS, 19 P.3d 597, 603 (Alaska 2001)

- David S. v. State, Dep't of Health & Soc. Servs., 270 P.3d 767, 785-86 (Alaska 2012)
- State v. Jones, 759 P.2d 558, 568-70 (Alaska App. 1988)
- Alexander v. State, 838 P.2d 269, 273 (Alaska App. 1992)

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