

SOUTH DAKOTA SUPREME COURT

People ex rel. L.S.

721 N.W.2d 83 (S.D. 2006) · Decided August 16, 2006

SUMMARY

The South Dakota Supreme Court affirmed the termination of a mother’s parental rights in an abuse and neglect proceeding. It held that res judicata did not bar a second petition based on new conduct and that the child-protection context warranted a flexible application of claim preclusion. The court also upheld the abuse-and-neglect adjudication, the excusal of reasonable reunification efforts, and termination as the least restrictive alternative.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | South Dakota Supreme Court                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| WRITING FOR THE COURT | Konenkamp, Justice (on reassignment); Gilbertson, Chief Justice; Konenkamp, Justice; Zinter, Justice; Sabers, Justice; Miller, Retired Justice, sitting for Meierhenry, Justice                                                                                                                                                                                                                                                                                                                                                                                                                  |
| JURISDICTION          | South Dakota                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| DECIDED               | August 16, 2006                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | The mother appealed from a judgment terminating her parental rights after a second abuse and neglect proceeding. She argued that the second proceeding was barred by res judicata and challenged the adjudication of abuse and neglect, the excusal of reasonable reunification efforts, and termination as the least restrictive alternative.                                                                                                                                                                                                                                                   |
| STANDARD OF REVIEW    | Res judicata is reviewed de novo. Abuse-and-neglect findings are reviewed under the clearly erroneous standard, with due regard for the circuit court's opportunity to assess witness credibility. The sufficiency of the evidence supporting adjudication and termination was evaluated under the clear-and-convincing-evidence standard. The decision to excuse reasonable reunification efforts is reviewed for abuse of discretion. The ultimate finding that termination was the least restrictive alternative commensurate with the children's best interests is reviewed for clear error. |
| PRECEDENTIAL VALUE    | Published South Dakota Supreme Court opinion; precedential.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

## TOPICS

termination of parental rights

family law procedure

res judicata

evidence

parental rights

## PRACTICE AREAS

family law

juvenile law

child protection

## QUESTIONS PRESENTED

1. Whether res judicata barred the State's second abuse-and-neglect petition based on the earlier proceeding.
2. Whether the circuit court properly adjudicated the children abused and neglected by considering the prior adjudication and the mother's subsequent exposure of a child to T.O.
3. Whether the circuit court properly excused DSS from making reasonable efforts to reunify the family under SDCL 26-8A-21.1(7).
4. Whether termination of the mother's parental rights was the least restrictive alternative commensurate with the children's best interests.

## HOLDINGS

1. Res judicata did not bar the second proceeding. In child-protection proceedings involving continuing and changing circumstances, the doctrine must be applied cautiously, and a hyper-technical application cannot prevent consideration of new material evidence bearing on the children's safety.
2. The circuit court properly adjudicated the children abused and neglected because clear and convincing evidence showed that they lacked proper parental care and were threatened with substantial harm through the mother's conduct and omissions.
3. The circuit court properly excused DSS from providing reasonable efforts toward reunification under SDCL 26-8A-21.1(7).
4. Termination of the mother's parental rights was the least restrictive alternative commensurate with the children's best interests.

## KEY QUOTATIONS

*"A hyper-technical application of res judicata is simply not appropriate in these extraordinary circumstances."* (¶ 29, 721 N.W.2d at 92)

*"Moreover, because the court is required to act in the best interest of the children, it is not improper for a court to consider the circumstances that brought about the previous adjudication."* (¶ 31, 721 N.W.2d at 92)

*"We find no error in the circuit court's conclusion that termination of the mother's parental rights was the least restrictive alternative commensurate with the best interests of L.S., J.S., and C.S."* (¶ 39, 721 N.W.2d at 95)

## FACTUAL BACKGROUND

The mother's boyfriend and later husband, T.O., sexually abused all three of her daughters. Although the mother initially reported some incidents and DSS instructed her to prevent T.O.'s contact with the children, she continued her relationship with him and used him as a caregiver, leading to the children's removal and an initial abuse-and-neglect adjudication. After the first case was orally dismissed, investigators observed the mother meet T.O. while one child was present, and the mother later continued to deny or minimize his abuse and asserted that contact with him was not harmful. The second court relied on the new incident, the prior adjudication, and the mother's testimony in finding continuing danger and terminating her parental rights.

## PROCEDURAL HISTORY

The children were adjudicated abused and neglected in an earlier Lincoln County proceeding after the mother continued to expose them to T.O., who had sexually abused them. The first proceeding was orally dismissed after the mother appeared to complete her case plan, but before written dismissal the State discovered that she continued contact with T.O. and had exposed one child to him. The State filed a second petition in Minnehaha County; the circuit court denied the mother's motion to dismiss, adjudicated the children abused and neglected, excused reasonable reunification efforts, and terminated the mother's parental rights. The South Dakota Supreme Court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Wells v. Wells, 2005 SD 67, ¶ 11, 698 N.W.2d 504, 507
- Banks v. Int'l Union Elec., Elec., Technical, Salaried and Mach. Workers, 390 F.3d 1049, 1052 (8th Cir. 2004)
- Moe v. Moe, 496 N.W.2d 593, 595 (S.D. 1993)
- Federated Department Stores, Inc. v. Moitie, 452 U.S. 394, 401 (1981)
- Brown v. Felsen, 442 U.S. 127, 132 (1979)
- Carr v. Preslar, 73 S.D. 610, 619, 47 N.W.2d 497, 502 (1951)
- Faulk v. Faulk, 2002 SD 51, ¶ 16, 644 N.W.2d 632, 635
- Interest of J.J.T. and T.J.T., 877 P.2d 161, 163-64 (Utah Ct. App. 1994)
- People in Interest of J.R., 711 P.2d 701, 703 (Colo. Ct. App. 1985)
- In the Matter of Newman, 49 Or. App. 221, 619 P.2d 901, 905 (1980)
- In re Juvenile Appeal, 190 Conn. 310, 460 A.2d 1277, 1282 (1983)
- In re Marriage of Weaver, 228 Ill. App. 3d 609, 592 N.E.2d 643, 649 (1992)
- Boone v. Boone, 150 F.2d 153 (D.C. Cir. 1945)
- Scott v. Department of Social Services, 76 Md. App. 357, 545 A.2d 81, 90 (1988), cert. denied, 492 U.S. 910 (1989)

- In re Pardee, 190 Mich. App. 243, 475 N.W.2d 870, 874 (1991)
- In re V.B., 220 Neb. 369, 370 N.W.2d 119, 121 (1985)
- In re J.L.H., 299 N.W.2d 812, 815 (S.D. 1980)
- Matter of N.J.W., 273 N.W.2d 134 (S.D. 1978)
- Interest of D.T., Jr., 2003 SD 88, ¶ 10, 667 N.W.2d 694, 698
- Interest of T.G., 1998 SD 54, ¶ 16, 578 N.W.2d 921, 923
- Matter of L.B., 416 N.W.2d 598, 599 (S.D. 1987)
- Matter of R.Z.F., 284 N.W.2d 879, 881 (S.D. 1979)
- In re K.D.E., 87 S.D. 501, 506, 210 N.W.2d 907, 910 (S.D. 1973)
- Interest of J.S.B., Jr., 2005 SD 3, ¶ 1, 691 N.W.2d 611, 613
- Interest of D.B., 2003 SD 113, ¶¶ 13, 15, 670 N.W.2d 67, 71-72
- New Jersey Division of Youth and Family Services v. A.R.G., 361 N.J. Super. 46, 824 A.2d 213, 233 (2003)
- In re S.A., 2005 SD 120, ¶ 21, 708 N.W.2d 673, 680
- In re A.S., 2000 SD 94, ¶¶ 19, 21, 614 N.W.2d 383, 386-87
- In re J.Y., 502 N.W.2d 860, 862 (S.D. 1993)
- Interest of T.G. and C.G., 1998 SD 54, ¶ 16, 578 N.W.2d 921, 923
- Interest of P.K., 2006 SD 17, ¶ 24, 711 N.W.2d 248, 256
- Interest of A.D., 416 N.W.2d 264, 268 (S.D. 1987)
- People in Interest of M.J.B., 364 N.W.2d 921 (S.D. 1985)
- In re E.D.J., 499 N.W.2d 130, 137 (S.D. 1993)
- In re J.M.V.D., 285 N.W.2d 853, 855 (S.D. 1979)