

SUPREME COURT OF SOUTH DAKOTA

In the Matter of the Termination of Parental Rights Over T.E.L.S.,
Minor Child

2007 SD 50 · No. No. 24289 · Decided May 16, 2007

SUMMARY

The Supreme Court of South Dakota affirmed the denial of petitions by the mother and her husband to terminate the father's parental rights and permit a stepparent adoption. The court held that the evidence did not clearly and convincingly establish that the father had abandoned the child under SDCL 25-6-4(2), considering his support payments and efforts to maintain contact.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Gilbertson, Chief Justice; Sabers, Justice; Konenkamp, Justice; Zinter, Justice; Meierhenry, Justice
JURISDICTION	South Dakota
DECIDED	May 16, 2007
DOCKET	No. 24289
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mother and her husband appealed the circuit court's judgment denying their petitions to terminate the father's parental rights and for the husband's adoption of the child.
STANDARD OF REVIEW	Whether a parent abandoned a child under SDCL 25-6-4 is a question of fact reviewed for clear error. The appellate court will not reweigh the evidence and defers to the trial court's firsthand assessment of witnesses and the significance assigned to their testimony.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	J.H.T., C.T. v. R.S.

TOPICS

- termination of parental rights
- adoption
- parental rights
- family law procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the circuit court was clearly erroneous in finding that R.S. had not abandoned T.E.L.S. under SDCL 25-6-4(2).
2. Whether the evidence established by clear and convincing evidence that R.S. intended to abandon and relinquish his parental obligations for at least six months immediately preceding the petition.

HOLDINGS

1. The circuit court did not clearly err in finding that R.S. had not abandoned T.E.L.S.; the evidence did not establish by clear and convincing evidence an intent to abandon and relinquish parental obligations.

KEY QUOTATIONS

“To constitute abandonment under our code it must appear by clear and convincing evidence that there has been by the parents a giving-up or total desertion of the minor child.” (¶ 27)

“There must be a showing of an intent on the part of the parent to abandon and to relinquish parental obligations; this intent may be inferred from conduct.” (¶ 27)

“We conclude that the circuit court could reasonably infer from this evidence the presence of Father's love, care, and affection for T.E.L.S.” (¶ 34)

FACTUAL BACKGROUND

R.S. had not seen T.E.L.S. since she was an infant, after the child's mother left California for South Dakota in 1997. The evidence showed disputed efforts by R.S. to maintain contact, including telephone calls, gifts, attempted visitation, and child-support payments totaling more than \$16,000 between 2002 and 2005. In 2005, after R.S. expressed an intent to visit, the mother obtained a protection order; the mother and her husband then sought termination of R.S.'s parental rights and the husband's adoption of the child.

PROCEDURAL HISTORY

J.H.T. and C.T. filed a petition to terminate R.S.'s parental rights under SDCL 25-6-4 contemporaneously with C.T.'s adoption petition. After a February 27, 2006 hearing, the circuit court issued a memorandum decision denying the petitions, entered findings of fact and conclusions of law, and entered judgment on September 12, 2006. The South Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Adoption of C.D.B., 2005 SD 115, ¶ 10, 706 N.W.2d 809, 814

- In re Adoption of C.D.B., 2005 SD 115, ¶ 12, 706 N.W.2d 809, 814
- In re Adoption of C.D.B., 2005 SD 115, ¶ 15, 706 N.W.2d 809, 815
- Matter of Adoption of Sichmeller, 378 N.W.2d 872, 873-74 (S.D. 1985)
- Mastrovich v. Mavric, 66 S.D. 577, 287 N.W. 97, 97-98 (1939)
- Claymore v. Serr, 405 N.W.2d 650, 652 (S.D. 1987)
- Matter of Adoption of Bellows, 366 N.W.2d 848, 851 (S.D. 1985)
- In re Romero, 73 S.D. 564, 46 N.W.2d 108, 110 (1951)

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