

SUPREME COURT OF GEORGIA

Boddie v. Daniels, 288 Ga. 143

702 S.E.2d 172 (2010) · No. S10A1821 · Decided November 1, 2010

SUMMARY

The Supreme Court of Georgia held that the best-interest standard in OCGA § 29-2-8(b) must be narrowly construed to protect a biological parent's constitutional right to raise a child. Before continuing a temporary guardianship over the parent's objection, the third party must prove by clear and convincing evidence that returning custody to the parent would cause physical or significant, long-term emotional harm, and must then show that continuation of the guardianship would best promote the child's welfare. The court reversed and remanded because the juvenile court applied a preponderance standard and made no required finding of harm.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Carley, Presiding Justice; All the Justices
JURISDICTION	Georgia
DECIDED	November 1, 2010
DOCKET	S10A1821
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Mother appealed the juvenile court's denial of her petition to terminate a temporary guardianship over her minor daughter.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of Georgia.
PARTIES	Tammie Boddie v. Yolanda Daniels

TOPICS

- guardianships
- child custody
- parental rights
- constitutional law
- statutory interpretation

PRACTICE AREAS

- family law
- guardianship law
- constitutional law
- appellate procedure

QUESTIONS PRESENTED

1. Whether OCGA § 29-2-8(b)'s best-interest standard for deciding whether to terminate a temporary guardianship must be narrowly construed to protect a biological parent's constitutional right to raise her child.
2. What evidentiary showing a third-party temporary guardian must make before a temporary guardianship may be continued over a biological parent's request for termination.
3. Whether the juvenile court erred by continuing the temporary guardianship without finding by clear and convincing evidence that returning custody to the biological parent would harm the child.

HOLDINGS

1. The best-interest standard in OCGA § 29-2-8(b) is constitutional only when narrowly construed in accordance with the safeguards applicable to custody disputes between a biological parent and a third party.
2. Before a temporary guardianship may be continued over a biological parent's request for termination, the third-party guardian must prove by clear and convincing evidence that the child will suffer physical or significant, long-term emotional harm if custody is returned to the biological parent; after that showing, the guardian must prove that continuation of the guardianship will best promote the child's welfare and happiness.
3. The juvenile court erred by denying termination of the temporary guardianship without finding by clear and convincing evidence that termination would harm the child.

KEY QUOTATIONS

“Accordingly, that standard as found in OCGA § 29-2-8(b) must be interpreted to mean that the third party must prove by clear and convincing evidence that the child will suffer physical or emotional harm if custody were awarded to the biological parent [by terminating the temporary guardianship]. Once this showing is made, the third party must then show that [continuation of the temporary guardianship] will best promote the child's welfare and happiness.” (702 S.E.2d at 175)

“By harm, we mean either physical harm or significant, long-term emotional harm; we do not mean merely social or economic disadvantages.” (702 S.E.2d at 175)

FACTUAL BACKGROUND

In March 2007, Tammie Boddie consented in writing to a petition for temporary letters of guardianship filed by Yolanda Daniels for Boddie's minor daughter. The probate court issued the temporary letters in April 2007. In 2009, Boddie sought termination of the guardianship; after transfer to the juvenile court, that court found by a preponderance of the evidence that continuing the guardianship served the child's best interests, but made no finding that termination would cause the child physical or emotional harm.

PROCEDURAL HISTORY

A probate court issued temporary letters of guardianship after the mother signed a written consent. When the mother later petitioned to terminate the guardianship, the guardian objected and the matter was transferred to the juvenile court. The juvenile court applied a preponderance-of-the-evidence best-interest standard, continued the

guardianship, and denied termination without finding that returning custody to the mother would harm the child. The Supreme Court of Georgia reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the juvenile court for further proceedings not inconsistent with the opinion. The juvenile court must apply the narrowed standard, determine whether the third party has proved by clear and convincing evidence that returning custody to the mother would cause physical or significant, long-term emotional harm, and, if so, determine whether continuation of the temporary guardianship best promotes the child's welfare and happiness. The court must also consider the factors identified in *Clark v. Wade*.

CASES CITED

- In the Interest of J.R.R., 281 Ga. 662, 663, 641 S.E.2d 526 (2007)
- Clark v. Wade, 273 Ga. 587, 544 S.E.2d 99 (2001)
- In the Matter of Guardianship of Doe, 93 Hawai'i 374, 4 P.3d 508 (2000)
- In the Matter of Bunting, 311 A.2d 855 (Del. 1973)
- In re Guardianship of D.J., 268 Neb. 239, 682 N.W.2d 238 (2004)
- In the Matter of the Guardianship of Williams, 254 Kan. 814, 869 P.2d 661 (1994)
- Guardianship of Jeremiah T., 976 A.2d 955 (Me. 2009)
- In the Interest of SRB-M, 201 P.3d 1115 (Wyo. 2009)
- Quilloin v. Walcott, 434 U.S. 246, 255, 98 S. Ct. 549, 54 L. Ed. 2d 511 (1978)

OPINION

Boddie v. Daniels 702 S.E.2d 172

CARLEY, J.

702 S.E.2d 172 (2010)

BODDIE

v. DANIELS. No. S10A1821. Supreme Court of Georgia. November 1, 2010.

*173 Deborah A. Johnson, Decatur, Rachel M. Lazarus, Lawrenceville, David A. Webster, Atlanta, for appellant.

Berk & Moss, Stephen J. Berk, Decatur, Ronke A. Williams, Tucker, for appellee. CARLEY, Presiding Justice. In March 2007, a petition for temporary letters of guardianship for the minor daughter of Tammie Boddie (Mother) was filed in the probate court by Yolanda Daniels (Guardian). Attached to the petition was a notarized written consent signed by Mother. See OCGA § 29-2-6(a). Temporary letters of guardianship were issued in April 2007. In March 2009, Mother filed a petition to terminate the temporary guardianship, Guardian filed a timely objection, and the

records were transferred "to the juvenile court, which shall determine, after notice and hearing, whether a continuation or termination *174 of the temporary guardianship is in the best interest of the minor." OCGA § 29-2-8(b). Mother challenged this "best interest" standard in writing as violative of her constitutional rights. Compare *In the Interest of J.R.R.*, 281 Ga. 662, 663, 641 S.E.2d 526 (2007). After a hearing, the juvenile court rejected that challenge and found by a preponderance of the evidence that the best interests of the child will be served by continuing the temporary guardianship. The juvenile court denied the request to terminate the guardianship without making any finding that such termination would harm the child. Mother appeals from this order. Mother contends that OCGA § 29-2-8(b) does not contain sufficient safeguards to protect her fundamental constitutional right to raise her child and that its "best interest" standard should therefore be construed narrowly as in *Clark v. Wade*, 273 Ga. 587, 544 S.E.2d 99 (2001). In *Clark v. Wade*, supra at 588, 544 S.E.2d 99. Such disputes do not implicate a parent's constitutional rights any more than does the present dispute between a biological parent and a third-party temporary guardian over continuation of the guardianship, since guardianships have at least as great a potential to interfere with parental rights as do awards of custody. Except with respect to receiving personal property of the minor without becoming her legally qualified conservator, "a temporary guardian shall be entitled to exercise any of the powers of a natural guardian." OCGA § 29-2-7(a). See also OCGA § 29-3-1(d); Jennifer L. Roberts & William J. Self, II, Ga. Guardian and Ward § 2:7 (2009-2010 ed.). "The implication of this provision ... is that guardians of a minor have the powers ... otherwise inherent in parenthood." In the Matter of Guardianship of Doe, 93 Hawai'i 374, 4 P.3d 508, 516(VI) (2000). As a result of these broad powers, "[c]ustody, even permanent custody, with its attendant responsibilities, is but an incident of guardianship. Consequently, appointment of a guardian supercedes that of a custodian since the latter is contained within the former. [Cit.]" In the Matter of Bunting, 311 A.2d 855, 857 (Del.1973). See also 39 CJS Guardian and Ward § 2. "There are significant similarities between 'custody' and 'guardianship.' ... A guardian has the broadest range of the rights and duties of caring for a child, but the right to custody of the child is certainly the principal attribute of guardianship of the person. For practical purposes, however, guardianship and custody are very similar concepts. Both carry with them the privileges and obligations of decision-making and the daily care of the child; the custody decision and the guardianship decision both determine the primary residence of the child." (Emphasis omitted.) [Cit.] Because these concepts share common attributes, we construe the ... guardianship provision ... and the custody provision... in pari materia in order to determine the appropriate standard to be applied where conflicting claims between parents and non-parents are made in a guardianship hearing. [Cit.] In the Matter Guardianship of Doe, supra at 516-517(VI). Consistent with the common attributes of custody and guardianship, those courts which apply certain principles and safeguards in the context of custody disputes between a biological

parent and a third party due to constitutional concerns apply those same principles and safeguards to a parent's effort to regain custody by terminating a guardianship. In *re* Guardianship of D.J., 268 Neb. 239, 682 N.W.2d 238, 246 (2004); In the Matter of the Guardianship of Williams, 254 Kan. 814, 869 P.2d 661, 670 (1994). See also *Guardianship of Jeremiah T.*, 976 A.2d 955, 962-963(II) (B) (Me.2009); In the Interest of SRB-M, 201 P.3d 1115, 1119-1120 (Wyo. 2009). Therefore, we conclude that the construction of the "best interest" standard in *Clark* is controlling in this case. Although there was no majority opinion in *Clark*, the plurality opinion clearly represented the views of a majority of Justices on several points. Where, as here, a third party seeks neither to terminate parental *175 rights nor to break up a natural family by removing the child from her biological parent's custody, "federal constitutional law does not require a showing that the parent is unfit before custody may be awarded to [the] third party. [Cit.]" *Clark v. Wade*, supra at 595(III), 544 S.E.2d 99. See also *Clark v. Wade*, supra at 600, 544 S.E.2d 99 (Sears, J., concurring specially); *Clark v. Wade*, supra at 601-606, 544 S.E.2d 99 (Hunstein, J., concurring specially) (concluding that OCGA § 19-7-1(b.1) is constitutional as written and that the plurality's narrowing construction is not constitutionally required). Compare *Quilloin v. Walcott*, 434 U.S. 246, 255(II) (A), 98 S. Ct. 549, 54 L. Ed. 2d 511 (1978) (expressing "little doubt" that the right to due process would be violated if "a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest"). The Supreme Court of the United States has not issued any decision since *Clark* placing that conclusion in doubt. However, where, as here, a custody dispute arises between a noncustodial biological parent and a third party, a strong majority of Justices in *Clark* would not permit the state to interfere with the parent's right to raise her child unless, at a minimum, "the state acts to protect the child's health or welfare and the parent's decision would result in harm to the child. [Cit.]" *Clark v. Wade*, supra at 597(IV), 544 S.E.2d 99. See also *Clark v. Wade*, supra at 606-608, 544 S.E.2d 99 (Thompson, J., dissenting) (where three Justices also opined that the parent could not be deprived of custody absent a showing of parental unfitness). Thus, in the two cases considered in *Clark*, the judgments of the trial courts were reversed and the cases remanded for application of the custody statute under a narrow construction of the "best interest" standard that came within these constitutional parameters. Accordingly, that standard as found in OCGA § 29-2-8(b) must be interpreted to mean that the third party must prove by clear and convincing evidence that the child will suffer physical or emotional harm if custody were awarded to the biological parent [by terminating the temporary guardianship]. Once this showing is made, the third party must then show that [continuation of the temporary guardianship] will best promote the child's welfare and happiness. *Clark v. Wade*, supra at 599(V), 544 S.E.2d 99. With that narrowing construction, we uphold the "best interest" standard in OCGA § 29-2-8(b) as constitutional. Therefore, the juvenile court erred by denying the petition to terminate the temporary guardianship without finding by clear and convincing evidence that such termination would harm the child. "By harm, we mean either physical harm or significant,

long-term emotional harm; we do not mean merely social or economic disadvantages. [Cits.]" Clark v. Wade, supra at 598(IV), 544 S.E.2d 99. In applying this rigorous harm standard so as to ensure that the temporary guardianship will be continued only when a real threat of harm would result from termination, the trial court must consider the factors set forth in Clark v. Wade, supra at 598-599(IV), 544 S.E.2d 99. See also Clark v. Wade, supra at 600, 544 S.E.2d 99 (Sears, J., concurring specially). We further "note that the death of a parent, divorce, or a change in home and school will often be difficult for a child, but some level of stress and discomfort may be warranted when the goal is reunification of the child with the parent." Clark v. Wade, supra at 598(IV), 544 S.E.2d 99. "(G)uardianships are intended to encourage parents experiencing difficulties to temporarily turn over the custody and care of their children safe in the knowledge that they will be able to regain custody in the future. This policy would be frustrated if guardianships were [difficult to terminate and constitutional parental rights were not protected], because parents would be less likely to voluntarily petition for a guardian to be appointed to care for their minor children. Therefore, children would unnecessarily be placed in jeopardy in many circumstances." [Cit.] In the Interest of SRB-M, supra at 1120 (quoting In re Guardianship of D.J., supra).

*176 Accordingly, we reverse the judgment of the juvenile court and remand this case to that court for further proceedings not inconsistent with this opinion.

Judgment reversed and case remanded with direction. All the Justices concur.