

NORTH DAKOTA SUPREME COURT

Dvorak v. S.H.

624 N.W.2d 678 (N.D. 2001) · Decided April 12, 2001

SUMMARY

The North Dakota Supreme Court affirmed an order terminating a mother’s parental rights to her daughter, an Indian child and member of the Yankton Sioux Tribe. The court held that the state-law requirements for termination were established by clear and convincing evidence, while the Indian Child Welfare Act’s continued-custody-damage requirement was proven beyond a reasonable doubt. The court also concluded that active remedial efforts had been unsuccessful and that the testimony satisfied the Act’s qualified-expert-witness requirement.

CASE DETAILS

COURT	North Dakota Supreme Court
WRITING FOR THE COURT	Maring, Justice; Gerald W. VandeWalle, Chief Justice; Carol Ronning Kapsner; Dale V. Sandstrom; William A. Neumann
JURISDICTION	North Dakota
DECIDED	April 12, 2001
DISPOSITION	affirmed
PROCEDURAL POSTURE	S.H. appealed from an order of the juvenile court terminating her parental rights to her daughter, M.S. The North Dakota Supreme Court reviewed the termination order and affirmed.
STANDARD OF REVIEW	The court reviewed the termination decision in a manner similar to a trial de novo. Although not bound by the juvenile court's findings, it gave them appreciable weight and deferred to the juvenile court's assessment because that court observed the witnesses' candor and demeanor.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	S.H., Mother v. Barb Dvorak, M.S., Child

TOPICS

- termination of parental rights
- indian child welfare act
- parental rights
- standard of review
- appellate procedure

PRACTICE AREAS

family law

termination of parental rights

Indian Child Welfare Act

QUESTIONS PRESENTED

1. Whether clear and convincing evidence established the state-law grounds for termination of S.H.'s parental rights.
2. Whether evidence beyond a reasonable doubt was required to prove that active efforts under 25 U.S.C. § 1912(d) had been made and had failed.
3. Whether the evidence satisfied 25 U.S.C. § 1912(f)'s qualified-expert-witness requirement when the witnesses lacked specialized knowledge of Indian customs, traditions, and culture.
4. Whether evidence beyond a reasonable doubt established that S.H.'s continued custody was likely to result in serious emotional or physical damage to M.S.

HOLDINGS

1. Termination of parental rights was proper because the child was deprived, the conditions and causes of deprivation were likely to continue, and the child was suffering or would probably suffer serious harm; those state-law elements were established by clear and convincing evidence.
2. For an Indian-child termination, the federal requirement that continued custody by the parent is likely to result in serious emotional or physical damage must be proved beyond a reasonable doubt, in addition to the clear-and-convincing-evidence standard applicable to the state-law termination elements.
3. A petitioner must demonstrate by clear and convincing evidence that active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that those efforts were unsuccessful; proof beyond a reasonable doubt is not required under § 1912(d).
4. When cultural bias is not implicated in the alleged parental deficiencies, § 1912(f)'s qualified-expert-witness requirement may be satisfied by qualified professional witnesses who do not possess specialized knowledge of Indian customs, traditions, or culture.

KEY QUOTATIONS

“These state and federal provisions create a dual burden of proof for the party seeking parental termination of the parent of an Indian child, whereby the elements of our state law must be proven by clear and convincing evidence and the federal requirement, that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child, must be satisfied with proof beyond a reasonable doubt.” (¶ 4)

“We hold the petitioner must demonstrate, under 25 U.S.C. § 1912(d), by clear and convincing evidence that active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and those efforts were unsuccessful.” (¶ 18)

FACTUAL BACKGROUND

M.S., an enrolled member of the Yankton Sioux Tribe, was placed in foster care after the juvenile court found her deprived. Evidence showed that S.H. repeatedly failed to provide adequate food, hygiene, supervision, and other basic care, and that a trial return to S.H.'s home resulted in recurrence of those problems. Social-service and parenting-aide efforts continued for an extended period but were unsuccessful, and expert testimony indicated that S.H. was unlikely to acquire adequate parenting skills even with substantial assistance.

PROCEDURAL HISTORY

M.S. was declared a deprived child in September 1997 and placed in the custody of Burleigh County Social Services. After unsuccessful services and a failed trial return to S.H.'s home, Burleigh County petitioned to terminate S.H.'s parental rights. Following a bench trial, the juvenile court granted the petition, and S.H. appealed.

DISPOSITION

affirmed

CASES CITED

- In re C.R., 1999 ND 221, ¶ 4, 602 N.W.2d 520
- B.R.T. v. Executive Director of the Social Service Board of North Dakota, 391 N.W.2d 594, 598 (N.D. 1986)
- Matter of Bluebird, 105 N.C. App. 42, 411 S.E.2d 820, 823 (1992)
- In re A.M., 1999 ND 195, ¶ 7, 601 N.W.2d 253
- In Interest of L.F., 1998 ND 129, ¶ 9, 580 N.W.2d 573
- Asendorf v. M.S.S., 342 N.W.2d 203, 207 (N.D. 1983)
- In Interest of J.L.D., 539 N.W.2d 73, 77 (N.D. 1995)
- Santosky v. Kramer, 455 U.S. 745, 769 (1982)
- People in Interest of S.R., 323 N.W.2d 885, 887 (S.D. 1982)
- K.N. v. State, 856 P.2d 468, 476 (Alaska 1993)
- In re Annette P., 589 A.2d 924, 928 n. 8 (Me. 1991)
- People in Interest of P.B., 371 N.W.2d 366, 372 (S.D. 1985)
- L.G. v. State, 14 P.3d 946, 953 (Alaska 2000)
- Matter of N.L., 754 P.2d 863, 868 (Okla. 1988)
- State ex rel. Juvenile Department v. Tucker, 76 Or. App. 673, 710 P.2d 793, 799 (1985)
- In re Interest of C.W., 239 Neb. 817, 479 N.W.2d 105, 112 (1992)
- D.W.H. v. Cabinet for Human Resources, 706 S.W.2d 840, 843 (Ky. App. 1986)
- Matter of Kreft, 148 Mich. App. 682, 384 N.W.2d 843, 848 (1986)
- Matter of S.D., 402 N.W.2d 346, 351 (S.D. 1987)