

SUPREME COURT OF THE STATE OF NEW MEXICO

In re Mahdjid B. and Aliah B.

No. 34,583 (N.M. Dec. 15, 2014) · No. 34,583 · Decided December 15, 2014

SUMMARY

The New Mexico Supreme Court held that a kinship guardian is not necessarily a necessary and indispensable party to abuse and neglect proceedings, but may not be involuntarily dismissed before the kinship guardianship is properly revoked under the Kinship Guardianship Act. The revocation process requires an evidentiary hearing and application of the New Mexico Rules of Evidence. The Court affirmed the Court of Appeals on different grounds and addressed, without deciding, the biological father's due process claim.

CASE DETAILS

COURT	Supreme Court of the State of New Mexico
WRITING FOR THE COURT	Edward L. Chávez; Barbara J. Vigil; Petra Jimenez Maes; Richard C. Bosson; Charles W. Daniels
JURISDICTION	New Mexico
DECIDED	December 15, 2014
DOCKET	34,583
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Original proceeding on certiorari from the Court of Appeals' reversal of a children's court order dismissing a kinship guardian from abuse and neglect proceedings.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo. Due process claims are ordinarily reviewed de novo, but the Court did not decide the father's due process claim.
PRECEDENTIAL VALUE	Published New Mexico Supreme Court opinion; precedential.
PARTIES	State of New Mexico ex rel. Children, Youth & Families Department v. Djamila B.

TOPICS

- guardianships
- statutory interpretation
- evidence
- appellate procedure
- writ of certiorari

PRACTICE AREAS

family law

guardianships

child welfare

QUESTIONS PRESENTED

1. Whether a kinship guardian may be involuntarily dismissed from abuse and neglect proceedings before the kinship guardianship is revoked under the Kinship Guardianship Act.
2. Whether a kinship guardianship revocation hearing during abuse and neglect proceedings must be conducted under the New Mexico Rules of Evidence and may be conducted by the children's court.
3. Whether kinship guardians are necessary and indispensable parties under Rule 1-019 NMRA.
4. Whether the children's court has concurrent jurisdiction with the appointing family court to conduct a kinship guardianship revocation hearing during abuse and neglect proceedings.
5. Whether the biological father's due process rights were violated by the proceedings concerning dismissal of the kinship guardian.

HOLDINGS

1. A kinship guardian may not be involuntarily dismissed from abuse and neglect proceedings unless the kinship guardianship is first properly revoked under the Kinship Guardianship Act and the New Mexico Rules of Evidence.
2. A kinship guardianship revocation hearing conducted during abuse and neglect proceedings must be a full evidentiary hearing governed by the New Mexico Rules of Evidence, and the moving party must prove by a preponderance of the evidence both a change in circumstances and that revocation is in the child's best interests.
3. The family court that appointed the kinship guardian retains continuing concurrent jurisdiction, but the children's court presiding over the abuse and neglect proceeding also has jurisdiction to conduct the revocation hearing within that proceeding.
4. Kinship guardians are not necessary and indispensable parties under Rule 1-019 NMRA in Abuse and Neglect Act proceedings, although the Children's Court Rules require a guardian to be a party and the guardian has a statutory right to a revocation hearing before involuntary dismissal.

KEY QUOTATIONS

“We hold that while kinship guardians are not necessary and indispensable parties to abuse and neglect proceedings, kinship guardians, nonetheless, have a statutory right to a revocation hearing in accordance with the revocation procedures of the KGA prior to being dismissed from abuse and neglect proceedings.” (¶ 2)

“After receiving a proper motion to revoke a kinship guardianship during abuse and neglect proceedings, the children’s court may conduct a full evidentiary hearing in accordance with our Rules of Evidence and act according to the revocation procedures of the KGA to revoke the kinship guardianship if the burden of proof has been met.” (¶ 37)

“We reverse the children’s court ruling to dismiss Guardian as contrary to law.” (¶ 45)

FACTUAL BACKGROUND

Djamila B., the children's paternal aunt, was appointed their kinship guardian in family court in May 2007, and the children lived with her until CYFD placed them in its custody in June 2010. CYFD then filed abuse and neglect proceedings against the biological parents and the guardian, initially pursuing reunification with the guardian and requiring her to comply with a treatment plan. After CYFD changed the permanency plan to adoption, it moved to dismiss the guardian because she was not a biological parent, and the children's court granted the motion without revoking the kinship guardianship under the Kinship Guardianship Act.

PROCEDURAL HISTORY

CYFD filed abuse and neglect proceedings against the children's biological parents and Djamila B., a kinship guardian. The children's court granted CYFD's motion to dismiss the guardian without first revoking the kinship guardianship under the Kinship Guardianship Act. The Court of Appeals reversed, holding that the guardian was a necessary and indispensable party. The New Mexico Supreme Court affirmed the Court of Appeals' result on different grounds, reversed the children's court ruling, and remanded for a revocation hearing if CYFD continued to seek dismissal.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the children's court to conduct a kinship guardianship revocation hearing under the Kinship Guardianship Act and the New Mexico Rules of Evidence if CYFD continues to believe that revocation and dismissal are warranted. If revocation is granted, the court must adopt or order development of a transition plan and may then dismiss the kinship guardian from further participation.

CASES CITED

- State ex rel. Children, Youth & Families Dep't v. Djamila B. (In re Mahdjid B.), 2014-NMCA-045, ¶ 20, 322 P.3d 444
- State v. Djamila B., 2014-NMCERT-004
- Bank of New York v. Romero, 2014-NMSC-007, ¶ 40, 320 P.3d 1
- State ex rel. Children, Youth & Families Dep't v. Maria C. (In re Rudolfo L.), 2004-NMCA-083, ¶¶ 18, 22-23, 136 N.M. 53, 94 P.3d 796
- Debbie L. v. Galadriel L. (In re Guardianship of Victoria R.), 2009-NMCA-007, ¶ 4, 145 N.M. 500, 201 P.3d 169
- Griego v. Oliver, 2014-NMSC-003, ¶ 20, 316 P.3d 865
- Freedom C. v. Brian D. (In re Guardianship of Patrick D.), 2012-NMSC-017, ¶ 13, 280 P.3d 909
- Jolley v. Associated Elec. & Gas Ins. Servs. Ltd., 2010-NMSC-029, ¶ 8, 148 N.M. 436, 237 P.3d 738

- State v. Rivera, 2004-NMSC-001, ¶ 13, 134 N.M. 768, 82 P.3d 939
- State ex rel. Children, Youth & Families Dep't v. Benjamin O. (In re Lakota C.), 2007-NMCA-070, ¶ 34, 141 N.M. 692, 160 P.3d 601
- State ex rel. Children, Youth & Families Dep't v. Maurice H. (In re Grace H.), 2014-NMSC-034, ¶ 34, 335 P.3d 746
- Smith, 2004-NMSC-032, ¶ 10
- State v. Smith, 2004-NMSC-032, ¶ 10, 136 N.M. 372, 98 P.3d 1022
- State v. Fairbanks, 2004-NMCA-005, ¶ 9, 134 N.M. 783, 82 P.3d 954
- Elder v. Park, 1986-NMCA-034, ¶ 17, 104 N.M. 163, 717 P.2d 1132
- State ex rel. Children, Youth & Families Dep't v. Pamela R.D.G. (In re Pamela A.G.), 2006-NMSC-019, ¶ 10, 139 N.M. 459, 134 P.3d 746