

SUPREME COURT OF LOUISIANA

State ex rel. K.C.C.

188 So. 3d 144 (La. 2016) · No. 15-1429 · Decided January 27, 2016

SUMMARY

The Louisiana Supreme Court considered whether private counsel for custodians could petition to terminate parental rights with leave and special appointment from the juvenile court under Louisiana Children's Code article 1004(F). The court held that the legislature authorized juvenile courts to designate private counsel to initiate termination proceedings based on abandonment, and that any defect in the custodians' original filing was cured by the court's subsequent designation of their counsel. The court therefore upheld the juvenile court's overruling of the biological parents' exception of no right of action.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Guidry, J.
JURISDICTION	Louisiana
DECIDED	January 27, 2016
DOCKET	15-1429
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The prospective adoptive custodians and the attorney appointed to represent K.C.C. sought review of the court of appeal's reversal of the juvenile court's denial of the biological parents' exception of no right of action.
STANDARD OF REVIEW	De novo review of the interpretation and applicability of La. Ch. Code art. 1004.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	E.C. and K.C., prospective adoptive custodians, Attorney for K.C.C. v. T.T. and M.M., biological parents

TOPICS

termination of parental rights

parental rights

family law procedure

statutory interpretation

civil procedure

PRACTICE AREAS

family law

termination of parental rights

statutory interpretation

civil procedure

QUESTIONS PRESENTED

1. Whether private counsel for prospective adoptive custodians may be specially appointed by a juvenile court to petition for involuntary termination of parental rights based on abandonment under La. Ch. Code art. 1004(F).
2. Whether the juvenile court properly overruled the biological parents' exception of no right of action after granting private counsel leave to file the termination petition.

HOLDINGS

1. A juvenile court may, by special appointment in a particular case, authorize private counsel to petition for termination of parental rights on the ground of abandonment under La. Ch. Code art. 1004(F).
2. Although the custodians themselves were not authorized to bring the action under article 1004(F), the defect was cured when their counsel moved for special appointment and the juvenile court granted that request; therefore, the juvenile court properly overruled the exception of no right of action.

KEY QUOTATIONS

“This history, culminating in the legislature granting the juvenile court the specific power to authorize private counsel to initiate a termination of parental rights proceeding on the ground of abandonment, convinces us that the legislature has intentionally broadened the classes of persons who may bring a termination of parental rights action.” (153)

“After reviewing the applicable law, Title X of the Children’s Code and La. Ch.Code art. 1004(F), we hold that private counsel in a particular case may be specially appointed, by approval of the court, to pursue the termination of parental rights due to abandonment under La. Ch.Code art. 1015(4).” (154)

FACTUAL BACKGROUND

K.C.C. was born to T.T. in March 2013, and the child went home from the hospital with E.C. and K.C., who sought to adopt him. A later DNA test established that M.M., rather than E.C., could not be excluded as the biological father, causing the custodians' intra-family adoption petition to be dismissed. The custodians then sought custody and permission to pursue termination of both biological parents' rights based on abandonment, and the juvenile court authorized their private counsel to file the termination petition.

PROCEDURAL HISTORY

The custodians filed a petition for custody and permission to petition for termination of parental rights, followed by a termination petition alleging abandonment. The juvenile court granted private counsel leave to file the petition, overruled the biological parents' exceptions, terminated both parents' rights, and certified the child as available for adoption. The court of appeal reversed the ruling on the exception of no right of action and remanded. The Louisiana Supreme Court granted review, reversed the court of appeal in part, and remanded for consideration of the parents' assignments of error that the court of appeal had not reached.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The court of appeal's judgment was reversed in part, and the matter was remanded to the court of appeal to consider the biological parents' assignments of error that had been pretermitted.

CASES CITED

- Holly & Smith Architects, Inc. v. St. Helena Congregate Facility, Inc., 943 So. 2d 1037, 1045 (La. 2006)
- Reese v. State Department of Public Safety and Corrections, 866 So. 2d 244, 246 (La. 2004)
- Miller v. Thibaux, 159 So. 3d 426, 430 (La. 2015)
- State in the Interest of Bartee, 446 So. 2d 512 (La. App. 4th Cir. 1984), writ denied, 450 So. 2d 358 (La. 1984)
- In the Interest of D.G.C., 690 So. 2d 237 (La. App. 4th Cir. 1997)
- S.J.G. v. A.A.G., 970 So. 2d 1022, 1027 (La. App. 1st Cir. 2007)
- In re T.E.R., 979 So. 2d 663 (La. App. 2d Cir. 2008)
- In re H.B.K., 980 So. 2d 200 (La. App. 2008)
- State in the Interest of D.M., 785 So. 2d 857 (La. App. 4th Cir. 2001)
- In re Fischbein, 194 So. 2d 388, 390, 392-93 (La. App. 4th Cir. 1967)