

SUPREME COURT OF THE STATE OF WASHINGTON

In re Welfare of B.P.

186 Wn.2d 292, 376 P.3d 1044 (2016) · No. No. 91925-9 · Decided July 28, 2016

SUMMARY

The Washington Supreme Court reviewed the termination of H.O.'s parental rights to B.P. The court held that the State failed to prove by clear, cogent, and convincing evidence that it had offered and provided all necessary services reasonably available to correct the mother's parental deficiencies under RCW 13.34.180(1)(d). The court reversed the Court of Appeals and the order terminating parental rights.

CASE DETAILS

COURT	Supreme Court of the State of Washington
WRITING FOR THE COURT	Gordon McCloud
JURISDICTION	Washington
DECIDED	July 28, 2016
DOCKET	No. 91925-9
DISPOSITION	reversed
PROCEDURAL POSTURE	H.O. sought review of a Washington Court of Appeals decision affirming an order terminating her parental rights to B.P. The Washington Supreme Court granted review and considered whether the State proved the statutory services prerequisite and the constitutional prerequisite of parental unfitness.
STANDARD OF REVIEW	Termination findings of fact are reviewed for substantial evidence. Because termination must be proved by clear, cogent, and convincing evidence, the supporting evidence must be more substantial than in an ordinary civil case. Legal questions concerning the statutory termination framework are reviewed de novo.
PRECEDENTIAL VALUE	Published, precedential Washington Supreme Court en banc opinion
PARTIES	H.O. (Mother) v. State of Washington, Department of Social and Health Services

TOPICS

termination of parental rights

parental rights

family law procedure

due process

statutory interpretation

PRACTICE AREAS

family law

parental rights

constitutional law

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appellate procedure

QUESTIONS PRESENTED

1. Whether the State proved by clear, cogent, and convincing evidence that it expressly and understandably offered or provided all necessary, reasonably available services capable of correcting H.O.'s parental deficiencies within the foreseeable future under RCW 13.34.180(1)(d).
2. Whether the State proved the constitutional prerequisite of current parental unfitness before terminating H.O.'s parental rights.

HOLDINGS

1. The State failed to prove by clear, cogent, and convincing evidence that it offered or provided all necessary services capable of correcting H.O.'s parental deficiencies because it did not provide attachment services addressing B.P.'s special attachment needs.
2. Services are not futile merely because their success is uncertain; where there is any reasonable possibility of success, reasonably available services capable of correcting parental deficiencies must be provided.
3. The court did not reach H.O.'s challenge to the finding of parental unfitness because the failure to satisfy the statutory services prerequisite independently required reversal.

KEY QUOTATIONS

“By ignoring this request and denying H.O. any opportunity to demonstrate her capacities for real attachment work, the State violated its statutory and constitutional obligation to offer or provide “all necessary services, reasonably available, capable of correcting parental deficiencies within the foreseeable future.”” (at 32)

“Where there is any reasonable possibility of success, the services must be provided.” (at 36)

FACTUAL BACKGROUND

B.P. was born addicted to methamphetamine and was removed from H.O.'s care after infancy. H.O. struggled with substance abuse, depression, mental-health issues, and the effects of childhood trauma; although she later achieved sobriety and successfully parented another child in a structured treatment setting, she relapsed and B.P. was again removed. B.P. experienced multiple placement disruptions and developed attachment difficulties, while the Department provided attachment-related services to B.P.'s foster parents but did not provide comparable attachment services to H.O. and B.P. before seeking termination.

PROCEDURAL HISTORY

B.P. was found dependent and placed in foster care after being born addicted to methamphetamine. The trial court terminated H.O.'s parental rights, finding that all necessary services had been offered or provided and that

H.O. was currently unfit to parent B.P. The Court of Appeals affirmed in a split decision. The Washington Supreme Court reversed the Court of Appeals and the termination order because the State failed to prove by clear, cogent, and convincing evidence that it had offered or provided all necessary services capable of correcting H.O.'s parental deficiencies.

DISPOSITION

reversed

CASES CITED

- In re Welfare of C.S., 168 Wn.2d 51, 225 P.3d 953 (2010)
- In re Termination of S.J., 162 Wn. App. 873, 256 P.3d 470 (2011)
- In re Welfare of A.B., 168 Wn.2d 908, 232 P.3d 1104 (2010)
- In re Welfare of A.B., 181 Wn. App. 45, 323 P.3d 1062 (2004)
- In re Dependency of K.N.J., 171 Wn.2d 568, 257 P.3d 522 (2011)
- In re Dependency of K.D.S., 176 Wn.2d 644, 294 P.3d 695 (2013)
- In re Welfare of Hall, 99 Wn.2d 842, 664 P.2d 1245 (1983)
- Welfare of M.R.H., 145 Wn. App. 10, 188 P.3d 510 (2008)
- Welfare of Ferguson, 32 Wn. App. 865, 650 P.2d 1118 (1982), rev'd on other grounds, 98 Wn.2d 589, 656 P.2d 503 (1983)