

MASSACHUSETTS SUPREME JUDICIAL COURT

Adoption of Ilona

459 Mass. 53 (2011) · Decided March 4, 2011

SUMMARY

The Supreme Judicial Court of Massachusetts considered whether a mother's parental rights should be terminated where she was currently unfit but argued that her unfitness might be temporary if provided additional services. The court upheld the termination, concluding that the Department of Children and Families had made reasonable efforts and that the mother's unfitness was likely to continue. The court also held that the judge did not abuse his discretion by declining to order posttermination visitation and leaving visitation decisions to the adoptive parents.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Gants, J.
JURISDICTION	Massachusetts
DECIDED	March 4, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	The mother appealed from a Juvenile Court judgment adjudicating Ilona a child in need of care and protection, terminating the mother's parental rights, dispensing with her consent to adoption, committing Ilona to the Department of Children and Families, and declining to order posttermination visitation. The Appeals Court affirmed the termination ruling but held that the Juvenile Court judge abused his discretion by failing to order visitation. The Supreme Judicial Court granted further appellate review.
STANDARD OF REVIEW	The court gives substantial deference to a judge's decision that termination of parental rights is in the child's best interest and reverses only for clearly erroneous factual findings, clear error of law, or abuse of discretion. The decision whether to order posttermination visitation is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Ilona, Mother v. Department of Children and Families

TOPICS

termination of parental rights adoption visitation parental rights family law procedure

PRACTICE AREAS

family law child welfare adoption

QUESTIONS PRESENTED

1. Whether the Juvenile Court erred in terminating the mother's parental rights when she was currently unfit but argued that her unfitness might be temporary if the Department provided additional or better-tailored services.
2. Whether the Juvenile Court abused its discretion by declining to order posttermination visitation after finding that continued contact between Ilona and her mother was in Ilona's best interest, where a preadoptive family had been identified and supported continued contact.

HOLDINGS

1. The Juvenile Court did not err in terminating the mother's parental rights because the evidence supported findings that her unfitness was likely to continue for a prolonged or indefinite period and that termination served Ilona's best interests. Although the Department had shortcomings in providing services, its efforts were not clearly unreasonable, and the court was required to decide the case according to Ilona's best interests.
2. A judge is not required to order visitation whenever the judge finds that continued contact with a biological parent is in the child's best interest. After finding visitation beneficial, the judge must separately determine whether a visitation order is necessary to protect that interest, balancing the benefit and security provided by an order against the intrusion on the rights of adoptive parents. On these facts, leaving visitation to the sound judgment of the supportive preadoptive parents was not an abuse of discretion.

KEY QUOTATIONS

“A judge should issue an order of visitation only if such an order, on balance, is necessary to protect the child’s best interest.” (64-65)

“Therefore, Adoption of Rico, supra, did not establish the principle that a judge must order visitation whenever the judge concludes that visitation is currently in the child’s best interest.” (66)

FACTUAL BACKGROUND

Ilona's mother had a longstanding history of physically abusing Ilona, including an incident in December 2006 that resulted in visible injuries, criminal charges, and Ilona's removal from the home. The mother received therapy, psychiatric treatment, parenting instruction, anger-management counseling, and supervised visitation services, but the trial judge found that she made no significant improvement in her parenting and remained unable to meet Ilona's emotional and safety needs. After placement with foster parents who wished to adopt her, Ilona made extraordinary progress and formed a strong, nurturing relationship with the foster family while

retaining a significant bond with her mother. The foster mother supported continued contact so long as it did not harm Ilona.

PROCEDURAL HISTORY

The Department filed a care and protection petition after removing Ilona from her mother's home following a reported incident of physical abuse. After a five-day trial, the Juvenile Court found both parents unfit, determined that the mother's unfitness was likely to continue indefinitely, terminated the mother's parental rights, and approved adoption by the foster parents. The Appeals Court affirmed the termination of parental rights but reversed the visitation ruling. The Supreme Judicial Court disagreed with the Appeals Court on visitation and affirmed the Juvenile Court judgment in full.

DISPOSITION

affirmed

CASES CITED

- Adoption of Nancy, 443 Mass. 512, 515 (2005)
- Adoption of Inez, 428 Mass. 717, 720, 723-724 (1999)
- Adoption of Hugo, 428 Mass. 219, 225 (1998), cert. denied sub nom. Hugo P. v. George P., 526 U.S. 1034 (1999)
- Adoption of Carlos, 31 Mass. App. Ct. 233, 239, 242 (1991), S.C., 413 Mass. 339, 350 (1992)
- Adoption of Paula, 420 Mass. 716, 729-730 (1995)
- Custody of Two Minors, 396 Mass. 610, 620-621 (1986)
- Adoption of Elena, 446 Mass. 24, 30-32 (2006)
- Adoption of Lenore, 55 Mass. App. Ct. 275, 278-279 n.3, 284 (2002)
- Petition of the Department of Public Welfare to Dispense with Consent to Adoption, 376 Mass. 252, 266, 268-269 (1978)
- Adoption of Gregory, 434 Mass. 117, 121-124 (2001)
- Adoption of Abigail, 23 Mass. App. Ct. 191, 195 (1986)
- Adoption of Frederick, 405 Mass. 1, 9 (1989)
- Adoption of Rico, 453 Mass. 749, 750, 752-759 (2009)
- Adoption of Vito, 431 Mass. 550, 553, 556-565 (2000)
- E.N.O. v. L.M.M., 429 Mass. 824, 827-828 (1999), cert. denied, 528 U.S. 1005 (1999)
- Youmans v. Ramos, 429 Mass. 774, 777, 783-784 (1999)
- Blixt v. Blixt, 437 Mass. 649, 657-658 (2002), cert. denied, 537 U.S. 1189 (2003)
- Troxel v. Granville, 530 U.S. 57, 68-69 (2000)
- Adoption of Gwendolyn, 29 Mass. App. Ct. 130, 139 (1990)
- Care & Protection of Robert, 408 Mass. 52, 62 (1990)
- Custody of a Minor, 375 Mass. 733, 749 (1978)

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