

SUPREME COURT OF NEW HAMPSHIRE

In re Zachary G. and another, 159 N.H. 146

982 A.2d 367 (2009) · No. No. 2008-785 · Decided July 31, 2009

SUMMARY

The Supreme Court of New Hampshire affirmed the termination of S.G.'s parental rights based on her failure to protect her children from violent and abusive men. The court held that collateral estoppel did not bar consideration of evidence from an earlier abuse and neglect proceeding because substantially similar abuse and neglect recurred after that proceeding was closed. It also held that the statutory grounds for termination under RSA 170-C:5, III were satisfied and that termination served the children's best interests.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	HICKS, J.; Broderick, C.J.; Dalianis, J.; Duggan, J.; Hicks, J.
JURISDICTION	New Hampshire
DECIDED	July 31, 2009
DOCKET	No. 2008-785
DISPOSITION	affirmed
PROCEDURAL POSTURE	The mother appealed the Claremont Family Division's order terminating her parental rights under RSA 170-C:5, III. The Supreme Court of New Hampshire affirmed.
STANDARD OF REVIEW	The Supreme Court would not disturb the family division's findings unless unsupported by the evidence or plainly erroneous as a matter of law. It would uphold the ruling on collateral estoppel unless unsupported by the evidence or legally erroneous. Statutory grounds for termination had to be proven beyond a reasonable doubt; the best-interests determination did not have to be established beyond a reasonable doubt.
PRECEDENTIAL VALUE	published and precedential
PARTIES	S.G., mother v. State of New Hampshire

TOPICS

termination of parental rights

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PRACTICE AREAS

family law

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child welfare

QUESTIONS PRESENTED

1. Whether collateral estoppel barred consideration of evidence from the earlier, closed abuse and neglect action in the parental-rights termination proceeding.
2. Whether judicial estoppel barred DCYF from pursuing termination after previously seeking closure of the earlier abuse and neglect action and reunification.
3. Whether RSA 170-C:5, III permitted termination based on the mother's failure to correct conditions associated with the 2004 neglect findings.
4. Whether the termination petitions were premature because twelve months had not elapsed when they were filed after the January 2007 neglect findings.
5. Whether the evidence proved beyond a reasonable doubt that the mother failed to correct the conditions leading to neglect and established that termination was in the children's best interests.

HOLDINGS

1. Collateral estoppel may apply in a termination-of-parental-rights proceeding, but it does not bar reconsideration of evidence from an earlier closed action when subsequent and recent incidents of abuse and neglect substantially similar to the earlier incidents have occurred.
2. The family division did not abuse its discretion by rejecting the mother's judicial-estoppel argument because DCYF's pursuit of termination was not clearly inconsistent with its earlier effort to close the 2004 case in light of intervening abuse and neglect.
3. RSA 170-C:5, III requires proof of a finding of abuse or neglect under RSA chapter 169-C, failure to correct the same condition within twelve months, and reasonable efforts under the direction of the court to correct that condition. The family division erred in relying exclusively on the stale 2004 findings, but the error was one of form rather than substance because DCYF had obtained and cited the 2007 findings and proved the same continuing condition.
4. Although DCYF's May 2007 termination petitions were filed before twelve months had elapsed from the January 2007 neglect findings, the termination was not reversible error because the mother received twelve months to correct the conditions before the termination hearing and decree, and the family division found that DCYF made reasonable reunification efforts during that period.
5. The evidence supported, beyond a reasonable doubt, the finding that S.G. failed to correct the condition leading to the neglect findings, and it sufficiently supported the conclusion that termination of her parental rights was in the children's best interests.

KEY QUOTATIONS

“Given the overriding need to ensure that the children's best interests are properly protected, see RSA 170-C:1 (2002), and the fact that RSA chapter 170-C broadly admits all "relevant and material information ... to the extent of its probative value," RSA 170-C:10 (2002), we hold that collateral estoppel is no bar to reconsidering evidence from an earlier action if there exist subsequent and recent incidents of abuse and neglect substantially similar to those in the earlier, closed action.” (982 A.2d at 373)

“Thus, in order to rely upon RSA 170-C:5, III as grounds for termination, DCYF must demonstrate: (1) a finding of child neglect or abuse under RSA chapter 169-C; (2) a failure to correct the same within twelve months of the finding; and (3) reasonable efforts to correct the condition provided under the direction of the court.” (982 A.2d at 373)

FACTUAL BACKGROUND

S.G. was the mother of Zachary and Kandace. The children were repeatedly exposed to physical abuse and violent, abusive men, particularly their father, A.G., despite protective orders, counseling, court supervision, and reunification efforts. After the first abuse and neglect case was closed and reunification began, A.G. again lived with or had contact with the children in S.G.'s home, and new findings of abuse and neglect were entered in 2007. The family division found beyond a reasonable doubt that S.G. had failed to correct the conditions leading to neglect and that termination was in the children's best interests because they had spent substantial portions of their lives in out-of-home placements and required safety and permanency.

PROCEDURAL HISTORY

DCYF filed abuse and neglect petitions in 2004, resulting in findings of abuse and neglect, supervised custody, foster placement, and efforts toward reunification. After the first action was closed, new abuse and neglect petitions were filed in 2006, and the family division entered new findings in January 2007 based on renewed exposure of the children to their abusive father. DCYF petitioned to terminate the parents' rights; after a five-day hearing, the family division denied the mother's motion in limine and terminated her parental rights. The mother appealed, challenging the evidentiary ruling, statutory grounds, and sufficiency of the evidence.

DISPOSITION

affirmed

CASES CITED

- In re Antonio W., 147 N.H. 408, 790 A.2d 125 (2002)
- In re Matthew G., 124 N.H. 414, 469 A.2d 1365 (1983)
- Cook v. Sullivan, 149 N.H. 774, 829 A.2d 1059 (2003)
- Appeal of Stanton, 147 N.H. 724, 805 A.2d 419 (2002)
- Cardinal Dev. Corp. v. Town of Winchester Zoning Bd. of Adjustment, 157 N.H. 710, 958 A.2d 996 (2008)
- McNair v. McNair, 151 N.H. 343, 856 A.2d 5 (2004)
- Sheehy v. Sheehy, 88 N.H. 223, 186 A. 1 (1936)
- In re Interest of V.B., 220 Neb. 369, 370 N.W.2d 119 (1985)

- Matter of Newman, 49 Or. App. 221, 619 P.2d 901 (1980), review denied, 290 Or. 449 (1981)
- Kelleher v. Marvin Lumber & Cedar Co., 152 N.H. 813, 891 A.2d 477 (2005)
- Pike v. Mullikin, 158 N.H. 267, 965 A.2d 987 (2009)
- State v. Robert H., 118 N.H. 713, 393 A.2d 1387 (1978)
- In re Craig T., 147 N.H. 739, 800 A.2d 819 (2002)
- State v. Balukas, 155 N.H. 377, 924 A.2d 381 (2007)
- State v. Gallagher, 157 N.H. 421, 951 A.2d 130 (2008)
- In re Robyn W., 124 N.H. 377, 469 A.2d 1351 (1983)
- McIntire v. Lee, 149 N.H. 160, 816 A.2d 993 (2003)
- In re Billy T., 124 N.H. 576, 474 A.2d 1010 (1984)
- In re Shannon M., 146 N.H. 22, 766 A.2d 729 (2001)

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