

SUPREME COURT OF LOUISIANA

In re L.M.M., Jr., a Minor

2017-CJ-1988 · No. 2017-CJ-1988 · Decided June 27, 2018

SUMMARY

The Louisiana Supreme Court held that modification or termination of a guardianship is governed by Louisiana Children’s Code article 724, rather than the ordinary custody standards under the Civil Code. The biological mother failed to prove by clear and convincing evidence that a substantial and material change in circumstances justified terminating the guardianship. The court affirmed the court of appeal’s reinstatement of the guardianship and remanded for establishment of a visitation schedule.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Weimer, J.
JURISDICTION	Louisiana
DECIDED	June 27, 2018
DOCKET	2017-CJ-1988
DISPOSITION	affirmed_and_remanded
PROCEDURAL POSTURE	The biological mother sought termination of a guardianship and restoration of custody. The district court terminated the guardianship and awarded joint custody with the mother as domiciliary custodian. The court of appeal reversed, reinstated the guardianship, and remanded for a visitation schedule. The Supreme Court of Louisiana granted certiorari.
STANDARD OF REVIEW	De novo review was applied because the district court's reasons revealed legal error, including consideration of irrelevant factors and failure to apply the stringent standards of Louisiana Children's Code article 724. The court otherwise reviewed the evidentiary determination under the clear-and-convincing-evidence burden prescribed by article 724(D).
PRECEDENTIAL VALUE	Published Louisiana Supreme Court opinion; precedential
PARTIES	Kodie Servat v. Lisa Mounney, guardian of L.M.M., Jr.

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QUESTIONS PRESENTED

1. What legal standard governs modification or termination of a guardianship under the Louisiana Children's Code?
2. Whether the mother proved by clear and convincing evidence a substantial and material change in the circumstances of the guardian or child sufficient to terminate the guardianship under Louisiana Children's Code article 724(D)(2).
3. Whether the district court committed legal error requiring de novo review by applying the wrong legal standards and considering matters concerning the original guardianship rather than the statutory grounds for termination.

HOLDINGS

1. Louisiana Children's Code article 724(D) supplies the governing standard for modifying or terminating a guardianship. The movant must prove by clear and convincing evidence a substantial and material change in the circumstances of the guardian or child and one of the statutory grounds for modification or termination.
2. A parent's rehabilitation and improved circumstances may constitute an advantage to the child and may amount to a material change in the child's circumstances, but they support termination only if the parent proves by clear and convincing evidence that the advantages substantially outweigh the presumed harm from changing the guardianship.
3. The mother did not prove by clear and convincing evidence that continuation of the guardianship was so deleterious to the child as to justify termination.
4. The mother did not prove by clear and convincing evidence that the advantages of terminating the guardianship substantially outweighed the likely harm to the child.
5. When the district court's reasons demonstrate legal error in its analysis, the reviewing court must conduct a de novo review rather than defer under an abuse-of-discretion standard.

KEY QUOTATIONS

"A guardianship order may be modified or terminated if the court finds by clear and convincing evidence that there has been a substantial and material change in the circumstances of the guardian or child because of any of the following:" (14-15)

"The evidence fails to establish a substantial and material change in the circumstances of the child on either of the grounds set forth in La. Ch.C. art. 724(D)(2)." (27-28)

FACTUAL BACKGROUND

L.M.M. was born prematurely to unmarried teenage parents who used illicit drugs after his birth. After the parents were arrested in Mississippi for possession of synthetic cannabinoids, the child entered state custody and was later placed under the guardianship of his paternal great-aunt, Lisa Mouney, with the parents' consent. Mouney obtained medical, developmental, and therapeutic services for the child, who had developmental delays and spastic hemiparetic cerebral palsy, and provided a stable home. The mother later became drug-free, married, obtained employment, and established a stable home, then sought to terminate the guardianship and regain custody.

PROCEDURAL HISTORY

A Mississippi court appointed Lisa Mouney as guardian of L.M.M. after the child was removed from his parents' custody. Louisiana's 24th Judicial District Court made the Mississippi judgment executory, after which Kodie Servat petitioned to modify custody and terminate the guardianship. Following a three-day trial, the district court terminated the guardianship and awarded joint custody. The court of appeal reversed and reinstated the guardianship. The Supreme Court affirmed the court of appeal and remanded for establishment of a visitation schedule.

DISPOSITION

affirmed_and_remanded

REMAND INSTRUCTIONS

The matter is remanded to the district court to establish a visitation schedule for the mother, consistent with the court of appeal's direction.

CASES CITED

- In re: L.M.M., Jr., 17-345 (La. App. 5 Cir. 10/25/17), 230 So. 3d 301
- In re: L.M.M., Jr., 17-1988 (La. 2/9/18), 234 So. 3d 888
- Tracie F. v. Francisco D., 188 So. 3d 231 (La. 2016)
- Bergeron v. Bergeron, 492 So. 2d 1193 (La. 1986)
- Santosky v. Kramer, 455 U.S. 745 (1982)
- In re Adoption of B.G.S., 556 So. 2d 545 (La. 1990)
- Boudreaux v. State, Department of Transportation and Development, 815 So. 2d 7 (La. 2002)
- Bridges v. Nelson Industrial Steam Co., 190 So. 3d 276 (La. 2016)
- Louisiana State Bar Association v. Edwins, 329 So. 2d 437 (La. 1976)
- Arabie v. CITGO Petroleum Corp., 89 So. 3d 307 (La. 2012)