

SUPREME COURT OF VERMONT

In re S.C., Juvenile & In re D.S., Juvenile

195 Vt. 415 (2014) · No. 2013-278 & 2013-311 · Decided January 10, 2014

SUMMARY

The Vermont Supreme Court considered whether appointed appellate counsel may withdraw from appeals of termination-of-parental-rights judgments because counsel believes the appeals lack merit under Vermont Rule of Professional Conduct 3.1. The Court held that, absent client consent or other compelling circumstances, appointed appellate counsel generally may not withdraw in such proceedings, emphasizing the importance of meaningful representation and the parent-child relationship. The Court denied the withdrawal motions in both cases.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Per Curiam; Paul L. Reiber, Chief Justice; John A. Dooley, Associate Justice; Marilyn S. Skoglund, Associate Justice; Beth Robinson, Associate Justice; Geoffrey W. Crawford, Associate Justice
JURISDICTION	Vermont
DECIDED	January 10, 2014
DOCKET	2013-278 & 2013-311
DISPOSITION	other
PROCEDURAL POSTURE	Appeals from termination-of-parental-rights judgments in which appointed appellate counsel moved to withdraw on the ground that continued representation was prohibited by Vermont Rule of Professional Conduct 3.1.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential.

TOPICS

termination of parental rights parental rights appellate procedure family law procedure civil procedure

PRACTICE AREAS

family law appellate procedure professional responsibility constitutional law

QUESTIONS PRESENTED

1. Whether appointed appellate counsel may withdraw from a termination-of-parental-rights appeal solely because counsel concludes that the appeal lacks merit or would require asserting an allegedly frivolous claim.
2. Whether appointed counsel's inability to contact the client warranted withdrawal under the circumstances presented in *In re S.C.*

HOLDINGS

1. Absent client consent or other compelling circumstances, appointed appellate counsel may not withdraw from a termination-of-parental-rights appeal solely because counsel believes the appeal lacks merit or that continued representation may involve an argument that does not satisfy Rule 3.1.
2. An attorney's good-faith presentation of pertinent facts and controlling law favorable to the client does not violate Rule 3.1 merely because counsel believes the client's position will not prevail; counsel must nevertheless comply with the duty of candor to the tribunal.
3. The court did not decide whether appointed appellate counsel's inability to contact or communicate with a client after diligent efforts could constitute a compelling circumstance permitting withdrawal.

KEY QUOTATIONS

"We must therefore conclude that, absent client consent or other compelling circumstances, withdrawal of appointed appellate counsel in a termination-of-parental-rights proceeding will not be permitted." (¶ 6)

"Contrary to counsel's suggestion, the assertion of a claim that an attorney believes to be without merit or lacking any meaningful chance of success does not render an appeal "frivolous" or unethical." (¶ 8)

FACTUAL BACKGROUND

The appeals involved judgments terminating parental rights in two juvenile proceedings. Appointed appellate counsel reviewed the existing lower-court records and concluded that no issue had merit or a realistic potential to affect the results. Counsel sought withdrawal, asserting that continued representation would require pursuing frivolous claims, while the State and the Defender General addressed the effect of withdrawal on the parents' appellate representation and the timely resolution of termination appeals.

PROCEDURAL HISTORY

The appeals arose from termination-of-parental-rights judgments entered in the Washington and Franklin Units of the Vermont Superior Court, Family Division. Appointed appellate counsel filed identical motions to withdraw after concluding that the records presented no meritorious issues. The Vermont Supreme Court requested briefing from counsel, the Defender General, and the Attorney General and denied both motions.

DISPOSITION

other

CASES CITED

- *Lassiter v. Department of Social Services*, 452 U.S. 18, 27-30 (1981)
- *Anders v. California*, 386 U.S. 738, 744 (1967)
- *A.L.L. & D.Z. v. People*, 226 P.3d 1054, 1055, 1060-63 (Colo. 2010)
- *In re Care and Protection of Valerie*, 529 N.E.2d 146, 147 (Mass. 1988)
- *In re Hall*, 664 P.2d 1245, 1248 (Wash. 1983)
- *Commonwealth v. Moffett*, 418 N.E.2d 585, 591 (Mass. 1981)

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