

SUPREME COURT OF ALABAMA

Ex parte J.E. (In re J.E. v. V.C.E.)

1 So. 3d 1002 (Ala. 2008) · No. 1060874 · Decided May 9, 2008

SUMMARY

The Alabama Supreme Court reversed and remanded a judgment terminating a father's parental rights. The Court held that the district court properly considered factors under Alabama Code § 26-18-7(b), but erred in finding that the father had voluntarily relinquished his parental rights solely because he failed to seek reinstatement of suspended visitation. The Court also addressed the requirement to consider viable alternatives to termination, including in abandonment cases.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Per Curiam; Lyons; Woodall; Smith; Parker; Cobb; Stuart; Bolin; Murdock
JURISDICTION	Alabama
DECIDED	May 9, 2008
DOCKET	1060874
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The father petitioned the Supreme Court of Alabama for a writ of certiorari to review the Court of Civil Appeals' no-opinion affirmance of a district-court judgment terminating his parental rights.
STANDARD OF REVIEW	Factual findings based on ore tenus evidence are presumed correct and will not be reversed unless plainly and palpably wrong or an abuse of discretion is shown. Conclusions of law and the application of law to facts are reviewed de novo.
PRECEDENTIAL VALUE	Published opinion; binding Alabama Supreme Court precedent.
PARTIES	J.E., father v. V.C.E., mother

TOPICS

- termination of parental rights
- parental rights
- family law procedure
- appellate procedure
- statutory interpretation

PRACTICE AREAS

family law

parental rights

termination of parental rights

appellate procedure

statutory interpretation

QUESTIONS PRESENTED

1. Whether the district court properly considered the factors in Ala. Code 1975, § 26-18-7(b), when the child was in the physical custody of the custodial parent rather than the noncustodial parent.
2. Whether the father's failure to petition for reinstatement of court-suspended visitation constituted a voluntary relinquishment or abandonment of his parental rights.
3. Whether the district court's termination judgment could stand when its abandonment finding was based on an unsupported conclusion that the father had voluntarily relinquished his parental rights.

HOLDINGS

1. A court may consider the factors listed in § 26-18-7(b) when evaluating termination of a noncustodial parent's parental rights, even when the child is physically residing with the custodial parent.
2. A parent's failure to seek reinstatement of court-suspended visitation does not, without evidence of an intent to surrender parental rights, establish voluntary relinquishment or abandonment by voluntary relinquishment.
3. The reversal did not preclude the district court from reconsidering whether clear and convincing evidence established abandonment on a basis other than voluntary relinquishment, or whether the father was otherwise unable or unwilling to provide for the child's needs.

KEY QUOTATIONS

"Relinquishment" is defined as "[a] forsaking, abandoning, renouncing or giving over a right." Black's Law Dictionary 1161 (5th ed.1979).... Voluntary relinquishment is thus essentially synonymous with the concept of "waiver," which has been defined as the "voluntary and intentional surrender or relinquishment of a known right." (1009-10)

"However, the district court was not within its authority in concluding that the father had "voluntarily relinquished" his parental rights, because there is no evidence in this record to support the inference that the father intended to surrender those rights." (1010)

"By so holding, this Court does not take the position that evidence of the failure to seek reinstatement of visitation rights can never support a finding of abandonment." (1010-11)

FACTUAL BACKGROUND

The father and mother divorced in 1999, with the mother receiving sole legal and physical custody and the father receiving visitation rights and a child-support obligation. After later contempt proceedings, the circuit court suspended the father's visitation indefinitely and reduced his support obligation, subject to recalculation upon reemployment. The father made regular payments at the reduced amount but had arrearages, made sporadic efforts to contact the child, and did not petition to reinstate visitation. The mother then petitioned to terminate his

parental rights; the district court found abandonment based primarily on his failure to seek reinstatement of visitation.

PROCEDURAL HISTORY

The Etowah District Court terminated the father's parental rights after finding that he had abandoned the child and had failed to provide adequate support or maintain contact. The Alabama Court of Civil Appeals affirmed without opinion, while its presiding judge dissented. The Supreme Court of Alabama granted certiorari, reversed, and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Court of Civil Appeals was directed to reverse the district court's judgment terminating the father's parental rights and remand the matter to the district court for further proceedings consistent with the opinion, including reconsideration of abandonment on other legally permissible grounds and whether the father was otherwise unable or unwilling to provide for the child's needs.

CASES CITED

- Ex parte Beasley, 564 So. 2d 950, 952, 954 (Ala. 1990)
- Ex parte D.J., 645 So. 2d 303, 306-07 (Ala. 1994)
- Dominex, Inc. v. Key, 456 So. 2d 1047, 1058 (Ala. 1984)
- In re T.M.A., 590 So. 2d 298, 299 (Ala. Civ. App. 1991)
- A.S. v. W.J.T., 984 So. 2d 1196 (Ala. Civ. App. 2007)
- A.J.H.T. v. K.O.H., 983 So. 2d 394 (Ala. Civ. App. 2007)
- In re Colbert, 474 So. 2d 1143, 1145 (Ala. Civ. App. 1985)
- Ex parte Perkins, 646 So. 2d 46, 47 (Ala. 1994)
- Ex parte T.V., 971 So. 2d 1, 4 (Ala. 2007)
- Ex parte Fann, 810 So. 2d 631, 633 (Ala. 2001)
- Phillips v. Phillips, 622 So. 2d 410, 412 (Ala. Civ. App. 1993)
- Eubanks v. Hale, 752 So. 2d 1113, 1144-45 (Ala. 1999)
- Washington v. State, 922 So. 2d 145, 158 (Ala. Crim. App. 2005)
- J.E. v. V.C.E., 1 So. 3d 1001 (Ala. Civ. App. 2006)
- W.L.H. v. B.L.M., 829 So. 2d 173, 175-76 (Ala. Civ. App. 2002)
- S.M.W. v. J.M.C., 679 So. 2d 256, 258 (Ala. Civ. App. 1996)
- D.C. v. J.C., 842 So. 2d 17, 20 (Ala. Civ. App. 2002)
- A.R.E. v. E.S.W., 702 So. 2d 138 (Ala. Civ. App. 1997)
- In re Beasley, 564 So. 2d 959, 960 (Ala. Civ. App. 1990)

- Sutton v. Elrod, 724 So. 2d 551 (Ala. Civ. App. 1998)
- Miller v. Knight, 562 So. 2d 274 (Ala. Civ. App. 1990)
- Talley v. Oliver, 628 So. 2d 690 (Ala. Civ. App. 1993)
- Thornton v. Thornton, 519 So. 2d 960 (Ala. Civ. App. 1987)
- Ex parte F.P., 857 So. 2d 125 (Ala. 2003)

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