

SUPREME COURT OF VERMONT

In re G.F.

181 Vt. 593 (2007) · Decided February 23, 2007

SUMMARY

The Vermont Supreme Court affirmed termination of the parents’ residual parental rights to three children. The court held that the trial court’s failure to make an express finding under the Indian Child Welfare Act was harmless beyond a reasonable doubt because the record overwhelmingly supported the required finding of likely serious emotional or physical harm from continued parental custody. The court also rejected challenges concerning consideration of alternatives to termination and the father’s earlier requests for appointed counsel.

CASE DETAILS

COURT	Supreme Court of Vermont
JURISDICTION	Vermont
DECIDED	February 23, 2007
DISPOSITION	affirmed
PROCEDURAL POSTURE	Parents separately appealed from an Orleans Family Court judgment terminating their residual parental rights to three children. The State also sought additional ICWA findings after judgment.
STANDARD OF REVIEW	For the omission of an ICWA § 1912(f) finding, harmless error is reviewed under a harmless-beyond-a-reasonable-doubt standard. The court also declined to consider father's constitutional and counsel arguments because they were not presented to the family court.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Mother, Father v. State of Vermont

TOPICS

- indian child welfare act
- termination of parental rights
- family law procedure
- harmless error
- appellate procedure

PRACTICE AREAS

- family law
- juvenile law
- Indian Child Welfare Act
- appellate procedure
- constitutional law

QUESTIONS PRESENTED

1. Whether the family court's failure to expressly make the beyond-a-reasonable-doubt determination required by 25 U.S.C. § 1912(f) required reversal of the termination judgment.
2. Whether the family court was required to consider less drastic alternatives, such as long-term foster care or guardianship, after finding the parents unfit and unable to resume parental responsibilities.
3. Whether the family court violated father's constitutional or statutory rights by denying his initial requests for appointment of counsel before the termination petition was filed.

HOLDINGS

1. A state court's failure expressly to make the ICWA § 1912(f) determination under the beyond-a-reasonable-doubt standard may constitute harmless error. Applying a harmless-beyond-a-reasonable-doubt standard, the omission was harmless because the evidence overwhelmingly supported the required finding that continued custody by mother would likely result in serious emotional or physical damage to the children.
2. Once the court determines that a parent is unfit, cannot resume parental responsibilities within a reasonable time, and that state custody is in the child's best interests, it need not consider or explain why it rejected less restrictive alternatives to termination.
3. The court found no reversible error in denying father's initial requests for counsel because he did not present adequate grounds for appointment, failed to preserve the constitutional arguments, and later received counsel when termination proceedings were initiated.

KEY QUOTATIONS

“We think a “harmless beyond a reasonable doubt” review standard best implements the congressional purpose of keeping Indian families together whenever possible. Thus, we adopt it for harmless error analysis with respect to the requirements of § 1912(f).” (181 Vt. at 596)

“Thus, we can say that the absence of a § 1912(f) finding was harmless beyond a reasonable doubt.” (181 Vt. at 597)

FACTUAL BACKGROUND

The children, ages eight, nine, and eleven during the proceedings, entered DCF custody after police found them locked outside their home while mother was present and acknowledged marijuana use. The record showed chronic neglect, parental substance abuse, domestic violence, unstable housing, and the parents' failure to progress under reunification case plans. The children made substantial progress in foster care, while evidence indicated that returning them to mother's custody would cause serious emotional or physical harm. The children and mother were recognized as members of the Choctaw Nation of Oklahoma, but neither had meaningful contact with the Tribe or Native culture, and the Tribe did not intervene.

PROCEDURAL HISTORY

The children were placed in DCF custody in January 2005. Mother stipulated to CHINS adjudication and disposition, while father failed to appear at the initial CHINS proceedings. DCF filed termination petitions in December 2005, and after a multi-day hearing the family court terminated both parents' residual parental rights. The State's post-judgment motion for an express finding under the Indian Child Welfare Act was denied. The Vermont Supreme Court affirmed; a motion for reargument was denied on April 9, 2007.

DISPOSITION

affirmed

CASES CITED

- In re M.C.P., 153 Vt. 275, 571 A.2d 627 (1989)
- In re M.R.G., 97 P.3d 1085 (Mont. 2004)
- In re M.D.M., 59 P.3d 1142 (Mont. 2002)
- In re Enrique P., 709 N.W.2d 676 (Neb. Ct. App. 2006)
- In re J.J.G., 83 P.3d 1264 (Kan. Ct. App. 2004)
- In re Riva M., 286 Cal. Rptr. 592 (Ct. App. 1991)
- In re T.R., 163 Vt. 596, 653 A.2d 777 (1994) (mem.)
- In re T.E., 155 Vt. 172, 582 A.2d 160 (1990)
- State v. Carter, 164 Vt. 545, 674 A.2d 1258 (1996)
- In re T.T., 2005 VT 30, ¶ 7, 178 Vt. 496, 872 A.2d 234 (mem.)
- In re L.A., 154 Vt. 147, 574 A.2d 782 (1990)
- In re A.G., 2004 VT 125, ¶ 25, 178 Vt. 7, 868 A.2d 692
- Lassiter v. Department of Social Services, 452 U.S. 18 (1981)
- Mathews v. Eldridge, 424 U.S. 319 (1976)