

SUPREME COURT OF UTAH

Office of the Guardian ad Litem v. H.M., 2007 UT 21

154 P.3d 835 (Utah 2007) · Decided February 23, 2007

SUMMARY

The Utah Supreme Court reviewed an appeal from a juvenile court permanency order returning most of eleven children to their mother's custody. The court held that the order was final and appealable, that the juvenile court applied the required child-safety standard, and that exclusion of the Guardian ad Litem's expert testimony under the Utah Rules of Juvenile Procedure was erroneous but harmless. The permanency order was affirmed.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Justice Durrant; Chief Justice Durham; Associate Chief Justice Wilkins; Justice Parrish; Justice Nehring
JURISDICTION	Utah
DECIDED	February 23, 2007
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Office of the Guardian ad Litem appealed a juvenile court permanency order directly to the Utah Supreme Court after the court of appeals certified the case before final judgment. The permanency order returned custody of all but two children to their mother and terminated the Department of Child and Family Services' custody.
STANDARD OF REVIEW	Finality and appealability were determined independently by the Supreme Court. The legal standard applied at the permanency hearing and interpretation of the juvenile-procedure rule were reviewed for correctness. Exclusion of a proffered witness is reviewed for abuse of discretion, and evidentiary error is harmful only if reasonably likely to have affected the outcome.
PRECEDENTIAL VALUE	Published Utah Supreme Court opinion; precedential.
PARTIES	Office of the Guardian ad Litem v. H.M., J.D.K.

TOPICS

- family law procedure
- child custody
- final judgment rule
- appellate procedure
- evidence

PRACTICE AREAS

Family law

Juvenile law

Appellate procedure

Evidence

QUESTIONS PRESENTED

1. Whether the permanency order terminating DCFS custody and returning children to a parent was final and appealable.
2. Whether the juvenile court applied the statutory safety standard in determining that the children could be returned to Mother's custody.
3. Whether the juvenile court erred by applying Utah Rule of Juvenile Procedure 20A(h)(1), rather than Rule 46, to exclude the GAL's expert witness from the permanency hearing.
4. Whether exclusion of the expert testimony was harmful error or violated the children's due process rights.

HOLDINGS

1. A permanency order that terminates DCFS custody, ends reunification services, and returns a minor to a parent's custody is final and appealable, even when the juvenile court retains jurisdiction and orders continuing protective services or counseling.
2. At a permanency hearing, the juvenile court must determine whether the minor may safely be returned to the parent's custody under Utah Code section 78-3a-312(2)(a); substantial compliance with the service plan is not a substitute for the safety determination.
3. Utah Rule of Juvenile Procedure 20A(h)(1), which governs expert disclosure for adjudication trials or hearings, does not apply to permanency hearings. Permanency hearings are disposition hearings governed by Rule 46, and the civil-procedure expert-discovery provisions in Rules 26 and 37 do not apply.
4. The juvenile court erred by treating Rule 20A(h)(1) as mandating exclusion of the GAL's expert testimony, but the error was harmless because the proffered testimony was cumulative and did not violate due process.

KEY QUOTATIONS

"We conclude that permanency orders such as this that terminate DCFS's custody of a minor, end reunification services, and return the minor to the custody of a parent are final for purposes of appellate review." (154 P.3d at 842)

"A permanency hearing is not an adjudication trial or hearing to which rule 20A(h)(1) applies, but is instead a type of disposition hearing to which rule 46 of the Utah Rules of Juvenile Procedure applies." (154 P.3d at 849)

"We therefore conclude that the juvenile court had discretion in the context of the permanency hearing with respect to deciding whether to admit or exclude Dr. Goldsmith's expert testimony." (154 P.3d at 850)

FACTUAL BACKGROUND

Mother and Father had eleven children, and the juvenile court adjudicated the first ten abused and neglected and the youngest a sibling at risk. Most of the children were removed from Mother's custody after multiple instances of abuse and neglect; Mother received reunification services, while Father had never had physical custody and was subject to a no-contact order. After an initial ninety-day extension of reunification services, the juvenile court held a further permanency hearing and found that all children except S.K. and A.K. could safely be returned to Mother, provided family-preservation services continued. The GAL sought to present expert testimony concerning Mother's acknowledgment of past abuse, but the juvenile court excluded the testimony as untimely.

PROCEDURAL HISTORY

The juvenile court adjudicated the children abused, neglected, or at risk and initially ordered reunification services. After an April 2005 permanency hearing, the court extended reunification services for ninety days. Following the original judge's recusal, a second judge held a July 2005 permanency hearing and ordered that all children except S.K. and A.K. be returned to Mother. The GAL appealed, challenging finality, the legal standard applied to return the children, and exclusion of its expert witness; the court of appeals certified the case to the Utah Supreme Court.

DISPOSITION

affirmed

CASES CITED

- Irvin v. State (State ex rel. S.M.), 2006 UT 75, 154 P.3d 787
- In re Fox, 2004 UT 20, 89 P.3d 127
- State ex rel. M.W., 2000 UT 79, 12 P.3d 80
- State ex rel. E.M., 922 P.2d 1282 (Utah Ct. App. 1996)
- State ex rel. A.H. v. Mr. & Mrs. H., 716 P.2d 284 (Utah 1986)
- State ex rel. H.J., 1999 UT App 238, 986 P.2d 115
- State ex rel. M.V., 937 P.2d 1049 (Utah Ct. App. 1997)
- State ex rel. J.H., 2006 UT App 205, 138 P.3d 70
- In re S.K., 1999 UT App 261, 987 P.2d 616
- State ex rel. J.J.T., 877 P.2d 161 (Utah Ct. App. 1994)
- Gerbich v. Numed, Inc., 1999 UT 37, 977 P.2d 1205
- Hardy v. Hardy, 776 P.2d 917 (Utah Ct. App. 1989)
- Berrett v. Denver & Rio Grande Western Railroad, 830 P.2d 291 (Utah Ct. App. 1992)
- State ex rel. K.M., 965 P.2d 576 (Utah Ct. App. 1998)
- State ex rel. W.S., 939 P.2d 196 (Utah Ct. App. 1997)
- Rehn v. Rehn, 1999 UT App 41, 974 P.2d 306
- Jensen v. IHC Hosps., Inc., 2003 UT 51, 82 P.3d 1076

