

DISTRICT OF COLUMBIA COURT OF APPEALS

In re Sa.C., Ch.Y., & K.C.; S.C., Appellant

In re Sa.C., Ch.Y., & K.C.; S.C., 178 A.3d 460 (D.C. 2018) · No. 17-FS-934, 17-FS-935, & 17-FS-1016 ·

Decided February 8, 2018

SUMMARY

The District of Columbia Court of Appeals denied motions to dismiss and motions for summary affirmance in consolidated neglect-case appeals involving a change in permanency goals from reunification to adoption. The court held that the procedure required by In re Ta.L. applied retroactively to the still-pending case and that the subsequent permanency-goal order was immediately appealable.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Per Curiam; Beckwith, Associate Judge; Easterly, Associate Judge; Washington, Senior Judge
JURISDICTION	District of Columbia
DECIDED	February 8, 2018
DOCKET	17-FS-934, 17-FS-935, & 17-FS-1016
DISPOSITION	other
PROCEDURAL POSTURE	S.C. appealed consolidated orders affirming a magistrate judge's post-hearing change of the permanency goal for her three children from reunification to adoption. The guardian ad litem and the District moved to dismiss or, alternatively, for summary affirmance.
STANDARD OF REVIEW	The opinion applies the District of Columbia's firm rule of retroactivity and discusses the discretionary law-of-the-case doctrine; it does not state a separate conventional standard of appellate review.
PRECEDENTIAL VALUE	published and precedential
PARTIES	S.C. v. Guardian ad litem for Sa.C., Ch.Y., & K.C., District of Columbia

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QUESTIONS PRESENTED

1. Whether the magistrate judge erred by holding an evidentiary hearing under *In re Ta.L.* and applying that decision to a neglect case that was pending when *In re Ta.L.* was issued.
2. Whether the initial permanency-goal change became final, or became binding under the law-of-the-case doctrine, such that *In re Ta.L.* did not apply.
3. Whether S.C. was entitled to an immediate appeal from the new permanency-goal change order.
4. Whether the guardian ad litem's and the District's motions to dismiss or for summary affirmance should be granted.

HOLDINGS

1. The magistrate judge did not err by following the procedure established in *In re Ta.L.* and holding an evidentiary hearing on the permanency-goal change because the neglect case was still pending when *In re Ta.L.* was issued.
2. The initial adverse permanency-goal change did not become final for purposes of the retroactivity analysis merely because S.C. did not appeal that initial order.
3. The law-of-the-case doctrine did not alter the retroactivity analysis and did not preclude reconsideration of the permanency-goal change in light of the change in governing law.
4. S.C. was entitled to an immediate appeal from the new permanency-goal change order.

KEY QUOTATIONS

"We hold that the magistrate judge did not err in following the procedure set forth in In re Ta.L. for permanency goal changes and holding such a hearing." (178 A.3d at 460-61)

"This court has adopted the "firm rule of retroactivity," see Davis v. Moore, 772 A.2d 204, 230 (D.C. 2001) (en banc), which requires it to apply a new judicial decision to any case pending in the trial court or on direct appeal." (178 A.3d at 461)

FACTUAL BACKGROUND

S.C.'s three children were involved in a neglect case in which the permanency goal was changed from reunification to adoption. After the Court of Appeals issued *In re Ta.L.*, the magistrate judge held the evidentiary hearing required by that decision and again determined that adoption was the appropriate permanency goal.

PROCEDURAL HISTORY

Before *In re Ta.L.* was decided, the magistrate judge summarily changed the children's permanency goal from reunification to adoption. After *In re Ta.L.*, the magistrate judge held an evidentiary hearing at S.C.'s request and again ordered the change; an associate judge affirmed on judicial review, and S.C. filed consolidated appeals.

The Court of Appeals denied the motions to dismiss and the alternative motions for summary affirmance and directed the guardian ad litem and the District to advise whether they intended to file briefs.

DISPOSITION

other

REMAND INSTRUCTIONS

The motions to dismiss and alternative motions for summary affirmance were denied. The guardian ad litem and the District were ordered to advise the court within ten days whether they intended to file their motions as their briefs, or alternatively to file briefs within thirty days.

CASES CITED

- In re Ta.L., 149 A.3d 1060 (D.C. 2016) (en banc)
- Davis v. Moore, 772 A.2d 204 (D.C. 2001) (en banc)
- Griffith v. Kentucky, 479 U.S. 314 (1987)
- Harper v. Virginia Department of Taxation, 509 U.S. 86 (1993)
- Kleinbart v. United States, 604 A.2d 861 (D.C. 1992)
- Minick v. United States, 506 A.2d 1115 (D.C. 1986)
- In re Baby Boy C., 630 A.2d 670 (D.C. 1993)
- Oliver T. Carr Management, Inc. v. National Delicatessen, Inc., 397 A.2d 914 (D.C. 1979)
- Linkletter v. Walker, 381 U.S. 618 (1965)
- Stovall v. Denno, 388 U.S. 293 (1967)
- Chevron Oil Co. v. Huson, 404 U.S. 97 (1971)

OPINION

PER CURIAM.

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District of Columbia

Court of Appeals

FEB. 8, 2018

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IN RE Sa.C., Ch.Y., & K.C.;

S.C., Appellant. 2015 NEG 147

2015 NEG 148

2012 NEG 138

BEFORE: Beckwith and Easterly, Associate Judges, and Washington, Senior Judge.

ORDER

(FILED – February 8, 2018)

In this neglect case, S.C. appeals from a permanency goal change from reunification to adoption, made after an evidentiary hearing held pursuant to *In re Ta.L.*, 149 A.3d 1060 (D.C. 2016) (en banc). On consideration of the motion to dismiss or, in the alternative, motion for summary affirmance filed by the guardian ad litem (GAL) for the minor children; S.C.’s opposition to the GAL’s motion; the District of Columbia’s motion to dismiss or, in the alternative, motion for summary affirmance; S.C.’s brief and appendix; and the record on appeal; and it appearing the GAL requested a published decision on the retroactive application of *In re Ta.L.*; and it further appearing a published order will aid both lawyers and judges in handling neglect cases; it is

ORDERED that the GAL’s and the District’s motions to dismiss are hereby denied.

Prior to the issuance of this court’s en banc decision in *In re Ta.L.*, the magistrate judge presiding over this neglect case summarily changed the permanency goals of S.C.’s three minor children from reunification to adoption. After the issuance of *In re Ta.L.*, the magistrate judge, upon S.C.’s motion, held an evidentiary hearing pursuant to *In re Ta.L.* to consider whether the permanency goal should be changed. Thereafter, the magistrate judge issued a written order

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analyzing the evidence in light of the standards announced in *In re Ta.L.* and again determined that the permanency goal should be changed to adoption. S.C. filed a motion for judicial review, and the reviewing associate judge affirmed. S.C. then filed these consolidated appeals. After S.C. filed her brief, the GAL and the District moved for dismissal based on perceived errors in the magistrate judge’s decision to hold what the parties and the Superior Court appear to uniformly call a —retroactive evidentiary hearing. We hold that the magistrate judge did not err in following the procedure set forth in *In re Ta.L.* for permanency goal changes and holding such a hearing.¹

This court has adopted the —firm rule of retroactivity,¹ see *Davis v. Moore*, 772 A.2d 204, 230 (D.C. 2001) (en banc), which requires it to apply a new judicial decision to any case pending in the trial court or on direct appeal. As S.C.’s neglect case was still being litigated in the trial court when *In re Ta.L.* was issued, the trial court properly sought to follow *In re Ta.L.* in making its decision to change the permanency goal from reunification to adoption.²

Despite the GAL’s and the District’s arguments to the contrary, the initial adverse change in the permanency goal from reunification to adoption did not become final under *Davis* such that *In re Ta.L.* had no application to this case. The GAL and the District highlight S.C.’s failure to appeal the initial permanency goal change, but this fact has no bearing on the retroactivity analysis under *Davis*. For purposes of a retroactivity analysis, finality occurs at the time of entry of a final judgment concluding litigation in a case. See *Davis*, 772 A.2d at 226 ([A]ll newly declared rules of law must be applied retroactively to all criminal cases pending on direct review or not yet final — with no exception for cases in which the new rule constitutes a ‘clear break’ with the past.³) (internal footnote omitted) (quoting *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987)); *Davis*, 772 A.2d at 226 n.20 (defining —final⁴ as the point —in which a judgment of conviction has been

1

We express no view on the merits of the decision to change the permanency goal from reunification to adoption.

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At the time the magistrate judge held the evidentiary hearing regarding changing the permanency goal, no proceedings had been initiated to terminate S.C.’s parental rights. We acknowledge that the termination of a parent’s rights is not contingent on a permanency goal change, and we do not address what impact *In re Ta.L.* has on cases still pending in the trial court or this court where the permanency goal was changed without the requisite evidentiary hearing but the parent’s rights have been terminated.

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rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied⁵) (quoting *Griffith*, 479 U.S. at 321 n.6); see also *Harper v. Virginia Dep’t of Taxation*, 509 U.S. 86, 97 (1993) ([W]hen this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full

retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule.)).

Similarly, the law of the case doctrine does not inform our retroactivity analysis under Davis. The law of the case doctrine reflects distinct concerns about relitigating issues based on the same legal and factual backdrop and is, in any event, discretionary. See *Kleinbart v. United States*, 604 A.2d 861, 866 (D.C. 1992) (the law of the case doctrine —merely expresses the practice of courts generally to refuse to reopen what has been decided and is not a limit to their power)) (internal quotation omitted); *Minick v. United States*, 506 A.2d 1115, 1117 (D.C. 1986) (—The doctrine of the law of the case conserves judicial time and resources by discouraging multiple attempts to prevail on a single question)). An order changing a permanency goal may become law of the case, but even under that doctrine, a trial court may reconsider or depart from a prior final ruling if reconsideration is justified because of a material change in the facts or the law. See *In re Baby Boy C.*, 630 A.2d 670, 678 (D.C. 1993) (explaining that a trial court’s ruling is generally binding unless it is —clearly erroneous in light of newly presented facts or a change in substantive law)) (quoting *Minick*, 506 A.2d at 1117).

The GAL’s argument that this court —chosell in *In re Ta.L.* not to retroactively apply its decision is flawed. Nothing in *In re Ta.L.* suggests the en banc court did not intend its holding regarding permanency goal changes to apply to neglect cases still pending in the Superior Court; nor, in light of our —firm rule of retroactivity under Davis, can our silence on this point be read as leaving the issue subject to question. See *Davis*, 772 A.2d at 231-32 (—The Supreme Court did not rethink retroactivity’ and reject the *Linkletter–Stovall–Chevron* doctrine in favor of a firm rule of retroactivity’ only to revert back to that doctrine every time it has to decide whether to apply a new rule of law to the parties before it.)).³

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In *Linkletter v. Walker*, 381 U.S. 618 (1965), and its progeny—*Stovall v. Denno*, 388 U.S. 293 (1967), and *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971)—the Supreme Court employed a case-by-case balancing test to decide whether a new rule of law applied retroactively.

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Finally, we reject the argument that S.C. could not immediately appeal the new permanency goal change order. Because this order (1) followed an evidentiary hearing held pursuant to *In re Ta.L.*, (2) approved a change in the permanency goal from reunification to adoption, and (3) superseded any prior order changing the permanency goal, S.C. was entitled to an immediate appeal. See *In re Ta.L.*, 149 A.3d at 1076 ([A] change in the permanency goal of a neglect case from reunification to adoption is an order subject to immediate appellate review.¶).

Addressing the GAL's and the District's alternative requests for summary affirmance, it is

FURTHER ORDERED that these requests are denied. See *Oliver T. Carr Mgmt., Inc. v. Nat'l Delicatessen, Inc.*, 397 A.2d 914, 915 (D.C. 1979). It is

FURTHER ORDERED that the GAL and the District shall, within ten days of the date of this order, advise this court if they intend to file their motions as their briefs. Alternatively, the GAL and the District shall, within thirty days of the date of this order, file their briefs.

PER CURIAM