

SUPREME COURT OF ARKANSAS

Jose Chacon v. Arkansas Department of Human Services and Minor Children

2020 Ark. 257 (2020) · No. CV-19-978 · Decided June 18, 2020

SUMMARY

This is a dissenting opinion concerning the Arkansas Supreme Court's denial of review in a dependency-neglect and parental-rights termination proceeding. The dissent argues that the incarcerated biological father was deprived of statutory counsel and constitutional due process when he was not meaningfully included in the proceedings before the termination hearing.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Josephine Linker Hart, Associate Justice
JURISDICTION	Arkansas
DECIDED	June 18, 2020
DOCKET	CV-19-978
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Dissent from the Arkansas Supreme Court's denial of Chacon's petition for review of an Arkansas Court of Appeals decision affirming the termination of his parental rights.
STANDARD OF REVIEW	The dissent addresses appellate issue preservation and whether a procedural bar may be applied to a specifically asserted constitutional due-process claim.
PRECEDENTIAL VALUE	Dissenting opinion; nonbinding
PARTIES	Jose Chacon v. Arkansas Department of Human Services, Minor Child, J.T.

TOPICS

- termination of parental rights
- family law procedure
- procedural due process
- due process
- appellate procedure

PRACTICE AREAS

family law

constitutional law

appellate procedure

civil rights

QUESTIONS PRESENTED

1. Whether Chacon preserved his constitutional due-process challenge to the termination of his parental rights by asserting the deprivation during the termination hearing.
2. Whether a procedural preservation bar may be applied when a parent specifically asserts that the termination proceedings violated his constitutional due-process rights.

HOLDINGS

1. In Justice Hart's dissenting view, Chacon sufficiently raised his due-process claim during the termination hearing, and the Court of Appeals erred by refusing to address it as unpreserved.

KEY QUOTATIONS

“Arkansas Dependency-Neglect proceedings cannot ignore a child’s father simply because he is incarcerated.” (at 1)

“Application of a procedural bar cannot stand against the plain assertion of a specific constitutional right.” (at 2)

FACTUAL BACKGROUND

The Department of Human Services knew that Chacon was the biological father of J.T. more than a year before filing its petition to terminate his parental rights. Chacon was incarcerated and, apart from a paternity test in October 2017, apparently received no information from DHS about the dependency-neglect proceedings until he was appointed counsel on July 17, 2019, nearly three months after the termination petition was filed and approximately two weeks before the termination hearing. At the hearing, his counsel argued that proceeding without notice, case-plan information, or meaningful participation violated Chacon's constitutional due-process rights.

PROCEDURAL HISTORY

The Sebastian County Circuit Court granted the Arkansas Department of Human Services' petition to terminate Chacon's parental rights. The Arkansas Court of Appeals declined to address Chacon's due-process argument, concluding that it was not preserved below. Justice Hart dissented from the Arkansas Supreme Court's denial of Chacon's petition for review, asserting that the constitutional issue had been sufficiently raised during the termination hearing.

DISPOSITION

writ_denied

CASES CITED

- Chacon v. Arkansas Dep't of Humans Servs., 2020 Ark. App. 277

OPINION

PER CURIAM.

Cite as 2020 Ark. 257 SUPREME COURT OF ARKANSAS No.: CV-19-978 Opinion Delivered: June 18, 2020 JOSE CHACON APPEAL FROM THE SEBASTIAN APPELLANT COUNTY CIRCUIT COURT [NO. 66FJV-16-544] V. HONORABLE LEIGH ZUERKER, ARKANSAS DEPARTMENT OF HUMAN JUDGE SERVICES AND MINOR CHILD, J.T. APPELLEES DISSENTING OPINION. JOSEPHINE LINKER HART, Associate Justice I dissent from this court's denial of Chacon's petition for review of the decision by the Arkansas Court of Appeals in Chacon v. Arkansas Dep't of Humans Servs., 2020 Ark.

App. 277. Arkansas Dependency-Neglect proceedings cannot ignore a child's father simply because he is incarcerated. Chacon has raised an important issue concerning the statutory right to counsel and the constitutional due process rights of fathers in Arkansas dependency-neglect proceedings.

The proceedings in this case resulted in the termination of Chacon's parental rights to his child, J.T. But despite the fact that DHS knew Chacon to be J.T.'s biological father well over a year before it filed its petition to terminate parental rights, Chacon was not appointed counsel until just two weeks before the hearing on DHS's termination petition began.

It appears that, outside of a paternity test in October 2017, Chacon did not receive any information whatsoever from DHS about the dependency-neglect proceedings (including the results of that paternity test)—all the way up until he was appointed counsel on July 17, 2019, nearly three months after the TPR petition had been filed.

On appeal, Chacon argues that essentially excluding him from the dependency- neglect proceedings all the way up until it was time to terminate his parental rights amounts to a due process violation. However, the Court of Appeals refused to address Chacon's argument on appeal, concluding it was not preserved for appellate review at the circuit court level. This decision was in error.

At the hearing on the Department's TPR petition, Chacon's counsel argued against granting the petition as follows: [Chacon] has been incarcerated this whole time not knowing that he was in fact determined by this Court to be the legal father of [JT], and he's received nothing as far as a case plan or other court orders that the case worker has testified to here today....[T]he evidence and testimony before the court [have] just been a complete injustice as to [Chacon's] constitutional due[-]process rights for this court to go forward on the petition and grant the termination....

It's a miscarriage of justice that the Cherokee Nation representative and any of the DHS case workers never sent Mr. Chacon anything on this case.... [He] had no actual knowledge of what was going on in these proceedings.... So in addition to what I believe are multiple examples of depravation of his basic due[-]process rights to terminate his parental rights of [JT]... it's clear that [DHS] had no intention of really doing anything more than naming Mr. Chacon in pleadings in their attempt to follow this Court's order that DNA testing be done....

[T]he infringements on his constitutional due[-]process rights cannot be overlooked or outweighed and I would argue that that is paramount to severing parent's rights in these cases. End of Excerpt. After the TPR hearing, the circuit judge took the matter under advisement, and eventually issued an order granting the Department's TPR petition.

The order did not specifically address Chacon's due process argument, but granted the petition. Concluding 2 that Chacon failed to properly raise this issue is simply inapposite. Application of a procedural bar cannot stand against the plain assertion of a specific constitutional right.

Accordingly, I dissent. 3