

SUPREME COURT OF LOUISIANA

State of Louisiana in the Interest of H.M.D. and J.J.W.

26 So. 3d 129 (La. 2010) · No. 2009-CJ-2373 · Decided January 8, 2010

SUMMARY

The Louisiana Supreme Court held that the five-day service requirement under Louisiana Children's Code article 1021 applies to the initial answer hearing in a termination-of-parental-rights proceeding, not to later trial notices. The court granted review, vacated the court of appeal's judgment, and remanded for consideration of the parent's remaining assignments of error.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Louisiana
DECIDED	January 8, 2010
DOCKET	2009-CJ-2373
DISPOSITION	writ_granted
PROCEDURAL POSTURE	The State sought review of a court of appeal judgment reversing a juvenile court judgment terminating J.D.'s parental rights and remanding for further proceedings.
STANDARD OF REVIEW	Abuse of discretion for the juvenile court's ruling on the motion for continuance.
PRECEDENTIAL VALUE	Published Louisiana Supreme Court opinion; precedential.
PARTIES	State of Louisiana, through the Department of Social Services, Office of Community Services v. J.D.

TOPICS

termination of parental rights service of process family law procedure appellate procedure
statutory interpretation

PRACTICE AREAS

family law juvenile law termination of parental rights appellate procedure

QUESTIONS PRESENTED

1. Whether Louisiana Children's Code article 1021 requires service of citation at least five days before every hearing in a termination-of-parental-rights proceeding, including the trial.
2. Whether the juvenile court abused its discretion by denying J.D.'s motion for a continuance after she received notice of the trial two days before it began.

HOLDINGS

1. Article 1021's requirement that service of citation be made not less than five days before the hearing applies to the initial answer hearing at which the parent answers the termination petition and the trial date is set; it does not require subsequent notices to comply with the same five-day service requirement.
2. The juvenile court did not abuse its discretion by denying J.D.'s request for a continuance.

KEY QUOTATIONS

“proper citation is the foundation of all actions.” (26 So. 3d at 130)

“Read in context, it is obvious that the “hearing” referred to by La. Ch.Code art. 1021 is the initial “answer hearing” at which the trial date is set.” (26 So. 3d at 130)

FACTUAL BACKGROUND

The State filed a petition to terminate J.D.'s parental rights to her two minor children. J.D. and her counsel appeared at the initial answer hearing, where the trial date was set, but J.D. was served with notice of the eventual trial only two days before it began and did not attend. Her appointed counsel requested a continuance based on inadequate notice, but the juvenile court denied the request and terminated her parental rights after trial.

PROCEDURAL HISTORY

The juvenile court denied J.D.'s oral motion for a continuance based on allegedly inadequate notice of the termination trial, proceeded with trial in her absence, and terminated her parental rights. The court of appeal held that Louisiana Children's Code article 1021 required five days' notice before the termination hearing, reversed, and remanded. The Supreme Court of Louisiana granted review, vacated the court of appeal's judgment, and remanded to that court to consider J.D.'s remaining assignments of error.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The judgment of the court of appeal was vacated and set aside, and the case was remanded to the court of appeal to consider J.D.'s remaining assignments of error.

CASES CITED

- Naquin v. Titan Indemnity Co., 00-1585 at p. 8 (La. 2/21/01), 779 So. 2d 704, 710
- State of Louisiana in the Interest of S.F., 01-702 at p. 13 (La. App. 5 Cir. 11/14/01), 802 So. 2d 791, 797

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