

COURT OF APPEALS OF GEORGIA

In the Interest of V. D.

303 Ga. App. 155 (Ga. Ct. App. 2010) · Decided March 26, 2010

SUMMARY

The Georgia Court of Appeals affirmed a juvenile court order finding one-year-old V. D. deprived and awarding temporary custody to the Department of Family and Children Services. The court held that the evidence supported findings of current deprivation and parental unfitness despite the absence of specific misconduct by the father, and rejected the father's challenges to the case plan and alleged due process violation.

CASE DETAILS

COURT	Court of Appeals of Georgia
WRITING FOR THE COURT	Barnes, Judge; Miller, C. J.; Andrews, P. J.
JURISDICTION	Georgia
DECIDED	March 26, 2010
DISPOSITION	affirmed
PROCEDURAL POSTURE	The father appealed the juvenile court's final disposition order finding V. D. deprived and awarding temporary custody to the Department of Family and Children Services. He challenged the sufficiency of the evidence of his parental unfitness, the custody award, and the adequacy of notice and due process.
STANDARD OF REVIEW	The appellate court views the evidence in the light most favorable to the juvenile court's judgment and determines whether any rational trier of fact could have found deprivation by clear and convincing evidence. The appellate court does not weigh the evidence or determine witness credibility and defers to the juvenile court's factfinding.
PRECEDENTIAL VALUE	Published Georgia Court of Appeals opinion; precedential within the scope of Georgia appellate authority.
PARTIES	Father of V. D. v. Department of Family and Children Services

TOPICS

- family law procedure
- child custody
- parental rights
- appellate procedure
- standard of review

PRACTICE AREAS

Family law

Juvenile law

Appellate procedure

Due process

QUESTIONS PRESENTED

1. Whether the juvenile court could find the child deprived and award temporary custody to DFACS without a specific finding that the father was personally unfit.
2. Whether the evidence was sufficient to establish present deprivation and parental unfitness by clear and convincing evidence.
3. Whether the father's due process rights were violated because he did not attend the deprivation hearing and was not provided financial assistance for travel.

HOLDINGS

1. A juvenile court may award temporary custody of a child based on present deprivation when the evidence establishes parental unfitness, including unintentional unfitness, resulting in abuse or neglect; the absence of a separate express finding directed exclusively to the father did not require reversal here.
2. The evidence was sufficient for a rational trier of fact to find present deprivation and parental unfitness by clear and convincing evidence, and the juvenile court did not err in awarding temporary custody to DFACS.
3. The father's due process claim was meritless because he did not show that he lacked notice or an opportunity to be heard, and he presented no evidence that he had requested financial assistance for travel.

KEY QUOTATIONS

“Under Georgia law, a deprived child is one who is “without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child’s physical, mental, or emotional health or morals.”” (303 Ga. App. at 157)

““[I]t is the child’s welfare and not who is responsible for the conditions which amount to deprivation that is the issue.”” (303 Ga. App. at 157)

““Lack of stable housing and lack of support due to a parent’s unstable or irregular employment are appropriate factors in determining deprivation.”” (303 Ga. App. at 158)

““A finding that a child is deprived does not necessarily result in a loss of custody by the parent.”” (303 Ga. App. at 158)

““The fundamental idea of due process is notice and an opportunity to be heard.”” (303 Ga. App. at 159)

FACTUAL BACKGROUND

DFACS took the child into temporary custody shortly after birth because the mother displayed severe mental instability and had a history of child-deprivation concerns, while the father was absent and had not established a relationship with the child or legitimized her. At the relevant hearings, neither parent was employed, stable

housing remained unresolved, DFACS lacked a current address for the couple, and the mother's mental-health issues had not been addressed. The father had been informed of the circumstances but did not attend the initial deprivation hearing and did not seek to legitimate the child until more than two months later.

PROCEDURAL HISTORY

DFACS filed a deprivation complaint and petition after taking the child into custody based primarily on the mother's mental instability and inadequate circumstances. The juvenile court found the child deprived and later entered a disposition order incorporating a case plan and awarding temporary custody to DFACS. The father was present at the final disposition hearing, was appointed counsel, later petitioned to legitimate the child, and appealed the final disposition order. The Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- In the Interest of H. S., 285 Ga. App. 839 (648 SE2d 143) (2007)
- In the Interest of N. D., 286 Ga. App. 236, 239 (1) (648 SE2d 771) (2007)
- In the Interest of M. D., 283 Ga. App. 805, 806 (642 SE2d 863) (2007)
- In the Interest of K. J., 268 Ga. App. 843, 844 (1) (a) (602 SE2d 861) (2004)
- In the Interest of U. B., 246 Ga. App. 328 (1) (540 SE2d 278) (2000)
- In the Interest of L. F., 275 Ga. App. 247, 250-251 (620 SE2d 476) (2005)
- In the Interest of J. S., 295 Ga. App. 861, 864 (673 SE2d 331) (2009)
- In the Interest of E. M., 264 Ga. App. 277 (590 SE2d 241) (2003)
- In the Interest of S. Y., 284 Ga. App. 218, 219 (644 SE2d 145) (2007)
- In the Interest of A. R., 287 Ga. App. 334, 336 (651 SE2d 467) (2007)
- In the Interest of A. J., 269 Ga. App. 580, 581 (1) (604 SE2d 635) (2004)