

SUPREME COURT OF DELAWARE

Green v. Division of Family Services

864 A.2d 921 (Del. 2004) · No. Nos. 590/594, 2003 · Decided December 14, 2004

SUMMARY

The Delaware Supreme Court affirmed termination of the parental rights of a mother and two fathers for failure to plan for their children. The court held that the Interstate Compact on the Placement of Children may apply to placement of dependent children with non-custodial natural parents, including out-of-state parents, in circumstances involving court custody and questions about parental fitness or the need for continuing supervision. The court also rejected the fathers' due process claims and upheld the Family Court's judgments.

CASE DETAILS

COURT	Supreme Court of Delaware
WRITING FOR THE COURT	Berger, Justice; Steele, Chief Justice; Holland, Justice
JURISDICTION	Delaware
DECIDED	December 14, 2004
DOCKET	Nos. 590/594, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from Family Court judgments terminating the parental rights of the mother and two fathers for failure to plan for their children.
STANDARD OF REVIEW	The Supreme Court reviewed the record for clear and convincing evidence supporting termination of parental rights and examined the legal questions concerning interpretation of the ICPC and due process de novo.
PRECEDENTIAL VALUE	precedential
PARTIES	Olin Green, Alfred Gelman, Sharon Taylor v. Division of Family Services, Court-Appointed Special Advocate

TOPICS

- termination of parental rights
- family law procedure
- parental rights
- procedural due process
- statutory interpretation

PRACTICE AREAS

family law

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether the Family Court had clear and convincing evidence that Taylor, Green, and Gelman failed to plan for their children and that termination of parental rights was in the children's best interests.
2. Whether the Interstate Compact on the Placement of Children applies to placement of a dependent child with a non-custodial natural parent residing in another state.
3. Whether applying the ICPC placement and home-study requirements to the non-custodial fathers violated their due process rights.

HOLDINGS

1. The Family Court's termination judgments were supported by clear and convincing evidence that Taylor, Green, and Gelman failed to plan for their children and that termination was in the children's best interests.
2. The ICPC applies to placement of a dependent child with a non-custodial natural parent in circumstances where the court has legal custody and must evaluate the parent's fitness and the need for continuing supervision.
3. Applying the ICPC to Green and Gelman did not violate due process because they could appeal the denials of their home studies in Virginia.

KEY QUOTATIONS

"We hold that the ICPC does apply to non-custodial natural parents in some circumstances, and that the placement requirements of the ICPC do not violate the parents' due process rights." (864 A.2d at 923)

"We decline to follow McComb because the ICPC directs that the Compact be liberally construed to effectuate its purpose." (864 A.2d at 927)

FACTUAL BACKGROUND

Sharon Taylor's four children experienced persistent hygiene, school-attendance, housing, medical, and nutritional problems despite services and case plans provided by social-service agencies. DFS obtained emergency custody in June 2001 after finding no food in the home, and later changed its goal from reunification to termination. The fathers, Olin Green and Alfred Gelman, lived in Virginia; Green made limited efforts and did not cooperate with a Virginia home study, while Gelman's home study was denied because of his criminal record and he later abandoned his Delaware case plan and contact with his child.

PROCEDURAL HISTORY

The Delaware Division of Family Services obtained emergency custody of Sharon Taylor's four children after persistent neglect, inadequate housing, school-attendance problems, and lack of food. Following a three-day hearing, the Family Court terminated Taylor's, Green's, and Gelman's parental rights, finding clear and

convincing evidence of failure to plan and that termination served the children's best interests. The parents appealed to the Supreme Court of Delaware, principally challenging the application of the Interstate Compact on the Placement of Children to the two Virginia-resident fathers and asserting due process violations.

DISPOSITION

affirmed

CASES CITED

- McComb v. Wambaugh, 934 F.2d 474 (3d Cir. 1991)
- Arizona Department of Economic Security v. Leonardo, 200 Ariz. 74, 22 P.3d 513 (Ct. App. 2001)
- Dept. of Children and Families v. Benway, 745 So. 2d 437 (Fla. App. 1999)
- Adoption of Warren, 44 Mass. App. Ct. 620, 693 N.E.2d 1021 (1998)

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