

SUPREME COURT OF SOUTH CAROLINA

Broom v. Jennifer J.

403 S.C. 96 (2013) · Decided May 8, 2013

SUMMARY

The South Carolina appellate court affirmed the termination of a mother's parental rights and the child's adoption by foster parents. Although the court held that the mother was erroneously denied appointed counsel in the private termination proceeding, it concluded that she was not prejudiced because the statutory grounds for termination and the child's best interests were established independently. The court also upheld the findings that the child had remained in foster care for fifteen of the preceding twenty-two months and that the mother had failed to visit, and addressed the admission of bonding-expert testimony.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Hearn, J.; Toal, C.J.; Kittredge, J.; Pleicones, J.; Beatty, J.
JURISDICTION	South Carolina
DECIDED	May 8, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mother appealed a family court order terminating her parental rights and placing custody of the child with the foster parents, arguing that she was denied appointed counsel, that the statutory grounds for termination were not established by clear and convincing evidence, and that the family court improperly admitted undisclosed expert testimony.
STANDARD OF REVIEW	The Supreme Court reviewed the statutory grounds for termination de novo and determined from the record whether clear and convincing evidence supported them. Admission or exclusion of evidence is reviewed for abuse of discretion, and reversal requires both an abuse of discretion and prejudice.
PRECEDENTIAL VALUE	published
PARTIES	Jennifer J. v. Broom

TOPICS

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QUESTIONS PRESENTED

1. Whether the family court erred by terminating Mother's parental rights after she was denied appointed counsel during portions of the termination proceedings.
2. Whether the statutory grounds that the child had been in foster care for fifteen of the most recent twenty-two months and that Mother willfully failed to visit were established by clear and convincing evidence.
3. Whether the family court erred by permitting an undisclosed bonding expert to testify.

HOLDINGS

1. An indigent parent subject to any termination-of-parental-rights proceeding has an absolute statutory right to appointed counsel under South Carolina Code section 63-7-2560(A), regardless of whether the action was filed by DSS or privately. Although Mother was erroneously denied counsel, reversal was unwarranted because she was represented at the final hearing and failed to show prejudice.
2. The statutory ground for termination based on the child having been in foster care for fifteen of the most recent twenty-two months was established by clear and convincing evidence.
3. Mother's failure to visit the child for eight consecutive months, followed by markedly infrequent visitation, constituted a willful failure to visit and established the statutory ground for termination by clear and convincing evidence.
4. The challenge to the bonding expert's testimony was abandoned because Mother cited no supporting authority beyond a rule encouraging information exchange and did not explain how the ruling constituted an abuse of discretion or caused prejudice.

KEY QUOTATIONS

“Thus, while under the United States Constitution and the South Carolina Constitution there is no absolute right to counsel for an indigent parent subject to a TPR proceeding, S.C.Code § 63-7-2560(A) now provides an absolute statutory right to counsel for indigent parents subject to TPR proceedings.” (403 S.C. at 108)

“Accordingly, where the parent erroneously denied counsel was not prejudiced thereby, the denial of counsel is not reversible error.” (403 S.C. at 109)

“Willfulness does not mean that the parent must have some ill-intent towards the child or a conscious desire not to visit; it only means that the parent must not have visited due to her own decisions, rather than being prevented from doing so by someone else.” (403 S.C. at 114)

FACTUAL BACKGROUND

The child was removed from Mother's home at approximately five months old after the home was found in an unsafe and unsanitary condition, Mother and Father admitted cocaine use, and the child tested positive for cocaine. The child remained in foster care with the Brooms for more than four years, while Mother failed to complete her treatment plan promptly and visited the child only thirty-four times out of approximately one hundred permitted minimum visits, including an eight-month period without visitation. By the final hearing, the child was strongly bonded with the Brooms, regarded them as her family, and had made substantial developmental progress in their care.

PROCEDURAL HISTORY

The Pickens County Department of Social Services removed the child from Mother's custody in August 2007 after evidence of neglect and cocaine exposure. After permanency-planning proceedings, the Brooms filed a private termination-of-parental-rights and adoption action in 2009. The family court terminated Mother's parental rights based on the fifteen-of-twenty-two-months foster-care ground and willful failure to visit, denied reconsideration, and Mother appealed. The Supreme Court of South Carolina affirmed.

DISPOSITION

affirmed

CASES CITED

- *Argersinger v. Hamlin*, 407 U.S. 25 (1972)
- *Gideon v. Wainwright*, 372 U.S. 335 (1963)
- *Lassiter v. Department of Social Services of Durham County*, 452 U.S. 18 (1981)
- *Scott v. Illinois*, 440 U.S. 367 (1979)
- *Morrissey v. Brewer*, 408 U.S. 471 (1972)
- *Mathews v. Eldridge*, 424 U.S. 319 (1976)
- *Gagnon v. Scarpelli*, 411 U.S. 778 (1973)
- *South Carolina Department of Social Services v. Vanderhorst*, 287 S.C. 554, 340 S.E.2d 149 (1986)
- *Briscoe v. State, Department of Human Services*, 323 Ark. 4, 912 S.W.2d 425 (1996)
- *In re People ex rel. S.D. Department of Social Services*, 691 N.W.2d 586 (S.D. 2004)
- *In re Tiffany Marie S.*, 196 W. Va. 223, 470 S.E.2d 177 (1996)
- *In re MN*, 78 P.3d 232 (Wyo. 2003)
- *Richberg v. Dawson*, 278 S.C. 356, 296 S.E.2d 338 (1982)
- *South Carolina Department of Social Services v. Cummings*, 345 S.C. 288, 547 S.E.2d 506 (Ct. App. 2001)
- *Charleston County Department of Social Services v. Marccuci*, 396 S.C. 218, 721 S.E.2d 768 (2011)
- *Loe v. Mother, Father, & Berkeley County Department of Social Services*, 382 S.C. 457, 675 S.E.2d 807 (Ct. App. 2009)
- *South Carolina Department of Social Services v. Cochran*, 356 S.C. 413, 589 S.E.2d 753 (2003)
- *South Carolina Department of Social Services v. Broome*, 307 S.C. 48, 413 S.E.2d 835 (1992)

- South Carolina Department of Social Services v. Smith, 343 S.C. 129, 538 S.E.2d 285 (Ct. App. 2000)
- South Carolina Department of Social Services v. Seegars, 367 S.C. 623, 627 S.E.2d 718 (2006)
- South Carolina Department of Social Services v. M.R.C.L., 390 S.C. 329, 701 S.E.2d 757 (Ct. App. 2010), rev'd on other grounds, 393 S.C. 387, 712 S.E.2d 452 (2011)
- Hunt v. Forestry Commission, 358 S.C. 564, 595 S.E.2d 846 (Ct. App. 2004)
- Fields v. Regional Medical Center Orangeburg, 363 S.C. 19, 609 S.E.2d 506 (2005)
- Hoffman v. Powell, 298 S.C. 338, 380 S.E.2d 821 (1989)

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