

SUPREME COURT OF SOUTH DAKOTA

People of the State of South Dakota, ex rel. South Dakota
Department of Social Services, in the Interests of A.D., Minor Child,
and Concerning D.S.Y.

678 N.W.2d 594 (S.D. 2004), 2004 SD 39 · No. No. 22947 · Decided March 31, 2004

SUMMARY

The Supreme Court of South Dakota affirmed the termination of a father's parental rights over his daughter. The court held that appointed counsel may file a Korth brief in an abuse and neglect appeal when counsel identifies no arguably meritorious issues, because the Anders procedure applies in termination-of-parental-rights appeals. The court rejected the father's individually raised challenges concerning the use of his history, visitation conditions, judicial bias, and alleged church-attendance requirement.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Gilbertson, Chief Justice; Sabers, Justice; Konenkamp, Justice; Zinter, Justice; Meierhenry, Justice
JURISDICTION	South Dakota
DECIDED	March 31, 2004
DOCKET	No. 22947
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed the termination of his parental rights over his ten-year-old daughter. His appointed counsel filed a Korth brief identifying no arguably meritorious issues while presenting issues requested by the client.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	D.S.Y. v. State of South Dakota, ex rel. South Dakota Department of Social Services, in the Interests of A.D., Minor Child

TOPICS

- termination of parental rights
- parental rights
- family law procedure
- appellate procedure
- standard of review

PRACTICE AREAS

family law

termination of parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether appointed counsel may file a Korth brief in an appeal from an order terminating parental rights when counsel identifies no nonfrivolous issues but presents issues requested by the client.
2. Whether the circuit court improperly considered father's prior domestic abuse charges and prison sentence in terminating his parental rights.
3. Whether DSS improperly conditioned visitation on father's participation in aftercare, NA, AA, and counseling.
4. Whether the circuit court was impermissibly biased against father.
5. Whether father's freedom of religion was violated because a counselor suggested church attendance.

HOLDINGS

1. When appointed counsel represents an indigent parent in a parental-termination appeal and concludes that there are no nonfrivolous issues, counsel may file an Anders-type brief; because Korth defines the Anders procedure in South Dakota, filing a Korth brief was procedurally appropriate.
2. The circuit court properly considered father's past domestic abuse charges and prison sentence, and the conditions requiring aftercare, NA, AA, and counseling before visitation were consistent with the child's best interests and constituted reasonable preliminary steps toward reunification.
3. Father's bias claim failed because the record did not support his allegation that the court stated it disliked him; in any event, ordinary critical, impatient, dissatisfied, or annoyed judicial remarks ordinarily do not establish bias or partiality.
4. The record did not show that church attendance was imposed as a condition of counseling or that counseling was withheld because father objected to church attendance; therefore, the religious-freedom claim lacked merit.

KEY QUOTATIONS

“For these reasons, we hold that when appointed counsel represents an indigent client in a parental termination appeal and concludes that there are no non-frivolous issues for appeal, counsel may file an Anders-type brief.” (598)

“Based upon the foregoing, it would appear to be the majority view that Anders should be held applicable to appeals in termination of parental rights cases.” (598)

FACTUAL BACKGROUND

The child lived with her mother, whose chronic alcoholism, unstable relationships, domestic violence, and inability to provide stable housing resulted in ongoing neglect. Father had a history of incarceration, substance abuse, domestic violence, unstable employment and housing, and failure to comply with visitation, counseling,

aftercare, and other reunification requirements. After father failed to make meaningful progress or maintain visitation and contact with DSS, the circuit court terminated his parental rights.

PROCEDURAL HISTORY

Abuse and neglect proceedings began in January 2000. The child was adjudicated abused or neglected as to both the mother and father, and the circuit court later ordered DSS to pursue a permanent placement other than with father while establishing visitation guidelines. After a May 2003 dispositional hearing, the circuit court entered findings, conclusions, and an order terminating father's parental rights. The South Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Korth, 2002 SD 101, 650 N.W.2d 528
- Anders v. State of California, 386 U.S. 738 (1967)
- Smith v. Robbins, 528 U.S. 259 (2000)
- J.K. v. Lee County, 668 So. 2d 813 (Ala. Civ. App. 1995)
- Jones v. Department of Human Resources, 155 Ga. App. 371, 271 S.E.2d 27 (1980)
- Matter of Keller, 138 Ill. App. 3d 746, 93 Ill. Dec. 190, 486 N.E.2d 291 (1985)
- Morris v. Lucas County Children Services Board, 49 Ohio App. 3d 86, 550 N.E.2d 980 (1989)
- In re V.E., 417 Pa. Super. 68, 611 A.2d 1267 (1992)
- In re K.S.M., 61 S.W.3d 632 (Tex. App. 2001)
- L.C. v. State, 963 P.2d 761 (Utah Ct. App. 1998)
- Denise H. v. Arizona Department of Economic Security, 193 Ariz. 257, 972 P.2d 241 (Ariz. Ct. App. 1998)
- In re Sade C., 13 Cal. 4th 952, 55 Cal. Rptr. 2d 771, 920 P.2d 716 (1996)
- N.S.H. v. Florida Department of Children & Families, 843 So. 2d 898 (Fla. 2003)
- In re Harrison, 136 N.C. App. 831, 526 S.E.2d 502 (2000)
- In re Welfare of Hall, 99 Wash. 2d 842, 664 P.2d 1245 (1983)
- Cain v. Department of Corrections, 451 Mich. 470, 548 N.W.2d 210, 222 n.30 (1996)
- Liteky v. United States, 510 U.S. 540, 555-56 (1994)