

SUPREME COURT OF ARKANSAS

In the Matter of the Guardianship of S.H.

2015 Ark. 75 · No. CV-14-475 · Decided February 26, 2015

SUMMARY

The Arkansas Supreme Court reversed and remanded a circuit court’s denial of a natural parent’s petition to terminate a consensual guardianship. The court held that a fit parent who revokes consent and informs the court that the conditions necessitating the guardianship no longer exist satisfies the initial burden of going forward, and that guardians must rebut the presumption favoring reunification by clear and convincing evidence. The court directed that the child be returned to the mother’s custody and that the guardianship be terminated.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Rhonda K. Wood, Associate Justice; Karen R. Baker, Justice; Hart, Justice; Jim Hannah, Chief Justice; Paul E. Danielson, Justice
JURISDICTION	Arkansas
DECIDED	February 26, 2015
DOCKET	CV-14-475
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the Arkansas County Circuit Court's denial, after remand, of a natural mother's petition to terminate a consensual guardianship over her child.
STANDARD OF REVIEW	Probate proceedings are reviewed de novo, but factual findings are not reversed unless clearly erroneous. A finding is clearly erroneous when, despite supporting evidence, the appellate court is left with a definite and firm conviction that a mistake was made. Due regard is given to the circuit court's superior position to assess witness credibility.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; binding precedent in Arkansas.
PARTIES	Tamera Grace Troesken v. Larry Herrington, Donna Herrington

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QUESTIONS PRESENTED

1. Whether a fit natural parent who consented to a guardianship satisfies the initial burden in a termination proceeding by revoking consent and informing the court that the conditions necessitating the guardianship no longer exist.
2. Whether the circuit court improperly applied a material-change-in-circumstances or affirmative burden-of-proof standard to the mother's petition to terminate the guardianship.
3. What burden the guardians must satisfy to rebut the presumption that termination of a consensual guardianship is in the child's best interest.
4. Whether the grandparents rebutted that presumption by clear and convincing evidence.
5. Whether the mother's challenge to the requirement that she participate in the child's counseling was moot after the court ordered the child returned to her custody.

HOLDINGS

1. A fit natural parent who consented to a guardianship satisfies the burden of going forward by revoking consent and informing the court that the conditions necessitating the guardianship no longer exist. The parent need not prove a material change in circumstances or carry an affirmative burden of proof.
2. When a fit natural parent seeks to terminate a consensual guardianship, the guardians must rebut by clear and convincing evidence the presumption that termination is in the child's best interest.
3. The grandparents failed to rebut by clear and convincing evidence the presumption that terminating the guardianship was in S.H.'s best interest. The child's stability, adjustment, and bond with the grandparents, standing alone, were insufficient to overcome the fit mother's fundamental parental right.
4. The mother's challenge to the requirement that she continue participating in the child's counseling was moot because the court reversed the guardianship order and directed that S.H. be returned to her custody.

KEY QUOTATIONS

"A fit parent who consented to a guardianship puts forth sufficient evidence, and meets the burden going forward, by revoking consent and informing the court that the conditions necessitating the guardianship no longer exist." (at 5)

"A preponderance-of-the-evidence standard would fail to safeguard a natural parent's fundamental right to parent his or her children." (at 7)

"So to hold that the bond between S.H. and her guardians—in itself—trumps Tamera's right to care for her child would effectively annihilate her fundamental right to be a parent." (at 12)

FACTUAL BACKGROUND

Tamera Troesken, S.H.'s biological mother, consented in 2008 to a permanent guardianship in favor of S.H.'s paternal grandparents while living with them and without counsel. About sixteen months later, she withdrew her consent and petitioned to terminate the guardianship, asserting that the circumstances necessitating it no longer existed. The evidence showed that Tamera remained a fit parent, had family support and was pursuing nursing-related education, while the grandparents provided S.H. with a stable and loving home. The circuit court relied principally on S.H.'s bond with the grandparents and her stability and adjustment in their care.

PROCEDURAL HISTORY

Tamera Troesken consented in 2008 to a permanent guardianship of S.H. in favor of S.H.'s paternal grandparents. In 2010, she withdrew her consent and petitioned to terminate the guardianship. The circuit court denied the petition, and the Arkansas Supreme Court reversed in *In re Guardianship of S.H. (I)*, holding that the guardianship statute was unconstitutional as applied and establishing a burden-shifting framework. On remand, the circuit court held three hearings, again denied termination, and alternatively found that the guardians had rebutted the presumption that termination was in S.H.'s best interest. The Supreme Court reversed and remanded with instructions to return S.H. to her mother's custody and terminate the guardianship.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court was directed to enter an order returning S.H. to Tamera Troesken's custody and terminating Larry and Donna Herrington's guardianship.

CASES CITED

- *In re Guardianship of S.H.*, 2012 Ark. 245, 409 S.W.3d 307
- *Troxel v. Granville*, 530 U.S. 57 (2000)
- *Linder v. Linder*, 348 Ark. 322, 72 S.W.3d 841 (2002)
- *Graham v. Matheny*, 2009 Ark. 481, 346 S.W.3d 273
- *Ingle v. Arkansas Department of Human Services*, 2014 Ark. 53, 431 S.W.3d 303
- *In re D.I.S.*, 249 P.3d 775, 786 (Colo. 2011)
- *In re Guardianship of Reena D.*, 35 A.3d 509, 515 (N.H. 2011)
- *In re Guardianship of D.J.*, 682 N.W.2d 238, 246 (Neb. 2004)
- *Boddie v. Daniels*, 702 S.E.2d 172, 175 (Ga. 2010)
- *Tourison v. Pepper*, 51 A.3d 470, 474 (Del. 2012)
- *Stills v. Stills*, 2010 Ark. 132, 361 S.W.3d 823
- *Smith v. Thomas*, 373 Ark. 427, 284 S.W.3d 476 (2008)
- *Crenshaw v. Crenshaw*, 2012 Ark. App. 695

- Aka v. Jefferson Hospital Association, Inc., 344 Ark. 627, 42 S.W.3d 508 (2001)
- Clinical Study Centers, Inc. v. Boellner, 2012 Ark. 266, 411 S.W.3d 695
- Potter v. Easley, 288 Ark. 133, 703 S.W.2d 442 (1986)
- Robinson v. Ford-Robinson, 362 Ark. 232, 208 S.W.3d 140 (2005)

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