

SUPREME COURT OF FLORIDA

J.B., Etc. v. Fla. Dep't of Child. & Fam.

170 So. 3d 780 (Fla. 2015) · No. SC14-1990 · Decided July 9, 2015

SUMMARY

The Florida Supreme Court addresses an indigent parent’s constitutional right to effective assistance of counsel in termination-of-parental-rights proceedings. The court rejects direct application of the criminal Strickland standard, establishes a Florida-specific standard requiring deficient professional assistance and cumulative prejudice, and provides a temporary procedure for presenting such claims. Applying the standard to J.B.’s claims, the court approves the First District’s decision affirming termination of her parental rights.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Labarga, C.J.; Lewis, J.; Quince, J.; Canady, J.; Perry, J.; Pariente, J.; Polston, J. (recused)
JURISDICTION	Florida
DECIDED	July 9, 2015
DOCKET	SC14-1990
DISPOSITION	approved
PROCEDURAL POSTURE	J.B. sought review of a First District Court of Appeal decision affirming an order terminating her parental rights. The First District certified two questions of great public importance concerning ineffective assistance of counsel in termination-of-parental-rights proceedings.
STANDARD OF REVIEW	De novo
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	J.B., etc. v. Florida Department of Children and Families

TOPICS

- termination of parental rights
- family law procedure
- appellate procedure
- procedural due process
- standard of review

PRACTICE AREAS

family law

constitutional law

appellate procedure

juvenile law

QUESTIONS PRESENTED

1. Whether the criminal ineffective-assistance standard announced in *Strickland v. Washington* applies to ineffective-assistance claims in termination-of-parental-rights proceedings.
2. Whether a procedure is available after termination of parental rights to raise ineffective-assistance claims that are not apparent on the face of the appellate record.
3. Whether J.B. established ineffective assistance warranting reversal or vacatur of the termination order.

HOLDINGS

1. The Florida Constitution's right to appointed counsel for an indigent parent in a termination-of-parental-rights proceeding necessarily includes the constitutional right to effective assistance of counsel.
2. *Strickland v. Washington* is not simply transplanted into the TPR context. A parent seeking relief must identify specific acts or omissions that, under the totality of the circumstances, demonstrate deficient exercise of reasonable, professional judgment and must establish cumulatively that, but for the deficient representation, the parent's rights would not have been terminated.
3. Until permanent rules are adopted, an indigent parent must file a motion in the circuit court alleging ineffective assistance within twenty days after entry of the termination judgment; the circuit court must rule within twenty-five days, or the motion is deemed denied, and any appeal is addressed together with the appeal from the termination order.
4. J.B. was not entitled to relief because her conclusory allegations did not demonstrate prejudice or establish that the termination result would have been different absent counsel's alleged deficiencies.

KEY QUOTATIONS

“the right of indigent parents to counsel under the Florida Constitution in TPR proceedings necessarily includes the constitutional right to the effective assistance of counsel.” (790)

*“We therefore conclude that it is not appropriate simply to transplant *Strickland* and the body of case law that it has spawned into the TPR context.” (792-793)*

“the parent must establish that, cumulatively, this deficient representation so prejudiced the outcome of the TPR proceeding that but for counsel’s deficient representation the parent’s rights would not have been terminated.” (793)

“Under the interim procedure for ineffective assistance of counsel claims, a parent—without assistance of appointed counsel—shall have twenty (20) days after the termination judgment issues within which to file a motion in the trial court alleging claims of ineffective assistance of counsel.” (794)

FACTUAL BACKGROUND

J.B.'s child was removed from her custody after allegations involving drug use, unstable housing, incarceration, and unsafe living conditions. The child was adjudicated dependent, and J.B. failed to substantially comply with a reunification case plan, including requirements involving substance-abuse treatment, parenting education, evaluations, testing, housing, income, and contact with the case manager. After a termination hearing at which appointed counsel made several alleged errors, the trial court terminated J.B.'s parental rights. J.B. later challenged counsel's performance, but the Supreme Court concluded that she had not shown how any alleged deficiency prejudiced the outcome.

PROCEDURAL HISTORY

DCF removed J.B.'s child from her custody, the trial court adjudicated the child dependent, and the court later entered a judgment terminating J.B.'s parental rights. J.B. appealed and raised ten ineffective-assistance claims for the first time on appeal. The First District applied the criminal Strickland standard, affirmed the termination order, and certified questions concerning the applicable standard and the availability of a procedure for claims not apparent on the appellate record. The Florida Supreme Court answered the first question in the negative and the second in the affirmative, established a TPR-specific standard and interim procedure, and approved the First District's decision.

DISPOSITION

approved

REMAND INSTRUCTIONS

The court directed development of permanent procedural rules through a Chief Justice's Select Committee. No case-specific remand was ordered; the court approved the First District's affirmance of the termination order.

CASES CITED

- Strickland v. Washington, 466 U.S. 668 (1984)
- In re D.B., 385 So. 2d 83 (Fla. 1980)
- D.M.T. v. T.M.H., 129 So. 3d 320 (Fla. 2013)
- Santosky v. Kramer, 455 U.S. 745 (1982)
- Lassiter v. Department of Social Services, 452 U.S. 18 (1981)
- In re M.R., 565 So. 2d 371 (Fla. 1st DCA 1990)
- E.K. v. Department of Children & Families, 33 So. 3d 125 (Fla. 2d DCA 2010)
- E.T. v. State, 930 So. 2d 721 (Fla. 4th DCA 2006)
- L.H. v. Department of Children & Families, 995 So. 2d 583 (Fla. 5th DCA 2008)
- State ex rel. Juvenile Department of Multnomah County v. Geist, 796 P.2d 1193 (Or. 1990)
- In re RGB, 229 P.3d 1066 (Haw. 2010)
- Lehman v. Lycoming County Children's Services Agency, 458 U.S. 502 (1982)
- In re E.H., 609 So. 2d 1289 (Fla. 1992)
- Corzo v. State, 806 So. 2d 642 (Fla. 2d DCA 2002)

- In re S.M., 614 A.2d 312 (Pa. 1992)
- I.B. v. Department of Children & Families, 876 So. 2d 581 (Fla. 5th DCA 2004)

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