

SUPREME COURT OF NEW HAMPSHIRE

In re O.D.; In re B.D.; In re G.D.

197 A.3d 646 (N.H. 2018) · No. 2017-0626 · Decided October 23, 2018

SUMMARY

The Supreme Court of New Hampshire affirmed the termination of the parents’ parental rights over three children based on their failure to correct the conditions leading to a finding of neglect. The court held that termination under RSA 170-C:5, III did not require the parents to have been named respondents in the original neglect proceedings or require new neglect petitions after the children were removed from the parents’ home. The court also held that challenges concerning the parents’ entitlement to counsel in the neglect proceedings were foreclosed because they had not appealed the relevant neglect orders.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Hantz Marconi, J.; Lynn, C.J.; Hicks, J.; Bassett, J.; Donovan, J.
JURISDICTION	New Hampshire
DECIDED	October 23, 2018
DOCKET	2017-0626
DISPOSITION	affirmed
PROCEDURAL POSTURE	Parents appealed an order of the New Hampshire Circuit Court terminating their parental rights under RSA 170-C:5, III, arguing that the court violated due process by permitting termination without requiring new abuse or neglect petitions after the children were removed from the parents' home and by failing to appoint counsel during the underlying neglect proceedings.
STANDARD OF REVIEW	The Supreme Court reviewed statutory-construction and constitutional issues de novo; family-division factual findings are not disturbed unless unsupported by the evidence or plainly erroneous as a matter of law.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential.
PARTIES	Mother, Father v. New Hampshire Division for Children, Youth and Families

TOPICS

termination of parental rights

parental rights

family law procedure

due process

statutory interpretation

PRACTICE AREAS

family law

child welfare

termination of parental rights

constitutional law

QUESTIONS PRESENTED

1. Whether RSA 170-C:5, III permits termination of a parent's rights when the parent was not named as a respondent in the original RSA chapter 169-C neglect petition.
2. Whether DCYF was required to file new abuse or neglect petitions after the children were removed from the parents' home in November 2016.
3. Whether the parents' due process rights were violated by the absence of appointed counsel during the underlying neglect proceedings.
4. Whether the evidence supported the circuit court's finding beyond a reasonable doubt that the parents failed to correct the conditions leading to the finding of neglect.

HOLDINGS

1. RSA 170-C:5, III does not require that the parent whose rights are terminated have been named as a respondent or identified as an offending parent in the original RSA chapter 169-C neglect petition. The statute requires that the parent fail to correct the conditions leading to the neglect finding within the statutory period despite reasonable efforts under the court's direction.
2. DCYF's failure to file new neglect petitions after the November 2016 removal did not foreclose termination of parental rights because the original neglect proceeding remained operative and the original conditions of neglect had not been conclusively corrected.
3. The parents' challenge was foreclosed because they did not appeal the orders entered in the neglect proceedings, including the order directing DCYF to file termination petitions. Those orders became final and binding as to issues raised or that could have been raised, including entitlement to appointed counsel.
4. The evidence supported the circuit court's finding beyond a reasonable doubt that the parents failed to correct the conditions leading to the finding of neglect, including problems involving substance abuse, domestic violence, parenting deficits, and the ability to meet the children's physical and emotional needs.

KEY QUOTATIONS

“We have previously held that RSA 170-C:5, III “does not provide that a parent must have been the named respondent in an RSA chapter 169-C neglect proceeding before that parent’s rights can be terminated.” (at 649)

“RSA chapter 169-C contemplates that neglect is not a static condition, and that the process of reunification will take time.” (at 651)

“due process does not require that indigent parents have a per se right to appointed counsel in abuse or neglect proceedings under RSA chapter 169-C” (at 653 n.2)

FACTUAL BACKGROUND

The three children initially lived with their grandmother, who was their legal guardian, but DCYF removed them after receiving reports that the grandmother was homeless and had been arrested for shoplifting while accompanied by one child. The circuit court found the children neglected, imposed case-plan requirements on the parents concerning safe housing, substance abuse, domestic violence, and parenting, and later returned the children to the parents subject to DCYF supervision. After reports of drug use and escalating domestic conflict, the children were removed from the parents' Massachusetts home; DCYF did not file new neglect petitions, and the court later terminated the parents' rights after finding that the original neglect conditions remained uncorrected.

PROCEDURAL HISTORY

The circuit court adjudicated the children neglected while they were in their grandmother's custody, imposed case-plan conditions on the parents, and later reunified the children with the parents subject to continued supervision. After the children were removed again, DCYF did not file new neglect petitions but filed termination petitions at the court's direction. The circuit court terminated both parents' rights, and the Supreme Court of New Hampshire affirmed.

DISPOSITION

affirmed

CASES CITED

- In re C.M., 166 N.H. 764, 773 (2014)
- In re Tricia H., 126 N.H. 418, 422 (1985)
- In re Bill F., 145 N.H. 267, 268, 273 (2000)
- In re Juvenile 2006-674, 156 N.H. 1, 5-7 (2007)
- In the Matter of Jeffrey G. & Janette P., 153 N.H. 200, 204 (2006)
- In re Zachary G., 159 N.H. 146, 153 (2009)
- In re Haley K., 163 N.H. 247, 251 (2012)
- In re C.M., 166 N.H. 764, 775 (2014)
- In re C.M., 166 N.H. 764, 781 (2014)
- In re C.M., 163 N.H. 768, 777 (2012)