

SUPREME COURT OF WISCONSIN

Steven V. v. Kelley H.

2004 WI 47, 271 Wis. 2d 1, 678 N.W.2d 856 · No. 02-2860 · Decided April 28, 2004

SUMMARY

The Wisconsin Supreme Court held that partial summary judgment may be used during the unfitness phase of a termination-of-parental-rights proceeding when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The court overruled the categorical prohibition on summary judgment in such proceedings and concluded that the procedure did not violate the parent's statutory jury-trial right or constitutional due process. The court also held that the circuit court was not required to advise a nonpetitioning party of the statutory right to a continuance to consult counsel about judicial substitution.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Diane S. Sykes, J.; Shirley S. Abrahamson, C.J.; Ann Walsh Bradley, J.; David T. Prosser, J.
JURISDICTION	Wisconsin
DECIDED	April 28, 2004
DOCKET	02-2860
DISPOSITION	affirmed
PROCEDURAL POSTURE	Kelley H. appealed the termination of her parental rights after the circuit court granted partial summary judgment on parental unfitness and later entered a dispositional order terminating her parental rights. The court of appeals affirmed, and the Wisconsin Supreme Court granted review.
STANDARD OF REVIEW	De novo review of the legal questions whether the summary judgment statute applies in termination-of-parental-rights proceedings and whether the circuit court has a statutory duty to advise a nonpetitioning party of the right to a continuance to consult counsel about judicial substitution.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Kelley H. v. Steven V.

TOPICS

termination of parental rights

summary judgment

family law procedure

procedural due process

statutory interpretation

PRACTICE AREAS

family law

termination of parental rights

civil procedure

constitutional law

QUESTIONS PRESENTED

1. Whether partial summary judgment is available during the unfitness or grounds phase of a termination-of-parental-rights proceeding when the material facts supporting a statutory ground are undisputed.
2. Whether use of partial summary judgment in the unfitness phase violates a parent's statutory right to a jury trial or constitutional right to procedural due process.
3. Whether Wis. Stat. § 48.422 requires the circuit court to advise a nonpetitioning party of the right to a continuance to consult counsel concerning judicial substitution.
4. Whether Kelley's explanations for failing to satisfy conditions for restoring visitation were relevant at the unfitness phase.

HOLDINGS

1. Partial summary judgment is available in the unfitness phase of a termination-of-parental-rights proceeding when the summary judgment requirements and the applicable standards under Wis. Stat. §§ 48.415 and 48.31 are satisfied.
2. Partial summary judgment on parental unfitness does not violate the statutory right to a jury trial or procedural due process when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, taking into account the clear-and-convincing-evidence standard.
3. The circuit court properly granted partial summary judgment on unfitness because the undisputed Brown County order established that Kelley had been denied physical placement and visitation for more than one year without modification.
4. Wis. Stat. § 48.422(1) does not impose an affirmative duty on the circuit court to advise a party of the right under § 48.422(5) to a continuance to consult counsel concerning judicial substitution.

KEY QUOTATIONS

“Accordingly, partial summary judgment may be granted in the unfitness phase of a TPR case where the moving party establishes that there is no genuine issue as to any material fact regarding the asserted grounds for unfitness under Wis. Stat. § 48.415, and, taking into consideration the heightened burden of proof specified in Wis. Stat. § 48.31(1) and required by due process, the moving party is entitled to judgment as a matter of law.” (271 Wis. 2d at 7-8)

“We withdraw this language from M.W. and I.W.; the circuit court does not have a statutory duty to inform a party in a TPR case of the right to a continuance to consult with counsel about judicial substitution.” (271

FACTUAL BACKGROUND

Steven V. petitioned to terminate Kelley H.'s parental rights to Alexander V. under Wis. Stat. § 48.415(4), alleging that a Brown County court order had denied Kelley physical placement and visitation for more than one year. The order had awarded Steven sole custody and placement, denied Kelley visitation, and remained unmodified for more than two years. Kelley requested a jury trial, but the parties ultimately agreed that no facts were disputed concerning the existence and duration of the order. The circuit court granted partial summary judgment on unfitness and later terminated Kelley's parental rights after a dispositional hearing.

PROCEDURAL HISTORY

Steven V. filed a petition in Grant County Circuit Court alleging that Kelley H.'s parental rights should be terminated under Wis. Stat. § 48.415(4) because she had been denied physical placement and visitation by an unmodified court order for more than one year. The circuit court granted the guardian ad litem's motion for summary judgment on unfitness, conducted a dispositional hearing, and terminated Kelley's parental rights. The court of appeals affirmed, finding any procedural errors harmless. The Wisconsin Supreme Court affirmed on different reasoning, holding that summary judgment was permissible and that the court had no duty to advise Kelley of the continuance right concerning judicial substitution.

DISPOSITION

affirmed

CASES CITED

- Steven V. v. Kelley H., 2003 WI App 10, 263 Wis. 2d 241, 663 N.W.2d 817
- Walworth County Dep't of Human Servs. v. Elizabeth W., 189 Wis. 2d 432, 525 N.W.2d 384 (Ct. App. 1994)
- M.W. and I.W. v. Monroe County Dep't of Human Servs., 116 Wis. 2d 432, 342 N.W.2d 410 (1984)
- Fredrick H., 2001 WI App 141, 246 Wis. 2d 215, 630 N.W.2d 734
- Burnett County Dep't of Soc. Servs. v. Kimberly M.W., 181 Wis. 2d 887, 512 N.W.2d 227 (Ct. App. 1994)
- Santosky v. Kramer, 455 U.S. 745 (1982)
- Mathews v. Eldridge, 424 U.S. 319 (1976)
- Sheboygan County DHHS v. Julie A.B., 2002 WI 95, 255 Wis. 2d 170, 648 N.W.2d 402
- Brandon S.S. v. Laura S., 179 Wis. 2d 114, 507 N.W.2d 94 (1993)
- Evelyn C.R. v. Tykila S., 2001 WI 110, 246 Wis. 2d 1, 629 N.W.2d 768
- Waukesha County Dep't of Soc. Servs. v. C.E.W., 124 Wis. 2d 47, 368 N.W.2d 47 (1985)
- Door County Dep't of Health & Family Servs. v. Scott S., 230 Wis. 2d 460, 602 N.W.2d 167 (Ct. App. 1999)
- J.A.B. v. Waukesha County Human Servs. Dep't, 153 Wis. 2d 761, 451 N.W.2d 799 (Ct. App. 1989)
- Monroe County Dep't of Human Servs. v. Kelli B., 2004 WI 48, 271 Wis. 2d 51, 678 N.W.2d 831

