

SUPREME COURT OF TENNESSEE

In re D.A.H.

142 S.W.3d 267 (Tenn. 2004) · Decided August 27, 2004

SUMMARY

The Tennessee Supreme Court held that a 2003 amendment to Tennessee Code Annotated section 36-1-113(g)(9)(A) could not be applied retroactively to terminate the parental rights of a biological father whose parental rights had vested under the prior statute. Applying the prior statute and *Jones v. Garrett*, the Court concluded that the additional termination grounds for persons who were not legal parents did not apply because the father established legal parentage before the termination proceeding. The Court also found that the evidence did not support abandonment and vacated the termination order, remanding for further proceedings.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Adolpho A. Birch, Jr., J.; Frank F. Drowota, III, C.J.; E. Riley Anderson, J.; Janice M. Holder, J.; William M. Barker, J.
JURISDICTION	Tennessee
DECIDED	August 27, 2004
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Mid-South Christian Services sought permission to appeal from the Tennessee Court of Appeals' judgment vacating a juvenile court order terminating Timothy Cope's parental rights. The Tennessee Supreme Court granted review to determine whether a 2003 amendment to Tennessee Code Annotated section 36-1-113(g)(9)(A) applied retroactively and whether the statutory termination grounds and abandonment allegations supported termination.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo with no presumption of correctness given to the lower courts' conclusions of law. The termination-related factual determinations were reviewed under the applicable evidentiary record, including whether the alleged abandonment grounds were supported.
PRECEDENTIAL VALUE	Published Tennessee Supreme Court opinion; precedential.
PARTIES	Mid-South Christian Services, Inc. v. Timothy Wayne Cope

TOPICS

termination of parental rights

parental rights

statutory interpretation

constitutional law

appellate procedure

PRACTICE AREAS

family law

termination of parental rights

constitutional law

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether the 2003 amendment to Tennessee Code Annotated section 36-1-113(g)(9)(A) could be applied retroactively to permit termination of Cope's parental rights.
2. Whether the additional termination grounds in section 36-1-113(g)(9)(A) applied to Cope after he established parentage and became a legal parent before the termination proceeding.
3. Whether the evidence supported termination based on alleged abandonment for failure to support the child's mother and failure to visit the child.
4. Whether the Court of Appeals had jurisdiction to consider Cope's challenge to the termination order despite the waiver arguments raised by Mid-South.

HOLDINGS

1. The 2003 amendment may not be applied retroactively to Cope's case because Tennessee Constitution article I, section 20 prohibits retroactive impairment of his vested, constitutionally protected parental rights.
2. The grounds in Tennessee Code Annotated section 36-1-113(g)(9)(A) do not apply to a person who is a legal parent at the time of the termination proceeding. Because Cope established paternity before that proceeding, those grounds could not support termination of his parental rights.
3. The alleged abandonment ground based on Cope's willful failure to make reasonable payments toward the support of the child's mother was not supported by the evidence.
4. The alleged abandonment ground based on willful failure to visit was not supported by the evidence.

KEY QUOTATIONS

“Because the right of a legal parent to the care and custody of his or her child had vested under the 2001 statute, construed in Jones, we hold that the amended version of Tennessee Code Annotated section 36-1-113(g)(9)(A) may not be retroactively applied to this case.” (269)

“Accordingly, we hold that article 1, section 20 of the Tennessee Constitution prohibits the retroactive application of section 36-1-113(g)(9)(A) as amended.” (274-275)

“The legislature’s use of the present tense (‘is not the legal parent’) indicates that the grounds for terminating parental rights under Tennessee Code Annotated section 36-1-113(g)([9])(A) do not apply to persons who are legal parents at the time of the proceeding.” (275-276)

FACTUAL BACKGROUND

D.A.H. was born to unmarried parents, Cynthia Ann Honeycutt and Timothy Wayne Cope, on December 11, 2000. Honeycutt placed the child with an adoptive family without Cope's knowledge, and Cope later contacted the adoption agency to express his desire to parent and obtain custody. Cope established parentage and was adjudicated the child's legal parent before the termination hearing, but the juvenile court terminated his parental rights under statutory grounds applicable to persons who were not legal parents. The record also showed that Honeycutt concealed the child's location and that fewer than four months elapsed between the child's birth and the filing of the termination petition.

PROCEDURAL HISTORY

The Shelby County Juvenile Court terminated Cope's parental rights based on statutory grounds applicable to persons who were not legal parents and on alleged abandonment. Cope established parentage before the termination hearing. The Court of Appeals, relying on *Jones v. Garrett*, vacated the termination order. The Tennessee Supreme Court affirmed the appellate result, vacated the juvenile court's order, and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the Juvenile Court of Shelby County for immediate proceedings consistent with the opinion.

CASES CITED

- *Jones v. Garrett*, 92 S.W.3d 835 (Tenn. 2002)
- *State v. Williams*, 38 S.W.3d 532, 535 (Tenn. 2001)
- *Nutt v. Champion International Corp.*, 980 S.W.2d 365, 368 (Tenn. 1998)
- *State Department of Human Services v. Defriece*, 937 S.W.2d 954, 958 (Tenn. Ct. App. 1996)
- *Kuykendall v. Wheeler*, 890 S.W.2d 785, 787 (Tenn. 1994)
- *Doe v. Sundquist*, 2 S.W.3d 919, 923-24 (Tenn. 1999)
- *Morris v. Gross*, 572 S.W.2d 902, 905 (Tenn. 1978)
- *Ficarra v. Department of Regulatory Agencies*, 849 P.2d 6, 16 (Colo. 1993)
- *Blair v. Badenhope*, 77 S.W.3d 137, 141 (Tenn. 2002)
- *Nale v. Robertson*, 871 S.W.2d 674, 680 (Tenn. 1994)
- *Stanley v. Illinois*, 405 U.S. 645, 651 (1972)
- *In re Askew*, 993 S.W.2d 1, 4 (Tenn. 1999)
- *Hawk v. Hawk*, 855 S.W.2d 573, 577-79, 582 (Tenn. 1993)
- *Petrosky v. Keene*, 898 S.W.2d 726, 728 (Tenn. 1995)

