

SUPREME COURT OF WYOMING

In the Matter of the Termination of Parental Rights to CS and TS,
Minor Children

143 P.3d 918 (Wyo. 2006) · No. Nos. C-05-16, C-05-17 · Decided October 13, 2006

SUMMARY

The Wyoming Supreme Court affirmed a jury verdict terminating LS's parental rights to her two minor children under statutory grounds involving abuse, neglect, rehabilitation failure, and foster-care duration. The court held that clear and convincing evidence supported findings of abuse and neglect based on inappropriate physical punishment, unsafe confinement, inadequate nutrition and medical care, and failure to comply with case plans. The court also held that any due process error arising from LS's absence on the first day of trial after DFS declined to provide transportation was harmless.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Hill, Justice; Voigt, C.J.; Golden, J.; Hill, J.; Kite, J.; Burke, J.
JURISDICTION	Wyoming
DECIDED	October 13, 2006
DOCKET	Nos. C-05-16, C-05-17
DISPOSITION	affirmed
PROCEDURAL POSTURE	LS appealed from a jury verdict and judgment terminating her parental rights to CS and TS.
STANDARD OF REVIEW	Termination of parental rights is subject to strict scrutiny and must be established by clear and convincing evidence. On a sufficiency challenge, the court views the evidence in the light most favorable to the prevailing party, assumes favorable evidence to be true, discounts conflicting evidence presented by the unsuccessful party, and applies traditional evidentiary review. Alleged error warrants reversal only if prejudicial and affecting a substantial right.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	LS a/k/a LA v. Johnson County Department of Family Services

TOPICS

termination of parental rights

parental rights

procedural due process

standard of review

appellate procedure

PRACTICE AREAS

family law

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether clear and convincing evidence established that LS abused or neglected CS and TS under the statutory definitions of abuse and neglect.
2. Whether LS was denied due process and a meaningful opportunity to be heard when DFS withdrew its offer to transport her to the first day of the termination trial.
3. Whether any error resulting from LS's absence on the first trial day was prejudicial.

HOLDINGS

1. The evidence was sufficient for a reasonable jury to find by clear and convincing evidence that LS abused and neglected the children. Confining an eight-month-old child in a tied fleece bag created an imminent risk of physical injury, pinching a child's fingers until he screamed constituted excessive or unreasonable corporal punishment, and the evidence of inadequate nutrition, inadequate medical care, and failure to comply with the case plan supported neglect.
2. LS was not denied due process because she had a meaningful opportunity to be heard: she appeared during the second and third days of trial, testified about her absence, and did not request a continuance. Even assuming DFS had incurred an obligation to provide transportation, LS failed to establish prejudice.
3. Any error arising from DFS's withdrawal of transportation was harmless because LS did not request a continuance, was able to explain her absence to the jury, and did not show that the error affected a substantial right.

KEY QUOTATIONS

“Due to the tension between the fundamental liberty of familial association and the compelling state interest in protecting the welfare of children, application of statutes for termination of parental rights is a matter for strict scrutiny.” (¶ 7)

“Rarely do we find a single condition or incident standing alone justifies termination. Instead, neglect is usually manifested by numerous incidents and conditions extending over a considerable length of time.” (¶ 16)

FACTUAL BACKGROUND

LS's two children were removed into protective custody after allegations that she confined an infant in a tied fleece sleeping bag, pinched another child's fingers as punishment, failed to provide adequate nutrition, and failed to obtain or follow necessary medical care. LS agreed to foster placement and received a reunification

case plan, but she failed to maintain stable housing or employment, paid no child support, and attended only about forty percent of scheduled visitations. At the termination trial, witnesses described continued inappropriate conduct, emotional abuse, and risks to the children's health and safety; LS was absent on the first trial day after DFS withdrew promised transportation but appeared and testified on the second and third days.

PROCEDURAL HISTORY

The Johnson County Department of Family Services petitioned to terminate LS's parental rights after the children were placed in foster care and LS failed to comply with reunification case plans. A jury found grounds for termination under Wyo. Stat. Ann. § 14-2-309(a)(iii) and (a)(v), and the juvenile court entered a judgment and decree terminating parental rights on October 3, 2005. The Wyoming Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- TR v. Washakie County Dep't of Pub. Assistance & Soc. Servs., 736 P.2d 712 (Wyo. 1987)
- In Interest of JG, 742 P.2d 770 (Wyo. 1987)
- D.S. v. Dep't of Pub. Assistance & Soc. Servs., 607 P.2d 911 (Wyo. 1980)
- Matter of GP, 679 P.2d 976 (Wyo. 1984)
- Matter of SYM, 924 P.2d 985 (Wyo. 1996)
- In re ZKP, 979 P.2d 953 (Wyo. 1999)
- In re IH, 2001 WY 100, 33 P.3d 172 (Wyo. 2001)
- Matter of TLC, 2002 WY 76, 46 P.3d 863 (Wyo. 2002)
- In re K.L.S., 2004 WY 87, 94 P.3d 1025 (Wyo. 2004)
- SD v. Carbon County Department of Family Services (In re SED), 2002 WY 168, 57 P.3d 1235 (Wyo. 2002)
- Pecha v. Smith, Keller & Associates, 942 P.2d 387 (Wyo. 1997)
- Jones v. Jones, 903 P.2d 545 (Wyo. 1995)
- Moore v. Board of Educ. of Fulton Public School No. 58, 836 S.W.2d 943 (Mo. 1992)
- Meyer v. Norman, 780 P.2d 283 (Wyo. 1989)
- In re "H" Children, 2003 WY 155, 79 P.3d 997 (Wyo. 2003)
- MS v. Kuchera, 682 P.2d 982 (Wyo. 1984)
- Smyth v. Kaufman, 2003 WY 52, 67 P.3d 1161 (Wyo. 2003)
- In re Adoption of CF, 2005 WY 118, 120 P.3d 992 (Wyo. 2005)

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