

SIGNIFICANT ADOPTION LAW RELATED CASES OF 2003

This compendium of adoption law related cases has been arranged by Harlan S. Tenenbaum, Chair of the American Bar Association Family Law Section Adoption Committee. Mr. Tenenbaum is a private attorney specializing in adoption related matters and Director of Adoption House, Inc., a fully-licensed non-profit adoption agency specializing in domestic newborn infant adoption and international adoption of toddlers and children from abroad. The case descriptions in this compendium have been prepared by the Dave Thomas Center for Adoption Law at Capital University Law School.

Wrongful/Fraudulent Adoption

Morris v. Dept. of Social and Health Services

A Washington Court of Appeals affirmed a jury verdict that found that the Washington Department of Social and Health Services ("DSHS") was negligent in failing to disclose the child's health and social history information as required by law but that also concluded that, even had DSHS disclosed the information, the adoptive parents would have proceeded with the adoption anyway. The adoptive parents argued on appeal that several of the jury instructions were erroneous but the appellate court found no reversible error in the instructions.

Cite: No. 47964-4-I, 2003 WL 220958 (Wash. Ct. App. Feb. 3, 2003)

Web link: <http://www.courts.wa.gov/opinions/opindisp.cfm?docid=479644MAJ>

Criminal Charge Against Adoption Attorney

U.S. v. Nishnianidze

The First Circuit Court of Appeals upheld the district court's criminal conviction of an attorney on extortion charges. The attorney, a citizen of the country of Georgia, had arranged the adoption of a Georgian child for an American couple for a fee. Three years later the attorney, now living in the United States, demanded money from the couple for the birth mother, whom he claimed was having a "rough time" with the adoption and might make a challenge to its legality. When the couple refused, he threatened to have the child kidnapped. The court ruled that the trial court did not abuse its discretion in denying a motion to suppress, finding that there was sufficient evidence to support an interstate commerce with intent of extorting money claim, and that the trial court's jury instructions, which had been clarified for the jury, were proper.

Cite: Nos. 01-2495, 01-2621, 2003 U.S. App Lexis 17758 (1st Cir. Aug. 26, 2003)

Wrongful/Fraudulent Adoption - Breach of Contract

Roe v. Jewish Children's Bureau

The Appellate Court of Illinois affirmed in part and reversed in part a circuit court's order that dismissed the adoptive parents' breach of contract claim against an adoption agency and granted the agency's motion for summary judgment. The adoptive parents alleged that the agency breached its contract by failing to inform them of the mental problems of the child's mother. In affirming the circuit court's dismissal for failure to state a claim, the appellate court concluded that the adoptive parents' complaint for breach of contract was insufficient because there was not an offer or acceptance relating to the child's mental history. In reversing the grant of summary judgment in the agency's favor on the adoptive parent's misrepresentation claim,

the appellate court concluded that the trier of fact should determine if the agency misrepresented itself in the adoption proceedings.

Cite: 2003 Ill App LEXIS 597 (Ill. App. May 16, 2003)

Finality of Adoption Decree - Wrongful/Fraudulent Adoption

McAdams v. McAdams

The Arkansas Supreme Court affirmed the lower court's denial of the adoptive father's petition to annul an adoption that took place in 1966 where the father claimed fraud had been committed against him and the court. The court concluded that the adoptive father failed to demonstrate by clear, strong and satisfactory proof that the adoption was obtained by extrinsic fraud practiced upon the trial court and, therefore, that the action was barred by the statute of limitations because it was filed more than two years after the adoption decree was entered.

Cite: No. 02-666, 2003 Ark. LEXIS 414 (Ark. Jun. 5, 2003)

Termination of Parental Rights - Appeals of Orders of Termination

In re Darlice C.

In ruling on a mother's petition for a writ of habeas corpus ordering the juvenile court to vacate its order terminating her parental rights, which she based on a claim of ineffective assistance of counsel during the termination proceedings, the California Court of Appeal for the Third Appellate District issued an order directing the county department of health and human services (DHHS) to show cause why the relief requested should not be granted. The court rejected the conclusion reached in a case decided by the Fourth Appellate District Court of Appeal that an order terminating parental rights may only be reviewed by direct appeal, a ruling on which DHHS had based its argument that such orders are not subject to collateral attack in habeas corpus proceedings. The appellate court's ruling also required the habeas claim to be adjudicated before the finalization of two pending consolidated appeals of the order terminating the mother's parental rights.

Cite: 129 Cal. Rptr. 2d 472 (Cal. Ct. App. 2003).

Web Link: <http://www.courtinfo.ca.gov/opinions/documents/C042466.DOC>

Richard B. v. Alaska Dept. of Health & Social Services

The Alaska Supreme Court affirmed the trial court's denial of a father's transport from prison to the termination hearing so that he could testify in person at the hearing. The Court held that due process does not in all cases require the transport of an incarcerated parent to a termination hearing and that in this case the burdens on the State outweighed the benefits to the father. The Court also remanded the case to determine whether the fact that the law firm representing the mother, which was the same firm that represented the father in a criminal matter, created a conflict of interest that adversely affected the father during the hearing.

Cite: No. S-10127, 2003 Alas. Lexis 52 (Alaska Jun. 13, 2003)

Web link: <http://www.state.ak.us/courts/ops/sp-5703.pdf>

In re Marino S.

The Court of Appeals of New York affirmed the lower court's order terminating both parents' parental rights even though it was undisputed that the agency did not make diligent attempts to reunite the children with their parents. The court held that severe sexual abuse of one of the children by the father eliminated the agency's duty to attempt reunification under amendments to the Adoption and Safe Families Act ("ASFA"), which New York adopted during the pendency of this action. Significantly, the court held that the family court was correct in applying the

statute retroactively because ASFA is remedial in nature and does not impair any vested rights, and its retroactive application did not violate the parents' due process rights. The court also held that the family court did not err in making derivative findings of abuse as to two of the children who were not victims of the sexual abuse.

Cite: No. 90, 2003 N.Y. LEXIS 1767 (N.Y. Ct. App. July 2, 2003)

Web link: <http://www.courts.state.ny.us/ctapps/decisions/90opn03.pdf>

C.B. v. B.C.

A Florida Court of Appeals vacated and remanded a trial court's order that terminated a father's parental rights, holding that the trial court erred by failing to identify "the act or acts" supporting its order in an involuntary proceeding in which the father voluntarily surrendered his rights. The mother appealed the termination order because she requested that the trial court include language in the termination order which specified that the father's rights were terminated because he was a sexual predator and had committed sexual battery on a minor. The court concluded Fla. R. Juv. P. 8.520(c) and 8.500 (g) required the court to identify the conduct which led to termination and that it was insufficient to identify consent as the "act" supporting termination.

Cite: No. 5D03-76, 2003 Fla. App. LEXIS 11787 (Fla. Ct. App. Aug. 8, 2003)

Web Link: <http://www.5dca.org/Opinions/OpinionFrameset.htm>

Dep't of Children's Services v. C.L.

The Tennessee Court of Appeals reversed the trial court's judgment terminating the parental rights of an unmarried mother and father to nine of their ten children, based on alleged abandonment, failure to comply with permanency plans, and persistence of the conditions that lead to removal of the children. Some of the circumstances leading to the children's removal included the mother's incarceration for child neglect and the parents' failure to provide proper nutrition and medical care. The mother and father independently appealed the judgment, arguing insufficient evidence existed for the judgment. The Court agreed, noting that some of the children's problems arose after they were placed in foster care and that the parents had not been given the responsibility for addressing the special needs of some of the children, who were in various foster homes. The court concluded that the Department of Children's Services failed to prove grounds necessary for termination in the case of either parent.

Cite: No. M2001-02729-COA-R3-JV, 2003 Tenn. App. LEXIS 606 (Tenn. Ct. App. Aug. 29, 2003)

Baker v. Richmond Dep't of Social Servs.

The Virginia Court of Appeals affirmed the trial court's decision terminating a mother's parental rights and approved the goal of adoption as proposed by Richmond Department of Social Services. The Court of Appeals concluded that the trial court did not erroneously terminate the mother's residual parental rights when it failed to investigate possible family placement beyond the maternal grandmother because the mother failed to provide social services with the names and address of other family members. The court also found that the mother offered no evidence to support her proposition that intellectual limitations prevented her from accepting services to rectify the situation that lead to her child's removal.

Cite: No. 0598-03-2, 2003 Va. App. LEXIS 459 (Va. Ct. App. Sept. 2, 2003)

Martin N. v. State

The Supreme Court of Alaska affirmed the lower court's decision to terminate an incarcerated father's parental rights, finding there was evidence that supported a substantial risk of future harm, the child was in need of aid due to a risk of mental injury, there was evidence that supported a finding that the father failed to make significant progress to correct his conduct, and

the Department of Family and Youth Services made reasonable efforts to provide the father with family support services.

Cite: No. S-10754, 2003 Alas. LEXIS 96 (Alas. Sept. 12, 2003)

Web link: <http://www.state.ak.us/courts/ops/sp-5736.pdf>

In re Termination of Parental Rights to Jonathon G.

The Wisconsin Court of Appeals affirmed the decision of the trial court to terminate the mother's parental rights over her objections that there was insufficient evidence to support the jury's conclusion that she failed to assume parental responsibility and that the trial court abused its discretion in terminating her parental rights, concluding there was sufficient evidence to uphold the jury's finding and the court did not abuse its discretion.

Cite: Nos. 03-2571 & 72, 2003 Wisc. App. LEXIS 1040 (Wisc. App. Nov. 11, 2003).

In re Tanya F.

The California Court of Appeals affirmed the lower court's order terminating the mother and father's parental rights in their special needs child, concluding the parents were barred from raising a due process claim because no appeal was taken from the jurisdictional order and the court's adoptability finding was supported by substantial evidence.

Cite: No. 167320, 2003 Cal. App. Unpub. LEXIS 10596 (Cal. Ct. App. Nov. 12, 2003)

In re: Bounds

An Ohio Court of Appeals reversed a trial court's judgment which granted permanent custody of child to the Allen County Children Services Board and terminated the mother's parental rights, after the mother had relinquished custody of the child to the boy's father because she was charged with sexual abuse. The appellate court found the trial court could not determine under the relevant state statute that a grant of permanent custody to the agency was in the best interest of the child. Because the mother had complied with the case plan, had continued contact with the child, demonstrated commitment to remedy past behavior and attempted to provide a stable home for the child, the evidence before the court did not support a finding that severing all parental ties to the mother was in the child's best interest.

Cite: No. 1-03-11, 2003 Ohio App. LEXIS 4276 (Ohio Ct. App. Sept. 8, 2003).

In re B.R.W.

The Oklahoma Court of Appeals reversed a lower court's order which denied the biological father and stepmother's motion to terminate the parental rights of the child's biological mother without her consent and declare the child eligible for adoption. In reversing, the appellate court concluded that the lower court committed a "fundamental error" by failing to appoint an independent attorney for the child to determine the child's eligibility for adoption without parental consent. The mother argued that this issue should not be decided on appeal because the issue was not raised below, however the court held that a "fundamental error" was an exception to the rule that issues not raised below could not be decided on appeal.

Cite: 78 P.3d 1243 (*Okla. Civ. App. 2003*)

Termination of Parental Rights - Appeals of Orders of Termination - Adoption Procedure

In re J.K.

The Supreme Court of Michigan reversed the judgments of the court of appeals and the circuit court terminating the mother's parental rights, vacated the order of adoption and ordered the Family Independence Agency to commence appropriate efforts toward reunification of the

mother and child. The Court found the evidence supporting termination to be insufficient and further concluded that the circuit court had no authority to finalize the adoption of the child by the foster parents because the mother's appeal of the court's termination of her parental rights was pending before the Supreme Court.

Cite: No. 121410, 2003 WL 21148188 (Mich. May 20, 2003).

Web link:

[http://courtofappeals.mijud.net/documents/OPINIONS/FINAL/SCT/20030520_S121410\(49\)_IN_RE_JK12APR03.OP.PDF](http://courtofappeals.mijud.net/documents/OPINIONS/FINAL/SCT/20030520_S121410(49)_IN_RE_JK12APR03.OP.PDF)

In re Henry J

A California Court of Appeals reversed an order of the Superior Court terminating a mother's parental rights to two of her minor children. The Court remanded with instructions to conduct a hearing pursuant to § 336.26 (c)(1)(E), finding the mother did have standing to raise the sibling exception because an evidentiary finding on that issue bears on whether the mother retains parental rights.

Cite: No. B161709 2003 WL 21213512 (Cal. Ct. App. May 27, 2003)

Adoption Procedure - Representation of Parties

In re Broome

The Supreme Court of South Carolina agreed with the finding of the Sub Panel and Full Panel of the Commission on Lawyer Conduct that the respondent committed misconduct in three separate matters, including adoption-related proceedings, but concluded that the gravity of the respondent's misconduct justified a 90-day suspension. Respondent's misconduct in the adoption-related proceedings stemmed from his initial representation of a married couple in an action to adopt an infant, his subsequent representation of the wife in action against the husband for maintenance, support and temporary custody after the wife moved out of the marital home, and his subsequent initiation of a separate action on behalf of the wife to adopt the infant while the first adoption proceeding remained pending. The Court found the attorney violated several relevant Rules of Professional Conduct by deceiving and misleading the court to believe the first adoption action did not remain viable to other parties in both the complaint and the examination of the adoptive mother in court. Additionally, the Court found that attorney had a duty to clarify the status of the first adoption proceeding and existence of the support action to the Court and should have notified all interested parties that the adoptive mother was filing a second adoption action on her own behalf.

Cite: No. 25748, 2003 S.C. LEXIS 276 (S.C. Nov. 10, 2003).

Termination of Parental Rights - Process

In re Andrea D.

The Illinois Appellate Court reversed the trial court's order finding that a father was an unfit parent and terminating his parental rights. The Appellate Court held that the State's petition failed to apprise the father that his parental rights could be "permanently" terminated and such notice must be clearly and obvious, requiring the use of the word "permanently" in the petition.

Cite: 783 N.E.2d 681 (Ill. App. Ct. 2003)

Web Link:

<http://www.state.il.us/court/Opinions/AppellateCourt/2003/2ndDistrict/January/Html/2020763.htm>

N.S.H. vs. Fla. Dept. of Children and Family Services

The Supreme Court of Florida answered the following question certified from the Fifth District Court of Appeals: Are the *Anders* procedures (which apply to those cases where appointed counsel for an indigent criminal defendant determines an appeal to be "wholly frivolous") to be followed in cases involving termination of parental rights? The Supreme Court held that the *Anders* procedures are not constitutionally mandated and that they should not apply in termination cases. The Court concluded that it would not be justified in requiring appellate courts to depart from their role as neutral decision makers to conduct independent reviews of records where appointed counsel has determined an appeal would be frivolous, and that the extension of *Anders* would be a potential detriment to the child because it would delay the child's permanent placement.

Cite: No. SC02-261, 2003 WL 1741080 (Fla. Apr. 3, 2003)

Web link: <http://www.flcourts.org/sct/sctdocs/ops/sc02-261.pdf>

In re K.C.

The Iowa Supreme Court granted the parties' petitions for interlocutory appeal of the juvenile court's order stating that the permanency plan as to one of the children was not acceptable because it called for reunification and directing the county attorney to file a petition to terminate the parental rights of *both* children within 30 days. The Supreme Court concluded that the juvenile court had statutory authority to direct the county attorney to file a petition to terminate parental rights and that the statute providing such authority does not violate the doctrine of separation of powers and does not require the county attorney to violate any ethical canons. However, because of the circumstances of this case, including the fact that the mother had made "reasonable progress" toward achieving the permanency goal, the Court concluded the juvenile court erred in directing the county attorney to file a termination petition.

Cite: No. 02-1264, 2003 WL 1733683 (Iowa Apr. 2, 2003)

Web link: <http://www.judicial.state.ia.us/supreme/opinions/20030402/02-1264.asp>

In re H.

The Colorado Court of Appeals affirmed the order of the trial court dismissing the County Department of Human Service's petition of delinquency and neglect regarding an unborn child, which alleged that the unborn child was dependent or neglected due to mother's methamphetamine use. Although the mother gave birth during the pendency of the action, the parties agreed that the issue involved was not moot, as it is capable of repetition yet evading review and involves a matter of great import or a recurring constitutional violation. After surveying state child welfare statutes, the legislative history and applicable case law, the Court found no support for the county's conclusion that an unborn baby should be included in the definition of "child" for the purpose of a dependency or neglect, and affirmed the trial court's ruling that it lacked jurisdiction over the matter.

Cite: No. 02CA1505, 2003 Colo. App. LEXIS 783 (Colo. Ct. App. May 22, 2003).

In re J.A.M.

The District of Columbia Court of Appeals vacated the trial court's order finding the mother's two children neglected. On a matter of first impression, the Court had to determine whether and under what circumstances a trial court may deny a parent's request to call and examine his or her child as a witness in a neglect or other child welfare proceeding. The court adopted a balancing test committing the decision whether to preclude the examination of a competent child witness to the trial court's informed discretion. The trial court must make three case-specific factual determinations to justify excluding the child's testimony: (1) the court must make a finding on record that testifying would create a risk of serious harm to the child; (2) if the court finds the child is at risk of serious harm, the court must consider whether the risk can be alleviated by means short of prohibiting the testimony altogether; and (3) the court must

evaluate the probative value of the child's testimony and the parent's concomitant need for it.
Cite: Nos. 00-FS-1690, 00-FS-1691, 00-FS-1692, 01-FS-289, 2003 D.C. App. LEXIS 300 (D.C. Ct. App. June 5, 2003)

In re Frances J.A.S.

The Supreme Court of Appeals of West Virginia reversed and remanded a lower court's order taking children out of biological father's custody and placing them in the custody of their mother and step-father during a dispositional improvement period. On appeal by the guardian ad litem and the biological father, the Court noted that in cases involving abuse and neglect the health and welfare of the child is the paramount concern and the motivating factor is the best interest of the child standard. Considering the circumstances, including testimony of the twelve-year-old child that she preferred to live with her father and reports that it would be in the best interest of the children to live with him, the Court concluded the lower court abused its discretion in removing the children from their father's custody.

Cite: Nos. 30909 & 30910, 2003 W. Va. Lexis 70 (W. Va. Jun. 18, 2003)

Web link: <http://www.state.wv.us/wvsca/docs/spring03/30909.htm>

In re Termination of Parental Rights to Thomas J.R.

The Supreme Court of Wisconsin reversed and remanded the decision of the court of appeals reversing the circuit court's decision denying the incarcerated father's motion to dismiss and ultimately terminating his parental rights on the basis that Wisconsin did not have personal jurisdiction over the father who was a resident of Arizona and lacked minimum contacts with Wisconsin. The Court concluded that the status exception to the general personal jurisdiction requirements, as employed in the Uniform Child Custody Jurisdiction Act (UCCJA), provided a basis for the exercise of jurisdiction in a child custody case and such an exercise of jurisdiction is consistent with notions of fair play and substantial justice. The Court further concluded that Wis. Stat. § 801.05(11), which references the UCCJA, provides sufficient due process protection to out-of-state parents based on notice and an opportunity to be heard.

Cite: No. 01-2787, 2003 Wisc. LEXIS 431 (Wisc. June 20, 2003)

Web link: <http://www.wisbar.org/res/sup/2003/01-2787.htm>

In re Celine R.

The California Supreme Court affirmed the judgment of the appellate court affirming the trial court's termination of the parents' parental rights and referring the children to the county adoption agency for adoptive placement. The court interpreted the sibling relationship provision as a basis for the court to choose something other than adoption as the preferred permanency plan to determine whether this provision requires the court to consider the interests of all the siblings or only the detriment to the specific child in question and under what circumstances the court must appoint separate counsel for each child. The court held that a court may reject adoption under this sibling relationship provision only if it finds adoption would be detrimental to the child whose welfare is being considered and may not prevent a child from being adopted solely because of the effect the adoption may have on a sibling. The court also concluded that a court may appoint a single attorney to represent all of the siblings unless, at the time of appointment, an actual conflict of interest exists among them or it appears from circumstances specific to the case that it is reasonably likely an actual conflict will arise. Once appointed, a court can relieve counsel from the joint representation only when an actual conflict of interest arises. Finally, the court concluded that any error in the trial court's refusal to appoint separate counsel was harmless because it was not reasonably probable the result would have been different.

Cite: No S111138, 2003 Cal. LEXIS 4422 (Cal. Sup. Ct. Jul. 7, 2003)

Web link: <http://www.courtinfo.ca.gov/opinions/documents/S111138.DOC>

In re Devon B.

The Supreme Court of Connecticut referred the mentally handicapped birth mother's appeal of the trial court's decision denying the birth mother's motion to cite in the Department of Mental Retardation as a necessary party and committing the birth mother's son to the custody of the Commissioner of Children and Families as neglected and uncared for to itself and reversed and remanded the trial court's decision. The court concluded that the trial court abused its discretion in denying the mother's motion to join the Department of Mental Retardation because the state is required to use reasonable efforts to reunite a child with his parents and the best way to address the mother's homelessness and mental disability, as well as ensure her compliance with the steps necessary to reunify, was to join the Department of Mental Retardation.

Cite: No. 16930, 2003 Conn. Lexis 262 (Conn. Jul. 8, 2003)

Web link: <http://www.jud.state.ct.us/external/supapp/archiveAROsup.htm>

A.A. v. Department of Children & Families

A Florida Court of Appeals affirmed an order of a lower court terminating the biological parents' rights to their four children. Like the trial court, the Court of Appeals rejected the parent's argument that they were entitled to the names of the children's foster parents. The Court held that relevant Florida statutes provide that the focus of a TPR proceeding is on the parents' deficiencies, and a trial court is not permitted to make comparison between the biological and foster parents' qualities, and, therefore, the parents were not entitled to the foster parents' names.

Cite: Nos. 4D02-4484 & 4D02-4583, 2003 Fla. App. LEXIS 11710 (Fla. Ct. App. July 30, 2003)

In re Zeth S.

The Supreme Court of California granted review and superseded an appellate court's holding which reversed and remanded a juvenile court's order terminating a mother's parental rights. The Supreme Court held it was improper, absent any error on the part of the juvenile court, for the appellate court to look outside the record on appeal to post-judgment evidence that was never considered by the juvenile court during its termination proceedings, or that directly related to or undermined the legal basis of the juvenile court's holding. The Supreme Court concluded that when the child's best interest is determined by a trial court pursuant to the juvenile dependency statutory scheme, the reviewing court may not substitute its own judgment as to what is in the child's best interest, especially when the determination is based on post-judgment evidence.

Cite: No. S099557, 2003 Cal. LEXIS 5377 (Cal. Aug. 4, 2003)

In re Paul H.

A California Court of Appeals reversed a juvenile court's termination of an alleged father's parental rights, concluding that the juvenile court failed to comply with Cal. Welf. & Inst. Code § 316.2 and California Rule of Court 1413. The Court held that the alleged father, while not entitled to the Constitutional and statutory rights of biological or presumed fathers, was entitled to the opportunity to establish paternity as provided by the statutes. In this instance, the alleged father was prejudiced by the juvenile court's failure to follow statutory procedures to give him such opportunity after he appeared at the dependency hearing, communicated that he might be the father, and later contacted a social worker for paternity testing.

Cite: No. C043023, 2003 Cal App Lexis 1314 (Cal. Ct. App. Aug. 26, 2003)

Nicholson v. Scoppetta

The United States Court of Appeals for the Second Circuit reviewed the district court's ruling holding that allowing a state to remove a child from his or her parents because the parent

exposed the child to incidents of domestic violence violates procedural and substantive due process rights. Rather than deciding the case, the appellate court instead certified questions to the New York Court of Appeals because it was unclear whether New York law authorizes removal only where the child views the violence, or whether the law requires specific evidence of harm to the child that would occur if the state fails to remove the child. The court hesitated to consider New York's process for investigating child abuse because federal courts have less familiarity and expertise in this area.

Cite: No. 02-7079, 2003 U.S. App. LEXIS 19076 (2nd Cir. Sept. 16, 2003)

Web link: <http://caselaw.lp.findlaw.com/data2/circs/2nd/027079p.pdf>

Means v. Ashby

A Tennessee Court of Appeals affirmed a trial court's decision dismissing a petition seeking termination of parental rights and vacated an award of custody to the petitioners, the mother's brother and sister-in-law. The appellate court found that although the child was living with the petitioners, they could not prove that the parents' failure to support or visit the child was willful, as required by the state statute to terminate parental rights on abandonment grounds. The appellate court also found that the trial court erred in using a best interest of the child standard in deciding custody. In an initial custody dispute between parents and non-parents, Tennessee law requires the court to use a substantial harm to the child standard. Because the father was not an original party to the custody order, the trial court erred in not using this standard.

Cite: No. M2002-00285-COA-R3-CV, 2003 Tenn. App. LEXIS 712 (Tenn. Ct. App. Oct. 6, 2003)

In re H.S.W.C.-B & S.E.C.-B

The Supreme Court of Pennsylvania reversed the order of the superior court quashing York County Children and Youth Services' appeal of the denial of its petition to change the goal from reunification to adoption and to involuntarily terminate the mother's parental rights. The Court concluded that all orders dealing with custody, visitation, termination, and the change of goals from reunification to termination are final when entered and thus appealable. The Court further concluded that a stay should not be ordered and the underlying proceedings halted pending the appeal.

Cite: No. J-85-2003, 2003 Pa. LEXIS 2198 (Pa. Nov. 25, 2003)

In re Gales

The Ohio Court of Appeals affirmed the judgments of the trial court granting legal custody of the mother's two minor children to the children's paternal cousin. The appellate court found the trial court did not err in failing to make a determination as to parental unsuitability before awarding legal custody to the cousin because the previous adjudication of the children as dependent necessarily encompassed a consideration of parental fitness, and therefore a separate finding of parental unsuitability was not necessary. The appellate court also found there was no abuse of discretion in awarding custody to the cousin because the mother failed to attend counseling sessions; failed to complete less than half of the random drug screenings; provided almost non-existent financial assistance to the children; and the children showed improvement in their behavior and were well adjusted to the cousin.

Cite: Nos. 03AP-445 & 446, 2003 Ohio App. LEXIS 5646 (Ohio Ct. App. Nov. 25, 2003)

Termination of Parental Rights – Grounds

In re Yve S.

The Maryland Court of Appeals reversed and remanded two circuit court orders granting the State agency's motion to modify a permanency plan from long-term to permanent foster care,

and a special appeals court's order relating to the permanency plan. The Court of Appeals held that the mother's 14th Amendment liberty interests were violated when the trial court ordered long-term foster care based on a social worker's testimony that because of the mother's mental problems she could never provide a stable home, even though the mother was stable and on medication. The Court concluded that the mother's mental illness was not a ground for modifying the permanency plan absent credible evidence of future neglect.

Cite: Nos. 24 & 50, 2003 WL 1563759 (Md. Ct. App. Mar. 27, 2003)

Web link: <http://www.courts.state.md.us/opinions/coa/2003/24a02.pdf>

In re D.J.

A Texas Court of Appeals affirmed the trial court's judgment terminating a father's parental rights, but reversed the judgment terminating the mother's parental rights and remanded the mother's case for a new trial. There was testimony during the trial that the child suffered from "shaken baby syndrome" and the court found that there was sufficient evidence upon which the jury could find that the father engaged in conduct that endangered the child's well being and termination of the father's parental rights was in the child's best interests based upon evidence that the father caused the child's injuries. However, the court found that the evidence was factually insufficient to support the jury's findings that the mother's parental rights should be terminated because there was no evidence that the mother injured the child nor that the father's prior conduct would have put the mother on notice that the environment in the home endangered the child. As the mother and father were still married, the court opined, however, that the mother should now be aware that any further contact between the child and the father could constitute endangerment.

Cite: No. 05-02-01018-CV, 2003 Tex. App. LEXIS 2713 (Tex. Ct. App. Mar. 28, 2003).

Web link: http://courtstuff.com/cgi-bin/as_web.exe?c05_03.ask+D+6688642

Termination of Parental Rights-Voluntary

In re J.D.

A Kansas Court of Appeals reversed and remanded a trial court's order preventing a child from being placed with foster parents in Manhattan, Kansas. The child previously lived with his former adoptive parents in Manhattan. The former adoptive parents voluntarily relinquished their parental rights and the State agency proceeded to place the child with foster parents in the same city. The appellate court held that the trial court still had jurisdiction over the child when it issued the order preventing the child from being placed in Manhattan, but for the trial court to issue said order under Kansas law, it had to determine that reasonable efforts or progress toward a finding an acceptable permanent placement were not being made.

Cite: No. 89942, 2003 Kan App Lexis 537 (Kan. Ct. App. Jun. 13, 2003)

Termination of Parental Rights – Involuntary

In re B.L.M.

The Texas Court of Appeals affirmed the trial court's decision to terminate the father's parental rights. The court reasoned that because the mother had voluntarily relinquished her parental rights, the father, due to mental illness, lacked the capacity to care for the children alone. The court further concluded that the father waived his complaint that the Texas Department of Protective and Regulatory Services violated the Americans with Disability Act by failing to accommodate his mental deficiencies by failing to plead or prove his complaint.

Cite: No. 2-02-377-CV, 2003 Tex. App. LEXIS 6401 (Tex. Ct. App. July 24, 2003).

In re C.M.S.

The Superior Court of Pennsylvania reversed and remanded the lower court's denial of the prospective adoptive parents' petition for involuntary termination of the father's parental rights as to his minor child. Although the court agreed with the trial court that both the mother and the intermediary acted deceptively and created obstacles for the father to assert his parental rights, the court found that the evidence in the record supported the conclusion that the father failed to take any action to overcome those obstacles. The case was remanded so that the parties could introduce evidence concerning the best interest of the child.

Cite: No. 1742MDA2002, 2003 Pa. Super LEXIS 2371 (Pa. Super. Ct. Aug. 11, 2003)

Note: Petition for re-argument was filed on August 21, 2003.

In re Swisher

The Court of Appeals of Ohio reversed and remanded the lower court's judgments overruling objections to and adopting two magistrate's decisions granting Franklin County Children Services permanent custody of the appellant's five minor children after the children were found living in deplorable conditions and suffering from various health ailments. The Court held that the lower court erred in terminating the mother's parental rights because neither the lower court nor the guardian ad litem asked the children if they wished to remain in their mother's care. On remand, the lower court is to determine if the children wish to stay with their mother, and if they wish to stay with the mother against the guardian ad litem's recommendation, then to determine if the conflict of interest between the children and the guardian ad litem requires that counsel be appointed to represent the children's interest in reunification.

Cite: Nos. 02AP-1408 & 02AP-1409, 2003 Ohio App. LEXIS 4901 (Ohio Ct. App. Oct. 14, 2003)

In Re J.R.C., III

The Louisiana Court of Appeals affirmed the juvenile court's judgment terminating the alleged father's parental rights and granting an intra-family adoption, concluding the juvenile court's findings of fact, including its finding that the alleged father had not manifested a commitment to his parental responsibilities or established that he is a fit parent, were supported by the record, the legal analysis was correct and the facts were correctly applied to the law.

Cite: No. 03-CA-0761, 2003 La. App. LEXIS 3135 (La. Ct. App. Nov. 12, 2003).

Adoption Procedure - Investigation/Assessment of Placement

In re Roldan

The Oregon Court of Appeals reversed and remanded the juvenile court's order requiring the Department of Human Services (DHS) to produce home studies of families that were being considered to adopt children to the children's court appointed special advocate (CASA). The Court of Appeals explained that the CASA's need for the home study must be balanced against the prospective adoptive family's interest in privacy and concluded that, because no home studies had been chosen for submission to the adoption committee in this case and because the CASA did not need those studies in order to advocate for the children before the permanency committee, the trial court abused its discretion in ordering discovery of the studies when it did.

Cite: Nos. A117750, A117751 & A117752, 2003 WL 1754784 (Ore. Ct. App. Apr. 3, 2003)

Web link: <http://www.publications.ojd.state.or.us/A117750.htm>

Adoption Procedure - Assessment of Placement

In re P.B.

The Superior Court of the District of Columbia, in a neglect disposition order, found by clear and convincing evidence that commitment of the children to the Child and Family Services Agency and continued placement in the pre-adoptive home of the children's caretaker served the children's best interests, notwithstanding the parents' preference for placement with the children's paternal aunt. The court rejected the argument that it must apply the standard established for adoption and termination of parental rights proceedings (*i.e.*, deference to a competent parent's choice of caretaker absent clear and convincing evidence that the parent's choice is contrary to the child's best interest) in a neglect disposition where parental rights cannot be terminated, procedural safeguards exist in the form of required reviews of disposition and permanency hearings and the standard applied in adoption and TPR proceedings may conflict with the overriding obligation of the court as *parens patriae* to protect the best interest of the child. Rather, the court held that, when a court orders placement of a child at a neglect disposition contrary to the expressed choice of a fit and competent parent, it must find by clear and convincing evidence that the placement serves the child's best interest.

Cite: Nos. N-33-00, N-936-00, 2003 WL 21689579 (D.C. Super. July 3, 2003)

Putative Fathers - Notice of Adoption Proceedings Adoption Consent Requirements - Who Must Consent

J.N.F. v. A.S.

The Court of Civil Appeals of Alabama reversed and remanded the probate court's judgment permitting the adoption of the child by the mother's parents. The Court concluded that the probate court's failure to address the merits of the putative father's contest to the adoption and its failure to appoint a guardian ad litem, which is required in the event of a contested adoption, required reversal.

Cite: No. 2011009, 2003 WL 21205818 (Ala. Civ. App. May 23, 2003).

Putative Fathers – Registry

In re Cameron

The Ohio Court of Appeals affirmed the trial court's order denying the putative father's motion to set aside the court's judgment granting the adoption of a minor child. The court held that, when a father fails to register on the Putative Father Registry within thirty days of the child's birth, his consent to an adoption is not required, even if he registers thereafter. The court explained that unwed parents do not automatically have a due process right to a relationship with their children and allowing a more lenient registry policy complicates the adoption process, threatens the mother's privacy, creates controversy, and hinders the finality of adoption decrees.

Cite: No. C-030250, 2003 Ohio App. LEXIS 3813 (Ohio Ct. App. Aug. 15, 2003).

Putative Father - Notice of Adoption Proceedings

In re Christopher M.

The California Court of Appeals affirmed the lower court's decision denying the alleged father a contested permanency hearing, concluding that the appellant's right to assert a position regarding his parental status did not entitle him to a contested § 366.26 hearing and the court did not have to give appellant the notice and form provided for in § 316.2 because the minor's paternity already had been established by a voluntary declaration of paternity.

Cite: No. C043514, 2003 Cal. App. LEXIS 1673 (Cal. Ct. App. Nov. 10, 2003)

Equitable Adoption

Barber v. Barber

The Supreme Court of Oklahoma vacated the court of appeals' decision reversing the district court's order awarding custody of the former spouse's children to the biological mother, which was based on the district court's finding that the former husband was not the biological father of the couple's second child, and granting visitation rights to the former husband and paternal grandparents. The Supreme Court affirmed the district court's ruling awarding custody to the biological mother and held that the common law theory of promissory estoppel or "equitable adoption" is not applicable to prevent the mother's timely challenge to the marital presumption of paternity. However, the Court reversed the district court's order granting the husband and the paternal grandparents visitation rights because granting visitation might infringe on the fundamental right of the biological mother to make decisions concerning the care, custody, and control of her son.

Cite: No. 93,086, 2003 WL 21150301 (Okla. May 20, 2003).

Foster Caregiver Rights

Adoption of L.E.K.M.

The Supreme Court of Alaska affirmed the superior court's ruling which concluded that it was in orphan child's best interest to dismiss adoption petitions filed by mother's best friend and her husband, paternal grandparents and paternal aunt and uncle and to instead enter an order granting primary legal and physical custody to mother's best friend and her husband and weekly visitation to the paternal relatives as a group. The Court declined to apply the relative placement preference statute applicable to foster placements, which generally prohibits a foster placement if there is a relative willing to care for the child. Noting that the statute previously had been held not to apply in adoption proceedings, the court emphasized that in an adoption case, courts must consider as relevant factors both the consent of the parents and the best interests of the child, and that there are many instances in which allowing a non-relative to adopt a child is in the child's best interests.

Cite: No. S-10199, 2003 WL 21246492 (Alaska May 30, 2003).

Web link: <http://www.state.ak.us/courts/ops/sp-5695.pdf>

In re Cheryl M.

The California Court of Appeals denied the Los Angeles County Department of Children and Family Services' petition for a writ of mandate directing the dependency court to vacate its order denying the Department's request for an order removing three children who were living with their aunt/de facto parent from the aunt pending the resolution of the Department's supplemental petition, in which the Department alleged that placement with the aunt was no longer effective in the protection of the children due to the aunt's conviction for two minor offenses concerning improper discipline of her own children. The court explained that removal was not mandatory and the relevant statute did not deprive the dependency court of discretion to allow the children to remain in the aunt's home.

Cite: No. B166181, 2003 WL 22271195 (Cal. Ct. App. Oct. 2, 2003)

Adoption and Safe Families Act

N.J. Div. of Youth & Family Servs. v. A.R.G.

The New Jersey Superior Court affirmed the lower court's determination that DYFS did not need to provide reasonable father-child reunification efforts pursuant to Adoption and Safe Families

Act because the children had been subjected to aggravated circumstances of abuse, neglect, and cruelty. In its unpublished opinion, the Superior Court also held that when there has been a determination of aggravated circumstances, the balancing formula should lean to protecting the child and not protecting the rights of the parents. The ASFA definition of "aggravated circumstances" embodies the concept that the nature of the abuse or neglect must have been so severe or repetitive that a reunification attempt would jeopardize the safety of the child and would place the child in a position to be further abused, and in this case, there was sufficient evidence of aggravated circumstances permitting the court to authorize bypassing reunification efforts.

Cite: No. A-0025-02T4, 2003 N.J. Super LEXIS 195 (N.J. Super Jun. 5, 2003)

Visitation Rights

In re Nelson

The Supreme Court of New Hampshire answered the following questions transferred from the trial court for interlocutory appeal: (A) Whether the court has subject matter jurisdiction to grant an unrelated third party custodial rights to minor children not adopted by virtue of the loco parentis and psychological parent doctrines; and (B) Whether granting such custody over the express objection of the children's sole parent violates the parent's rights under the state and federal constitutions. The court held that granting custodial rights to an unrelated third person standing in loco parentis (with the exception of stepparents) over the objection of a natural or adopted parent is unconstitutional under New Hampshire's constitution.

Cite: No. 2002-433, 2003 NH LEXIS 75 (N.H. Jun. 6, 2003).

Indian Child Welfare Act

Navajo Nation v. Norris

The 9th Circuit U.S. Court of Appeals affirmed the trial court's decision to permit the adoption of a Native American child outside the Nation. The court held that when a Native American child is domiciled outside a reservation, the case is subject to the concurrent jurisdiction of both a tribal court and state court and that because the Native American couple moved off the reservation and objected to the application of ICWA, the adoption finalized by the state court would be upheld.

Cite: No. 01-35041, 2003 US App Lexis 11448 (9th Cir. Jun. 9, 2003)

In re A.B.

The North Dakota Supreme Court affirmed a juvenile court's ruling that transferred a child custody proceeding to a tribal court under the Indian Child Welfare Act and dismissed the State agency's petition to terminate parental rights. The Court concluded that trial court did not commit reversible error when it failed to review transcripts or to allow the State agency to respond before the trial court reversed a referee's decision that denied the transfer motion. The Supreme Court went on to conclude the tribe's motion to transfer was not untimely when it was filed seven weeks after the termination petition and one week before pretrial conferences, and that the child's substantive due process and equal protection rights were not violated by the transfer because the transfer did not interfere with the child's right to a permanent and stable placement.

Cite: No. 20020309, 2003 ND Lexis 112 (N.D. Jun. 17, 2003)

Web Link: <http://www.court.state.nd.us/COURT/OPINIONS/20020309.htm>

Doe v. Mann

The United States District Court for the Northern District of California dismissed a Native American mother's suit challenging termination of parental rights. The court held that the Rooker-Feldman doctrine did not bar federal district court's review of a state court termination decision. The Rooker-Feldman doctrine states that if claims in federal court are "inextricably intertwined" with the state court's decision and the interpretation and application of state law, then the federal complaint must be dismissed for lack of subject matter jurisdiction. The court also held the termination of parental rights was not in violation of the Indian Child Welfare Act (ICWA) as the act is not grounds to relitigate a claim.

Cite: 2003 WL 22255820 (N.D. Cal.)

In re Karla C.

The California Court of Appeals reversed and remanded the lower court's order declaring appellants' daughter a dependent of the court and removing her from parental custody, concluding the ICWA notice must be filed with the court and the error could not be deemed harmless because there was no suggestion in the record that the notice sent to the tribe contained the required information.

Cite: No. D042048, D042060, 2003 Cal. App. LEXIS 1672 (Cal. Ct. App. Nov. 10, 2003)

Contested Adoption - Indian Child Welfare Act ("ICWA")

In re Adoption of Bernard A

The Alaska Supreme Court affirmed the trial court's denial of the grandparent's adoption petition and granting of such a petition to the child's foster parents. The court held that placing more weight on the amount of time the child had spent in the care of his foster parents did not amount to a single factor outweighing all others in applying the best interest of the child test. The court also held that ICWA was satisfied by placement with foster parents, as they were extended family even though more removed than the grandparents. Also, the provision under ICWA giving the biological parent's preference greater weight is not applicable here since the mother was "a demonstrably incompetent parent" and showed little interest in her child's care.

Cite: No. S-10771, 2003 Alas. LEXIS 97 (Alas. Sept. 12, 2003)

Web link: <http://www.state.ak.us/courts/ops/sp-5735.pdf>

Consent Requirements - Withdrawal of Consent

In re B.T.D.

The Utah Court of Appeals reversed and remanded the trial court's denial of the prospective parents' motion to dismiss the birth mother's complaint in intervention, which was based on the trial court's determinations that the birth mother's consent to the adoption was given under duress, that the birth mother did not receive proper notice of the adoption proceeding, and that it was not necessary to hold a statutory best interests of the child hearing after dismissing the petition for adoption. The court of appeals concluded that (1) the birth mother terminated her right to notice under the Adoption Statute by signing a consent; (2) in determining the issue of duress, the trial court relied on a subjective balancing test whereas the correct standard is an objective test and thus that a new duress hearing should be held on remand; (3) the trial court erred in not requiring the birth mother to prove the elements justifying revocation of consent by clear and convincing evidence; and (4) the trial court erred in its legal conclusion that the Jurisdiction Act controls this adoption petition and that, therefore, the birth mother was entitled to notice under the Jurisdiction Act.

Cite: No. 20020083-CA, 2003 WL 1738955 (Utah Ct. App. Apr. 3, 2003)

Web link: <http://www.utcourts.gov/opinions/appopin/btd040303.htm>

Withdrawal of Consent: Voluntary Termination of Parental Rights

In re: Termination of the Parent-Child Relationship of M.N. and H.N.

The Supreme Court of Indiana reversed the trial court's order terminating parental rights and held that a parent may initially consent to voluntary termination of her parental rights and later change her mind and challenge the termination in open court. The court recognized conflicting Court of Appeals' opinions and contradictory statutes on the issue and found that, a parent's written consent to the voluntary termination of parental rights is invalid unless the parent appears "in open court" to acknowledge his/her consent to the termination.

Cite: No. 17S03-0209-JV-470, 2003 WL 22208799 (Ind. Sept. 25, 2003).

Termination of Guardianship

In re Carrie W.

A California Court of Appeals affirmed the trial court's order terminating the grandmother's legal guardianship and ordered a permanent plan of long-term foster care. The court held that the guardianship was not permitted by law to coexist with the new permanent plan for long-term foster care.

Cite: No. F041891, 2003 Cal. App. LEXIS 1075 (Cal. Ct. App. July 17, 2003).

Rights of Grandparents or Other Biological Relatives

Skerrett v. The Association for Guidance, Aid, Placement and Empathy, Inc.

A Tennessee Court of Appeals affirmed a trial court's decision that denied a grandmother's request for custody of her grandchild after the grandmother intervened in the trial court's proceedings to terminate her son's parental rights. The court concluded that the biological relationship between the child and the grandmother, by itself, was not sufficient to create a legally protected interest in the child, and therefore the grandmother should not have been allowed to intervene during the trial court proceedings. The court further found that Tennessee did not have statute that gave the grandmother a statutory right to intervene and that the grandmother did not create a legally protectable interest by assuming parental responsibilities regarding the child.

Cite: No. M2002-00218-COA-R3-JV, 2003 Tenn App LEXIS 486 (Tenn. Ct. App. July 11, 2003)

In re Huffer

The Ohio Court of Appeals affirmed the trial court's award of custody of the child to her foster parents, concluding the trial court's determination that it was in the best interest of the child for the foster parents to have legal custody, as opposed to the grandmother, was not against the great weight of the evidence, but noting that the issue was close.

Cite: No. 2002 CA 96, 2003 Ohio 5964 (Ohio Ct. App. Nov. 7, 2003)

In re T.S.

A California Court of Appeals for the Third Appellate District affirmed the juvenile court's order terminating a biological father's and mother's parental rights. The court held there was substantial evidence to find the children are "adoptable" by the children's paternal grandparents. The court also found that the grandparents need not undergo a physical examination in order to qualify to adopt the children and that the grandparents' ages (58 and 61)

were not legal impediments to the adoption.

Cite: No. C043419, 2003 Cal. App. LEXIS 1801 (Cal Ct. App. Dec. 4, 2003).

Federal Law

Harriott v. Ashcroft

The trial court granted Petitioners, an alien and his adoptive mother, a writ of mandamus requiring the proper officials to approve the alien's application for derivative citizenship. The alien's adoptive mother, his natural aunt, became a naturalized citizen and applied for derivative citizenship of the alien, but the application was denied after a two and a half year delay because the alien was no longer a minor when the application was decided. The trial court granted the writ on the grounds that the officials were estopped from denying derivative citizenship to the alien based on the officials' inexplicable neglect of their ministerial duties and disregard for their own internal guidelines concerning timely consideration of applications.

Cite: No. 01-CV-5823, 2003 U.S. Dist. LEXIS 12135 (E.D. Pa. July 2, 2003).

Web link: <http://www.paed.uscourts.gov/usci2003.shtml>

Custody

State Dep't of Human Resources v. R.E.C.

The Alabama Court of Civil Appeals reversed and remanded the trial court's judgment returning four minor children to the custody of their parents based on its conclusion that it could not find by a preponderance of the evidence that the children had been abused by their father. On appeal, the court concluded that, based on the evidence before it at the time, including evidence of the children's advanced knowledge of sexual behavior, the trial court abused its discretion in returning the children to their parents' home. The court remanded the case and noted that, because the appeal arose from an ongoing dependency proceeding, nothing prevented the parties from introducing or the court from considering evidence of factual developments since the court's earlier order.

Cite: No. 2010672, 2003 Ala. Civ. App. LEXIS 507 (Ala. Ct. Civ. App. July 25, 2003)

Web link: www.alalinc.net

Termination of Parental Rights - Mediation Challenge

In re A.H. and D.H.

A Texas Court of Appeals of Texas affirmed the lower court's order terminating a father's parental rights. The father argued on appeal that the mediated settlement he signed was not binding because the agreement failed to meet statutory requirements that the mediation was irrevocable, and that evidence presented by the guardian ad litem (GAL) was legally and factually insufficient to conform to the terms of the agreement. The court found that the mediated settlement signed by the father clearly provided, in bold print at the bottom of pages to be signed, that the agreement was not subject to revocation. Further, the court found that the GAL's investigation was sufficient to meet the terms of the agreement.

Cite: No. 05-03-00080-CV, 2003 Tex.App.LEXIS 7873 (Tex. Ct. App. Sept. 9, 2003)

Claims Asserted Against State Agency

Eaton v. State Dept. of Social Services

The Washington Court of Appeals affirmed a lower court's order granting summary judgment to a State agency and denying a father's motion for summary judgment on his claims of malicious

interference with the parent- child relationship, negligent investigation, and a violation of his rights under 42 U.S.C. § 1983. On appeal, the father argued that collateral estoppel should apply based on issues previously litigated in an administrative proceeding. The court held, however, that the father failed to meet the elements required for collateral estoppel because the relevant issues between this lawsuit and the prior administrative proceeding were not identical insofar as the prior administrative hearing focused on whether the father had either physically or emotionally abused his son.

Cite: No. 50780-0-I, 2003 Wash App LEXIS 1917 (Wash. Ct. App. Sept. 9, 2003)

Who May Adopt

Gerweck v. Schoenrad

An Indiana Court of Appeals affirmed a trial court's order granting an adoption petition of a man who cared for the child since birth, but was not the biological father of the child, and denying a petition to adopt by the biological mother's maternal aunt and uncle. On appeal the aunt and uncle claimed that the trial court erred in not appointing a guardian ad litem (GAL) for the child, abused its discretion when it relied on hearsay documents admitted without objection, and that denial of their petition and grant of father's petition was contrary to law. The appellate court found that because the trial court accepted a report from a court appointed special advocate, which statutorily functions in the same capacity as a GAL, the child's interests were adequately represented and a GAL was not required in this case. As for the other claims, the court found there was no reversible error and that the evidence supported the grant of father's petition and denial of their petition. Notably, the court "decline[d] to hold that biology is more important than a child's relationship which a man who has been, as the trial court so aptly put it '[the child's] father in terms that matter most.'"

Cite: No. 09A02-0211-CV-918, 793 N.E.2d 1054 (Ind. Ct. App. July 22, 2003)

United State Constitution - Equal Protection Clause **Presumed Father Status**

In re Kyle F.

The California Court of Appeals reversed and remanded the trial court's ruling that an unwed father who could have been charged with misdemeanor unlawful sexual intercourse could never qualify as a presumed father. On appeal, the court concluded that neither case law nor statute preclude an 18-year-old unwed father from attempting to demonstrate a full commitment to assume his parental responsibilities toward a child born to a mother who was 16 at the time of conception. The court explained that the trial court misconstrued prior case law by equating "unlawful sexual intercourse" with "nonconsensual sexual intercourse." Thus, while a person who forcibly rapes another should not be afforded constitutional protection in proceedings concerning the adoption of a child conceived during the rape, an unwed father should not be denied the constitutional right to develop a parental relationship with his child when he and the minor mother were relatively close in age and both willingly participated in the act.

Cite: No. F038536, 2003 Cal. App. LEXIS 1512 (Cal. Ct. App. Oct. 3, 2003).

Adoption Subsidies

York County Children & Youth Servs. v. Dep't of Public Welfare

The Commonwealth Court of Pennsylvania affirmed the order of the Department of Public Welfare that affirmed an earlier order of the Department of Public Welfare Bureau of Hearings and Appeals sustaining the appeal of an adoptive father from the denial of the adoptive father's

request for adoption assistances by York County Children and Youth Services (Children Services). The Court concluded that Children Services' failure to inform the adoptive parent of relevant medical information and to provide a meaningful understanding of the adoption assistance program constituted extenuating circumstances, which justified retroactive application of an adoption subsidy.

Cite: No. 660 C.D. 2003, 2003 Pa. Commw. LEXIS 695 (Pa. Commw. Oct. 1, 2003)

Agency Liability

J.H. v. Johnson

The Seventh Circuit Court of Appeals affirmed the District Court's decision granting defendant Department of Children and Family Services employees' motion for summary judgment on the children's father's § 1983 claim brought against them for their role in placing his children in foster homes where they were sexually abused. Although defendants acted under color of state law, the court concluded that, under the modified deliberate indifference standard, the father did not establish that defendants knew of or suspected that the children were at risk of sexual abuse in the foster homes. The court explained that a violation of state law does not *per se* make a state actor liable under § 1983 and knowledge or suspicion of abuse cannot merely be imputed from a statute.

Cite: No. 02-194, 2003 U.S. App. LEXIS 20738 (7th Cir. Oct. 10, 2003)

Inheritance Rights - Intestate

Hulsey v. Carter

The Supreme Court of Georgia affirmed the lower court's decision granting summary judgment in favor of decedent's nieces and against decedent's step daughter in an action brought by decedent's step daughter seeking a declaration that she was the virtually adopted daughter of the decedent, concluding the step daughter failed to establish the first essential element for a virtual adoption, which requires that the contract for adoption be made by persons competent to contract for the child.

Cite: No. S03A1310, 2003 Ga. LEXIS 953 (Ga. Nov. 10, 2003)

International Adoption - State Law Issues

In re D.N.

An Iowa Court of Appeals affirmed the juvenile court's vacation of an adjudication finding that a child had no parent. The mother had adopted the child in Vietnam but has dismissed the adoption petition in Iowa and wished to relinquish custody of the child. The Court held that the mother, who had held the child out as her own in Iowa, could not be relieved of the duty to support the child merely because under the applicable statute required a second proceeding for international adoptions.

Cite: No. 3-247/02-1410, 2003 Iowa App. LEXIS 822 (Iowa Ct. App. Sept. 24, 2003).

OTHER CASES OF INTEREST

Indian Child Welfare Act

In re Guardianship of Daniel A.

In an unpublished opinion, the California Court of Appeal reversed and remanded the trial court's order granting guardianship to a child's maternal grandparents over the natural father's

objection. The court concluded that the trial court failed to make a requisite finding under section 1912 subdivision (e) of the Indian Child Welfare Act, which mandates that a foster care placement or guardianship may not be ordered unless there is a determination, supported by clear and convincing evidence, that the child is likely to be seriously emotionally or physically harmed if custody with the parent continues.

Cite: No. 2-01-384-CV, 2003 WL 253704 (Tex. Ct. App. Feb. 6, 2003).

Web Link: <http://www.courtinfo.ca.gov/opinions/nonpub/E031202.DOC>

In re Daniel M.

A California Court of Appeals dismissed the appeal of a father whose parental rights were terminated. The father argued that the lower court committed reversible error by not complying with the notice provisions of the Indian Child Welfare Act (ICWA), which require that when a court knows or has reason to know an Indian child is involved, the child's parents or custodian and tribe must be notified of pending proceedings. The Court disagreed, ruling that the child's father lacked standing to raise the issue because he was an unwed father who failed to acknowledge or establish paternity as required by state law who, therefore, could not be considered a parent under the ICWA.

Cite: No. D041470, 2003 Cal. App. Lexis 1069 (Cal. Ct. App. June 20, 2003)

In re H.D.

An Illinois Court of Appeals affirmed the decision of the Circuit Court, holding that the Indian Child Welfare Act was not applicable because there was no information to support that the child was a member of an Indian tribe.

Cite: 797 N.E. 2d 1112 (Ill Ct. App. 2003).

SNK v. State

The Supreme Court of Wyoming dismissed an appeal from the District Court of Park County stating that the challenge to the trial court's decision that the Indian Child Welfare Act did not apply was moot because a subsequent court order granted the tribe the right to continue to participate in the child's life.

Cite: No. C-03-5, 2003 WL 22479405 (Wyo. Nov. 4, 2003).

Federal Law- Indian Child Welfare Act ("ICWA") Putative Fathers

In re N.H.

A California Court of Appeals affirmed a disposition order of the lower court finding in this dependency case that it was proper to deny the appellant father presumed father status and therefore preclude him from participation in adjudication, disposition, and reunification processes. Although appellant was married to the child's mother, the court determined by clear and convincing evidence that he was incarcerated at the time of conception and therefore could not be the biological father. The Court also found that because he was not the child's father he lacked standing to challenge the notice required by the Indian Child Welfare Act.

Cite: No. B164001, 2003 WL 22182938 (Cal. Ct. App. Sept. 23, 2003).

Statutes - Adoption and Safe Families Act

CASA v. Dep't of Servs. for Children, Youth & Their Families

The Supreme Court of Delaware affirmed the orders of the trial court granting legal guardianship of two minor children to non-relative foster parents, concluding the record supported a

conclusion that the legal status of a standard guardianship satisfies the permanency requirements of the Adoption and Safe Families Act (AFSA) and was in the children's best interest and, therefore, did not require a demonstration of compelling reasons why termination of parental rights and adoption would not be in the children's best interest to be valid.

Cite: No. 059,2003, 2003 Del. LEXIS 508 (Del. Oct. 7, 2003)

Termination of Parental Rights - Appeals of Orders of Termination

In re W.C., K.A.C., L.C.D., D.J.D., and S.T.D.

The Texas Court of Appeals reversed and remanded the trial court's judgment terminating a mother's parental rights. The appellate court held that the jury's finding that termination was in the best interests of the child was not supported by factually sufficient evidence, noting specifically that the "best interests" standard does not permit termination merely because a child might be better off living elsewhere and that the mother's behavior, leaving the children with an abusive father, was not egregious enough to warrant termination of her parental rights. The court noted, in addition, that the mother had made significant progress and changes in her life and had done everything required of her to have her children returned.

Cite: No. 2-10-384-CV, 2003 WL 253704 (Tex. Ct. App. Feb. 6, 2003)

Web Link: <http://www.2ndcoa.courts.state.tx.us/opinions/HTMLOpinion.asp?OpinionID=14332>

CLARIFICATION

Last week we reported on an unpublished case out of the California Court of Appeals for the Second Appellate District. We thank one of our subscribers for pointing out a factual error in our case summary and offer this clarified report:

In re Jasmine H.

A California Court of Appeal reversed the lower court's order terminating a foster mother's guardianship of one child and directing the removal of two other children from her custody. The foster mother, who was in the process of adopting the children, confessed her extensive past criminal history to Department of Children and Family Services ("DCFS") caseworkers during their investigation of an abuse claim filed against her. Although finding the abuse allegation unsubstantiated, DCFS removed the children from the foster mother's custody and filed petitions seeking changes of placement on grounds that the previous placement had not been sufficient to ensure the protection of two of the children and that changed circumstances warranted a change of placement for the third. The trial court granted the petitions. In reversing, the appeals court noted that the foster mother had successfully cared for the children for many years and that DCFS thus could not establish that the previous placement had been ineffective to protect two of the children in her custody. Further, although finding that DCFS's discovery of the foster mother's criminal history did constitute a "change in circumstance," the court held that the evidence offered did not demonstrate that termination of legal guardianship was in the best interests of the third child. The Court opined that, rather than "indulging in formalism," the lower court and DCFS should have carefully considered "the harm that children may suffer when they are separated from those they have come to identify as their parents."

Cite: No. B155930, 2003 WL 190794 (Cal. Ct. App. Jan. 29, 2003)

Web link: <http://www.courtinfo.ca.gov/opinions/nonpub/B155930.DOC>

Loper v. Texas Dept. of Protective and Regulatory Services

The Texas Court of Appeals affirmed the district court's termination of the birth father's parental rights, holding there was clear and convincing evidence supporting the district court's finding that it was in the child's best interest to terminate the father's parental rights.

Cite: No. 01-0839, 2003 WL 1738413 (Tex. Ct. App. Apr. 3, 2003)

Web link: <http://www.3rdcoa.courts.state.tx.us/opinions/html opinion.asp?OpinionId=11663>

In re Hurt

The Ohio Court of Appeals affirmed the lower court's judgment approving and adopting the magistrate's decision terminating all of the mother's parental rights and responsibilities relative to her five minor children and granting permanent custody to the Richland County Children Services Board, concluding that the lower court's findings provided sufficient grounds for termination.

Cite: No. 2002CA79, 2003 WL 1756120 (Ohio Ct. App. Apr. 1, 2003)

Web link: <http://www.fifthdist.org/fifty-fourthweek/hurt.pdf>

In re Care and Protection of Emily

The Massachusetts Court of Appeals reversed a trial court's order denying reunification of a seventeen-year-old with her mother on the basis of educational neglect, holding the government interest in compulsory education does not outweigh the mother's fundamental right to custody when the child has exceeded the maximum age which the law requires children to attend school.

Cite: No. 02-P-1636, 2003 WL 21183060 (Mass. Ct. App. May 22, 2003)

In Re Adoption Male Child

The Supreme Court of Hawaii affirmed the circuit court's judgment granting John Doe's adoption petition and ordering Richard Roe to pay sanctions and guardian ad litem fees, concluding Roe had notice of the possibility that default judgment could be entered against him and that the ordering of sanctions was within the family court's discretion.

Cite: No. 24958, 2003 WL 21189894 (Hawaii May 21, 2003).

In re M.G.D.

The Texas Court of Appeals reversed the trial court's order granting judgment notwithstanding the verdict after a jury found termination was in the best interest of the children, holding that a trial court may properly disregard a verdict of termination only where there is no evidence to support it. The court found that because reasonable jurors could form a firm belief or conviction that termination was in the best interest of the children, the trial court erred in granting judgment n.o.v.

Cite: No. 14-02-00583-CV, 2003 WL 21229832 (Tex. Ct. App. May 29, 2003)

In re Michael Myers III

The Ohio Court of Appeals reversed and remanded the trial court's ruling granting permanent custody of appellant's four children to the Athens County Children Services, concluding that if a party requests factual findings and conclusions of law, the court is required to make findings pursuant to R.C. § 2151.414(D), which sets out five factors to consider in determining a child's best interest.

Cite: No. 02CA50, 2003 WL 21246432 (Ohio Ct. App. May 23, 2003)

In re Child of Simon

The Minnesota Court of Appeals affirmed the district court's order terminating the father's parental rights, concluding that the district court abused its discretion in admitting two letters from the child's therapist into evidence under the business-records exception to the hearsay rule without the proper foundation to establish their trustworthiness under an exception to the hearsay rule, but that the error was harmless because the record showed that termination was in the best interest of the child.

Cite: CX-02-2024 2003 Minn App LEXIS 673 (Minn. App. Jun. 3, 2003)

In re Jamarqon C.

The Appellate Court of Illinois affirmed the trial court's order terminating the parents' parental rights, concluding that section 1(D)(t) of the state Adoption Act does not violate one's constitutional rights to procedural due process because the fact that the mother gave birth to a child who had drugs in his body and was subsequently adjudicated neglected because of that only marks the starting point of determining if the respondent was unfit, and the State must still show by clear and convincing evidence that the mother was given the opportunity to get drug treatment yet still subsequently gave birth to another child who tested positive for drugs.

Cite: 788 N.E.2d 344 (Ill. Ct. App. May 16, 2003)

In re D.V.

The Supreme Court of Montana affirmed the trial court's decision to terminate a father's parental rights, holding the evidence supported the finding that the father had failed to complete an appropriate treatment plan and the concerns about his fitness as a parent were too great.

Cite: No. 02-765, 2003 Mont. LEXIS 239 (Mont. Jun. 5, 2003).

B.C. v. Dept. of Children and Families

The Florida Court of Appeals reversed the trial court's decision to grant the petition filed by the Department of Children and Families to adjudicate the child dependent due to the father's actions, holding that the instances of domestic violence between the father and his former wife and the issues concerning the father's substance abuse were not enough to adjudicate the child dependent because there was no evidence that the child actually suffered or was likely to suffer any harm as a consequence thereof.

Cite: No. 4D02-3949, 2003 Fla. App. LEXIS 8778 (Fla. Ct. App. June 11, 2003).

In re Christopher B.

The Supreme Court of Rhode Island affirmed the lower court's decision to terminate parental rights as to the mentally impaired mother, concluding that, although the Department of Youth and Family did not make reasonable efforts to provide services geared toward the mother's mental impairment, termination was in the best interest of the children based on the mother's failure to address the problem of recurrent abusive male relationships.

Cite: No. 2001-150-M.P., 2003 R.I. LEXIS 137 (R.I. Sup. Ct. May 30, 2003)

J.B. V. JEFFERSON CO. DEPT. OF HUMAN RESOURCES

The Alabama Court of Civil Appeals affirmed the juvenile court's termination of a mother and father's parental rights to their minor son. The court found that a state law requirement to make reasonable efforts to rehabilitate a parent in order to attempt reunification before seeking to terminate parental rights was not required when a parent has been convicted of voluntary manslaughter in the death of the child's sibling, as was the mother in the case. Additionally, the father's constitutional rights were not violated because he failed to establish a substantial relationship (insofar as he never had met the child); existence of a biological link was not enough.

Cite: No. 2010506, 2003 Ala. Civ. App. LEXIS 437 (Ala. Ct. App. June 30, 2003)

Jenny W. v. State of Alaska, Dept. of Health & Social Services

The Supreme Court of Alaska affirmed the lower court's decision to terminate a mother's parental rights finding that termination was warranted because the children no longer needed mother's financial support because both children were with prospective adoptive parents.

Cite: No. S-10809, 2003 WL 21512993 (Ala. Sup. Ct. July 2, 2003).

F.L. v. Fla. Dept. of Children & Families

A Florida Court of Appeals reversed and remanded the trial court's ruling, holding that a statute allowing termination of parental rights for one child based solely on the involuntary termination of parental rights of another child is unconstitutional because it places the burden of proof on the parent, rather than the State, to show that the conditions are dissimilar to the past circumstances and reunification will not pose a substantial risk of harm to the child.

Cite: No. 4D02-4396, 2003 Fla. App. LEXIS 10150 (Fla. Ct. App. July 3, 2003).

Web link: <http://www.4dca.org/opfrm.html>

In re M.S.

The Texas Supreme Court reversed and remanded the appellate court's ruling, holding that in a parental rights termination case, the parent has a right to effective assistance of counsel; however, the appellate court must presume that the attorney's conduct falls within the wide range of reasonable professional assistance.

Cite: No. 02-0509, 2003 Tex. LEXIS 108 (Tex. Ct. App. July 3, 2003).

In re A.T. and J.T.

The Supreme Court of Montana affirmed in part and reversed in part the trial court's decision to terminate the parental rights of both mother and father. The Supreme Court held that it was proper for the trial court to require the mother to prove that she had complied with the state's treatment plan, but it was improper for the court to terminate the father's parental rights because he was incarcerated and could not comply with the state's treatment plan.

Cite: No. 02-312, 2003 Mont LEXIS 232 (Mont. Jun. 3, 2003).

In re Cooper

An Oregon Court of Appeals reversed and remanded the trial court's summary adjudication to terminate a mother's parental rights after the mother failed to appear, but where the court appointed guardian ad litem appeared and requested a trial. The court held that where a court appointed guardian ad litem appears on the parent's behalf and objects to summary adjudication of a termination petition, the court cannot summarily adjudicate that petition based on a *prima facie* presentation but must proceed to a full adversarial trial.

Cite: No. 804672; A119563, 2003 Ore App LEXIS 896 (Ore. Ct. App. July 16, 2003)

Web Link: <http://www.publications.ojd.state.or.us/A119563.htm>

In re Andrea D.

At the direction of the Illinois Supreme Court, the Illinois Court of Appeals vacated its prior judgment reversing the trial court's termination of parental rights to reconsider it and affirmed the decision of the circuit court, holding that the trial court's finding of unfitness was not against the manifest weight of the evidence based on the father's history of repeated incarceration.

Cite: No. 01--JA-412003, Ill. App. LEXIS 1006 (Ill. Ct. App. Aug. 1, 2003)

State Dept. of Children Services v. Demarr

A Tennessee Court of Appeals reversed and remanded, for a custody determination, a trial court's order that terminated a mother's parental rights, holding that the trial court erred in terminating the mother's parental rights because the mother did not abandon her child. The Court found that the mother did not abandon her child because the basis of removal stemmed from one incident in which the child wandered from the home and that the State did not investigate the incident.

Cite: No. M2002-02603-COA-R3-JV, 2003 Tenn. App. LEXIS 569 (Tenn. Ct. App. Aug. 13, 2003)

Web Link: <http://www.tsc.state.tn.us/opinions/tca/ca3qtr2003.htm>

J.M. v. Department of Children & Families

A Florida Court of Appeals reversed a decision of a trial court adjudicating as dependent an infant child of a sixteen-year-old mother, who was also an adjudicated dependent. The Court held that because the Department of Children and Family Services never had custody of the minor child and the mother was not given notice or an opportunity to be heard, a trial court did not have jurisdiction over the child to enter an order adjudicating the infant child dependent and in effect deprived the mother of her due process rights. Furthermore, the Court found that even if the trial court did have jurisdiction over the infant child, the allegations in the petition were not sufficient evidence to support a finding of dependency, because the mother did not violate any court order by leaving the jurisdiction and no evidence was presented that the child was at risk or neglected.

Cite: No. 4D02-3832, 2003 Fla. App. LEXIS 11769 (Fla. Ct. App. Aug. 6, 2003).

Web Link: <http://www.4dca.org/opfrm.html>

In re B.T.

An Indiana Court of Appeals reversed and remanded a decision of a trial court that terminated a mother's parental rights without a proper final termination hearing. The court found that the mother's due process rights were violated because the trial court conducted the hearing as a summary proceeding without witnesses or cross examination.

Cite: 791 N.E.2d 792 (Ind. Ct. App. 2003)

Web Link: <http://www.in.gov/judiciary/opinions/archive/07160301.nhv.html>

In re J.W. and D.S.G.

The Court of Appeals of Texas affirmed the trial court's termination of parents' parental rights, finding that the mother and father were not entitled to a continuance due to pending criminal charges, they were not entitled to severance, the probative value of their arrests and pending prosecutions was not substantially outweighed by the danger of prejudice, the evidence supported the termination as in the best interests of the children, the parents had effective counsel, and the trial court did not abuse its discretion in dismissing the father's motion for a new trial.

Cite: No. 05-99-00705-CV, 2003 Tex. App. LEXIS 7069 (Tex. Ct. App. Aug. 18, 2003)

In re M.T.

The Texas Court of Appeals affirmed the decision of the trial court terminating the parental rights of a mother to her two children, finding that the jury properly found by clear and convincing evidence termination was in the best interests of the children and the mother violated three grounds for termination under the relevant state statute.

Cite: No. 14-02-00973-CV, 2003 Tex. App. LEXIS 7731 (Tex. Ct. App. Sept. 4, 2003)

In re Victoria B.

The Connecticut Court of Appeals affirmed an order terminating a mother's parental rights, holding the trial court's findings that the mother failed to achieve such a degree of rehabilitation as to be able to assume a responsible position in her child's life within a reasonable time and that termination was in the best interest of the child were not clearly erroneous.

Cite: No. 23174, 2003 Conn. App. LEXIS 385 (Conn. Ct. App. Sept. 2, 2003)

In re Sprague-Carver

The Michigan Court of Appeals, in an unpublished opinion, reversed the trial court's order terminating the mother's parental rights, holding that the court may not terminate the parental

rights of a mother who substantially completed the requirements of her service plan though expert witnesses expressed great reservations about the mother's ability to care for her children due to their special needs.

Cite: No. 246746, 2003 Mich. App. LEXIS 2092 (Mich. Ct. App. Aug. 28, 2003).

In re J.F. and T.F.

The Missouri Court of Appeals affirmed an order terminating an incarcerated father's parental rights, holding under the applicable statute it was the father's responsibility to file for a writ of habeas corpus to insure his ability to attend the hearing and the court was under no obligation to file such a writ *sua sponte*.

Cite: 2003 Mo App LEXIS 1424 (Mo. Ct. App. Sept. 9, 2003)

In re K.L.S.

The Missouri Court of Appeals reversed the trial court's termination of a mother's parental rights, holding that the mother timely withdrew her consent to the order of termination, and therefore, the trial court could not terminate the mother's parental rights based upon her consent.

Cite: No. ED81837, 2003 Mo. App. LEXIS 1 (Mo. Ct. App. Sept. 16, 2003)

In re Sprague-Carver

The Michigan Court of Appeals reversed the trial court's order terminating a mother's parental rights, holding that the trial court erred in finding clear and convincing evidence to conclude that the mother could not properly care for her children, in a reasonable time, as required under the relevant state statute.

Cite: No. 246746, 2003 Mich. App. LEXIS 2092 (Mich. Ct. App. Aug. 28, 2003)

C.S. v. Virginia Beach Dept. of Soc. Serv.

The Virginia Court of Appeals reversed the lower court's decision terminating the mother's parental rights, finding that the mother had substantially remedied the problems that had originally led to the children's placement in foster care.

Cite: No. 3156-02-1, 2003 Va. App. LEXIS 499 (Va. Ct. App. Sept. 30, 2003)

In re Holman

The North Carolina Court of Appeals affirmed a trial court's order that terminated a father's parental rights. The appellate court concluded that that the trial court had subject matter jurisdiction over the action and that there was clear and convincing evidence to support the trial court's conclusion that the alleged father willfully abandoned his child. Finally, the appellate court concluded that the trial court did not abuse its discretion in finding that it was in the child's best interest to terminate the alleged father's parental rights.

Cite: No. COA03-167, 2003 N.C. App. LEXIS 1839 (N.C. Ct. App. Oct. 7, 2003)

In re Michael R.

A Wisconsin Court of Appeals affirmed the trial court's order terminating a mother's parental rights to her two sons. The appellate court found that the trial court properly ordered termination even though the dispositional hearing was continued and occurred outside a statutorily prescribed forty-five day limit, because the mother and guardian ad litem agreed to waive the time limit, the mother did not want the hearing to occur soon, and the trial judge was ill. The appellate court further found that the trial court complied with a relevant state statute when the court accepted the mother's admissions to the allegations contained in the termination petition. Finally, the trial court gave sufficient consideration to all the statutory factors it should consider when exercising discretion to terminate parental rights.

Cite: Nos. 03-0925, 03-0926, 2003 Wisc. App. LEXIS 944 (Wisc. Ct. App. Oct. 7, 2003).

In re Rebecka P.

The Supreme Court of Nebraska reversed the trial court's order terminating the father's parental rights, holding the State had failed to prove by clear and convincing evidence that termination was in the child's best interest, based on the court's finding that, although the father had not accomplished all the goals in the rehabilitation plan, he had made progress and the father had developed a strong bond with the child that would be hurt if it were severed.

Cite: No. S-02-1353, 2003 Neb. LEXIS 164 (Neb. Oct. 10, 2003)

In re C.M.

An Ohio Court of Appeals reversed the lower court's termination of parental rights, holding that there was insufficient evidence to support a finding that termination was in the best interest of the child and what evidence was presented supported preservation of the biological family relationship.

Cite: No. 21372, 2003 Ohio App. LEXIS 4553 (Ohio Ct. App. Sept. 24, 2003).

In re Jacqueline P.

A California Court of Appeals granted a petition for writ of habeas corpus and held that, when a parent files an untimely appeal in a termination of parental rights case, the court may apply the constructive filing doctrine and allow the appeal to proceed when the parent justifiably relied on an attorney to file the timely notice of appeal and underwent due diligence to ensure that the appeal would be filed, but the attorney failed to do so.

Cite: No. D042482, 2003 Cal. App. LEXIS 1469 (Cal Ct. App. Sept. 24, 2003).

People v. John J. (In re John Paul J.)

An Illinois Court of Appeal affirmed the circuit court's order finding that a child was a neglected minor and adjudicating him a ward of the court. The court concluded that parents cannot seek dismissal of a petition for adjudication but must instead seek release of their child if the child is not brought before a judicial officer within 48 hours. Further, petitioners waived their right to dismissal of a claim that the hearing was not brought within 90 days because they failed to file a motion for dismissal on these grounds.

Cite: No. 1-02-1205, 2003 Ill. App. LEXIS 1185 (Ill. Ct. App. Sept. 24, 2003).

In re "Male" W. (Anonymous)

The Supreme Court of New York remanded a trial court's decision that denied plaintiff's motion to terminate a mother's parental rights. The Court held that the trial court erroneously concluded that a diligent effort requirement was required under Social Services Law § 384-b(4)(c), that the trial court erred in dismissing plaintiff's claim, and the court held that a new hearing was required because the trial court erroneously focused on plaintiff's alleged lack of diligent effort.

Cite: 2003 N.Y. App. Div. LEXIS 9686 (N.Y. Sup. Ct. 2003).

In re Wilcoxon

An Ohio Court of Appeals affirmed a judgment of the lower court terminating a mother's parental rights and awarding permanent custody to the Stark County Department of Jobs and Family Services (SCDJS). The appellate court concluded the child could not be placed with either parent at this time and because the child had been in the temporary custody of SCDJS for 12 of the past consecutive 22 months, a grant of permanent custody to SCDJS was in the best interests of the child.

Cite: No. 2003-CA-00221, 2003 Ohio App. LEXIS 5368 (Nov. 3, 2003)

In re Angelique C.

A California Court of Appeals affirmed a lower court's denial of reunification services for a father relying on a State statute that allowed the court to bypass reunification services if a parent's relationship with a sibling of the minor child in question had been permanently severed. The appellate court found that because the father had voluntarily relinquished his rights to this child's sibling, and the evidence presented supported a finding that the father had not made reasonable efforts to treat the problems that led to the sibling's removal, the trial court was correct in denying the father reunification services.

Cite: No. H024986, 2003 Cal. App. LEXIS 1718 (Nov. 19, 2003)

In re C.J.F.

The Court of Appeals of Texas upheld the lower court's decision terminating both mother and father's parental rights, concluding there was enough evidence to establish endangerment, that termination was in the best interests of the child, and that the lower court did not err when admitted into evidence autopsy photos of another child of mother finding that the probative value was not substantially outweighed by the danger of unfair prejudice.

Cite: No. 07-03-0171-CV, 2003 Tex. App. LEXIS 10009 (Tex. Ct. App. Nov. 25, 2003)

Everett v. Everett

A North Carolina Court of Appeals reversed the trial court's order which relieved the State social services agency from facilitating reunification efforts between the minor children and their biological father. The appellate court held that such reunification efforts could not be terminated because the record did not show the efforts were futile.

Cite: No. COA03-316, 2003 WL 22844441 (N.C. Ct. App. Dec. 2, 2003).

In re Dhermy

A North Carolina Court of Appeals affirmed the trial court's order terminating a mother's parental rights and concluded that, despite trial court's failure to appoint a guardian ad litem, there was still clear and convincing evidence to substantiate termination of parental rights.

Cite: No. COA03-71, 2003 WL 22844240 (N.C. Ct. App. Dec. 2, 2003).

State v. T.L.C.

A Tennessee Court of Appeals vacated and remanded the trial court's termination of a father's parental rights and concluded that the trial court's finding that the child was in all reasonable probability subject to abuse or neglect by the father was against the great weight of the evidence.

Cite: No. M2003-00509-COA-R3-JV, 2003 Tenn. App. LEXIS 848 (Tenn. Ct. App. Dec. 3, 2003)

In re Muir

A Tennessee Court of Appeals vacated and remanded the trial court's order denying the petition of a biological mother and her new husband seeking to terminate the parental rights of the biological father. The trial court had previously held that the biological mother and new husband had not established by clear and convincing evidence that the biological father had abandoned the child. However, the appellate court held that it was required to vacate and remand because the trial court's order because the trial court failed to make the specific findings of fact and conclusions of law as required by Tenn. Code Ann. § 36-1-113(k).

Cite: No. M2002-02963-COA-R3-CV, 2003 Tenn. App. LEXIS 831 (Tenn. App. Nov. 25, 2003).

In re A.R.M.F

A Pennsylvania Superior Court upheld a lower court's decision that involuntarily terminated a

couple's parental rights to their two daughters, finding that under a relevant State statute the agency proved that parents demonstrated a continuing inability to care for the children through lack of judgment, marital instability, and refusal to seek counseling. Furthermore, the appellate court found the agency met their burden of proof in presenting evidence that the children had been removed from the home for a statutory period of time and that termination would be in the children's best interest.

Cite: No. 1046 EDA 2003, 2003 PA Super 469 (Pa. Super. Ct. Dec. 2, 2003).

In re Amanda B.

A Court of Appeals of Oregon reversed a lower court's decision terminating a mother's parental rights, finding that the State failed to carry its burden of demonstrating that the mother was an unfit parent. Under a relevant State statute, the appellate court did not find persuasive evidence of unfitness when considering the mother's mental health at the time of the trial because the mother had been sober for 380 days and she had substantially met all the requirements of the service agreement she entered to result in reunification of her children.

Cite: Nos. J000777 & J000778, 2003 WL 22810312 (Or. Ct. App. Nov. 26, 2003)

In re S.E.L.

A Texas Court of Appeals affirmed the trial court's order terminating a mother's parental rights. The appellate court found that the trial court correctly determined that termination was in the best interests of the child due to the mother's drug use and unstable lifestyle.

Cite: No. 13-03-213-CV, 2003 Tex. App. LEXIS 10184 (Tex. Ct. App. Dec. 4, 2003).

Termination of Parental Rights - Appeals

In re the Termination of Parental Rights to Zachary B.

The Fourth District of the Court of Appeals of Wisconsin reversed a lower court's order terminating a mother's parental rights to her three children from an incestuous relationship with her father, holding that the statute unconstitutionally interfered with the mother's fundamental interests in raising her children. The court found that the mother, as an interested parent (i.e., she has custody of her kids and they live with her) has a fundamental liberty interest in parenting them and, further, that there is no case supporting the termination of her parental rights in this type of situation, where the parent was a minor when the incestuous relationship began, the parent has a continuing relationship with her children, and there are no other grounds supporting a finding of parental unfitness. The court distinguished this case from another in which the termination of rights was affirmed on the basis that the mother in this case is not continuing the incestuous relationship.

Cite: Nos. 03-0060, 03-0061, 03-0062, 2003 WL 1563728 (Wis. Ct. App. Mar. 27, 2003).

Web link: <http://www.courts.state.wi.us/html/ca/03/03-0062.htm>

Termination of Parental Rights - Process

Div. of Youth & Family Servs. v. M.Y.J.P.

The New Jersey Appellate Court affirmed the trial court's judgment terminating the parents' parental rights, holding that the child's presence in the state over an extended period of time conferred subject matter jurisdiction over questions bearing on the child's welfare, including the parent-child relationship, and that the conduct of the Haitian mother and related facts subjected her parental status to the jurisdictional sway of the state under the status exception, notwithstanding that she, herself, had never been present in the state.

Cite: Nos. A-3402-01T4, A-3875-01T4, 2003 N.J. Super LEXIS 192 (N.J. Super. May 27,

2003).

In re Beasley

The Ohio Court of Appeals affirmed the trial court's decision granting the Scioto County Children Services Board custody of the appellant-child, concluding the child could not be placed with his mother because the mother had effectively abandoned the child by refusing to comply with children's services request, there were no planned permanent living arrangements available to the child, and the trial court's failure to make an express dual appointment did not prejudice the minor.

Cite: No. 03CA2874, 2003 Ohio App. LEXIS 2557 (Ohio Ct. App. May 28, 2003)

New Jersey Dept. of Youth & Family Servs. v. S.V.

The New Jersey Superior Court affirmed a trial court's decision terminating a mother's parental rights, concluding clear and convincing evidence supported termination and kinship legal guardianship did not apply because adoption was a viable option for the children.

Cite: No. A-1459-02T4, 2003 N.J. Super LEXIS 248 (NJ Ct. App. Jul. 8, 2003)

Web link: <http://www.judiciary.state.nj.us/opinions/a1459-02.pdf>

In re Parent-Child

An Indiana Court of Appeals reversed and remanded a lower court's decision terminating a mother's parental rights. The court noted that a parent does not have a constitutional right to be present at a final termination hearing, but held the mother's due process rights were violated because the hearing was conducted as a summary proceeding where no witnesses testified and no cross-examination was conducted.

Cite: No. 10A04-0210-JV-493, 2003

Ind App LEXIS 1254 (Ind. Ct. App. July 16, 2003)

Adoption of Scott

The Massachusetts Court of Appeals affirmed the trial court's decision denying the birth mother's motion for abuse of discretion filed after the completion of the trial, ruling that the mother lacked standing. The Court concluded that the trial court properly denied the mother's post-adoption motion finding that the mother lacked standing to challenge subsequent changes to the adoption plan because her parental rights had been terminated.

Cite: No. 02-P-1637, 2003 Mass. App. LEXIS 966 (Mass. Ct. App. Sept. 12, 2003)

Abraham L. v. Superior Court

The California Court of Appeals remanded the lower court's order terminating the reunification process, concluding that the juvenile court failed to comply with certain statutory provisions dealing with a sibling group.

Cite: No. B164765, 2003 Cal. App. LEXIS 1455 (Cal. Ct. App. Sept. 19, 2003)

Daniel Y. v. Arizona Department of Economic Security and Andrew Y.

The Arizona Court of Appeals of Arizona vacated and remanded the order of the superior court terminating the father's parental rights, holding that, under the circumstances of this case where it was unknown why the father's two previously appointed counsel withdrew, the father had not knowingly or voluntarily waived his right to counsel.

Cite: No. 1CA-JV 02-0121, 2003 WL 22251089 (Ariz. Ct. App. Oct. 10, 2003)

In re Brooks

An Ohio Court of Appeals held that an agency requesting permanent custody of a child must have temporary custody of the child for 12 or more months of a consecutive 22-month period,

and that the agency is not required to wait the entire 22-month period before filing a motion for permanent custody.

Cite: No. 03AP-282, No. 03AP-442, 2003 Ohio App. LEXIS 4805 (Oct. 7, 2003).

In re J.C.

The Court of Appeals of Iowa reversed and remanded a juvenile court order terminating the child's parents' parental rights, holding that the adoptive parents did not have standing to initiate a proceeding to terminate their own parental rights.

Cite: No. 3-700, 2003 WL 22345729 (Iowa Ct. App. Oct. 15, 2003)

Williams v. Chesterfield

The Court of Appeals of Virginia affirmed a trial court order terminating the mother's parental rights, concluding the evidence was sufficient to support the termination and the social worker did not need personal knowledge of the facts recorded in the prior social worker's notes for those notes to be admitted pursuant to the business records exception to the hearsay rule.

Cite: No. 1152-03-2, 2003 WL 22330989 (Va. Ct. App. Oct. 14, 2003)

In re Adoption of Baby W.

The Indiana Court of Appeals affirmed the judgment a trial court dismissing a putative father's objection to an adoption petition filed by adoptive parents. The putative father claimed that his procedural due process right to be advised of a constitutional right to counsel was violated when his parental rights were terminated. The court held that, because the father had never showed an interest in taking responsibility for the child, he had merely an executory interest in forming a relationship with the child that had not ripened into one which was entitled to substantial protection under the Due Process Clause. Additionally, the Court found the same counsel represented the father throughout all the paternity and adoption hearings; therefore, any error in the trial court's failure to inform the father of right to counsel was harmless.

Cite: No. 14A01-0305-CV-189, 2003 Ind. App. LEXIS 1814 (Ind. Ct. App. Sept. 26, 2003)

Contested Adoption - Termination of Parental Rights

In re J.G., Jr.

The District of Columbia Court of Appeals affirmed the trial court's final decree of adoption of her son by the child's maternal great aunt of the child, concluding that, under a District of Columbia statute (*D.C. Code Ann.* § 16-304), the trial court properly waived the consent of the parents over their objections to the adoption because it was in the best interests of the child.

Cite: No. 02-FS-131, 2003 D.C. App. LEXIS 558 (D.C. Ct. App. Sept. 18, 2003)

Web link: <http://www.dcbarr.org/dcca/pdf/02FS131.pdf>

Termination of Parental Rights - Process/Appeals

City of Newport News Dept. of Social Services v. Winslow

The Virginia Court of Appeals reversed and remanded the lower court's decision striking the Department of Social Services' evidence in a proceeding to terminate the mother's parental residual parental rights to her two youngest children on the basis that the appellate court was unable to discern any guidance from the trial court's broadly written final order and because the trial court improperly applied the law to the facts.

Cite: No. 2631-02-1, 2003 WL 21146583 (Va. Ct. App. May 20, 2003)

Web link: <http://www.courts.state.va.us/opinion/2631021.doc>

Termination of Parental Rights - Representation of Parties

In re Alyssa Nicole C.

The Ohio Court of Appeals reversed the lower court's order terminating the parents' parental rights, concluding the parents were improperly denied counsel.

Cite: No. L-02-1360, 2003 WL 21205372 (Ohio Ct. App. May 23, 2003)

Termination of Parental Rights - Notice Rights

Stafford v. Div. of Youth & Family Servs.

The Supreme Court of Delaware denied the Division of Family Services' motion to dismiss a father's appeal of the family court's order vacating a prior order terminating the father's parental rights, but remanded the case to the family court to consider the father's motion for reconsideration, holding that, in a termination of parental rights case, a parent is not put on constructive notice of a petition against him if a copy of the petition is mailed to the parent's last known address and the parent does not receive it and that, even if a parent does not inform the court of address changes, the parent does not waive his right to reinstatement proceedings.

Cite: No. 159, 2003, 2003 Del. LEXIS 281 (Del. May 16, 2003).

State Regulations

Amendment to the Rules of Juvenile Procedure, Fla. R. Juv. P. 8.350

The Supreme Court of Florida amended the proposed Juvenile Rules of Procedure section 8.350 and concluded that before a court can involuntarily place a child into a residential mental health facility the law needs to incorporate both a precommitment hearing and appointment of counsel for a child when the child objects to the residential placement.

Cite: No. SC00-2044, 2003 WL 746422 (Fla. Mar. 6, 2003)

Web Link: <http://www.flcourts.org/sct/sctdocs/bin/sc00-2044-final.pdf>

International Adoption - State Law Issues

In re Joshua S.

A California Court of Appeals reversed and remanded the juvenile court's order terminating jurisdiction, holding that inability of maternal grandmother, whom the court appointed as the children's legal guardian, to financially provide for the children constituted a foreseeable future harm to the children's welfare and therefore the trial court's termination of jurisdiction over the children was an abuse of discretion.

Cite: No. B156445, 2003 WL 1154111 (Cal. Ct. App. Mar. 14, 2003).

Web Link: <http://www.courtinfo.ca.gov/opinions/documents/B156445.PDF>

Interstate Compact on the Placement of Children

In re K.W.

A Georgia Court of Appeals upheld a juvenile court order finding that the State agency still maintained legal custody of a child even though the child was placed with his paternal aunt and uncle in Georgia. According to the Interstate Compact on the Placement of Child (ICPC), when an agency from another state places a child in a different state, the agency that sent the child to the current state shall retain jurisdiction over the child to determine all matters in relation to custody, supervision, care, treatment and disposition of the child, as if the child had remained in the sending agency's state. A parent's filing of a habeas corpus action does not alter the result

because it is not authorized by the ICPC and one cannot force Georgia to divest South Carolina of jurisdiction when Georgia had previously refused jurisdiction.

Cite: 2003 Ga. App. Lexis 739 (Ga. Ct. App. Jun. 13, 2003)

Termination of Parental Rights - Involuntary

In re Termination of Parental Rights to Tyler P.

The Wisconsin Court of Appeals reversed the circuit court's termination of the birth father's parental rights. The appellate court concluded that the trial court's findings that the child had learned all his emotions by age three and that termination would make his adoption more likely were not supported by the record. The court therefore remanded the case for another dispositional hearing in order for the trial court to consider whether the factors required under Wisconsin law to be considered in a proceeding for termination of parental rights were supported by the facts of record.

Cite: No. 02-3411, 2002 WL 954265 (Wis. Ct. App. Mar. 11, 2003).

In re RLH

The Tennessee Court of Appeals affirmed the trial court's ruling terminating a mother's parental rights because the mother was unable to provide a stable living environment for her child and had failed to protect her child from abuse, concluding the mother's limited cognitive abilities would prevent her from ever properly caring for her child.

Cite: No. M2002-01179-COA-R3-JV, 2003 Tenn. App. LEXIS 836 (Tenn. Ct. App. Jun. 3, 2003)

In re Knuckles

An Ohio Court of Appeals reversed the juvenile court's order terminating parental rights. The Court held that the record failed to offer clear and convincing evidence that termination of parental rights was in the children's best interests where the parents attempted to comply with their case plan, though transportation difficulties hindered their ability to consistently do so, and the county agency did not help alleviate the transportation difficulties.

Cite: Nos. CA2003-01-004, CA2003-001-005, 2003 Ohio App. LEXIS 3926 (Ohio Ct. App. Aug. 21, 2003).

In re T.S.

The Supreme Court of Kansas affirmed the district court's order, holding that if the trial court finds that granting custody to a noncustodial parent is in the best interests of the child, the court need not first consider the possibility of reintegration to the home from which the child was removed.

Cite: No. 89,077, 2003 Kan. LEXIS 482 (Kan. Aug. 22, 2003).

In re S.B.

The Superior Court of Pennsylvania affirmed the lower court's order in relation to two children who had been adopted from Guatemala, adopting the findings of the master and placing the parents' daughter in foster care with the goal of adoption and the son in the parents' custody under the protective supervision of Beaver County Children and Youth Services. The court held that the son, as a sibling in a household where his sister was sexually abused, is a dependent child though he himself was not abused and that, though the child was returned to the household, the state must continue to intervene and supervise the family.

Cite: Nos. 1052 WDA 2002 & 1053 WDA 2002, 2003 PA Super. LEXIS 2333 (Pa. Super. Ct. Aug. 6, 2003).

In re Jac'Quez N.

The Supreme Court of Nebraska reversed that part of the juvenile court's order that failed to terminate the mother's parental rights and remanded the cause with directions to the juvenile court to enter an order of termination, holding that reasonable efforts at reunification are not required when there is clear and convincing evidence of aggravating circumstances in which the abuse was so severe that an attempt at reunifying the child with the parents would compromise the safety of the child.

Cite: No. S-02-1381, 266 Neb. 782, 2003 Neb. LEXIS 157 (Neb. Sept. 26, 2003).

Termination of Parental Rights - Grounds

In re D.T.

An Illinois Appellate Court reversed and remanded a Circuit Court's decision to terminate a biological mother's parental rights. The Circuit Court found she was an unfit mother and that it was in the child's best interest to terminate her rights, however, the Appellate Court held that at the best interest stage, the State must prove by a preponderance of the evidence that it is in the child's best interest to terminate parental rights and the bulk of the evidence weighed against termination.

Cite: No. 1-01-2410, 2003 Ill. App. LEXIS 347 (Ill. App. Ct. Mar. 27, 2003)

Web link:

<http://www.state.il.us/court/Opinions/AppellateCourt/2003/1stDistrict/March/Html/1012410.htm>

State Dept. of Children's Svcs. v. D.D.B.

A Tennessee Court of Appeals affirmed the juvenile court's finding of abandonment by clear and convincing evidence and that it was in the best interest of the child that the mother's parental rights be terminated. The appellate court concluded that the mother's eight visits over a period of more than two years constituted only "token visitation" and that the mother had failed to visit the child for a period of eight consecutive months prior to the department filing its termination petition.

Cite: No. M2002-00523-COA-R3-JV, 2003 Tenn. App. LEXIS 246 (Tenn. Ct. App. Mar. 28, 2003)

Web link: <http://www.tsc.state.tn.us/OPINIONS/TCA/ca1qtr2003.htm> (To view opinion, scroll down and double click on [State Dept of Children's Svcs v. D.D.B.](#))

Termination of Parental Rights - Effect of Termination Child Support

State ex rel. v. Overstreet

The Supreme Court of Oklahoma vacated the ruling of the court of appeals and affirmed the decision of the trial court, holding that the termination of a parent's parental rights also terminated parental duties, including the obligation to pay child support.

Cite: No. 97179, 2003 WL 22331844 (Okla. Oct. 14, 2003)

Effect of Adoption Decree

Sluder v. Marple

The Kentucky Court of Appeals affirmed the trial court's decision to grant summary judgment on behalf of the defendant in a wrongful death action. As a matter of first impression, the Court of Appeals held that an adopted child may not maintain a wrongful death action following the death of his or her biological parent, explaining that, once adopted, the child is no longer "the kindred

of the deceased" as contemplated by Kentucky's wrongful death statute.
Cite: No. 2002-CA-680-MR, 2003 Ky App LEXIS 131 (Ky. Ct. App. May 30, 2003).

Adoption of Scott

The Massachusetts Court of Appeals affirmed the trial court's order denying a biological mother's motion for abuse of discretion that was filed after the completion of trial on a petition of the Department of Social Services to dispense with the need for her consent (and that of the father) to the adoption of her four year old son, concluding that, after it was determined that the biological mother was unfit, she had no right to determine the child's future, and absent extraordinary circumstance, a biological parent cannot rely on post-trial changes in the adoption plan to reopen proceedings.

Cite: No. 02-P-1637, 59 Mass. App. Ct. 274 (Mass. Ct. App. Sept. 12, 2003)

Rights of Grandparents and Other Biological Relatives

In re Brenda DD

The New York Supreme Court, Appellate Division, affirmed the family court's order granting Albany County Department of Children, Youth and Families' motion to vacate order granting grandfather custody of the child, holding that where the birth parents' parental rights have been terminated and the child is in the custody of an authorized agency for adoption, extended family members have no special right to custody which allow them to override the agency's decision to place the child for adoption.

Cite: No. 91980, 2003 NY App LEXIS 6293 (NY Ct. App. Jun. 5, 2003)

Fenn v. Sheriff

The California Court of Appeals reversed the trial court's decision denying the parents of a deceased mother visitation rights with their grandchild and granting the father's motion for summary judgment for failure to allege that the father was an unfit parent, concluding that Family Code § 3102, which grants the parents of deceased visitation rights, did not infringe upon the father's constitutional right to raise his child.

Cite: No. C041899, 2003 Cal. App. LEXIS 943 (Cal. Ct. App. Jun. 25, 2003)

In re Mitchell

The Ohio Court of Appeals affirmed the lower court's decision granting custody of the children to their paternal aunt living in Boulder, Colorado as opposed to the children's foster parents of three years, concluding that the lower court did not abuse its discretion.

Cite: Nos. 2002-L-078 & 2002-L-079, 2003 Oh. App. LEXIS 3647 (Ohio Ct. App. Aug. 1, 2003)

S.H.B. v. DaSilva

The Court of Appeals of Washington affirmed the trial court's order granting the godmother custody of a minor who was removed from her paternal grandmother's home by her maternal grandmother after the paternal grandmother was arrested for growing substantial amounts of marijuana, concluding that the paternal grandmother was not entitled to the rights of a parent even though the child had resided with her for six years because no special status is provided for individuals acting in loco parentis and that the trial court properly applied the best interest standard in holding that substantial evidence supported a finding that it was in the child's best interest to live with her godmother.

Cite: No. 50681-1-I, 2003 Wash. App. LEXIS 1823 (Wash. Ct. App. Aug. 18, 2003)

In re Hilliard

The Ohio Court of Appeals affirmed a lower court's dismissal of a paternal grandmother's

motion to intervene in a stepparent adoption proceeding even though she had been granted visitation rights through the domestic court. The appellate court concluded that the paternal grandmother was not entitled to intervene and that the lower court lacked jurisdiction to grant post adoption visitation rights.

Cite: No. 8-03-13, 2003 Ohio App LEXIS 3968 (Ohio Ct. App. Aug. 25, 2003)

In re Baby G.

In an unreported memorandum opinion, a Superior Court of Connecticut denied a mother's petition to terminate a father's parental rights to their son. Previously, the mother had filed a petition for adoption in the Probate Court, attempting to effect the adoption of her son by her husband (the child's stepfather). When the biological father learned of the order granting the adoption, he filed a motion to reopen the order and requested paternity tests. The Probate Court then vacated the adoption order and transferred the matter to the Superior Court. Even though grounds existed to terminate the father's parental rights, the Superior Court chose to make specific findings directed to the best interest of the child. The Court found that although the father had no on-going parental relationship with the child, he was entitled to an opportunity to develop a relationship due to his efforts to build a relationship with child since the time he discovered the plans for adoption. Furthermore, the Superior Court found that allowing the child to believe the stepfather was the child's biological father would not serve the child's best interests.

Cite: 2003 Conn. Super. Lexis 2280 (Aug. 21, 2003) (opinion subject to further appellate review)

In re Adoption of M.E.

The Florida Court of Appeals reversed the trial court's denial of a grandmother's adoption petition, holding that DFS was required to give the grandmother an opportunity to adopt the twins after a cousin was unable to because, in the termination of parental rights trial, the court had given the grandmother an opportunity to adopt if a cousin could not.

Cite: Nos. 1D02-2743 & 1D02-2938, 2003 Fla. App. LEXIS 14067 (Fla. Ct. App. Sept. 19, 2003)

Web link: <http://www.1dca.org/opinion/index.htm>

Dep't of Children & Family Servs. v. B.Y

The Florida Court of Appeals affirmed the lower court's order finalizing the adoption petition of a grandmother without the consent of the Department of Children and Family Services, concluding that Florida Statutes section 63.125 did not require a final home investigation because the statute provided an exception to the final home investigations requirement for individuals related to a child within the third degree of consanguinity.

Cite: No. 4D03-715, 2003 Fla. App. LEXIS 14815 (Fla. Ct. App. Oct. 1, 2003)

In re the Custody of G.J.

The Indiana Court of Appeals reversed and remanded the trial court's judgment granting the mother's motion to dismiss the uncle's action seeking custody of his deceased brother's daughter, concluding the uncle had grounds to pursue the action because the child custody statute permits any person other than a parent to initiate an independent cause of action to seek custody.

Cite: 796 N.E.2d 756 (Ind. Ct. App. 2003)

B.B. v. Dep't of Children & Families

A Florida Court of Appeals reversed and remanded a trial court's denial of a paternal grandmother's petition to adopt her grandchildren. The Court concluded that the Department of Children and Family Services failed to comply with an order made after the termination of

parental rights, which gave the grandmother the equivalent of the statutory priority under section 63.0425(1) of the Florida Statutes.

Cite: No. 1D02-2743, 02-2938, 2003 Fla. App. LEXIS 14067 (Fla. Ct. App. Sept. 19, 2003).

In re T.J.F.

The Indiana Court of Appeals reversed a lower court's order that granted an adopted child's biological sister post-adoption visitation rights and remanded with instructions to grant the adoptive parent's motion to dismiss the guardian ad litem and the Office of Family and Children's motion to permit biological sibling visitation. The Court of Appeals concluded that the lower court lacked authority under the statute to order visitation between the adopted child's biological sister and the adopted child, absent a specific authorization for the biological sister's visitation in the adoption decree.

Cite: No. 02-A05-0212-CV-616, 2003 Ind. App. LEXIS 2107 (Ind. Ct. App. Nov. 13, 2003).

In re Goff

The Ohio Court of Appeals, 11th District affirmed the lower court's order denying the paternal grandparents' motion to intervene in their grandchild's dependency hearing. The court found that the grandparents failed to state how their presence in the proceedings was necessary and the grandparents' intervention would not be in the best interest of the child. The court also noted that the grandparents never obtained a legal right to have custody or visitation with the child before the dependency hearing. In a second order entered in relation to this case, the court affirmed both the trial court's denial of the father's motion to dismiss or stay ruling on the county agency's motion for permanent custody of his child pending the outcome of the grandparents' appeal and the final judgment awarding permanent custody to the county.

Cite: No. 2003-P-0068, 2003 Ohio App. LEXIS 5442 (Ohio Ct. App. Nov. 14, 2003); No. 2003-P-0069, 2003 Ohio App. LEXIS 5444 (Ohio Ct. App. Nov. 14, 2003).

Consent Requirements - Who Need Not Consent

In re Adoption of Gabrielle Ann. M.

The Ohio Court of Appeals affirmed the trial court's judgment finding that the birth mother failed, without justification, to communicate with her children for at least one year and, therefore, the mother's consent for adoption was not needed, recognizing that the mother's testimony contradicted that of the prospective adoptive parents' and deferring to the trial court in matters of witness credibility.

Cite: Nos. L-03-1043, L-03-1037, 2003 Ohio App. LEXIS 2623 (Ohio Ct. App. Jun. 6, 2003)

Consent Requirements- Who Must Consent

In re Adoption of Cutright

An Ohio Court of Appeals reversed and remanded a lower court decision that the consent of a biological father was not needed for a stepfather to adopt the child. The court held that the relevant Ohio statute allows adoption without consent when a biological parent has failed without justifiable cause to communicate or provide for support for one year preceding the filing of an adoption petition or placement of the child. In this case, the court found evidence, such as the child was of a young age and the father lived 1,000 miles away, to establish justifiable cause for the biological father's failure to communicate and thus his consent to adoption was necessary.

Cite: No. 03CA2696, 2003 WL 21660034 (Ohio Ct. App. July 15, 2003)

Privacy of Records and Proceedings

In re Camille

The Supreme Court of New York denied the petition of a 64-year-old woman who requested the unsealing of her adoption records, explaining that the public policy of New York is that sealed adoption records are not to be made available except upon a showing of need to treat a serious, existing physical or mental illness and concluding that the petitioner failed to meet this burden.

Cite: 2003 N.Y. Misc. LEXIS 676 (N.Y. Sup. Ct. Jun. 3, 2003)

Custody Issues

Rosero v. Blake

The North Carolina Supreme Court reversed and remanded an appellate court's decision that common law dictated that custody of an illegitimate child presumptively vests in the mother and could not be awarded to the child's biological father. The Court found that modification of N.C.G.S. § 50-13.2 and changes to the General Statutes expressly abrogated the common law presumption vesting custody of a child in the child's mother. Furthermore, the Court held that the father's rights are legally equal to that of the mother and that the trial court was correct to apply the best interest of the child standard to determine where the child should be placed.

Cite: No. 322AO2, 2003 NC Lexis 605 (N.C. Jun. 13, 2003)

Winczewski v. Winczewski

The Oregon Court of Appeals affirmed by an equally divided court an award of custody of two children to their paternal grandparents, holding that the grandparents had rebutted the statutory presumption of that the mother acts in the best interest of the children and that the change in custody was in the best interest of the children and that the application of the statute did not infringe upon the mother's constitutional right to the care and custody of her children since the grandparents have shown by a preponderance of the evidence that the mother is unable to adequately care for her children.

Cite: No. A112079, 2003 Ore. App. LEXIS 903 (July 16, 2003)

Consent

In re Adoption of Pierce

A Massachusetts Court of Appeals dismissed an appeal brought by the child's half-sister concerning a trial court's order dispensing with consent of the biological parents. The court held the half-sister lacked standing because there is no constitutionally protect liberty interest in sibling visitation.

Cite: No. 02-P853, 2003 Mass App Lexis 644 (Mass. Ct. App. Jun. 16, 2003)

Child Support

In re H.E.J. & H.E.T.

The Tennessee Court of Appeals affirmed the trial court's termination of a father's parental rights, but reversed the trial court's award of child support, concluding with respect to the latter that the father did not have an opportunity to address the propriety of the child support award or to challenge the calculation relied upon by the trial court.

Cite: No. M2002-00539-COA-R3-JV, 2003 Tenn. App. LEXIS 443 (Tenn. Ct. App. Jun. 19, 2003)

Barber v. Myers

The North Carolina Court of Appeals reversed the lower court's order denying biological father's motion to dismiss an action filed by the biological mother for child support for a child that had been adopted by the maternal grandmother, holding that the 1992 adoption of the child by the maternal grandmother divested the biological father of all legal duties and obligations toward the child under the statute in effect at the time of the adoption.

Cite: No. COA02-1235, 2003 N.C. App. LEXIS 1554 (N.C. Ct. App. Aug. 5, 2003)

Inheritance

Smalley v. Parks

The Missouri Court of Appeals affirmed the determination of the lower court that the evidence was insufficient to show that the stepdaughter of the decedent, who died intestate, had been equitably adopted by the decedent.

Cite: No. 25111, 2003 Mo App Lexis 967 (Mo. Ct. App. Jun. 24, 2003)

Inheritance Rights

Shippey v. Rogers

The Supreme Court of Wyoming reversed the district court's order, holding that although an adopted child has a statutorily preserved right to inherit from his biological parents, an adopted child's biological family members do not have a right to inherit from the adopted child under the State's intestacy statutes.

Cite: No. 02-211, 2003 WY 125, 2003 Wyo. LEXIS 150 (Wyo. Oct. 1, 2003).

Inheritance Rights - Equitable Adoption/Equitable Estoppel

In re Estate of Seader

The Wyoming Supreme Court affirmed the district court's refusal to apply the doctrine of equitable adoption to the distribution of a testate estate. The court held that where the applicable statutes and the last will and testament are unambiguous then there is no need to resort to equity.

Cite: No. 02-224, 2003 Wyo. LEXIS 144 (Wyo. Sept. 23, 2003).

Fraudulent Adoption

Cockrell v. Dillard

The Arkansas Court of Appeals affirmed the lower court's decision to set aside the adoption based on a finding by the court that the adoption was in name only and was procured in order for the child to draw social security benefits.

Cite: No. CA 03-209, 2003 Ark App Lexis 572 (Ark. Ct. App. Jun. 25, 2003)

Subsidies/Adoption Assistance

In re Strandberg

The Minnesota Court of Appeals reversed and remanded the district court's child support award, holding that adoption subsidies should be considered as a resource of the child when determining the amount of support under the applicable statute.

Cite: No. F7021255, 2003 Minn. App. LEXIS 871 (Minn. Ct. App. July 22, 2003)

Subsidies/Tax Credits

York County Children & Youth Servs. v. Dep't of Pub. Welfare

The Commonwealth Court of Pennsylvania affirmed the Department of Public Welfare's ruling, holding that an adopted daughter suffered from Reactive Attachment Disorder at or before the time of her adoption, and therefore, she had a "mental or emotional handicap" at the time she was adopted. Because the adopted daughter was found to have a "mental or emotional handicap," she met the requirements of a Pennsylvania statute (55 Pa. Code § 3140.202 (b)(4)(i)) authorizing adoptive families to apply for financial assistance on behalf of children who have a physical, mental or emotional handicap.

Cite: 833 A.2d 281 (Pa. Cmwlth. 2003).

Foster Care Issues

Carter v. Beech Brook

An Ohio Court of Appeals affirmed a judgment of a trial court that granted the Cuyahoga County Department of Children and Family Services and other Defendants summary judgment, finding that the particular use of a home as a foster home was permitted under relevant Ohio statutes. The Plaintiffs argued that the foster home was not a permitted use under the relevant Ohio statute because it was a "treatment foster home" and that the home violated township zoning resolutions because the children were placed there as a result of criminal behavior. The Court held that when definitions from the Ohio statute are read together, the term "certified foster home" also includes "treatment foster homes" and therefore whether the home was classified as "treatment", "family", or "specialized foster home" was immaterial and the home was protected.

Cite: No. 2001-G-2397, 2003 Ohio App. LEXIS 3757 (Ohio Ct. App. Aug. 8, 2003)

Claims Against Foster Parents

Lehmann v. Dept. of Children and Family Serv.

The Appellate Court of Illinois, First District, Second Division reversed the circuit court's order which reversed the State agency's refusal to expunge child abuse allegations against foster parents. The appellate court concluded that administrative appeals in the expungement process did not deprive the foster parents of their due process rights and, further, that when there is evidence sufficient to support a finding of child abuse, the allegations should not be expunged. Accordingly, the court reinstated the State agency's findings that the abuse allegations should not be expunged.

Cite: No. 1-02-0472, 2003 Ill App. LEXIS 1122 (Ill. Ct. App. Sept. 9, 2003)

Foster Caregiver Rights

Risk Management Division of General Services ex rel. Apodaca v. Farmers Mutual Ins. Co.

A New Mexico Court of Appeals reversed a lower court's summary judgment in favor of a foster parents' homeowners insurance company. The trial court held that the foster child was a resident of the home and therefore the insurance company did not have the duty to defend or indemnify the foster parents in any judgments relating to the death of the foster child under a resident exclusion provision. The Appellate Court ruled that additional facts were necessary to determine if the child was a resident and that, on remand, the trial court would have to consider the intent of the parties under the insurance contract and the nature of the child's stay in the

foster home to determine if the child was a resident.

Cite: 2003 N.M. App. Lexis 51 (N.M. Ct. App. Aug. 20, 2003)

Dep't of Children & Families v. M.M.

The Florida Court of Appeals reversed the trial court's order finding the Department in contempt for failing to transfer the child from a residential sex offender program to a therapeutic foster home, holding that the violation was not willful as the Department had made an effort to comply.

Cite: No. 4D02-4087, 2003 Fla. App. LEXIS 15481 (Fla. Ct. App. Oct. 15, 2003)

Federal Law

Lawrence v. U.S.

In an action alleging Bivens claims and claims under the Federal Tort Claims Act by a female child who had been sexually abused by her foster father, the Ninth Circuit Court of Appeals affirmed the district court's ruling in favor of defendants, two federal officers. The officers had withheld some aspects of the criminal record of a participant in the federal witness protection program when he applied to work at children's group home and later to be a foster parent. The Ninth Circuit affirmed the district court's ruling dismissing the action. The officers were entitled to qualified immunity on the Bivens claims where they had been objectively reasonable in reviewing the witness's file and verifying there was no prohibition against his working with minors. Summary judgment was appropriate on the Federal Tort Claims Act claims, pursuant to the statute's discretionary function exemption.

Cite: No. 01-36-142, 2003 U.S. App Lexis 17171 (9th Cir. Aug. 21, 2003)

Adoption Procedure

In re Eduardo A.

A California Court of Appeals reversed and vacated as moot the Superior Court of Los Angeles County and concluded that the court did not have jurisdiction over the children.

Cite: No. B166189, 2003 WL 22725361 (Cal. Ct. App. Nov. 20, 2003)

SB v. Dept. of Children and Family Services

A Florida Court of Appeals reversed and remanded the circuit court's default entry, concluding that the circuit court had no authority to enter a default in case adjudicating dependency for the child simply because the father arrived late for the hearing.

Cite: No. 2D03-66, 2003 Fla. App. Lexis 16962 (Fla. Ct. App. Nov. 7, 2003).

Criminal Charges - Agency Responsibility

Waldon v. Little Flower Children's Service

The New York Supreme Court, Appellate Division, affirmed the lower court's decision denying the foster care agency's and church diocese's motion for summary judgment in a personal injury action where a foster mother was stabbed outside the foster care agency by the biological mother, concluding an issue of fact existed as to whether the attack was reasonably foreseeable thereby triggering the need for protective action.

Cite: 2003 N.Y. App. Div. LEXIS 9163 (N.Y. Sup. Ct. App. Div. Sept. 4, 2003)

Representation of Parties: Guardian ad Litem

In re Antone C.

The Nebraska Court of Appeals modified the trial court's denial of reasonable guardian ad litem (GAL) fees with respect to investigation and home visits. However, the court affirmed the denial of 11 of the 14 hours spent on the GAL report, concluding that the time spent was unreasonable and unnecessary since much of the report was duplicative of the State agency's report.

Cite: No. A-02-849, 2003 Neb. App. LEXIS 244 (Neb. Ct. App. Sept. 9, 2003)

Visitation Rights**Adoption of Felton**

The Massachusetts Court of Appeals affirmed the lower court's order denying post-adoption visitation to the mother despite the Department of Social Service's belief that the children would benefit from limited contact with their mother, concluding there was insufficient evidence to show the "significant, existing bonds" necessary to warrant an order for post-adoption visitation.

Cite: No. 03-P-439, 2003 WL 22244238 (Mass. Ct. App. Sept. 30, 2003)

§ 1983 Action for Violation of Due Process in Termination Cases**Meyers v. Franklin County Court of Common Pleas**

The United States Court of Appeals for the Sixth Circuit affirmed the district court's dismissal of a § 1983 suit brought against two Franklin County Judges, holding that both judges were immune since the parents brought the suit against them in their official capacities.

Cite: 2003 U.S. App. LEXIS 23556 (6th Cir. 2003).