

Court of Appeals Division III

State of Washington

Opinion Information Sheet

Docket Number: 27659-7

Title of Case: In re the Matter of the Welfare of A. G.

File Date: 03/24/2011

SOURCE OF APPEAL

Appeal from Pend Oreille Superior Court

Docket No: 07-7-00022-9

Judgment or order under review

Date filed: 11/13/2008

Judge signing: Honorable Allen C Nielson

JUDGES

Authored by Dennis J. Sweeney

Concurring: Stephen M. Brown

Dissenting: Teresa C. Kulik

COUNSEL OF RECORD

Counsel for Appellant(s)

David L. Donnan

Washington Appellate Project

1511 3rd Ave Ste 701

Seattle, WA, 98101-3635

Heather Lynn McKimmie

Disability Rights Washington

315 5th Ave S Ste 850

Seattle, WA, 98104-2691

Counsel for Respondent(s)

Tobin J. Carlson

Attorney at Law

1116 W Riverside Ave

Spokane, WA, 99201-1106

Pamela Vogt Reuland
Offc of Attorney General
1116 W Riverside Ave
Spokane, WA, 99201-1106

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Welfare of: No. 27659-7-III

) (consolidated with
A.G.,) No. 27660-1-III)
L.S.)
) Division Three
)
) PUBLISHED OPINION
)
)

Sweeney, J. -- The termination of parental rights must be based, in part, on an

explicit or implicit finding of current parental unfitness. In re Welfare of A.B., 168

Wn.2d 908, 920, 232 P.3d 1104 (2010). If the finding is not explicit, the court may imply

the finding if the record clearly shows that the trial court found the parent currently unfit

to parent. Id. at 921. We will not imply that necessary finding based on this record. We

therefore reverse the trial court's order and remand for further proceedings.

FACTS

A.G. was born December 7, 2001. A.G.'s sibling, L.S., was born January 20,

2005. The State took custody of both children on June 20, 2005. A trial court found

Nos. 27659-7-III; 27660-1-III

In re Welfare of A.G., L.S.

them dependent on August 2. The State petitioned to terminate their mother's parental

rights to them in March 2007.

The State alleged that the children's mother, Ms. G., was unfit to parent because of

child neglect, drug abuse, domestic violence, and mental illness. The trial court held a hearing, concluded that parental rights should be terminated, and entered findings and conclusions. The trial court did not expressly find that Ms. G. was unfit to parent the children.

Ms. G. appealed the termination order. And we affirmed it. In re Welfare of A.G., 155 Wn. App. 578, 229 P.3d 935 (2010). The Supreme Court granted discretionary review and remanded to us for reconsideration in light of A.B., 168 Wn.2d 908. In re Welfare of A.G., 169 Wn.2d 1032, 242 P.3d 810 (2010). We now do so.

DISCUSSION

The State may terminate a parent's rights to his or her children with two essential conclusions -- the parent is unfit and termination of the parent-child relationships is in the children's best interests. A.B., 168 Wn.2d at 911; RCW 13.34.180(1), .190. A parent's

constitutional right to due process of law requires a showing that the parent is currently

unfit to parent. A.B., 168 Wn.2d at 920. Whether a proceeding satisfies constitutional

due process is a question of law that we review de novo. In re Welfare of J.M., 130 Wn.

2

Nos. 27659-7-III; 27660-1-III

In re Welfare of A.G., L.S.

App. 912, 920, 125 P.3d 245 (2005). The court's conclusion that the parent is unfit may

be explicit or implicit.

In A.B. the trial court entered findings on each of six factors (RCW 13.34.180(1))

but did not expressly find Rogelio Salas currently unfit to parent. 168 Wn.2d at 917, 921-

22. It, nevertheless, terminated Mr. Salas's parental rights to his daughter. Id. at 918.

The Court of Appeals affirmed the termination order, and the Supreme Court granted

review and reversed. Id. at 918, 927. The Supreme Court concluded that the trial judge had failed to find parental unfitness, either implicitly or explicitly.

Similarly, we find no express finding here that Ms. G. is unfit to parent. We turn then to the findings to determine whether the necessary finding of unfitness can be implied. In doing so, we do not review for evidence upon which the trial court could have based a finding of current unfitness. Id. at 927. We instead look for evidence that the trial court did or did not find current unfitness. Id. We "may imply the existence of such a finding if -- but only if -- the facts and circumstances clearly demonstrate that the finding was actually made by the trial court." Id.

Again, Ms. G.'s identified parental deficits were child neglect, drug abuse, domestic violence, and mental illness. And the trial court found that "[t]here is little likelihood that [these] conditions will be remedied so that [A.G.] or [L.S.] can be returned

Nos. 27659-7-III; 27660-1-III

In re Welfare of A.G., L.S.

to their mother in the near future." A.G. Clerk's Papers (CP) at 49 (based on RCW

13.34.180(e)). Some of the court's findings, however, show that Ms. G.'s first two

deficits have been remedied and that the remaining two deficits do not affect Ms. G.'s

ability to parent. A.G. CP at 51, 52, 54 (Findings of Fact N, O, P, U). The trial court did

not find that Ms. G. currently neglects her children. It found instead that she is nurturing

and has healthy interactions with A.G. and L.S. The court also found that Ms. G.'s

"chemical dependency is apparently in remission." A.G. CP at 52. The court suspected

but found no evidence to affirmatively show otherwise. Report of Proceedings (RP) at

925; A.G. CP at 52 (Finding of Fact P).

Next, the court found that domestic violence leads to the physical and emotional

abuse of children but also found that there is no "necessary connection between being a domestic violence perpetrator and parenting ability." A.G. CP at 51. The court, however, wanted Ms. G. to complete a domestic violence perpetrator program, which she had not completed by the time of trial. The court also found that Ms. G. experiences hallucinations and paranoia and has not remedied these illnesses. A.G. CP at 51, 52 (Findings of Fact O, P). But it found that it is not known how these illnesses affect her parenting ability. A.G. CP at 51 (Finding of Fact O). And this record suggests that there are no negative effects.

healthy relationship with her children. Her chemical dependency is currently in

remission, although the trial court suspects she has relapsed. RP at 925; A.G. CP at 52

(Finding of Fact P). And it is not clear from the court's findings that Ms. G.'s domestic

violence and mental illness deficiencies are relevant to her ability to parent. There is,

then, no obvious parental deficit that would support an implicit finding of current parental

unfitness. So we reverse the termination order.

Our resolution of this issue is dispositive. We, therefore, need not address Ms.

G.'s remaining contention that the trial court erred by considering the best interests of the

children while determining the parental unfitness issue.

We reverse the order terminating Ms. G's parental rights to A.G. and L.S. and

remand for further proceedings

Sweeney, J.

I CONCUR:

Brown, J.