

In the Interest of F.A.G.R , 761 S.E.2d 512 (2014)

- Decided July 9, 2014
- Opinion: Doyle, P.J.
- Concurring: Miller and Dillard, J.J.

Posture:

Petitioners appeal from a juvenile court order declining to endorse their petition alleging F.A.G.R.'s deprivation and seeking to invoke the juvenile court's jurisdiction.

Issue(s):

Did the juvenile court abuse its discretion when it issued an order concluding that the petition lacked allegations sufficient for the court to exercise its jurisdiction, and thus declined to endorse the petition pursuant to OCGA § 15-11-37 (2013)?

Holding:

Affirmed. The juvenile court did not abuse its discretion because there was no evidence that he was "not currently suffering from a lack of care or control necessary for his physical, mental, or emotional health or morals, nor was he without a custodian." Also given his age, the court did not abuse its discretion in choosing not to exercise jurisdiction for public interest reasons.

Facts:

F.A.G.R. was born on June 25, 1995 in Honduras. He was forced to leave home at 17 by his parents, in order to come to the United States to seek work. In route to the United States, he experienced a kidnapping and additional abuse before U.S. Customs picked him up in January 2013. First, he was placed in the custody of the United States Office of Refugee Resettlement and then subsequently, F.A.G.R. was placed with an older cousin (one of the petitioners) in March 2013. He was enrolled in school and Petitioners provided for his needs. When the Petitioners filed the petition, F.A.G.R. was only a few months from his eighteenth birthday.

Petitioners (the custodians of then 17 year-old F.A.G.R.) alleged that F.A.G.R. had enrolled in school and that his needs were being met. However, they argue that given the circumstances under which F.A.G.R. left Honduras, and the difficulties he faced coming to the United States, he was a deprived child. The juvenile court issued an order that the petition lacked allegations sufficient for the court to exercise jurisdiction and declined to endorse the petition.

Reasoning:

OCGA § 15-11-37 (2013) provides as follows: "A petition alleging delinquency, deprivation, or unruliness of a child shall not be filed unless the court or a person authorized by the court has determined and endorsed upon the petition that the filing

of the petition is in the best interest of the public and the child.” The court found no sign of current or future deprivation given he was placed with family and attending school. Therefore there was no jurisdiction for the court. Additionally, given the child’s age, the court discusses mootness (though this does not impact their decision directly given the petition was found to fail on its merits).

In the Interest of G.Q., 761 S.E.2d 472 (2014)

- Issue Date: July 19, 2014
- Opinion: Andrews
- Concurring: McFadden, Ray

Posture and Issue:

The father of G.Q. appealed the juvenile court's order terminating his parental rights on three grounds: the court failed to establish when the defendant was personally served, the court admitted evidence containing hearsay, and the court violated his right to an attorney due to their strict enforcement of the thirty day period for petitioning after being served with notice of termination. The appeal considers whether the juvenile court correctly found that the father lacked the standing to challenge the termination of his parental rights.

Holding:

Affirmed. The juvenile court correctly found that the father lacked standing to challenge the termination of his parental rights.

Facts:

In the original case, the Coweta County juvenile court terminated the parental rights of both the appellant-father and the mother after finding that the father lacked the standing to challenge the termination of his parental rights.

DFCS became involved when G.Q. tested positive for marijuana at birth in 2010. The agency thereafter lost contact with the parents until January 12, 2012 when the appellant G.Q. entered custody after his father brought him to an appearance at drug court where the father tested positive for cocaine and was incarcerated. DFCS filed a deprivation petition the following day, the summons for which was served upon the father on January 26, 2012. The summons contained an admonition regarding obtaining representation. Five months after the adjudicatory hearing, G.Q.’s mother gave birth to Y.Q. DFCS took immediate custody because both the mother and the newborn tested positive for marijuana. The following day, July 17, 2012, DFCS filed a deprivation petition, the summons for which was served upon the father on July 30, 2012. This summons and process also contained notice of the parties’ right to counsel.

The father's reunification case plans for both G.Q. and Y.Q. required that he legitimize the children.

Following a period of inaction by the parents, DFCS filed for termination of parental rights on March 8, 2013. G.Q.'s father was served with the summons and process in Coweta County Jail on March 12, 2013, which included a statement notifying him of his right to counsel and the potential loss of all rights to object to the termination of his parental rights unless he pursued legitimation within 30 days. The trial court provided counsel for him in an order filed April 29, 2013, at his request, and filed a petition to legitimize on May 3, 2013. During a hearing on May 20, 2013, the juvenile court found that he lacked standing to challenge termination of his parental rights, after which time, on May 30, the court entered an order terminating the parental rights of both parents. The court noted that the parents had not had any contact with G.Q. since Y.Q.'s birth on July 13, 2012.

The father of G.Q. appealed, contending that the juvenile court did not establish that he was actually served with the summons and process on March 12, 2013, that the court admitted hearsay as evidence, and that the strict enforcement of termination of parental rights thirty days after the summons in the absence of a petition to legitimize violated his right to counsel.

Reasoning:

The court acknowledged that the biological father whose parental rights the court wishes to terminate has a right to notice of the petition to terminate parental rights, which can be given via mail, personal service, or publication. In this case, the appellant was served personally at Coweta County Jail on March 12, 2013. The appellate court notes that the burden of establishing insufficient service rests with the party claiming insufficient service. The father did not bring up the issue of service in the pretrial hearing or in the motion to continue the termination hearing. Further, the father did not even claim improper service, but rather that one of the signatures on the form was indecipherable. The court found this argument to be without merit. The juvenile court was correct in finding that the appellant was personally served on March 12, 2013.

The appellate court cites O.C.G.A. 15-11-96(h), which dictates that the juvenile court "shall" terminate rights if no legitimation petition is filed within thirty days of the summons. Here, the father filed a petition to legitimize on May 3, 2013. The court reasoned that the word "shall" mandated that the juvenile court terminate the father's parental rights after thirty days without a petition to legitimize.

Next, the court focuses on the appellant's claim that his right to counsel was violated. The court found this argument without merit as well, reasoning that he failed to file a petition for legitimation within thirty days of the notice of termination of his parental rights, and therefore lacked standing to challenge this termination.

As to the appellant's claim that the juvenile court admitted hearsay, the appellate court noted that this was unsupported by any meaningful argument, and therefore deemed abandoned.