

***In the Interest of J.V.J.***, Ga. App. LEXIS 703 (2014)

- Decided October 30, 2014
- Opinion: Dillard, P.J.
- Concurring: Doyle, J. and Miller, J.

Posture:

Petitioner appeals the termination of her parental rights and subsequent denial of motion for a new trial, arguing that the evidence was insufficient to support the court's finding that the cause of the child's deprivation was likely to continue.

Issue(s): Did the Juvenile Court abuse its discretion by finding without clear and convincing evidence that the cause of J.V.J.'s deprivation, including the mother's past drug use and current poverty, was likely to continue or will likely not be remedied, when the mother completed a long term substance abuse program, had obtained student loans, and began attending college?

Holding:

Reversed. The Juvenile Court did abuse its discretion, because there was not clear and convincing evidence demonstrating that the cause of J.V.J.'s deprivation is likely to continue or will likely not be remedied. There have been substantial efforts put forward by the mother, without a reunification plan or any other support, to earn her high-school diploma, enrolled in college, completed a drug-rehabilitation program, and attended a 15-week parenting class.

Facts:

J.V.J. was removed from her mother's custody at birth because her mother previously lost parental rights to three other children and had a history of instability and drug use. At the termination hearing nine months later, the mother admitted to chronic drug use but contended that she stopped using when she learned she was pregnant with J.V.J. She visited regularly with the child, voluntarily enrolled in a parenting course, completed an outpatient substance abuse program, earned her high school diploma and enrolled in college. Further, though she was unemployed, she could apply for TANF, and she had maintained stable housing for approximately two years with support from her boyfriend, who – though he was not J.V.J.'s biological father – signed an acknowledgment of legitimacy indicating he was her father. DFCS had not developed a case plan for J.V.J. and had done nothing to assist the mother to work toward reunification.

The court entered an order terminating the mother's parental rights on the basis of her long history of instability and drug use and her dependence on a man who also abused drugs. The court noted her previous involuntary terminations and found that she was unable to meet J.V.J.'s needs.

Reasoning:

On appeal, the court found that the undisputed evidence established the mother's substantial efforts to rehabilitate herself, even without support from DFCS. This evidence refutes the juvenile court's finding that there was no evidence that the mother

would ever be able to care for the child. Also, DFCS acknowledged the mother's continued sobriety and evident bond with the child despite the department's lack of efforts to facilitate reunification. The court cited the well-established principle that evidence of past misconduct and instability, without more, is insufficient to permanently terminate the parent-child relationship and noted that the juvenile court cited no compelling evidence that the mother was presently unfit. Moreover, the juvenile court has no authority to terminate parental rights simply because the child would be better off with a foster family.