

In the Interest of C.K.S., Ga. App. LEXIS 657, *15 (2014)

- Decided October 6, 2014
- Opinion: McFadden, P.J.
- Concurring: Andrews, P.J.
- Special concurrence: Ray, J.

Posture:

Petitioner father filed an application for discretionary review of a juvenile court order terminating his parental rights, alleging that the evidence was insufficient to support the court's finding that continued deprivation was likely to cause serious harm and that termination was in the child's best interests. The father also challenged the juvenile court's decision not to place the child with a family member.

Issue(s):

Did the juvenile court abuse its discretion when it ordered termination of parental rights of C.K.S.'s father when there was no clear and convincing evidence of parental misconduct or instability?

Holding:

Reversed. The juvenile court did abuse its discretion, because the child had a bond with the father and the juvenile court did not consider the evidence that the father had secured employment, would have obtained housing had he not been incarcerated, and had completed the case plan goals. The court did not reach the issue regarding the child's placement.

Facts:

The court found C.K.S. was deprived on July 28, 2011 on the basis of his mother's incarceration and previous involuntary termination because of her chronic, unrehabilitated substance abuse, lack of stable housing and income, and failure to bond with the child. Additionally, the father admitted to marijuana use, was unemployed, and could not accommodate the child in his residence. The court-ordered case plan established concurrent goals of reunification of the child with his mother and adoption; it did not include any specific goals for the father and the father did not sign the plan. The juvenile court did not enter a case plan that included goals for the father until June 19, 2012; however, the father voluntarily entered two accountability-court programs and properly legitimated the child.

Before and after he had become part of the case plan, the father tested positive for drugs and pled guilty to several criminal offenses. On its motion to extend custody, DFCS further alleged that the father had not complied with recommendations from the psychological evaluation and had failed to complete his parenting class. DFCS filed a petition to terminate parental rights on September 28, 2012 alleging that the father had failed to: remain drug and alcohol free, maintain stable housing sufficient for himself and the child, maintain stable income sufficient to support himself and the child; and maintain a bond with the child. DFCS also alleged that the father had been convicted and incarcerated for an unspecified felony that adversely affected his relationship with his

son. Before a hearing on the petition could be held, the father was sanctioned by the Family Dependency Treatment Court. On October 14, 2013, the juvenile court terminated the parental rights of both parents.

Reasoning:

O.C.G.A § 15-11-94(a) provides that in order to terminate a parent's rights there must be clear and convincing evidence of parental misconduct or ability showing that (1) the child is deprived; (2) that lack of proper parental care or control is the cause of deprivation; (3) that the cause of deprivation is likely to continue or will not likely be remedied; and (4) that continued deprivation is likely to cause serious physical, mental, emotional, or moral harm to the child.

O.C.G.A § 15-11-94(b)(4)(A) also provides that the juvenile court must consider whether termination of parental rights would be in the best interest of the child, after considering the child's physical, mental, emotional, and moral condition and needs, including the need for a secure, stable home.

On appeal, the court found that the record did not support the juvenile court's findings that the father had been incarcerated repeatedly for substance abuse. Moreover, it found that the record refuted the juvenile court's finding that the father had not maintained a bond with the child. The juvenile court also failed to consider evidence of the father's employment, housing, and completion of the case plan goals. Accordingly, the evidence was insufficient to support the requisite findings for termination.

Given the reversal of the termination, the appellate court did not address the issue of the suitability of placement with the child's aunt but instead, encouraged the juvenile court to reconsider its finding.