

October 2006
Appellate Case Law Update

In the Interest of J.L.E., 2006 Ga.App. LEXIS 1253 (Decided October 5, 2006)

Posture: Putative father appeals from the trial court order denying his motion for a new trial following the court's denial of his legitimation petition and termination of parental rights. *Affirmed.*

Facts: Appellant failed to pursue legitimation of his child despite being advised to do so by the DFCS caseworker until 11 months after his son was taken into DFCS custody and DFCS had filed its TPR petition. Additionally, appellant was arrested on a probation violation, resulting in the reinstatement of a 10-year prison sentence. Prior to his arrest, he had visited his son twice while the child was in DFCS custody. The juvenile court concluded that appellant had abandoned his opportunity interest in developing a relationship with the child and entered an order denying the legitimation petition. In a separate order, the juvenile court granted the petition to TPR after concluding that appellant lacked standing to challenge it as a result of his failure to properly legitimate the child.

Held: The juvenile court conclusion that the father has abandoned his opportunity interest is sufficient to end the appellate court's inquiry and justifies the denial of the legitimation petition. Delay in filing was unreasonable because obtaining the results of genetic testing is not a condition precedent to filing a legitimation petition. Moreover, the primary evidence presented at trial and relied upon by the court in denying the legitimation petition sufficiently supported the finding that appellant had abandoned his opportunity interest. Because appellant failed to properly legitimate the child, he lacked standing to challenge the termination of his parental rights.

In the Interest of D.R., 2006 Ga.App. LEXIS 1249 (Decided October 5, 2006)

Posture: Father appeals termination of his parental rights based on lack of clear and convincing evidence of misconduct or inability and lack of sufficient evidence that termination was in the best interest of his son. *Affirmed.*

Facts: Appellant's five-month old son was taken into DFCS custody after the child's mother refused to care for him and attempted to give custody to the maternal grandmother, who was deemed unsuitable. Appellant declined placement because he was on medication for epileptic seizures. The juvenile court found the child to be deprived and DFCS subsequently filed a TPR petition based on the parents' failure to comply with the case plan.

Held: Deprivation was established by unappealed prior deprivation orders. The trial court's determination that the lack of proper parental care or control caused the deprivation was properly based on its consideration of the severity of the father's medical condition and his incapacity during seizures. The evidence that the father was not

capable of successfully parenting his son, based on his failure to complete his reunification case plan and failure to provide financial support for his son while the child was in DFCS' custody, supported the court's finding that deprivation would continue. Finally, the same facts that support deprivation and that deprivation is likely to continue also support the conclusion that deprivation would likely cause the child serious harm. The same factors that support a finding of parental inability support the conclusion that termination of parental rights is in the child's best interest.

In the Interest of M.R., 2006 Ga.App. LEXIS 1248 (Decided October 5, 2006)

Posture: Biological father appeals from termination of his parental rights based on insufficient evidence. *Affirmed.*

Facts: Mother and youngest child tested positive for cocaine at child's birth and mother had a history of cocaine and heroin abuse and incarceration. Newton County DFCS filed a deprivation petition and the court initially allowed appellant to retain custody under a protective order. Appellant failed to keep the mother from the children and DFCS was awarded temporary custody. DFCS subsequently pursued TPR based on the parents' failure to complete their case plan.

Held: Appellant was bound by prior unappealed deprivation orders, and the court properly relied on the parents' past conduct in determining that the parents' inability caused the deprivation, that the deprivation was likely to continue and that the deprivation would cause the children serious harm.

In the Interest of A.N., 2006 Ga. LEXIS 655 (Decided October 4, 2006)

Posture: DFCS appeals from denial of a motion for reconsideration of a ruling awarding legal custody of a child to DFCS and physical custody to a third party. *Reversed.*

Facts: Following a deprivation hearing in which the juvenile court found the children to be deprived, it awarded legal custody to DFCS and physical custody to the maternal grandparents. DFCS filed a motion for reconsideration on the basis that the court was statutorily prohibited from placing legal custody in the agency and physical custody in another party. The juvenile court denied the motion, finding that it had the statutory authority to place conditions and limitations on DFCS' legal custody and in the alternative, that the statutory provisions preventing the division of custody of a deprived child violated the Equal Protection Clause of the U.S. Constitution.

Held: A trial court may not order that legal and physical custody of a deprived child be divided between DFCS and some other party unilaterally chosen by the court. A review of O.C.G.A. § 15-11-55, including the 2003 revisions construed *in pari materia* O.C.G.A. § 49-5-3(12)(A) supports this conclusion. Further, the laws in question did not violate concepts of equal protection.

In the Interest of B.D., 2006 Ga.App. LEXIS 1229 (Decided October 3, 2006)

Posture: Consolidation of appeals from order terminating parental rights of mother and father based on insufficient evidence. *Affirmed.*

Facts: All three children were taken into the custody of DFCS after their father held them hostage for several hours and threatened to kill himself and them. As a result of these actions, he plead guilty to numerous crimes and was sentenced to ten years in prison. In addition to the hostage crisis, the juvenile court noted that there were also allegations of neglect and drug use by the parents. Both parents consented to a finding of deprivation. DFCS subsequently filed a petition to terminate the parental rights of both parents based on the father's incarceration, the mother's continued drug use and the parents' failure to comply with the case plan.

Held: Juvenile court's order terminating parental rights was supported by evidence of father's continued incarceration coupled with the aggravating circumstances of the father's actions to take the children hostage and threats to kill them. Unless the father could establish that he was harmed by an alleged due process violation arising from not receiving a copy of the case plan, reversal was not required. In view of the egregious nature of the father's crimes and incarceration, termination would be warranted even if the father had complied with the case plan. The evidence likewise supported termination of the mother's parental rights, and her appeal failed to challenge the requisite findings of the juvenile court.