

**Appellate Case Law Update
November 2006**

In the Interest of D.N.K., 2006 Ga.App. LEXIS 1410 (Decided November 16, 2006)

Posture: Mother appeals from the juvenile court's order finding her child to be deprived and continuing temporary custody of the child with DFCS. *Reversed.*

Facts: Mother's three children were removed based on the mother's failure to provide adequate supervision. A reunification plan was developed and two of the children were subsequently returned to the mother's custody. D.N.K., who suffered from developmental delays, remained in DFCS' custody. The mother initially complied with the reunification case plan but later fell out of compliance after losing her job, failing to obtain child care, and encountering financial difficulty. DFCS then filed a deprivation complaint, alleging that D.N.K. had been in foster care for three years and had cognitive, language, and motor skills delays beyond his mother's ability to care for him. The court found the child deprived and noted that the previous temporary custody order would expire soon. A month later, DFCS filed another deprivation petition and a petition to terminate the mother's parental rights, noting that the mother had completed all case plan goals except obtaining stable employment.

Held: The Court of Appeals held that the finding of deprivation was not supported by clear and convincing evidence. Although a child's disability coupled with a parent's limitations may form a legitimate basis for finding deprivation, the evidence did not meet the definition of deprived in that deprivation was not shown to have resulted from unfitness on the part of the parent.

In the Interest of D.D.B., 2006 Ga.App. LEXIS 1413 (Decided November 16, 2006)

Posture: Mother appeals from the order terminating her parental rights claiming insufficient evidence to support the finding that the cause of the deprivation is likely to continue and that continued deprivation is likely to cause serious harm to the child. *Affirmed.*

Facts: Mother's three children were taken into DFCS custody because of the mother's inability to care for them due to her admitted drug addiction. A reunification case plan was developed. Custody to DFCS was subsequently extended due to the mother's inconsistent progress on her case plan goals, including completing a drug treatment program and obtaining stable housing. The mother continued her on-again, off-again progress for more than a year, after which DFCS filed a petition to terminate her parental rights.

Held: The juvenile court was authorized to conclude that the mother's inconsistent efforts in the past to stay off drugs, lead a stable life, and visit the child so that bonding could occur had caused the child to suffer emotional difficulties and exhibit behavior problems. The evidence also showed that the child's well-being had improved in foster

care and she had bonded with her foster parent who desired to adopt her. Moreover, the same factors that showed the existence of parental misconduct or inability support the finding that termination of parental rights is in the child's best interests.

In the Interest of T.E.T., 2006 Ga.App. LEXIS 1366 (Decided November 6, 2006)

Posture: Father appeals from an order terminating his parental rights, challenging the sufficiency of the evidence and contending that termination is not in the best interest of the child. *Reversed*.

Facts: The child was placed in the custody of DFCS after both he and his mother tested positive for cocaine at the time of his birth. The mother stipulated to the deprivation and did not appeal the order. Appellant father initially denied paternity and was not included in the reunification case plan. Subsequently, the father submitted to DNA testing, but before the results were obtained, DFCS filed a motion to change the plan to nonreunification/adoption based on the mother's failure to comply with the case plan. Several weeks after appellant learned the results of the paternity test, he contacted the caseworker to inquire about visitation, began visiting regularly and filed a legitimation petition. At the time of the hearing on the termination petition, the legitimation petition had not yet been filed. Appellant testified that he had purchased a trailer but did not have land on which to locate it. He did, however, provide evidence of family support until the trailer was ready. He demonstrated that he did not use illegal drugs, testified to stable employment and finances, and a semi-regular payment schedule of child support. The mother's rights were terminated and Appellant was given 60 days to complete the set up of his home, submit to drug test and complete a home study. At a subsequent hearing, the juvenile court terminated Appellant's parental rights based on his failure to have his residence completed in the time allowed, failure to pay child support on a regular basis and failure to visit the child regularly since the last hearing.

Held: The Court of Appeals noted that a reunification case plan was never implemented for Appellant, that the termination petition was filed within months of notification that he was the biological father, that he had contacted the DFCS caseworker and visited regularly, that he purchased a home and began making child support payments. Appellant was seeking both to establish a relationship with the child and to provide some support for him. Thus, the Court held that while the father should have taken greater initiative, the evidence fell short of meeting the clear and convincing evidence standard necessary to uphold the termination of his parental rights.