

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CJ 0268

STATE OF LOUISIANA
IN THE INTEREST OF:
D.M.S. (DOB MAY 6, 2008)

Judgment rendered June 10, 2011.

Appealed from the
City Court of Slidell, Juvenile Division
in and for the Parish of St. Tammany, Louisiana
Trial Court No. 10 JS 3301
Honorable James "Jim" Lamz, Judge

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ATTORNEY FOR
D.M.S.

BEFORE: KUHN, PETTIGREW, AND HIGGINBOTHAM, JJ.

*J.S.P.
J.E.K.
by [signature]
TMH*

PETTIGREW, J.

Appellant, S.M.B., seeks review of the trial court's judgment terminating her parental rights as to the minor child, D.M.S., pursuant to La. Ch. Code art. 1015(3)(k).¹ S.M.B. argues on appeal that the State of Louisiana, Department of Children and Family Services ("State")² failed to prove by clear and convincing evidence that prior attempts to rehabilitate her were unsuccessful and that termination was in the child's best interest. For the reasons that follow, we affirm.

According to the record, D.M.S., who was nine-months old at the time, originally entered the State's custody by Instanter Order on February 26, 2009. Her parents, who were arrested two days earlier for domestic violence, had arranged to leave D.M.S. in the care of a neighbor. However, on the following day, D.M.S. somehow ended up with her grandfather, who advised the State that he could not take care of D.M.S. This led to the February 26, 2009 Instanter Order. D.M.S. was subsequently adjudicated a child in need of care on May 4, 2009, and was continued in the State's custody. A case plan with services for the parents was approved by the trial court, and the child's parents, S.M.B. and K.M.S., were ordered to comply so that reunification with D.M.S. might be achieved. At the 12-Month Dispositional Case Review Hearing on March 2, 2010, the trial court found that "inadequate progress [had] been made toward alleviating or mitigating the causes necessitating placement in foster care and that reunification [was] impossible at

¹ The grounds for involuntary termination of parental rights are set forth in La. Ch. Code art. 1015, in pertinent part, as follows:

(3) Misconduct of the parent toward this child or any other child of the parent or any other child in his household which constitutes extreme abuse, cruel and inhuman treatment, or grossly negligent behavior below a reasonable standard of human decency, including but not limited to the conviction, commission, aiding or abetting, attempting, conspiring, or soliciting to commit any of the following:

....

(k) The parent's parental rights to one or more of the child's siblings have been terminated due to neglect or abuse and prior attempts to rehabilitate the parent have been unsuccessful.

² See La. R.S. 36:471, creating the department and La. Acts 2010, No. 877, § 3, directing the Louisiana Law Institute to change all references to the "Department of Social Services" to the "Department of Children and Family Services" and all references to either the "Office of Community Services" or the "Office of Family Support" to the "Office of Children and Family Services" throughout the Louisiana Revised Statutes of 1950.

this time." The trial court then changed the plan for permanent placement for D.M.S. from reunification to adoption.

A petition for termination of parental rights and certification for adoption was filed on June 24, 2010, seeking to terminate the rights of S.M.B. and K.M.S.³ The State sought termination based on La. Ch. Code art. 1015(3)(k) and (5), noting, in part, as follows:

VI.

UNDER 1015 (3) (K) The misconduct of [S.M.B.] toward this child, any other child of hers, or any other child in her household, which constitutes extreme abuse, cruel and inhuman treatment, or grossly negligent behavior below a reasonable standard of human decency, including but not limited to:

The parental rights of the mother, [S.M.B.], to this child's siblings ... were involuntarily terminated due to abuse or neglect, on the 5th day of May 2008 ... and prior attempts to rehabilitate the mother have been unsuccessful[.]

VII.

UNDER 1015 (5) On February 26, 2009, the child entered state custody pursuant to Court Order. The child has remained in custody since that time, a period of more than one year. [S.M.B.] has not substantially complied with the case plan for services filed by the Department and approved by the Court as necessary for the safe return for the child, as evidenced in part by:

1. [S.M.B.'s] repeated failure to comply with the required program of treatment and rehabilitation services provided in the case plan ...[.]
2. [S.M.B.'s] lack of substantial improvement in redressing the problems preventing reunification, and the persistence of conditions that led to removal[.]
 - a. she has not acknowledged her responsibility for the circumstances necessitating state custody for the child, instead choosing to blame [the state], the child's caretaker, her mother, and [K.M.S.];[;]
 - b. she has not cooperated with the [D]epartment, even while under Court scrutiny and facing termination of her parental rights[;]
 - c. she appeared at a family gathering under the influence of either drugs or alcohol[;]
 - d. despite her prior termination of parental rights due to her substance

³ We note that K.M.S. has not appealed the judgment below. Thus, the judgment is final as it relates to the termination of his parental rights to D.M.S.

abuse and failure to rehabilitate, she still has not significantly changed the behaviors which necessitated the child's removal[;]

The matter proceeded to a hearing on October 12, 2010, at which time the trial court heard testimony from various witnesses, including S.M.B. After considering the testimony and evidence in the record, the trial court found that the State had proven, by clear and convincing evidence, that S.M.B.'s parental rights had previously been terminated as to two of her other children because of substance abuse and that prior attempts at rehabilitation had been unsuccessful. The trial court ruled that S.M.B. was not a credible witness and that she was "feigning the mental health [problems] in order to get the substances that she craves so desperately." The trial court further found that short of "locking [S.M.B.] up 24 hours a day" to protect her from herself, there was not much more the State could have done to help her as she has refused to recognize that she has a continuing substance abuse problem. Thus, the trial court concluded that it was in the child's best interest to terminate S.M.B.'s parental rights pursuant to Article 1015(3)(k). The trial court signed a judgment terminating S.M.B.'s parental rights and freeing D.M.S. for adoption on October 22, 2010. This appeal by S.M.B. followed.

On appeal, S.M.B. argues that the State failed to meet its burden of proof by establishing each element of Article 1015(3)(k) by clear and convincing evidence. S.M.B. does not contest that her parental rights to two of her other children were involuntarily terminated. However, she contends that the State has failed to prove that prior attempts at rehabilitation were unsuccessful.

A court of appeal may not overturn a judgment of a juvenile court absent an error of law or a factual finding that is manifestly erroneous or clearly wrong. **Stobart v. State, Through Department of Transportation and Development**, 617 So.2d 880, 882 (La. 1993); **State, In Interest of GA**, 94-2227, p. 4 (La. App. 1st Cir. 7/27/95), 664 So.2d 106, 110. An appellate court reviews a trial court's findings as to whether parental rights should be terminated according to the manifest error standard. **State ex rel. K.G.**, 2002-2886, p. 4 (La. 3/18/03), 841 So.2d 759, 762. The

Louisiana Supreme Court has expressed the unique concerns present in all cases of involuntary termination of parental rights as follows:

In any case to involuntarily terminate parental rights, there are two private interests involved: those of the parents and those of the child. The parents have a natural, fundamental liberty interest to the continuing companionship, care, custody and management of their children warranting great deference and vigilant protection under the law, and due process requires that a fundamentally fair procedure be followed when the state seeks to terminate the parent-child legal relationship. However, the child has a profound interest, often at odds with those of his parents, in terminating parental rights that prevent adoption and inhibit establishing secure, stable, long-term, and continuous relationships found in a home with proper parental care. In balancing these interests, the courts of this state have consistently found the interest of the child to be paramount over that of the parent.

The State's *parens patriae* power allows intervention in the parent-child relationship only under serious circumstances, such as where the State seeks the permanent severance of that relationship in an involuntary termination proceeding. The fundamental purpose of involuntary termination proceedings is to provide the greatest possible protection to a child whose parents are unwilling or unable to provide adequate care for his physical, emotional, and mental health needs and adequate rearing by providing an expeditious judicial process for the termination of all parental rights and responsibilities and to achieve permanency and stability for the child. The focus of an involuntary termination proceeding is not whether the parent should be deprived of custody, but whether it would be in the best interest of the child for all legal relations with the parents to be terminated. As such, the primary concern of the courts and the State remains to secure the best interest for the child, including termination of parental rights if justifiable grounds exist and are proven. Nonetheless, courts must proceed with care and caution as the permanent termination of the legal relationship existing between natural parents and the child is one of the most drastic actions the State can take against its citizens. The potential loss to the parent is grievous, perhaps more so than the loss of personal freedom caused by incarceration.

Title X of the Children's Code governs the involuntary termination of parental rights. [Article] 1015 provides the statutory grounds by which a court may involuntarily terminate the rights and privileges of parents. The State need establish only one ground ... but the judge must also find that the termination is in the best interest of the child. Additionally, the State must prove the elements of one of the enumerated grounds by clear and convincing evidence to sever the parental bond.

State ex rel. J.A., 99-2905, pp. 7-9 (La. 1/12/00), 752 So.2d 806, 810-811 (citations omitted).

The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents. **State ex rel. SNW v. Mitchell**, 2001-2128, p. 8 (La. 11/28/01), 800

So.2d 809, 814 (quoting **Santosky v. Kramer**, 455 U.S. 745, 753, 102 S.Ct. 1388, 1394-1395, 71 L.Ed.2d 599, 606 (1982)). A corollary principle is that in an involuntarily termination of parental rights proceeding, a court must delicately balance the natural parent's fundamental right and the child's right to a permanent home. **Mitchell**, 2001-2128 at 8, 800 So.2d at 814-815.

We have thoroughly reviewed the record in this matter and the history leading up to the State's petition for termination of S.M.B.'s parental rights. The record clearly and convincingly demonstrates that it was in the best interest of D.M.S. that S.M.B.'s parental rights be terminated and she be cleared for adoption. The trial court's conclusion is supported by the evidence and, therefore, not manifestly erroneous.

For the above and foregoing reasons, the judgment of the trial court is affirmed. All costs associated with this appeal are assessed against appellant, S.M.B. We issue this memorandum opinion in accordance with Uniform Rules--Courts of Appeal, Rule 2-16.1B.

AFFIRMED.