

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 38795

IN THE MATTER OF THE)	
TERMINATION OF PARENTAL RIGHTS)	
OF JANE (2010-27) DOE.)	
IDAHO DEPARTMENT OF HEALTH &)	2011 Unpublished Opinion No. 639
WELFARE,)	
)	Filed: September 30, 2011
Petitioner-Respondent,)	
)	Stephen W. Kenyon, Clerk
v.)	
)	THIS IS AN UNPUBLISHED
JANE (2010-27) DOE,)	OPINION AND SHALL NOT
)	BE CITED AS AUTHORITY
Respondent-Appellant.)	
_____)	

Appeal from Magistrate Division of the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Carolyn M. Minder, Magistrate.

Decree terminating parental rights, affirmed.

Gabriel J. McCarthy, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Mary Jo Beig, Deputy Attorney General, Boise, for respondent.

MELANSON, Judge

Jane Doe appeals to this Court from the magistrate’s decree terminating her parental rights to her child. For the reasons set forth below, we affirm.

I.

FACTS AND PROCEDURE

Doe’s child, E.G., was born in 2001. From 2001 until 2009, the Idaho Department of Health and Welfare received multiple referrals regarding E.G., including allegations of physical and sexual abuse. In March 2009, the Department received a report that, after E.G. refused to clean up his dishes, Doe threw a bowl at E.G., which hit him and resulted in a golf-ball-sized lump on his head. Doe indicated that, while she did throw the bowl, she did not intend to hit E.G. and the injury was an accident. In June 2009, E.G. was reported to have a rug burn on his

chest. E.G. disclosed to Department social workers that he obtained the injury when his father knocked him down, kicked him a couple of times, and threw him into a closet. After an investigation, Father was charged with felony injury to a child. A no-contact order was issued between Father and E.G. Despite the no-contact order, Doe allowed contact between E.G. and Father. Doe let E.G. visit his aunt's home even though she knew Father was residing there and that contact between E.G. and Father was likely. As a result of this incident, the Department filed a petition for hearing under the Child Protective Act, alleging that E.G. was neglected because Doe failed to honor the no-contact order. E.G. was ordered into the legal custody of the Department.

In August 2009, E.G. was placed on an extended home visit with Doe. Doe was provided with a case plan which required that she: (1) successfully complete a protective parenting class and follow all recommendations; (2) not allow any contact between E.G. and his father other than supervised visits at the Department; (3) successfully participate in the Family Preservation Services program and demonstrate acquired skills in interactions with E.G.; (4) participate in a psychological evaluation and follow all recommendations; (5) maintain a safe, stable, and structured home environment and not allow any persons to reside in the home without prior Department approval; and (6) obtain and maintain legitimate employment sufficient to meet her family's basic needs. For the first three months of the extended home visit, it appeared that all was going well. Doe worked diligently on her case plan, attended all classes, and participated fully with Family Preservation Services which provided her with intensive in-home parenting training. Doe reported that the techniques she was learning in her parenting classes were helpful and that her interactions with E.G. were improving.

In November 2009, however, the Department received a report that E.G. had wounds on his right arm. When confronted about the marks, Doe admitted that she had grabbed E.G. in response to him throwing toys at her. Once she had immobilized E.G. by grabbing his arm she spanked him with her bare hand seven to eight times. Doe stated that her fingernails were long at the time and that she did not intend to hurt E.G., but she acknowledged that she felt out of control when the incident occurred. Doe stated that, once she discovered E.G. was bleeding, she cleaned and bandaged his wounds. The Department also received a report that, a few days prior to this incident, Doe became frustrated with E.G. when he insisted on wearing a hooded sweatshirt instead of a jacket. Doe reportedly grabbed the hood of the sweatshirt briefly causing

E.G. to choke and leaving a temporary red mark on his neck. Based on these incidents, a safety plan was developed in which Doe agreed to cease all forms of physical discipline.

In December 2009, the Department received a number of reports about physical violence occurring between Doe and E.G. In one incident, a power struggle occurred when E.G. refused to do his homework. The incident escalated and ended with E.G. punching and hitting Doe. In another incident, E.G. reportedly attacked Doe by hitting her with a mop and broom. Finally in early January 2010, two further incidents of physical violence occurred. In the first incident, Doe and E.G. were fighting over a punching bag. As the two struggled to gain control of the bag, E.G. reportedly slipped and hit his head against a wall. Doe stated that the incident was an accident and that she did not push E.G. In the second incident, Doe had banned E.G. from watching television. When Doe found E.G. laying on the floor watching television anyway, she threw a bottle of carpet cleaner at him. The bottle reportedly bounced off the floor and hit E.G., leaving a small bruise under his chin. Doe reported she did not intend to hit E.G. with the bottle and that the incident was an accident.

Based on these ongoing physical altercations, the extended home visit was ended on January 5, 2010, and E.G. was placed in foster care. From February to May 2010, Doe was allowed one two-hour supervised visit with E.G. per week. Subsequently, Doe was also allowed an additional two-hour unsupervised visit per week. The Department filed a petition for termination of Doe's parental rights in August 2010. The Department alleged termination was proper because it was in E.G.'s best interests and because E.G. was neglected. Specifically, the Department alleged that E.G. was without the proper care and control necessary for his well-being because Doe was unable to protect E.G. from ongoing physical injuries and utilize noncorporal punishment that did not result in physical injury to E.G. The Department also alleged that Doe was unable to discharge her parental responsibilities and that such inability would continue for a prolonged, indeterminate period and would be injurious to the health, morals, or well-being of E.G. Doe filed an answer and denied all allegations.

A termination trial was conducted on September 15 and 30, 2010. A memorandum decision and final order terminating Doe's rights was issued. Doe appealed. Due to a failure of the court recording system on the first day of the termination trial, this Court remanded the case with instructions to retry the first day of the trial. On April 25, 2011, the magistrate re-conducted

the first day of the termination trial and subsequently issued an amended memorandum decision and order terminating Doe's parental rights. Doe appeals.

II.

STANDARD OF REVIEW

A parent has a fundamental liberty interest in maintaining a relationship with his or her child. *Doe v. State*, 137 Idaho 758, 760, 53 P.3d 341, 343 (2002). *See also Quilloin v. Walcott*, 434 U.S. 246, 255 (1978). This interest is protected by the Fourteenth Amendment to the United States Constitution. *State v. Doe*, 144 Idaho 839, 842, 172 P.3d 1114, 1117 (2007). "Implicit in [the Termination of Parent and Child Relationship Act] is the philosophy that wherever possible family life should be strengthened and preserved" I.C. § 16-2001(2). Therefore, the requisites of due process must be met when the Department intervenes to terminate the parent-child relationship. *State v. Doe*, 143 Idaho 383, 386, 146 P.3d 649, 652 (2006).

Because a fundamental liberty interest is at stake, the United States Supreme Court has determined that a court may terminate a parent-child relationship only if that decision is supported by "clear and convincing evidence." *Santosky v. Kramer*, 455 U.S. 745, 746 (1982). *See also* I.C. § 16-2009; *Doe*, 146 Idaho at 761-62, 203 P.3d at 691-92; *Doe*, 143 Idaho at 386, 146 P.3d at 652. Several factors call for employment of an elevated standard of proof: the permanence and irrevocability of a termination of parental rights; the imprecision of the standards to be applied, such as the best interest of the child, which leave determinations unusually open to the subjective values of the judge; and the reality that the state's ability to assemble its case almost inevitably dwarfs the parents' ability to mount a defense. *See Santosky*, 455 U.S. at 759-63.

On appeal from a decision terminating parental rights, this Court examines whether the decision is supported by substantial and competent evidence, which means such evidence as a reasonable mind might accept as adequate to support a conclusion. *Doe v. Doe*, 148 Idaho 243, 245-46, 220 P.3d 1062, 1064-65 (2009). The appellate court will indulge all reasonable inferences in support of the trial court's judgment when reviewing an order that parental rights be terminated. *Id.* The Idaho Supreme Court has also said, however, that, the substantial evidence test requires a greater quantum of evidence in cases where the trial court finding must be supported by clear and convincing evidence, than in cases where a mere preponderance is required. *Doe v. Doe*, 143 Idaho 343, 346, 144 P.3d 597, 600 (2006). Clear and convincing

evidence is generally understood to be evidence indicating that the thing to be proved is highly probable or reasonably certain. *In re Doe*, 143 Idaho 188, 191, 141 P.3d 1057, 1060 (2006). Further, the magistrate’s decision must be supported by objectively supportable grounds. *Doe*, 143 Idaho at 346, 144 P.3d at 600.

III. ANALYSIS

The Department may petition the court for termination of the parent-child relationship when, among other circumstances, it is in the child’s best interest and the child is subject to neglect or abuse. I.C. § 16-2005(b). Idaho Code Section 16-1602(25)(a) provides, in pertinent part, that a child is “neglected” when the child “is without proper parental care and control, or subsistence, medical or other care or control necessary for his well-being because of the conduct or omission of his parents, guardian or other custodian or their neglect or refusal to provide them.” Idaho Code Section 16-1602(25)(b) provides that a child is “neglected” when his or her parent is unable to discharge their responsibilities to and for the child and the result is the child lacks the parental care necessary for his or her health, safety, or well-being.

Here, the Department’s petition alleged that termination was proper because termination was in E.G’s best interests and because E.G. was neglected. Specifically, the Department alleged that E.G. was without the proper care and control necessary for his well-being because Doe failed to demonstrate an ability to protect E.G. from on-going physical injuries. The Department asserted Doe was unable to discharge her parental responsibilities and that such inability would continue for a prolonged, indeterminate period and would be injurious to the health, morals, or well-being of E.G. Doe argues that the magistrate erred because there was not substantial and competent evidence in the record to support the order terminating her parental rights. Specifically, Doe asserts there was not sufficient evidence to prove to a clear and convincing standard that termination was in E.G.’s best interests and that Doe neglected E.G.

A. Neglect

Doe argues that there was not sufficient evidence to prove to a clear and convincing standard that Doe neglected E.G. by failing to prevent on-going physical injuries to E.G. and by being unable to discharge her parental responsibilities. The Department presented evidence at trial of Doe’s history as a neglectful and underinvolved parent. In total, the Department has received twenty-four child protection referrals regarding E.G. The referrals describe numerous

events in which E.G. has been “accidentally” hurt. E.G. has incurred multiple injuries at the hands of Doe, including being hit in the head with a cereal bowl, gouged by Doe’s finger nails, choked when Doe grabbed his sweatshirt hood, hit with a carpet cleaning bottle which Doe threw at him, and being injured when he hit his head against a wall after tussling with Doe over a punching bag.

The evidence presented at trial demonstrated that, during the extended home visit, Doe received multiple services and classes aimed at improving her protective parenting skills. Doe completed a protective parenting class, as well as a love and logic parenting class. Doe also received intensive in-home parenting help through Family Preservation Services. Evidence presented by the Department at trial indicated that Doe complied with the tasks outlined for her in her case plan. Despite having received these services, Doe failed to apply any of the tools provided to her in order to create a safe and nonviolent home for E.G. Between November and December 2009, the incidents of violence between E.G. and Doe increased rather than decreased. The child protection case manager testified that, by responding inappropriately to E.G.’s misbehavior, Doe was causing conflict in the home to escalate to the point of physical violence which resulted in Doe or E.G. getting hurt. The case manager stated that, during these incidents, Doe took a victim position rather than that of a responsible parent. The case manager testified that, although Doe had received training in protective parenting, she remained unable to implement that training in her home.

Doe also received a psychological evaluation and counseling. Doe’s psychologist testified that he was unable to develop an accurate understanding of Doe’s clinical presentation because of her lack of honesty in answering questions. According to the psychologist, Doe adopted a defensive approach, attempted to portray herself in a favorable light, and refused to accept responsibility for her past actions toward E.G. The psychologist stated that, without overcoming her denial, Doe would be unable to progress to the point where she could implement protective parenting skills within her home. In addition, the risk to child assessment report indicated that Doe had unrealistic expectations of E.G.’s behavior, lacked empathy for her child, and held some beliefs which support corporal punishment. The licensed clinical professional counselor who completed the risk to child assessment testified that Doe minimized the role her actions played in instigating violence in her home and noted that Doe seemed unable to accept the feedback and training provided by the Department.

Doe's physical violence toward E.G. was the subject of multiple Department referrals. Doe was given an opportunity to educate herself in protective parenting techniques. Despite successfully completing the requirements of her case plan, including parenting classes, Doe was unable to implement what she had learned. Doe remained in denial and refused to take full responsibility for her actions. Even if Doe were to receive additional support from the Department, it is questionable whether she would be able to protectively parent E.G. without resorting to physical discipline. Therefore, there was substantial and competent evidence in the record to support the magistrate's finding that Doe neglected E.G.

B. Best Interests of the Child

Doe also argues that termination of her parental rights was not in E.G.'s best interests. It is clear that Doe and E.G. love each other. In addition, Doe showed improved parenting skills during the supervised and unsupervised two-hour visits. A Department caseworker testified that, during her supervised two-hour visits with E.G., Doe demonstrated improved protective parenting. The caseworker also noted that there were no reports of physical discipline or inappropriate parenting during Doe's two-hour unsupervised visits. The caseworker noted that, although Doe was able to maintain positive interactions with Doe for two-hour increments, she doubted whether Doe would be able to maintain protective parenting for longer periods of time. The caseworker testified that, during the extended home visit, Doe would respond to E.G.'s misbehavior in such a way as to escalate the conflict into a physical altercation and that there was not as high a risk of escalation during a shorter visit. Although Doe received parenting classes and other services from the Department, she was unable to maintain a violence-free home for E.G. The extended home visit ultimately ended because E.G. continued to receive physical injuries under Doe's care.

The caseworkers and guardian ad litem testified that E.G.'s behavior in Doe's presence was dramatically different than his behavior at daycare, at school, and in the foster home. When in Doe's home, E.G. was whiny, disobedient, and often lashed out at Doe in a violent manner. While E.G. had some incidents of misbehavior at school and in daycare, no school personnel, foster parents, or daycare providers reported that E.G. was aggressive or violent toward adults. Outside Doe's home, E.G. was calm, focused, and easy to redirect. His caseworker noted that E.G. was flourishing within the structure and discipline offered by his foster home. E.G.

expressed concerns, however, about the instability of his situation. He noted that he did not know where he belonged.

Doe had not changed her behavior, despite receiving help. Psychological evaluations indicated Doe continued to fail to take responsibility for her actions. Doe described the incidents which led to E.G.'s injuries as accidents and took the victim's stance when confronted about the role she played in escalating his misbehavior. Doe's counselor testified that, while Doe complied with the requirements of counseling, she was not emotionally absorbing the lessons or accepting responsibility for her actions. Doe completed parenting classes, but was unable to verbalize or implement those lessons at the time of trial.

Doe had been unable to accept responsibility for the role she played in E.G.'s physical injuries and, despite successfully completing her case plan and utilizing the services provided by the Department, Doe was unable to protectively parent E.G. The record demonstrates that E.G. flourished within the structure provided by his foster home. Therefore, there was substantial and competent evidence in the record supporting the magistrate's finding that termination would be in E.G.'s best interests. Accordingly, the magistrate did not err in terminating Doe's parental rights.

IV.

CONCLUSION

The magistrate did not err in finding that Doe's parental rights should be terminated because she neglected E.G. In addition, the magistrate did not err in concluding that termination was in E.G.'s best interests. Therefore, the magistrate's decree terminating Doe's parental rights is affirmed. No costs or attorney fees are awarded on appeal.

Judge LANSING and Judge GUTIERREZ, **CONCUR.**