

STATUTORY CHANGES

2011 Amendments

Child Protection Act Amendments to advisements at Shelter Care and Initial Appearance

The changes more clearly delineate between a shelter care hearing and an initial hearing. Under the previous law the court was required to advise the parents at the shelter care hearing that they could admit or deny allegations of abuse or neglect. The changes clarify that those advisements can be made at a separate initial appearance, or the initial appearance can be combined with the shelter care hearing as long as all of the necessary advisements are made.

Majority of these changes are at 14-3-409 and 14-3-426.

2012 Amendments

Many statutes were amended to provide for the payment of Guardian ad Litem through the Guardian ad Litem program administered by the Public Defender's Office.

and

Child Care Facilities

14-4-101(a)(vi)(H) got rid of "homes for Defective Children" and replaced it with "Homes for Children with Developmental Disabilities."

CASE LAW

1. In the Interest of DRS, NJL, and KDL, 2011 WY 128, 261 P.3d 697-This is an appeal of a review hearing held in a juvenile neglect case.

Issues: Placement of children with grandparents

Holding: The children had previously been adjudicated as neglected and had been placed with their mother. Due to a number of different circumstances, the County Attorney's Office made a motion to have the children placed with their grandparents shortly before a review hearing was held in the juvenile case. The District Court granted the motion having heard from the members of the multi-disciplinary team, but did not have an evidentiary hearing on that date. The Court did set the issue for a full evidentiary hearing a little over two months later. After that evidentiary hearing the court continued the placement of the children with their grandparents. Mother appealed the decision from the first review hearing as well as the order entered after the evidentiary hearing was held.

The Court found that mother's failure to appeal the initial decision in a timely manner did not deprive it of jurisdiction to determine whether that initial decision could be overturned. The Court then moved forward to determine whether moving the children without a full evidentiary hearing violated mother's due process rights. The Court determined that Mother's rights were not violated since the mother clearly was on notice after the neglect adjudication that placement and custody would continue to be discussed at all juvenile review hearings. The Court also found that mother had a meaningful opportunity to be heard at the review hearing.

A second issue raised by Mother was which statute from the Child Protection Act should apply to determinations of change of custody. Mother argued that Wyo. Stat. Ann. § 14-3-405, which is the statute related to taking of children into protective custody when there is imminent danger to the child, should be applied. The Supreme Court found that the district court applied the correct statute of Wyo. Stat. Ann. § 14-3-429 (a)(iv) which required the district court to make a finding that returning the children to their home would be contrary to their best interests. This statute applies because the change in custody is occurring by order of the Court and after the mother had already been adjudicated as neglectful.

The Court then considered the sufficiency of the evidence presented at the hearing. It determined that the district court had sufficient evidence to find that returning the children to their mother would be contrary to their best interests given the allegations that the mother was not able to get along the father of two of the children and appeared to be coaching her children to make allegations against their father.

2. In the Interest of RE, 2011 WY 170, 267 P.3d 1092- Appeal of a permanency hearing.

Issues: Whether the determination that reunification efforts were no longer appropriate and the goal should be termination and adoption was correct.

Holding: The Supreme Court found that the appropriate standard of review in this situation is abuse of discretion rather than the sufficiency of the evidence SOR that it had previously applied to a dispositional order in *HP v. State*, 2004 WY 82, 93 P.3d 982 (Wyo. 2004). The Court went with the abuse of discretion standard because the district court is required to make a determination in the best interest of the child during a permanency hearing and the Court has regularly applied this standard when best interests are at stake.

Mother argued that the burden of proof should have been clear and convincing evidence because the permanency goal of termination and adoption would impact her fundamental rights and those of the children's grandparents. The Court rejected this argument and reiterated that a permanency plan of adoption did not actually terminate a parent's rights and that could only be accomplished in a separate civil action. Furthermore, Mother was not in a position to argue a grandparents' right to familial association.

Lastly, Mother argued that Wyo. Stat. Ann. § 14-3-431(j) required that DFS provide a compelling reason for recommending adoption as a permanency plan rather than guardianship. The Court also rejected this argument based on the plain language of the statute that states "The department of family services shall provide the court a compelling reason for establishing a permanency plan other than reunification, adoption or legal guardianship." Wyo. Stat. Ann. § 14-3-431(j).

2. Termination of Parental Rights to ZMETS, ZCJS, ZPMs, and ZKMS - 2012 WY 68, 276 P.3d 392-Termination of Parental Rights case where the mother of the children failed to timely file an answer and default was entered against her.

Issues: Sufficiency of the evidence

Holding: Mother requested the district court set aside the default, but the motion was denied because the court found that she did not present good cause for setting aside the default. Thereafter, the District Court had a hearing wherein the Department of Family Services presented evidence to support the entry of a default judgment. The Court allowed the mother, through her counsel, to object to evidence presented by the Department and make opening and closing arguments during the default judgment hearing. Mother timely appealed the entry of the default judgment on sufficiency of the evidence grounds.

The Department first contended that Mother, having defaulted, did not have standing to raise sufficiency of the evidence. The Supreme Court disagreed and found that mother did have standing since the District Court allowed her participation at the hearing and allowed her to question the sufficiency of the evidence to the District Court.

The Supreme Court then considered the sufficiency of the evidence presented and upheld the district court's decision based on the 15 of 22 ground found at Wyo. Stat. Ann. 14-2-309(a)(v). Importance of the decision: the Supreme Court approves of the method used by the District Court in listening to the presentation of evidence to determine the appropriateness of entry of a default judgment. The Court also approves of the procedure used whereby the mother is allowed to participate at the hearing, but not present her own evidence. This decision is important because it really is the first decision by the Supreme Court addressing the default procedure in termination cases used by District Courts around the State. It appears to indicate that a hearing, with presentation of evidence, is necessary in determining whether default judgment should be entered ("Because of the fundamental interests at stake, a court must ensure that is as well-informed as the circumstances allow, and should make its decision based on a record that is as fully developed as possible" ¶ 15).

4. **MSH v. ALH**, 2012 WY 29, 271 P.3d 983 - Mother petitioned to terminate fathers parental rights

Grounds - 14-2-309(a) (iv) parent incarcerated due to conviction of a felony and unfit

Issues: District court erred in allowing police report to be introduced into evidence

District court erred in allowing testimony of officer consistent with report who allegedly vouched for credibility of victim

Sufficiency of evidence of unfitness

Holding: Father failed to prove that, if there was error, it was prejudicial - report and testimony were not necessary to establish that father was incarcerated due to a felony conviction. Father's own testimony established that to be the case.

Fitness includes the ability to meet the ongoing physical, mental and emotional needs of the child. - sparse contact with children - no financial support - currently incarcerated for sexually assaulting a child - incarceration alone not per se

evidence of unfitness, it is a reality that severely impacts the parent child relationship and therefore cannot be ignored. - also look a facts surrounding the conviction, failure to take responsibility for actions

Will not reweigh evidence - standard of review - traditional sufficiency of evidence review - examine evidence in the light most favorable to the prevailing party while discounting conflicting evidence

5. **ADOPTION OF RMS**, 2011 WY 78, 253 P.3d 149 - Stepmother and father filed a petition to adopt child that alleged mother's consent was not required. because of failure to pay child support

Issue: Was there an abuse of discretion for allowing adoption to proceed without Mother's consent - Mother argues failure to pay support was not willful since she was unemployed and did not have the ability to pay

Holding: District courts determination that parents consent is not required for adoption effectively terminates parental rights

Mother voluntarily ended employment she had at time of child support order - did not take steps to improve her employability - did not apply any money she did earn towards child support - conclusion that Mother acted willfully in not paying support was supported by the evidence.

6. **IN THE INTEREST OF SRB-M**, 2009 WY 22, 201 P.3d 1115 - Mother petitioned to terminate guardianship of grandmother over child

Issue: Whether court can continue an existing non-parent guardianship without finding parent unfit.

Whether non-parent guardian has burden of showing parent unfit.

Holding: Apply holding of MEO. Conclude that a finding of parental unfitness is required in order to continue an established guardianship over a parent's objection unless compelling reasons or exceptional circumstances warrant a departure from this general rule

Under facts of case, Mother did not have the burden of proving she was fit -non-parent seeking to continue guardianship over parents objection has burden of proving parent unfit

7. **IN THE MATTER OF THE TERMINATION OF PARENTAL RIGHTS TO KMJ and JDAJ**, 2010 WY 142, 242 P.3d 968 - DFS petitioned to terminate Father's parental rights to children

Grounds: 14-2-309(a)(v) - children have been in foster care for 15 of most recent 22 months and parent is unfit to have care and custody of children

Issues: Sufficiency of the evidence of unfitness

Failure to prove less intrusive alternatives to termination of parental rights were impractical

Holding: Statute requires a finding of unfitness at the time of the termination proceedings, however, District court is not required to ignore evidence of a parent's previous unfitness. It is appropriate to consider a parents history and pattern of behavior over time in determining whether rights should be terminated. Court could consider criminal history. Failure of parent to accept counseling and training to meet special needs of children also considered in determining unfitness.

Less intrusive means alternatives as part of reasonable efforts to rehabilitate - however reasonable efforts to rehabilitate are required only under 14-2-309(a)(iii)

8. **IN THE MATTER OF THE TERMINATION OF PARENTAL RIGHTS TO ARC AND RMR**, 2011 WY 119, 258 P.3d 704 - DFS petitioned to terminate mothers parental rights

Grounds: 14-2-309(a)(iii) and 14-2-309(a)(v)

Issues: Sufficiency of the evidence as to reasonable efforts
Sufficiency of the evidence as to health and safety

Sufficiency of the evidence as to unfitness

Less intrusive means

Holding: The Court found DFS presented sufficient evidence on all elements of the grounds for termination.

Less intrusive means issue not fully resolved by court as guardianship attempted

Failure to hold MDT for 1 year not evidence of failure of reasonable efforts

9. **IN THE MATTER OF THE TERMINATION OF PARENTAL RIGHTS TO KMO, DMO, CMO, AKO, DKO, MTO, ABO, EEO and JBO**, 2012 WY 99, 280 P.3d 1203 - DFS petitioned to terminate mothers parental rights to nine children.

Grounds: 14-2-309(a)(v)

Issues: Sufficiency of the evidence - time of filing termination petition

Verdict form

Due process and equal protection

Holding: The Court determined that at the time of trial in April of 2001, all of the children were in foster care for at least seventeen months. The Court also determined that Wyo. Stat. Ann §14-3-431(o) was not applicable to the circumstances of the case and that neither the Child Protection Act or the termination statutes impose a filing deadline applicable to the grounds on which the petition was filed. The Court also held that the 15 of 22 month timeline is not "tolled" if a child is placed with a relative. Wyo. Stat. 14-3-431(m) does not preclude DFS from filing a termination petition if a child is in relative care for 15 of the most recent 22 months, rather, it makes filing a termination petition in that circumstance optional.

The Court held that history of neglect and unfitness could be used towards unfitness element of ground for termination, and that in addition to the extensive history of neglect and unfitness, DFS presented evidence as to mother's current circumstances and her inability to provide for the physical, mental and emotional needs of her children; mother was not able to provide financial stability for the children; mother was living in a home where several incidents of domestic violence had occurred; mother refused to acknowledge severity of children's problems relating to prior sexual abuse.

The Court held that the submission of a particular verdict form is vested in the sound discretion of the trial court and that the verdict form is considered together with the instructions provided to the jury. The verdict form submitted to the jury required the jury to find the elements of Wyo. Stat. §14-2-309(a)(v) as to the nine children as a group. Mother proposed a verdict form that required the jury to find the elements as to each of the nine children individually. The law in Wyoming termination cases is that whether a parent is fit to have custody and control of a child is a decision that must be made within the context of a particular case and depends on the situation and attributes of the specific parent and child. The Court found the jury was appropriately instructed as to this law and reading the jury verdict form together with the instructions, the Court could not say the form of the verdict misled or confused the jury with respect to the applicable principles of law or was fundamentally unfair. The Court found no abuse of discretion.

Mother asserted her due process rights and equal protection rights were violated by the "clear and

convincing" burden of proof set forth in the termination statutes and argued for a higher burden of beyond a reasonable doubt. The Court held that the Wyoming legislature has set a burden of proof in termination cases to require clear and convincing evidence and the United States Supreme Court has determined this standard to be constitutionally sufficient. Mother also argued her equal protection rights were violated by the clear and convincing standard because the Indian Child Welfare Act establishes a "beyond a reasonable doubt" standard of proof for terminations involving Indian children. The Court followed the Oregon court in *Application of Angus*, ^0 Or. App. 546, 655 P.2d 208 (1982) and held that the different burdens of proof in the federal ICWA and Wyoming's termination statute do not violate mother's constitutional rights to equal protection.

10. IN THE MATTER OF THE TERMINATION OF PARENTAL RIGHTS TO KMO, DMO, CMO, and AKO, 2012 WY 100, 280 P.3d 1216 - DFS petitioned to terminate father's parental rights to four children.

Grounds: 14-2-309(a)(v)

Issues: Sufficiency of the evidence

Verdict form

Failure to grant Motion for Judgment as a Matter of Law

Holding: The Court determined that the record was clear that the children had been in foster care for fifteen of the most recent twenty-two months. Father argued that the circumstances surrounding the foster care placement: DFS's failure to pursue relative placement or reunification with father should negate the finding that the children were in care for fifteen of the most recent twenty-two months. The Court found this argument without merit and held the plain language of the statute requires no more than a showing that the children have been in foster care for the requisite time period.

The Court held that a jury could consider evidence of a parent's previous unfitness in determining current unfitness. The Court further held that the past history demonstrated that deplorable and unsafe conditions have persisted in the children's home and that the father was aware of those conditions. The Court also found the history revealed a clear pattern of father's refusal or inability to be a placement option for his children. The Court further found that evidence was presented as to father's current circumstances and inability to meet the ongoing physical, mental and emotional needs of his children. Father's home was not appropriate for his children and he failed to make appropriate accommodations for his children so they could live safely in the same home.

The Court held that, in looking at the jury verdict form along with the jury instructions, it could not find that the jury verdict form submitted to the jury misled or confused the jury with respect

to the applicable principles of law or was fundamentally unfair, and found no abuse of discretion.

The Court finally held that a denial of a motion for a judgment as a matter of law is predicated on the sufficiency of the evidence, and DFS presented sufficient clear and convincing evidence to submit the matter to the jury.

11. **IN THE MATTER OF THE ADOPTION OF SDL, AJL and GASL**, 2012 WY 78, 278 P.3d 242 - Father appeals adoption by stepfather over father's objection

Issues: Abuse of discretion in granting petition for adoption; correct calculation of child support obligations and arrearages

Holding: The father argued that social security payments received by Mother on behalf of the children should be considered child support payments and therefore he did not willfully fail to pay child support. Father also argued that his child support obligation was reduced when his oldest child became emancipated, when his second child reached the age of majority and when his third child stopped living with mother.

The Court held that the district court did not err in determining that father was more than seventy percent in arrears on his child support payments and that he had not brought the support current within sixty days of being served with the petition to adopt, and therefore father's consent to adoption was not required.