



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



TIMOTHY B. v. DEPARTMENT OF CHILD SAFETY
CV-20-0318-PR

PARTIES:

Petitioner: Department of Child Safety.

Respondent: Timothy B.

FACTS:

Timothy B. is the biological father of H.B., born in September 2012. At this time, H.B. was living with Timothy and the child's mother ("Mother"), as well as some of Mother's other children. In October 2013, Timothy was arrested and charged with multiple felonies. After Timothy was incarcerated, H.B. moved in with Timothy's mother and sister but continued to visit Mother and had frequent contact with Timothy. In March 2015, Timothy was convicted of four felonies and sentenced to an aggregate of 12.5 years in prison and lifetime probation after his release

In January 2017, the Department of Child Safety ("DCS") filed a petition for dependency as to Mother and Timothy. The petition addressed concerns for four children including H.B. and alleged that Mother had been arrested and had neglected to provide for her children, abused substances, and was involved in domestic violence. H.B. was found dependent as both parents. H.B. was found dependent as to Timothy because he was incarcerated. The juvenile court granted DCS's request to place H.B. with a sibling in a qualified kinship placement with a friend of Mother's.

After the dependency action was initiated, Timothy repeatedly requested visitation and phone calls with H.B., and eventually DCS supervised weekly phone calls and in-person visits once or twice a month. Timothy also frequently sent gifts and letters to H.B.

In May 2018, the juvenile court ordered all of the children returned to Mother. Six months later, the court again removed the children from Mother after her participation in services waned, she tested positive for cocaine, and the children's school attendance became "sporadic." DCS then returned H.B. to the kinship placement. The following month, DCS moved to terminate the parental rights of both Mother and Timothy, alleging Timothy's length of sentence as the legal ground for termination of his rights. (Mother, whose parental rights were terminated, is not a party to this appeal.)

After a five-day hearing, the juvenile court ruled that DCS had proven the statutory ground for severance of Timothy's rights under A.R.S. § 8-533(B)(4)(authorizing severance of parental rights if parent is "deprived of civil liberties due to the conviction of a felony ... of such length that the child will be deprived of a normal home for a period of years"); and that severance would be in the "best interest" of H.B. as required by A.R.S. § 8-533(B).

Timothy appealed. The Court of Appeals reversed the order of severance and remanded the case to

the juvenile court. In a published opinion, the court first considered the statutory ground for severance under A.R.S. § 8-533(B)(4), expressing reservations concerning the continued viability of the definition of a “normal home” in previous Arizona cases. It held that, although ideally a natural parent is available to take on daily responsibilities, many modern parents who are not considered “unfit” are often personally unable to do so, including parents on military deployment, single working parents, chronically ill parents, or parents attending higher education programs. It agreed that a less rigid definition might be appropriate and that the juvenile court should have the discretion to consider that a “normal home” may include a parent with a non-traditional presence. *Cf. Pima Cnty. Juv. Action No. S-114487*, 179 Ariz. 86, 97 (1994) (“When . . . circumstances prevent the . . . father from exercising traditional methods of bonding with his child, he must act persistently to establish the relationship however possible and must vigorously assert his legal rights to the extent necessary.”); *Roberto F. v. Ariz. Dep’t of Econ. Sec.*, 232 Ariz. 45, 55 ¶ 42 (App. 2013) (“In any severance proceeding, the material issue facing the court is whether a parent has the ability to properly parent his/her child; it is irrelevant whether a child has a stronger attachment to [the foster placement], whether [such placement is] more ‘nurturing,’ or whether [the placement] might be more capable or better parents than a natural parent.”).

Dismissing the notion that its analysis arose from “sympathy” for the incarcerated parent, the Court of Appeals instead emphasized the need to ensure the juvenile court does not unintentionally impinge on an individual’s constitutional rights to a parental relationship based on a potentially outmoded or rigid concept of parenthood or a normal home. It remanded the case to the trial court to consider whether DCS had proven parental unfitness without relying entirely on the narrow parameters of the definition of “normal home.”

The Court of Appeals also vacated the juvenile court’s finding that termination of the parent-child relationship was in the best interests of H.B. It remanded for a reconsideration that “includes a proper balancing of H.B.’s and Timothy’s respective interests.” DCS filed a Petition for Review which the Arizona Supreme Court granted on November 2, 2021.

ISSUES:

1. Did the court of appeals misinterpret the term, “normal home,” as that term is used in the length-of-sentence ground, when it held that the term may include a home in which the incarcerated parent has a “nontraditional presence”?
2. Did the court of appeals misinterpret the requirement under A.R.S. § 8-533(B) that the juvenile court consider “the child[s]” best interests when it held that the best-interests inquiry requires the juvenile court to consider “the parent’s” interests?

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