APPELLATE CASE LAW REVIEW

August 2019 – December 2020

Yuma County Dependency Attorney Training
March 2021

TPR – ABUSE/ NEGLECT

SANDRA R. V. DCS
248 ARIZ. 224 (2020)

- *DCS moved to TPR on abuse against both parents and all chn after one ch was victim of abusive head trauma in parents' care.*
- *COA held (in part) that the "nexus" finding (required by Linda V. & other cases) is not part of the SX ground, but should be considered as part of best interests inquiry.*
- *On PFR, ASC held: when juv ct finds a parent unfit for abusing/neglecting a ch, the court may also find the parent unfit to parent non-abused chn, but to do so it must find during the statutory unfitness inquiry whether there is clear & convincing evidence of a risk of harm to the non-abused ch.*
- *Held: explicitly disavows "nexus" language*

MOT. TO SET ASIDE

TRISHA A. V. DCS 247 ARIZ. 84 (2019)

- *DCS filed SX motion; M appeared at ISX but failed to appear at combined R&R and PTC. Juv ct proceeded in absentia & granted TPR.*
- *Juv ct granted M's mot to set aside TPR; DCS moved to reconsider b/c M had not provided a meritorious defense.*
- *COA vacated SX, but drew distinction between accelerated DX at ISX/PTC and proceeding in a parent's absence at actual trial date (saying "meritorious defense" required applied only to the latter)*
- *ASC held: "good cause" standard for FTA must be consistent between R.64(C), 65(C), & 66(D)(2).*
- *Held: R.46(E) governs motions to set aside & expressly requires that they conform to Civ. R. 60. Since cts have consistently required the "meritorious defense" requirement for R.60, it also applies to R.46(E).*
- *Held: the "good cause" in 46(E) is different than the "good cause" in R.64/65/66; there is a higher standard (incl. "meritorious defense") for R.46(E) b/c it seeks to set aside a presumptively valid final judgment.*

MOT. TO SET ASIDE

DENIA L. V. DCS 248 ARIZ. 36 (APP. 2019)

- *DCS removed twins when one was seriously injured; M was charged w/ ch abuse.*
- *Ch's GAL successfully moved to TPR on abuse & PGPs subsequently adopted chn.*
- *M successfully challenged charges & on remand grand jury didn't indict her; 11 mos after adoption, M moved to set it aside based on the dismissal of her criminal case (but filed in SX matter, not AX matter). Juv ct denied motion as untimely; M appealed.*
- *Held: appeal dismissed as moot b/c SX and AX are separate matters & ARS 8-123 prevents attacking an adoption after one year from the date the order was entered.*

FINAL ORDERS

- *1 yr after dependency adjudication, Mother & Father filed competing R. 59 motions. Juv ct found that F was "further along" in services & granted his motion & denied M's. M appealed. While appeal was pending, juv ct granted DCS's motion to remove ch from F.*
- *Held: order denying return of custody under R.59 is interlocutory & not a final, appealable order (but COA elected to treat the appeal as a special action and affirmed anyway).*

BRIONNA J. V. DCS
247 ARIZ. 346 (APP. 2019)

FINAL ORDERS

JESSICAH C. V. DCS
248 ARIZ. 203 (APP. 2020)

- *Mother did not contest allegations in DCS's in-home petition & juv ct adjudicated ch dependent. At same hrg, DCS moved to remove ch from M. Juv ct granted motion over M's objection after hearing argument. M appealed.*
- *Held: COA lacked jurisdiction to consider appeal b/c order changing ch's custody was not a final, appealable order (but COA elected to treat as a special action)*
- *Dicta: discusses different opinions re: "final order" & ultimately analogizes removal to a R. 59 order*
- *Held: by failing to object in juv ct, M waived claim that she was denied due process b/c she lacked advance notice of the motion to remove*

FINAL ORDERS

- *M appealed dependency adjudication, claiming insufficient evidence.*
- *Held: reversed & remanded b/c juv ct's findings failed to state the basis for dependency as required by ARS 8-844(C)(1)(a)(ii) and R.55(E)(3)*
- *Parent does not waive requirement for specific findings by not raising the issue in the juv ct.*
- *Dependency order must be sufficiently specific to allow for effective appellate review.*

FRANCINE C. V. DCS
249 ARIZ. 289 (APP. 2020)

UCCJEA

ARTURO D. V. DCS
249 ARIZ. 20 (APP. 2020)

- *Ch was found w/o supervision & DCS filed dependency petition alleging that F had failed to protect ch by not making appropriate arrangements for ch during F's incarceration in CA.*
- *F argued that AZ lacked jurisdiction under UCCJEA.*
- *B/c there was no prior or pending action/orders in CA, the juv ct declined to hold a conference & instead directed DCS to coordinate w/ counterparts in CA to see if CA would take jurisdiction.*
- *Juv ct found AZ had temporary emergency jurisdiction (TEJ) – A.R.S. 25-1034.*
- *Held: CA's role as home state did not prevent AZ from exercising TEJ*
- *Held: juv ct could adjudicate DX under TEJ*

UCCJEA

HOLLY C. V. TOHONO O'ODHAM NATION
247 ARIZ. 495 (APP. 2019)

- *F is enrolled member of Tohono O'odham (TO) Nation; M is non-Indian. DES (not DCS) obtained a paternity & ch support order against F. F initiated parenting-time proceeding in TO court; TO awarded F sole decision-making & primary physical custody.*
- *MGM filed private dependency petition in state ct alleging that F had neglected ch. 2 days before initial dependency hearing, TO ct held a review hearing & confirmed its ongoing jurisdiction.*
- *At state ct initial hearing, F moved to dismiss dependency b/c TO had exclusive jurisdiction under UCCJEA. Juv ct & TO ct held conference & juv ct agreed to dismiss.*
- *M appealed the dismissal & while appeal was pending, MGM filed new dependency petition b/c F had been incarcerated & M was in rehab. F had given power of atty to paternal relatives though, and juv ct refused to remove ch from them. TO again moved to dismiss, but MGM argued that juv ct had TEJ. Juv ct found no emergency & dismissed.*

UCCJEA

HOLLY C. CONT'D

- *TO ct gave M custody, but COA agreed to address moot issues to discuss interplay of UCCJEA & ICWA jurisdiction*
- *Held: ICWA limits state jurisdiction by giving tribes exclusive jurisdiction over chn residing/domiciled on reservation; UCCJEA has different definition of ch custody proceeding & doesn't address domicile, but relies on "home state" jurisdiction.*
- *Held: emergency jurisdiction under ICWA (25 USC § 1922) is different from TEJ under UCCJEA (ARS § 25-1042)*
- *Held: juv ct's Title 8 jurisdiction must yield to UCCJEA jurisdiction; UCCJEA must yield to ICWA.*
- *Here, juv ct abused its discretion when it dismissed w/o fully investigating evidence re: whether TO had exclusive ICWA jurisdiction based on domicile; on remand must determine whether TO is ch's "home state" to determine if tribe has UCCJEA jurisdiction.*

ADA + REASONABLE EFFORTS

JESSICA P. V. DCS 249 ARIZ. 461 (APP. 2020)

PARTIALLY VACATED ON REMAND!!

- *M, who has intellectual disability, was living with MGM when she gave birth to ch. MGM helped M care for ch. After several reports of neglect, DCS removed ch due to M's substance abuse, mental condition, refusal to participate in services & MGM's refusal to drug test. Ch was developmentally delayed.*
- *M diligently participated in services "to the best of her abilities," but DCS was concerned that M still did not understand ch's medical & behavioral needs. M participated in two psych evals with poor prognosis for her ability to independently parent.*
- *The juv ct granted DCS's motion to terminate on mental deficiency & 15-month grounds.*
- *On appeal, M claimed that the juv ct failed to consider whether DCS's efforts complied with the ADA & that DCS's services did not reasonably accommodate her mental disability.*

ADA + REASONABLE EFFORTS

- ~~*Held: DCS must provide reunification services that comply with the ADA to disabled parents.*~~
- ~~*Held: claims that services don't comply with the ADA are waived if not raised in the juv ct.*~~
- *Held: DCS does not have to prove that there TPR is the least-restrictive means for protecting the child.*
- *Held: when the juv ct makes findings under ARS 8-533, it does not also have to make findings under ARS 1-601/602 (Parents' Bill of Rights) because the SX statutory findings satisfy due process.*

JESSICA P.

CONT'D
PARTIALLY VACATED ON REMAND*

- *BUT!!! 12/28/20: ASC granted review as to issue re: whether M waived her ADA claim by failing to raise below & vacated ¶¶ 23-27 (the ADA portion) of the COA opinion & remanded to determine whether the juv ct committed fundamental error (review denied on other 3 issues)*

"NORMAL HOME"

TIMOTHY B. V. DCS 250 ARIZ. 139 (APP. 2020)

PFR PENDING

- *This case deals with 2 bio Fs, but we're concerned w/ issues re: Timothy B.*
- *Ch was born in Sept 2012; F was arrested in Oct 2013 & in Mar 2015 was convicted & sentenced to 12.5 yrs in prison. Ch lived w/ F (& M) until F's incarceration; afterwards she lived with PGM/Pat Aunt & had frequent contact w/ F.*
- *F repeatedly requested & DCS eventually provided weekly phone calls & 2x/month in-person visits w/ ch. F also frequently sent gifts & letters to ch.*
- *In Dec 2018, DCS moved to TPR on length of incarceration*

"NORMAL HOME"

TIMOTHY B.

CONT'D

- *On appeal, F did not dispute that he was deprived of civil liberties due to felony conviction, but challenges that ch will be deprived of a normal home for a period of yrs; he claimed that the juv ct relied on an "outdated definition" of "normal home" found in JS-5609 ("a home in which the respondent natural father has a presence" and not a home environment created by others).*
- *COA noted that "many modern parents who are not considered 'unfit' are often personally unable to" take on daily responsibilities for children, including single working parents, those deployed in military, chronically ill, etc.*
- *Held: "a less rigid definition" of "normal home" "may be appropriate and the juvenile court should have the discretion to consider that a 'normal home' may include a parent with a non-traditional presence."*
- *Held: the evidence did not support the juv ct's finding that terminating F's parental rights was in ch's best interests.*

PATERNITY

DOHERTY V. LEON
249 ARIZ. 515 (APP. 2020)

- *BioF donated sperm so that M and her Wife could have a child. M & Wife would not seek ch support and bioF would have no parental rights. M, Wife, & bioF lost contact for a time.*
- *M became pregnant, gave birth to ch in April 2016, and Wife was named on ch's birth certificate. When ch was 6 mos old, M was arrested & incarcerated and Wife became ch's sole caregiver.*
- *After an argument with M, Wife contacted bioF and he agreed to help her maintain parental rights and keep ch safe from M. Wife & bioF remained friends and he babysat ch.*
- *January '18, w/o Wife's consent, bioF had ch's blood drawn for DNA test. BioF called DCS & reported ch wasn't safe with Wife. DCS determined allegations to be unfounded & Wife ceased contact w/ bioF. BioF then filed petition for paternity, legal decision-making, parenting time, & ch support.*
- *Trial court ruled that bioF was not a legal parent & denied his petition. He appealed.*

PATERNITY

DOHERTY

CONT'D

- *COA rejected F's claim that the genetic testing presumption controls over the marital presumption b/c a bio F has a duty to establish paternity & a relationship, whereas the marital presumption begins and vests at birth. Therefore trial ct did not "sever" bioF's parental rights, but rather recognized that he failed to establish any in the first place.*
- *Held: "there is no hierarchy among the statutory presumptions"; instead the presumption "based on weightier considerations of policy & logic will control" per ARS 25-814(C).*
- *COA rejected bioF's claim that paternity presumptions don't apply to artificial insemination*
- *ARS 25-814(C) doesn't explicitly require a best interests finding (although trial court found that applying the marital presumption over the DNA presumption was in ch's best interests here)*
- *bioF was equitably estopped from asserting parental rights b/c he had agreed not to from the outset*

PATERNITY

MCQUILLEN V. HUFFORD, 249 ARIZ. 69 (APP. 2020) [REVIEW DENIED]

- *M and "voluntary F" signed & submitted voluntary affidavit of paternity (AOP).*
- *M later petitioned to establish bioF's paternity & legal decision-making, parenting time, & ch support. She moved to set aside AOP on grounds of her own fraud.*
- *COA affirmed trial ct order granting bioF's motion for summary judgment & dismissal.*
- *Held: AOP filed with Dep't of Health has same force & effect as a superior ct judgement & therefore rebutted presumption of bioF's paternity based on DNA testing*
- *Held: Presumption of paternity has no effect when a ch has a legal F established through filing of AOP (but mere AOP isn't enough—must be filed to have force of ct order)*
- *Relief from judgment is available to parties who make mistakes despite diligent efforts to comply w/ laws, not to relieve party from effects of own fraud*

QUESTIONS?

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