

2024
MJJA FALL CONFERENCE
JUVENILE CASE LAW UPDATE

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Section 1.41 Neglect - Section 210.110(8), RSMo.

Adjudication for abuse or neglect was affirmed where parents failed to avail themselves of numerous services offered to them, and where child overdosed on three occasions, and where the family had a long history with the Children's Division prior to removal. *In Interest of S.F.*, WD86165 (Mo.App.W.D. 1-23-24).

Trial court's dismissal of abuse/neglect petition after adjudicatory hearing was affirmed where there was conflicting evidence because the appellate court defers to the trial court's assessment of the credibility, and where there was no convincing link to predicted future behavior, even if the appellate court would reach a different or "more reasonable" result. While there was disconcerting evidence, the appellate court finds the decision dismissing the petition was supported by substantial evidence. *In Interest of A.L.R.*, ED111658 (Mo.App.E.D. 2-27-24).

Section 1.43 Factual Examples of Neglect

Adjudication for abuse or neglect was affirmed where parents failed to avail themselves of numerous services offered to them, and where child overdosed on three occasions, and where the family had a long history with the Children's Division prior to removal. *In Interest of S.F.*, WD86165 (Mo.App.W.D. 1-23-24).

Section 1.45 Truancy - Section 211.031.1(2)(a), RSMo.

Adjudication for Tampering in the First Degree is affirmed where the crime victim testified that her car was stolen, and where that information was conveyed to the police as a result of a license plate recognition camera which gave the police the location of the stolen vehicle,

and where the officer detained the driver. The trial court's denial of the juvenile's motion to suppress was not erroneous. *In Interest of M.A.S.*, ED111500 (Mo.App.E.D. 3-12-24).

L. Right To Counsel
Section 1.88 Generally

Where Father engaged in a serial effort to delay and hinder the adjudication by requesting continuances and by changing attorneys on the eve of scheduled court dates, the trial court did not err in denying father's request for a continuance of the adjudication hearing, nor did the court err in failing to inquire of father if he wanted appointed counsel where father had been informed of his right to counsel on previous occasions. *In Interest of K.K.S.S.*, WD86175 (Mo.App.W.D. 5-14-24).

Section 1.90 Appointment of Counsel for Juvenile's Custodian

Where Father engaged in a serial effort to delay and hinder the adjudication by requesting continuances and by changing attorneys on the eve of scheduled court dates, the trial court did not err in denying father's request for a continuance of the adjudication hearing, nor did the court err in failing to inquire of father if he wanted appointed counsel where father had been informed of his right to counsel on previous occasions. *In Interest of K.K.S.S.*, WD86175 (Mo.App.W.D. 5-14-24).

Q. Dismissal To Allow Prosecution Of Juvenile Under General Law As An Adult
Section 1.110 Generally

Certification of juvenile to stand trial as an adult was affirmed where the 17 year old shot the victim in the stomach in the presence of a four-year-old who was in the car when the victim was shot because the offenses were serious, they involved force and violence, and protection of the community required certification. In addition, the juvenile's age did not allow enough time for rehabilitation in the juvenile system, and the juvenile had a history of prior referrals to the juvenile authorities. *In Interest of R.S.*, SD37723 (Mo.App.S.D. 2-26-24).

Counsel was not ineffective in certification hearing where the juvenile was accorded a meaningful hearing and where there was no probability that the outcome would have changed even had counsel called an expert in adolescent brain development and a witness from DYS who could have testified about services that may have been available. *In Interest of T.L.L.*, WD86004 (Mo.App.W.D. 5-7-24).

Counsel was not ineffective in a certification hearing where counsel provided the juvenile with a meaningful hearing and where an expert in adolescent brain development would not have changed the outcome because the juvenile's past is not considered when evaluating the first three factors to be considered by the court in certification cases. The court need not give

equal weight to all of the factors, and the first three dominate the inquiry. *In Interest of A.M.S.*, WD86022 (Mo.App.W.D. 5-7-24).

Counsel was not ineffective under either the meaningful hearing standard or the Strickland standard given the offenses charged, the record and history of the juvenile, and the fact that counsel raised the issue of the delay by the juvenile officer in filing the petition several months after the names of all of the victims were known. *In Interest of B.A.V.*, WD86093 (Mo.App.W.D. 5-7-24).

Judgment certifying the juvenile to stand trial as an adult is affirmed where the juvenile fails to establish that his attorney was ineffective, and where juvenile is charged with six offenses involving viciousness, force, and violence, where he had 21 prior referrals, and where there were no other services that could be offered. No evidence was shown that the result would have been different but for the alleged errors of counsel. *In Interest of D.L.C.*, WD86530 (Mo.App.W.D. 8-27-24).

Certification of juvenile to stand trial as an adult is affirmed where the offense involved viciousness, force, and violence, and where there are findings supported by the evidence on numerous of the other factors considered by the court. *In Interest of K.X.B.*, WD86371 (Mo.App.W.D. 8-27-24).

R. Hearing On Petition
Section 1.119 Scheduling

Where Father engaged in a serial effort to delay and hinder the adjudication by requesting continuances and by changing attorneys on the eve of scheduled court dates, the trial court did not err in denying father's request for a continuance of the adjudication hearing, nor did the court err in failing to inquire of father if he wanted appointed counsel where father had been informed of his right to counsel on previous occasions. *In Interest of K.K.S.S.*, WD86175 (Mo.App.W.D. 5-14-24).

Section 1.120 Conducting the Hearing

Adjudication based upon bare admission of the juvenile is reversed where the court did not make a record or findings as to whether the admission was freely, voluntarily and knowingly made, and whether a basis in fact existed for the admission. *In Interest of A.J.L.G.*, WD85961 (Mo.App.W.D. 11-21-2023).

Section 1.121 Presentation of Evidence

Despite lack of laboratory confirmation according to the label on the test package, the judgment was affirmed where the label was not in evidence, nor was it part of the record on appeal, despite it being in an appendix. The DJO was trained to administer the test, had used the test in the field and in on site testing, and the DJO testified that the results were positive

for marijuana, a violation of the conditions of probation. *In Interest of B.J.*, ED111060 (Mo.App.E.D. 11-21-2023).

Where juvenile punched the victim in the vagina, there was no evidence that the element of the juvenile having committed the act for the purpose of arousing or gratifying the sexual desire of any person. Adjudication reversed and judgment vacated. The juvenile is discharged. *In Interest of C.B.K.*, ED111270 (Mo.App.E.D. 11-14-2023).

Section 1.125 Abuse/Neglect

Adjudication for abuse or neglect was affirmed where parents failed to avail themselves of numerous services offered to them, and where child overdosed on three occasions, and where the family had a long history with the Children's Division prior to removal. *In Interest of S.F.*, WD86165 (Mo.App.W.D. 1-23-24).

Section 1.127 Delinquency

Where juvenile punched the victim in the vagina, there was no evidence that the element of the juvenile having committed the act for the purpose of arousing or gratifying the sexual desire of any person. Adjudication reversed and judgment vacated. The juvenile is discharged. *In Interest of C.B.K.*, ED111270 (Mo.App.E.D. 11-14-2023).

U. Appeals

Section 1.148 To Whom Allowed

Whether the order appealed from is a permanency order or an order under Chapter 211, the appeal must be dismissed. Permanency plans are not appealable. The right to appeal derives from statute, and if the order appealed from is under Chapter 211, the appeal must still be dismissed because 211.261.2(2) allows an appeal only if the order entered changes or modifies placement of a child, and this order did not. *In re: J.A.F.*, WD85942 (Mo.App.W.D. 12-5-2023).

AB. Termination Of Parental Rights

Section 1.187 Termination of Parental Rights for Abuse or Neglect (Contested Ground No. 2)

Section 1.188 Adjudication - Required Showing

Denial of TPR petition is affirmed where father supported the child, partially complied with services, completed an evaluation and counseling, and where there was no evidence that contact between child and father would be so harmful as to require TPR. *In Interest of K.A.L.*, WD86314 (Mo.App.W.D. 3-19-24).

Section 1.192 Failure to Rectify (Contested Ground No. 3)

Section 1.195 Social Service Plan/Success or Failure of Efforts

Mother's due process claim could not be raised by appellate counsel because trial counsel, who served through the period when a post-trial motion could have been filed, failed to do so. *In Interest of M.L.P. and M.R.P.*, SD38069 (Mo.App.S.D. 5-1-24).

Section 1.196 Termination of Parental Rights for Felony Convictions (Contested Ground No. 4)

TPR upheld where Father did not challenge the best interests finding, and where Father pleaded guilty to two felony violations of Chapter 566 when a child was the victim. *In Interest of E.G.*, SC100136 (Mo.banc 1-9-2024).

Section 1.199 Section 211.447.7 Factors

TPR is affirmed where mother challenges only the best interests finding, alleging that her past conduct, which included sexual abuse, physical abuse, and failure to rectify, should be ignored in favor of recent successes and that there was no evident intent that she would be granted progressive visitation, thus preventing her from reunification. Mother's claim that a guardianship should have been granted is rejected where the evidence showed the child would not benefit from a further relationship with mother. *In Interest of B.K.B.*, WD86407 (Mo.App.W.D. 2-20-24).

Section 1.202 Procedure

Section 211.443 does not require the court to make findings on its provisions in a TPR case. The matters set forth in that section are factors to guide the court's interpretation, not factors upon which the court must make findings. *In Interest of E.R.*, WD86297 (Mo.App.W.D. 2-13-24).

In his TPR appeal, Father's claim of error based upon the trial court's verbatim adoption of the proposed judgment of the Children's Division is not preserved for review, and Father does not make a facial showing of manifest injustice or miscarriage of justice, therefore, the TPR is affirmed. *In Interest of P.S.A.*, SD38461 (Mo.App.S.D. 9-6-2024).

Section 1.205 Petition for Termination of Parental Rights

Father could not be in default as no responsive pleading is required. There was nothing in the record showing Father received notice of the date of the trial. The court, therefore, lacked personal jurisdiction over Father rendering the judgment void. *In Interest of M.M.B.*, SD37865 (Mo.App.S.D. 10-17-2023).

TPR in connection with adoption is affirmed and Mother's claim that attorneys-in-fact action in filing the petition amounts to a "consent" is rejected. The authority for the petition to terminate parental rights and adopt comes from the statute and not from the power of attorney. *In Interest of A.J.C., L.E.R., and L.C.R.*, WD86706 (Mo.App.W.D. 8-27-24).

Section 1.207 Service of Summons

Plain error review is declined after Father failed to raise his claim that he was not served a summons. A party aggrieved by noncompliance with statutes and rules must still raise the error in a timely manner. *In Interest of K.C.G.*, 38180 (Mo.App.S.D. 3-25-2024).

Section 1.209 Right of Counsel/Appointment of Counsel

TPR is reversed where the one attorney appointed to represent both parents had a concurrent conflict of interest. An attorney does not provide effective assistance of counsel when the representation involves an actual conflict of interest. *In Interest of T.A.G. and Z.Z.G.*, ED111463 (Mo.App.E.D. 11-21-2023).

Section 1.213 Right to Effective Assistance of Counsel

TPR is reversed where the one attorney appointed to represent both parents had a concurrent conflict of interest. An attorney does not provide effective assistance of counsel when the representation involves an actual conflict of interest. *In Interest of T.A.G. and Z.Z.G.*, ED111463 (Mo.App.E.D. 11-21-2023).

Section 1.214 Juvenile Officer Meeting with the Court/Social Study and Investigation

Mother's claim that the trial court failed to strictly and literally comply with the termination statute related to the home study and investigation is rejected where the court ordered the Children's Division to prepare the report and a CD supervisor with an office in a different county within the same circuit did so. *A.R.S., et al. v. G.D.S.*, SD38292 (Mo.App.S.D. 5-22-24).

Section 1.215 Dispositional Hearing

Father could not be in default as no responsive pleading is required. There was nothing in the record showing Father received notice of the date of the trial. The court, therefore, lacked personal jurisdiction over Father rendering the judgment void. *In Interest of M.M.B.*, SD37865 (Mo.App.S.D. 10-17-2023).

Section 211.443 does not require the court to make findings on its provisions in a TPR case. The matters set forth in that section are factors to guide the court's interpretation, not factors upon which the court must make findings. *In Interest of E.R.*, WD86297 (Mo.App.W.D. 2-13-24).