CONSTITUTIONAL ISSUES IN THE TERMINATION OF PARENTAL RIGHTS

Family Defense Center – IL Parents’ Attorney Network Training

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Touchstones of Constitutional Law in TPR Cases

Stanley v. Illinois, 405 U.S. 645 (1972)

- Statutory scheme requiring unmarried fathers to prove themselves fit violated both equality and discrimination principles.
- “Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod over the important interests of both parent and child. It therefore cannot stand.”
Touchstones of Constitutional Law in TPR Cases


• State of New York’s statutory scheme permitted state TPR upon showing by “Fair POE” that child was “permanently neglected”

• Freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment

• TPR process must bifurcate issues of unfitness and best interests

• State’s allegations of unfitness must be proven by “clear and convincing evidence”
Key Principles:

- Involuntary TPR must rest on sequential proof of (1) Unfitness, and (2) Best Interests
- State carries burden of proving grounds for TPR by C&CE
- Procedures that don’t allow for individualized determinations violate DP
What is Sufficient Evidence of Unfitness?

*In re Enis*, 121 Ill.2d 124 (1988)

- Old version of *Ground (f)* permitted finding of unfitness based on two or more findings of physical abuse, reached under a preponderance standard
- Petitioner challenged TPR, citing *Santosky* and arguing statute failed to satisfy C&CE standard
- Held: violation of parent’s constitutional rights
What is Sufficient Evidence of Unfitness?

*Helvey v. Rednour*, 86 Ill. App. 3d 154 (1st Dist. 1980)

- Precursor to *Ground (p)* provided that if a parent is incompetent by reason of mental impairment or mental retardation and will not recover in the foreseeable future, then the court may appoint a person with authority to consent to the adoption.

- Held (citing *Stanley*): “It cannot be argued that every retarded parent possesses at least one of the behavioral traits enumerated in section 1(D) of the Act so as to be rendered unfit for parenthood. ... We therefore conclude that before respondent can be deprived of her right to raise her child, a hearing must be held to determine her fitness.”
What is Sufficient Evidence of Unfitness?

*In re R.C.*, 195 Ill.2d 291 (2001)

- Post *Helvey*, *Ground (p)* amended to add individualized frame focused on nexus between mental capacity and parenting:
  
  “Inability to discharge parental responsibilities supported by competent evidence ... of mental impairment, ... and there is sufficient justification to believe that the inability to discharge parental responsibilities shall extend beyond a reasonable time period.”
What is Sufficient Evidence of Unfitness?

*In re R.C., 195 Ill.2d 291 (2001)*

- Revised **Ground (p)**: does not allow a finding of unfitness based on a mere showing of mental impairment, illness, or retardation. Rather, the person's mental condition must render him unable to discharge his parental responsibilities and the inability to discharge parental responsibilities must "extend beyond a reasonable time period.

- State's interest is sufficiently compelling to satisfy strict DP scrutiny when a child is being raised by a parent who is, and will remain, for an unreasonable time, mentally unable to give the child proper care.
What is Sufficient Evidence of Unfitness?

_In re D.W_. 214 Ill.2d 289 (2005)

- **Ground (q):** A parent is irrefutably presumed unfit if the parent “has been criminally convicted of aggravated battery, heinous battery, or attempted murder of any child,” whether or not the parent is capable of adequately caring for his or her child.”

- **Ground (i):** A parent is presumed depraved based on proof of conviction of enumerated crimes but may rebut presumption

- Respondents found unfit under **Ground (q)** alleged violations of both P and DP
What is Sufficient Evidence of Unfitness?

_In re D.W._ 214 Ill.2d 289 (2005)

- Citing _Stanley_, court finds distinction lacks rational basis and thus _Ground (q)_ violates =P
- Court does not reach DP question.
- In dicta, court affirms idea of a rebuttable presumption in ground (i), by pointing to this § as a roadmap for fixing the problem in ground (q)
What is Sufficient Evidence of Unfitness?

In re S.F., 359 Ill.App.3d 63 (1st Dist. 2005)

- **Ground (f)** (amended after Enis) provided (inter alia) that criminal conviction resulting from death of a child by physical abuse creates irrebuttable presumption of unfitness

- **Held:** Following D.W., challenged statute is unconstitutional

- In the wake of D.W. and S.F., (q) was repealed and (f) amended to allow for rebuttal evidence
What is Sufficient Evidence of Unfitness?

- Ground (m) is focused on events subsequent to finding that demonstrate failure to correct conditions, which if shown by C&CE are sufficient to pass muster

*In re Jamarqon C.*, 338 Ill App. 3d 639 (1st Dist. 2003)
- Focus of Ground (t) is not on predicate finding but on subsequent conduct, which if shown by C&CE can support finding of unfitness

*In re Gwynne P.*, 215 Ill. 2d 340 (2005)
- Upheld application of Ground (s) (Repeated incarceration “preventing parent from discharging his or her responsibilities for the child.”)
What is Sufficient Evidence of Unfitness?

**In re H.G. 197 Ill.2d 317 (2001)**

- ASFA (1997): Congress required states to move towards TPR in any case where a child had been in care for 15 of past 22 months, or show cause for not doing so.
- In response, Illinois passed **Ground (m-1)**, making this circumstance not just cause for filing TPR petition, but also substantive ground of unfitness.
- Court (citing **Santosky**) held that (m-1) conflates issues of fitness and best interests, violating DP.
Other Constitutional Issues – Separation of Powers

*Who can prosecute a TPR petition?*

*In re D.S.*, 198 Ill.2d 309 (2001)

- Child’s GAL, as an interested party under 2-13, may properly *file* a TPR Petition.

- While State has sole authority to prosecute, Court may order state to proceed against its will.
Other Constitutional Issues – Procedural DP

*What is the scope of parent’s right to notice?*

*In re Dar C. and Das. C., 2011 Il 111083*

- Fundamental liberty interest protects individuals’ right to be heard
- State must make every effort to provide best possible notice – publication only if parent can’t be found after diligent search
- Search for parent was insufficient
Can a court impose limits on a parent’s right to present evidence?

_In re Vanessa C., 316 Ill.App.3d 475 (1st Dist. 2000)_

- Court had authority to sanction parents for failing to answer discovery, but sanction of striking her answer and precluding her testimony violated her procedural due process rights.
Other Constitutional Issues – Procedural DP

*What type of proof is required to show unfitness?*

*In re M.H., 196 Ill.2d 356 (2001)*

- Parent admitted to charge of failure to make reasonable progress, without any stipulation to underlying facts.
- Court on review found this stip – without evidence – insufficient to support finding of unfitness.
Other Constitutional Issues – Procedural DP

Does State’s burden of proof by C&CE extend to both stages of TPR?


- Practice in most courts following *Santosky* was to assume C&CE standard applied to both stages.
- Court held that *Santosky* mandated C&CE support *only* finding of unfitness.
- Following *Matthews v. Eldridge*, court held BI finding need only be supported by preponderance standard.
Other Constitutional Issues – Right to Counsel

*Lassiter v. Conn. Dep’t of Soc. Services, 452 U.S. 18 (1981)*

- Parents have a recognized fundamental interest protected by D.P., but...

- Interest may be satisfied by considering whether individual circumstances warrant appointment of counsel in any given case
Other Constitutional Issues – Right to Counsel

*In re C.M.*, 48 A. 3d 942 (N.H. 2012)

- Parents assigned public counsel, but attorney withdrew after NH Legis. abolished statutory rt. to representation
- Following *Lassiter*, NH Sup. Ct. concludes that case-by-case approach is sufficient to safeguard their rights to due process.
Other Constitutional Issues – Right to Counsel


- Children have fundamental due-process liberty interests that must be protected in TPR proceedings
- Mother failed to show that trial court violated due process rights of sons by not appointing counsel for them
- Due process right to counsel of children who are subjects of dependency or termination-of-parental rights proceedings to counsel is not universal; *Lassiter’s* case-by-case approach satisfies requirements of state Constitution
Other Constitutional Issues – Right to Counsel


- Right to counsel for children in CP cases is guaranteed by the Due Process Clause of the Georgia Constitution
- Decision carefully avoids mention of *Lassiter* but closely tracks logic of the *Lassiter* dissent.
Other Constitutional Issues – Right to Counsel

*In re T.M.*, 2014 WL 37287 (Hi. 2014)

- Mother, also a minor and a ward, was not provided with a lawyer until statutory time to rehab had nearly expired.
- HI Sup. Ct. held that 19-month delay was an abuse of discretion requiring reversal of TPR.
- Reasoning: Case-by-case approach of *Lassiter* is illogical, unworkable, and contrary to DP requirement of Hawai’i Constitution.
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