

## **Wyoming Dependency Docket 2011**

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**WHEN CONSIDERING A PETITION FOR TERMINATION OF PARENTAL RIGHTS, A COURT MAY TAKE INTO CONSIDERATION RESPONDENT'S VOLUNTARILY WAIVER OF OBJECTION TO THE TIMELINESS OF STATUTORY REQUIREMENTS AND RESPONDENT'S PATTERN OF BEHAVIOR OVER TIME.**

*In the Matter of Termination of Parental Rights to WDW, a minor child: JLW v. CAB, 2010 WY 9, 224 P.3d 14 (Wyo. 2010).*

Father appealed from the order of the district court of Carbon County terminating his parental rights. The Wyoming Supreme Court affirmed the decision of the district court.

WDW (Child) was born in May of 1999, while Father was in jail. After Child's birth, Mother filed for divorce from Father. Mother retained custody of Child and Father was ordered to pay child support. Father received no visitation rights but was left with the option of petitioning for visitation in the future.

Mother remarried in June 2005 and sought Father's permission to allow her husband to adopt Child. When Father refused, Mother petitioned to have Father's parental rights terminated. Father contested and a Guardian *Ad Litem* was appointed for Child. A trial was held in September of 2008 that resulted in the termination of Father's parental rights.

On appeal, Father argues that his parental rights were wrongfully terminated because the district court failed to satisfy the social study requirement set out in Wyo. Stat. Ann. § 14-2-314. Specifically, Father argues that the court failed to order the study in a timely manner, that the court made its determination before receiving the study and the study contained inadequate information. The statute requires that a social study be ordered when the petition is filed to determine factors related to parental fitness that will aid the court in making its final determination.

The facts surrounding the social study are not in dispute. The district court and the parties had full knowledge that the required social study had not been ordered. However, based on the suggestion of Father, the court proceeded and the study was ordered after trial. Although Father argues that it was error not to order the study at the time the petition was filed, the court noted Father had intentionally and knowingly waived any objection to the timeliness of the study by suggesting that trial proceed without the required study.

Prior to receiving the completed social study, the court issued a decision letter notifying counsel of its intention to terminate Father's rights. The court acknowledged that the required study had not yet been received but noted that based on the facts of trial, including the testimony of Father, the absence of the study was not detrimental to the court's decision. The study was officially filed with the court on January 15, 2009. The court emphasized the decision letter only demonstrated intent and the order to terminate Father's rights was not entered until February 20, 2009. Although Father contends that the study was inadequate because it did not reflect his current situation, the study was deemed cumulative and presented no contradiction of the evidence presented at trial. Therefore, Father could not demonstrate prejudicial error.

Father also argues that the evidence presented at trial was insufficient to terminate his rights pursuant to Wyo. Stat. Ann. 14-2-309(a)(iv) which requires clear and convincing evidence demonstrating Father was incarcerated due to a felony conviction and a showing of parental unfitness. Father concedes that he is currently incarcerated on a felony conviction but argues the evidence does not demonstrate that he is an unfit parent. The Wyoming Supreme Court has previously recognized fitness to include the ability to meet the ongoing physical, mental and emotional needs of a child.<sup>1</sup>

It is appropriate for a district court to consider a parent's history and pattern of behavior over time in determining whether rights should be terminated.<sup>2</sup> The district court recognized that Father never met Child and never taken any legal steps to gain visitation. Any attempt Father made to see Child was deemed harassment and inappropriate. Father never voluntarily paid child support and has pending felony charges in Utah. Father's history of drug and alcohol abuse resulted in a recurring pattern of incarceration. By the time Father is released from his current incarceration, Child will have reached adolescence.

Based on these facts and Father's limited attempts at self-improvement, the district court concluded, with clear and convincing evidence, that Father's actions are not consistent with parental fitness and ordered Father's parental rights terminated under Wyo. Stat. Ann. § 14-2-309(a)(iv). The Wyoming Supreme Court affirmed.

**JUVENILE COURT IS VESTED WITH DISCRETION WHEN CONSIDERING WHETHER TO GRANT A MOTION TO WITHDRAW A VOLUNTARY ADMISSION OF NEGLECT, EVEN IF RESPONDENT SUFFERS FROM A MENTAL ILLNESS.**

*In the Interest of DRT, A Minor. Jet, v. The State of Wyoming, Department of Family Services*, 2010 WY 137, 241 P.3d 489, (Wyo. 2010).

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<sup>1</sup> See, e.g., *RLA v. State of Wyo., Dep't of Family Servs.*, 2009 WY 109, ¶ 14, 215 P.3d 266, 269 (Wyo. 2009), citing *CDB v. DJE*, 2005 WY 102, ¶ 7, 118 P.3d 439, 441 (Wyo. 2005).

<sup>2</sup> See, e.g., *BA v. Laramie County Dep't of Family Servs.*, 2007 WY 128, ¶ 7, 163 P.3d 844, 847 (Wyo. 2007).

Mother appealed from the juvenile court of Carbon County's acceptance of Mother's admission of neglect and the denial of Mother's motion to withdraw. The Wyoming Supreme Court upheld the decision of the juvenile court.

DRT (Child) was born on November 20, 2009, and taken into protective custody six days later. Protective custody was taken Mother phoned a public health social worker and confessed she felt she was going to hurt Child. The social worker telephoned police who went to Mother's residence and took Child into protective custody. A neglect petition was filed pursuant to the Child Protection.<sup>3</sup>

A combined shelter care and initial appearance hearing was held in December 2009. At the hearing, Mother admitted to the allegations of neglect. The admission came after the judge advised Mother of her rights including her right to speak with an attorney and the possibility of her parental rights being terminated if Child remained in foster care for fifteen of the most recent twenty-two months.<sup>4</sup> Mother's mental health was also discussed including her struggle with Bipolar Disorder, ADHD, panic and anxiety attacks. The judge concluded that further psychiatric evaluation should be conducted.

On appeal, Mother concedes that the court did not fail to give her the advisements required by statute at the initial hearing.<sup>5</sup> However, Mother argues that the court abused its discretion by denying her motion to withdraw the admission and the court violated her due process rights by failing to advise her that upon an adjudication of neglect, termination of parental rights could be initiated.<sup>6</sup>

Notice of potential termination of parental rights is required by Wyo. Stat. Ann. § 14-3-409(b)(vi). The Wyoming Supreme Court noted on appeal that Mother's argument had already been rejected in a previous Wyoming case and that a juvenile court is not required to advise Mother at an initial hearing of termination under a different legislative act.<sup>7</sup> Mother was fully advised of her rights at the initial hearing and the direct consequences that could result from the admission or finding of neglect, including termination based on Wyo. Stat. Ann. §14-3-401. Based on the adequacy of the juvenile courts actions, there was no abuse of discretion or violation of Mother's rights when Mother's petition to withdraw her admission was denied.

Mother also contends that the court abused its discretion and violated due process by accepting her admission of neglect despite the evidence that she suffered from a mental illness. The court notes that mental illness does not automatically render a person incompetent to enter a guilty plea.<sup>8</sup> When looking at the record as a whole, there is nothing to suggest that Mother did not understand the proceeding because of her mental illness. Mother offered minimal argument on her mental incapacity. A pre-hearing

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<sup>3</sup> Wyo. Stat. Ann. § 14-3-401.

<sup>4</sup> Wyo. Stat. Ann. § 14-3-431.

<sup>5</sup> Wyo. Stat. Ann. § 14-3-409; Wyo. Stat. Ann. § 14-3-426(a).

<sup>6</sup> See, Wyo. Stat. Ann. § 14-2-309(a)(iii).

<sup>7</sup> *MN v. State Dep't of Family Servs.*, 2003 WY, 135, 78 P3d. 232 (Wyo. 2003).

<sup>8</sup> *Koenig v. State*, 2005 WY 135, ¶ 11, 121 P3d. 780, 782 (Wyo. 2005).

evaluation offers evidence that Mother has a high-average intellect and does not have disorganized thought processes. This evidence presented provided the juvenile court with a sound basis for finding that Mother voluntarily offered an admission of neglect.

Based on the record, the Wyoming Supreme Court affirmed the decision of the juvenile court, determining that Mother's due process rights were not violated and the court did not abuse its discretion in accepting Mother's admission of neglect.

### **COURT CAN EXAMINE RELEVANT FACTORS IN PARENT'S HISTORY WHEN DETERMINING CURRENT PARENTAL FITNESS.**

*In the Matter of the Termination of Parental Rights to KMJ and JDAJ, Minor Children, AJJ v. The State of Wyoming, Department of Family Services, 2010 WY 142, 242 P.3d 968 (Wyo. 2010).*

Father appealed from the district court of Sheridan County's order terminating his parental rights to his two minor children, KMJ and JDAJ (Children). The district court terminated Father's parental rights pursuant to Wyoming Statute § 14-2-309(a)(v) which provides for termination when it can be proven by clear and convincing evidence that the children have been in foster care fifteen of the most recent twenty-two months combined with a showing of parental unfitness.

Children were taken into protective custody after their mother died in 2007 and Father was incarcerated on a felony possession of a firearm charge. Upon Father's release, Department of Family Services (DFS) set up a case plan for Father with the ultimate goal of reunification with Children. When Father failed to follow the case plan, DFS petitioned to terminate Father's parental rights. The district court ordered Father's rights terminated in October of 2009 and Father appealed.

Father does not contest the fact that Children have been in foster care for fifteen of the most recent twenty-two months. However, Father argues that insufficient evidence exists to support the district court's decision of parental unfitness and also that DFS failed to use less intrusive means before terminating his parental rights.

Parental fitness is the ability to meet the ongoing physical, mental and emotional needs of the child.<sup>9</sup> The district court examined several factors to determine Father's parental fitness including criminal history, the special needs of Children and his failure to participate in counseling and educational opportunities.

Father's criminal history includes a conviction for felony child abuse. The victim was not a child of Father's, but was a household member at the time the abuse occurred. The abuse included: cigarette burns on the victim's hands and feet; force feeding the victim chewing tobacco and cigarettes; and bruising of the victim's thigh and buttocks.

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<sup>9</sup> *JLW v. CAB*, 2010 WY 9, ¶ 19, 224 P.3d 14, 19 (Wyo. 2010).

Father also has convictions for battery, felony larceny and felon in possession of a firearm and ammunition.

In addition to Father's history, the district court considered Children's special needs and that Father did not accept the training and counseling offered to aid him in understanding and caring for Children. Father also failed to maintain employment, establish an adequate home for Children and maintain contact with Children's teachers. He did not take advantage of opportunities to visit Children or maintain consistent contact with them through phone conversations. At trial, Father showed a lack of understanding surrounding the gravity of the proceedings or the responsibility that caring for Children would impose. The district court also noted that Father previously made comments indicating his lack of rehabilitation surrounding the previous incident of felony child abuse.<sup>10</sup>

Despite Father's assertion that his present situation should be the deciding factor when determining parental fitness, the district court acknowledged the need to examine Father's previous fitness to make a decision. The district court determined, with clear and convincing evidence, that his rights would be terminated pursuant to Wyo. Stat. Ann. § 14-2-309(a)(v). It was also determined that DFS had no obligation to use less intrusive means before terminating Father's rights under the statute. The Wyoming Supreme Court affirmed the district court's order.

**OFFICER ACTED WITHIN HIS LAWFUL DUTIES WHEN HE PHYSICALLY REMOVED A CHILD FROM A VEHICLE DUE TO SAFETY CONCERNS AND SAID REMOVAL IS NOT EXCESSIVE FORCE THAT INVOKES A CHILD'S RIGHT TO SELF-DEFENSE.**

*In the Interest of CG, A Minor Child v. The State of Wyoming*, 2011 WY 28, 248 P.3d 186 (Wyo. 2011).

Child appealed from the Natrona County Juvenile Court's order adjudicating her guilty of two delinquent acts. The juvenile court found Child guilty pursuant to Wyoming Statute § 6-5-204(a) and § 6-2-501(g)(i).<sup>11</sup> The Supreme Court of Wyoming upheld the juvenile court decision.

Child, at the age of fourteen, was adjudicated a child in need of supervision (CHINS) for failing to regularly attend school in September of 2009. Child was placed on probation and ordered to attend school without any further absences or tardiness. On a morning shortly after the CHINS hearing, Mother tried

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<sup>10</sup> See, *In the matter of the termination of parental rights to KMJ and JDAJ, minor children, AJJ, Appellant v. The State of Wyoming, Department of Family Services, Appellee*, 242 P.3d 968, 971.

<sup>11</sup> § 6-5-204(a) – Child had unlawfully and knowingly obstructed, impeded, or interfered with Officer while he was engaged in the lawful performance of his official duties.

§ 6-2-501(g)(i) – Child unlawfully touched Officer in a rude, insolent or angry manner without intentionally using sufficient physical force to cause bodily injury.

unsuccessfully to get Child ready for school and Child missed the school bus. Mother was without a driver's license and Stepfather was ill and unable to drive Child. Frustrated, Mother called a caseworker at the Department of Family Services (DFS).

DFS advised Mother to contact the police for assistance. A police officer (Officer) arrived at the residence and spoke with Child, who was still visibly upset and noncompliant. Officer persuaded Child to allow a neighbor to drive her to school. Child and Mother rode with the neighbor to school while Officer followed behind in a patrol car. At school, when Child refused to leave the car, the neighbor requested Officer's assistance. When Child continued to refuse to exit the vehicle, Officer grabbed Child's wrist in an attempt to force her from the vehicle. Child then punched Officer in his forearm. This resulted in the Child's arrest for assault. A delinquency petition was filed against Child and following a detention hearing that same day, Child was placed at the Youth Crisis Center. The petition alleged that Child had committed two criminal offenses.<sup>12</sup> Child was adjudicated a delinquent child.

On appeal, Child argues that Officer's actions were unlawful and therefore, not conducted in the lawful performance of his duties, which is a predicate to § 6-5-204(a). The Court noted that Child was defining Officer's duties too narrowly and pointed out that as a peace officer, police perform a broad range of duties. When reviewing the record, the Court acknowledged the neighbor's request for assistance from Officer in removing Child from her vehicle. Officer noted that Child's behavior was escalating and that his actions reflected his concern for safety. Based on these facts, the Court determined that Officer had acted in the lawful performance of his official duties.

Child also contends that the juvenile court erred when they rejected her claim of self-defense. Child argues that Officer used excessive force to remove her from the vehicle and this gave rise to her right of self-defense. The Court recognized the claim of self-defense but noted that self-defense can only be used when an Officer has used excessive force.<sup>13</sup> Based on the evidence presented, including Child's own testimony, the Court concluded that Officer had not used excessive force to remove Child from the vehicle.<sup>14</sup> Based on the finding of no excessive force, the claim of self-defense could not stand.

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<sup>12</sup> *See id.*

<sup>13</sup> *See e.g., Yetter v. State*, 987 P.2d 666, 669 (Wyo. 1999).

<sup>14</sup> The evidence presented included: Child's testimony in which she said that when Officer grabbed her wrist it "hurt a little"; video footage from the patrol car's camera; Mother's testimony; Officer's testimony; and testimony from neighbor.