

Summary of SC93649, *In the Interest of J.A.R., D.K.R., and A.E.R., Children under 17 Years of Age, Greene County Juvenile Office v. D.G.R.*

Appeal from the Greene County circuit court, Judge William R. Hass

Argued and submitted March 11, 2014; opinion issued April 1, 2014

Attorneys: The father was represented by Kristoffer R. Barefield of Mann, Walter, Bishop & Sherman in Springfield, (417) 877-9138; the juvenile office was represented by its counsel, Brittany O'Brien of Springfield, (417) 829-6141; and the guardian ad litem was Marily A. Braun, an attorney in Fair Grove, (417) 833-2586.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A father appeals the termination of his parental rights to his three children. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the trial court's judgment. The father cannot raise a new claim in this Court that he did not raise in the court of appeals, and there is a distinct difference between claiming insufficiency of the evidence, which the father argued previously, and a judgment against the weight of the evidence, which he attempts to raise for the first time in this Court. The evidence must be reviewed in the light most favorable to the judgment, and the trial court was free to believe all, part or none of any witness's testimony. As such, there was sufficient evidence supporting the trial court's finding both of neglect and that termination of parental rights was in the children's best interest.

Facts: After having difficulty providing for his three children, a father – a California resident – sent the children to Missouri in July 2010 to live with a couple they viewed as their maternal grandparents. He said he intended to move to Missouri within a few weeks but did not do so; he also repeatedly told the children he would visit them but did not do so. Around November 2010, the children began to live with their mother in Springfield. In March 2011, the state children's division took the children into protective custody because the mother was intoxicated and failed to supervise the children and because the father did not have suitable housing for the children or the ability to get them from Missouri. Over the next year, the children lost trust in their father, who repeatedly made promises he failed to keep, and telephone calls with him were discontinued at their request. During that time, he also made little progress on a treatment plan developed by the children's caseworker, and he declined the caseworker's request to help him get services in California through an interstate compact. The father also provided no financial support for the children after July 2011, although he reported he was working.

In March 2012, although the father came to Missouri, he skipped a hearing – scheduled to accommodate him – at which a permanent placement for the children would be discussed. By the end of the next month, the juvenile office filed petitions to terminate the father's parental rights to all three children. In late September 2012 – a few days prior to the trial – the father abruptly moved to Missouri but was unemployed and living in his vehicle. The children – then ages 11, 12 and 13 years old – testified that they felt neglected by their father and did not wish to be reunified with him. Both the children's division and the guardian ad litem appointed for the children recommended termination of the father's parental rights. The father chose not to testify.

The court found that the record supported three separate legal grounds for terminating the father's parental rights and concluded such a termination would be in the children's best interests. The father appeals.

AFFIRMED.

Court en banc holds: (1) The father failed to preserve for this Court's review his claims that the trial court's findings are against the weight of the evidence. The father may not raise in this Court a ground for appeal that he did not raise in his brief filed in the court of appeals. None of the points relied on in his brief in the appeals court raised a claim that the circuit court's findings were against the weight of the evidence. Rather, the points claimed only that the evidence was insufficient to support such findings. These are two distinctly different claims, and they have different standards. For example, a claim the judgment is against the weight of the evidence presupposes there is sufficient evidence to support the judgment.

(2) Substantial evidence on the record supports the trial court's judgment. When determining the sufficiency of evidence in a case involving termination of parental rights, any conflicts in the evidence must be viewed in the light most favorable to the trial court's judgment. Further, a trial court is free to believe all, part or none of any witness's testimony; it is not the reviewing court's role to reevaluate the evidence through its own perspective.

(a) Substantial evidence on the record supports the trial court's finding of neglect as defined by state statute. The evidence shows that the father repeatedly or continuously failed to provide for his children's needs, including their need for a suitable home. They had been in protective custody for more than a year and a half at the time of the trial, and the father was in no better position to provide for their needs than he was when they were placed in protective custody. The evidence showed he knew he was obligated to support the children and had the ability to do so, but he had not contributed to their care and support for more than 14 months preceding trial. The evidence showed the father also neglected his relationship with his children to the point they refused to speak with him, and he had not visited them since he sent them to Missouri in 2010. Given all the evidence, the trial court did not err in finding, "The only thing the father seems to have been consistent in is telling the [children] that he would be coming to visit them and then failing to follow through." Because there is substantial evidence to support one ground for termination of parental rights, this Court is not required to address the father's challenges regarding the other two grounds.

(b) Substantial evidence on the record supports the trial court's specific findings that termination of the father's parental rights was in his children's best interest. The father had not maintained regular contact with his children; failed to provide for the cost of their care and maintenance, although able to do so; and had demonstrated a disinterest in, or lack of commitment to, the children. As the guardian ad litem reported to the court, it had been two years since the father had seen his children, and they had given up on him, stating they did not wish to have contact with him.