

Summary of SC89190, *Christopher and Renee Young v. Children's Division, State of Missouri Department of Social Services*

Appeal from the Jefferson County circuit court, Judge Gary Kramer.

Attorneys: The Youngs were represented by John J. Ammann of the Saint Louis University Legal Clinic, (314) 977-2778, and the division was represented by Sarah E. Ledgerwood of the attorney general's office in Jefferson City, (573) 751-3321.

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 couple appeals the denial of their application for subsidy under the behavioral foster care program for two children they adopted who have behavioral problems. In a 7-0 decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri reverses the trial court's judgment and remands (sends back) the case to the trial court, which shall remand the matter to the division so the division expeditiously can promulgate a rule and determine the couple's application.

Facts: In March 2003, Christopher and Renee Young adopted biological siblings J (a boy) and H (a girl), who had been in their foster care since February 2001. The Youngs received the basic adoption subsidy from the children's division for both children from the date of the adoption. In December 2003, the Youngs adopted B, the younger biological brother of the other two children and entered into another subsidy agreement with the division. In March 2004, the Youngs requested placement of J and H into the behavioral foster care program, which provides a higher monthly stipend to foster and adoptive parents of children with behavioral problems. Following staff meetings in September and October 2004, the division denied the behavioral foster care adoption subsidy in January 2005. Five days later, the Youngs requested a hearing to review the denial of the adoption subsidy. Following an April 2005 hearing, the division in November 2005 affirmed the denial of adoption subsidy benefits, holding that little evidence supported a finding that the children's behavioral problems were severe enough or occurred consistently enough to meet the behavioral foster care program criteria. In September 2006, the Youngs sought review in the circuit court, which in January 2007 affirmed the division's decision. The Youngs appeal.

REVERSED AND REMANDED.

Court en banc holds: (1) The division's decision applying eligibility requirements for the behavioral foster care program is void because the requirements were not promulgated under rulemaking procedures. On appeal, this Court reviews the division's decision, not the circuit court's judgment. In *Department of Social Services v. Little Hills Healthcare, L.L.C.*, 236 S.W.3d 637 (Mo. banc 2007), this Court held that the agency was required to promulgate a rule for the method it uses to calculate annually the "estimated Medicaid days" of Medicaid services providers and that the agency's decision regarding estimated Medicaid days was invalid because it was based on criteria or methodology that should have been promulgated as a rule. This holding was not dependent on the language of the statute providing that the agency define "by rule and regulation" certain issues related to medical assistance services. Instead, the

determination of whether an agency policy should be promulgated as a rule is guided by section 536.010(6), RSMo Supp. 2006, defining “rule” as an agency statement of “general applicability” that implements, interprets or prescribes law or policy or that describes an agency’s organization, procedure or practice requirements. Here, as in *Little Hills*, the issue is the validity of an individualized decision that is based on a set of standards – relating to the subsidy application procedure, required standard of proof, type of evidence required, types of qualifying behaviors, how frequent and recent the behaviors must be, and whether professional treatment is required – that has not been promulgated as a rule. The division here also uses a child welfare manual in implementing the adoption subsidy program, but it has not promulgated the manual – which lists characteristics a behavioral foster care program participant may exhibit – as a rule. The criteria and methodology the division uses in determining a child’s qualification for behavioral foster care subsidy under section 453.073, RSMo 2000, meets the definition of “rule” under section 536.010(6).

(2) Because the division denied the Youngs’ petitions for the subsidy based on standards and procedures that should have been promulgated as a rule, the denial of the subsidy benefits is void. This Court cannot determine any amount of subsidy to the Youngs’ adopted children, however, because the correct monetary amount can be determined only after the division promulgates the necessary rules to determine eligibility for the behavioral foster care subsidy.