

Summary of SC91584, *In the Interest of: B.H.*

Appeal from the Jackson County circuit court, Judge Marco A. Roldan
Argued and submitted September 2, 2011; opinion issued October 4, 2011
Judge William W. Francis, a judge of the Missouri Court of Appeals, Southern District, participated in this case by special designation to fill the vacancy on the Court.

Attorneys: Mother was represented by Michael E. Crowley of Stinson Morrison Hecker LLP in Kansas City, (816) 691-6000; and the juvenile officer was represented by Lori L. Stipp of the Jackson County juvenile office in Kansas City, (816) 435-4725.

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: Mother appeals the termination of her parental rights to Son. In an opinion written by Judge Mary R. Russell, joined by all other judges participating, the Supreme Court of Missouri affirms the termination. The trial court correctly found by clear, cogent and convincing evidence that Son was subject to abuse and neglect under section 211.447.5(2). The preponderance of the evidence standard with respect to the best interests of the child is constitutional and was supported by the evidence in this case. The trial court made sufficient factual findings with respect to the abuse and neglect determination and with respect to the potential future harm to Son evidenced by Mother's conduct.

Facts: Mother was arrested for soliciting herself for prostitution on Craigslist. She admitted to police that she regularly locked Son in his room while she conducted acts of prostitution in their shared home. Mother had significant mental deficiencies. She also had already had her parental rights terminated to all of her seven other children. The trial court terminated Mother's parental rights pursuant to section 211.447. The trial court found that the abuse or neglect ground for termination under section 211.447.5(2) existed by "clear cogent and convincing evidence" and made findings under all conditions or acts required to be considered. The trial court also found that the mental condition of Mother was "of a permanent nature such that there is no reasonable likelihood that the condition can be reversed" and that condition rendered Mother "unable to knowingly provide the child with the necessary care, custody and control."

AFFIRMED.

Court en banc holds: Section 211.447 is constitutional. Although due process requires a heightened standard of proof in finding a ground for termination, the best interest of the child finding can be found by a preponderance of the evidence. The requirement of finding a ground for termination by "clear, cogent and convincing evidence" operates as a protection of a parent's fundamental liberty interest in raising his or her child. The best

interest of the child finding, however, operates as a protection for the child. Requiring a heightened standard would only frustrate actions in the best interest of the child after due process has already been satisfied by finding a ground for termination by a heightened standard.

The trial court did not misapply the law because (1) it was not required to expressly state that its findings of the 211.447.5(2) conditions or acts were made by “clear, cogent and convincing evidence,” and (2) the trial court properly considered the risk of future harm to Son caused by Mother’s conduct.