

Summary of SC93677, *In the Interest of: Q.A.H., a minor. Juvenile Officer and C.W.M. and C.D.M. v. M.H. (Mother)*

Appeal from the Jackson County circuit court, Judge Justine Del Muro
Argued and submitted March 11, 2014; opinion issued March 25, 2014

Attorneys: The mother was represented by Casey P. Murray and Sandra J. Wirtel of Spencer Fane Britt & Browne LLP in Kansas City, (816) 474-8100. The foster parents were represented by James M. Smart Jr., an attorney in Kansas City, (816) 509-7677, and James A. Waits and Sarah S. Johnston of Waits, Brownlee, Berger & Dewoskin in Kansas City, (816) 363-5466. The juvenile office was represented by Marina E. Bell in Kansas City, (816) 842-2272. The guardian ad litem was Mary Shemane Mann in Kansas City, (816) 435-4670.

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 mother appeals the termination of her parental rights to her child. In a 6-1 decision written by Chief Justice Mary R. Russell, the Supreme Court of Missouri affirms the trial court's judgment. There was sufficient evidence supporting the three grounds on which the trial court terminated the mother's parental rights. It was free to believe all, part or none of a witness's testimony and, as such, was free to believe testimony from parent aides and children's division workers about the mother's mental status instead of the testimony of mental health professionals testifying on the mother's behalf. Further, the evidence supported findings that the mother's personal relationships presented a potential harm for the child despite the mother's therapy and that the mother failed to support her child while her child was living in foster care.

Judge Richard B. Teitelman dissents. He would reverse the trial court's judgment and send the case back because the evidence fails to demonstrate clearly that the mother is currently unable to care adequately for her child and that she will be unlikely to do so in the future.

Facts: A mother suffered a delusional episode in August 2009 and took her five-month-old daughter to a hospital. As a result, the child was placed in foster care, and the mother began psychiatric support and weekly supervised visits with the child. The weekly visits continued until March 2010, when the child was returned to her mother's custody for four months. The mother lost custody in July 2010 after refusing to allow the father to have court-ordered supervised visits with the child. Since then, the child – who now is 5 years old – has been living with a foster family that sought to terminate the mother's parental rights and, if the termination were granted, to adopt the child. At the time of the September 2012 termination hearing, the mother had been under psychiatric care for approximately three years, was not employed, and was relying on another individual for housing and financial support. The court terminated her rights, finding three grounds to do so under section 211.447.5, RSMo. First, it found the mother had abused or neglected her child because her mental condition rendered her unable to provide the child with necessary care, custody and control. Second, it found she had abused or neglected her child by failing to provide adequate food, clothing, shelter or education despite having the financial resources to do so. Finally, it found that the child had been under its jurisdiction for more than one year and that the conditions leading it to assume jurisdiction persisted; or that conditions of a potentially harmful nature continued to exist, leaving little likelihood the child could be returned

to the mother in the near future; or that a continued relationship between the mother and child greatly diminished the child's prospects for integration into a stable home. The mother appeals.

AFFIRMED.

Court en banc holds: (1) There was substantial evidence supporting the trial court's decision that the mother's mental condition rendered her unable to provide the child with necessary care, custody and control and that she had not rectified the conditions that led the court to assume jurisdiction. In examining the evidence presented, the court found that the mental health professionals who testified on the mother's behalf were not credible in their assessment of her parenting abilities. As fact-finders, trial courts are free to believe all, part or none of a witness's testimony. Because the court considered other evidence of the mother's mental condition – as presented by parent aides and children's division employees – it was free to disbelieve the professionals the mother presented. In doing so, there was substantial evidence that the mother continued to suffer from the delusions she experienced in 2009. Further, the trial court was free to find unpersuasive evidence that a Kansas court – not privy to information from Missouri service providers – permitted the mother to retain custody of another child, as one successful parent/child relationship does not necessarily mean the circumstances leading the court to assume jurisdiction were remedied with respect to other children.

(2) There was substantial evidence to support the trial court's finding that the mother's personal relationships presented a potential harm for the child despite the mother's therapy. The mother continued to suffer from delusions that became her reality, presenting a danger to the child. Parent aides reported the mother continues to have "adult" conversations with her child about topics that are inappropriate for the child's age, and it would be a burden for the child to hear false information about her father based on her mother's delusions. Further, despite three years of therapy, the mother had not achieved her goal of setting healthy personal boundaries. Rather, she had stayed in relationships with two men whom she believed jeopardized her safety on several occasions and, against her therapist's advice, had moved in with another man with whom she denies having romantic involvement.

(3) There was substantial evidence supporting the trial court's determination that the mother failed to support her child. Despite being able to afford up to \$100 per month in child support, the mother never paid any support for her child in the years the child resided with foster parents. The few clothes she provided were too small for the child, she purchased the child only a few toys, and other items she purchased were clearly inappropriate for the child's age. She had a sporadic work history before obtaining her associate's degree – which she did while her child was in foster care – and she said she could obtain employment. But at the time of the termination hearing, the mother was not working and was living on a combination of government aid and the generosity of the man with whom she lives. As such, it is unlikely she will be able to provide adequate food, clothing and shelter for the child in the future.

Dissenting opinion by Judge Teitelman: The author would reverse the trial court's judgment and would send the case back to the trial court. While evidence in this case provides a snapshot of a troubled past, it fails to demonstrate clearly that the mother is currently unable to care adequately for her child and that she will be unlikely to do so in the future, as Missouri law requires to terminate the parent-child relationship.