MISSOURI COURT OF APPEALS
WESTERN DISTRICT

IN THE INTEREST OF A.R.,

JUVENILE OFFICER,
RESPONDENT
vs.

R.R. (PUTATIVE FATHER),
APPELLANT

DOCKET NUMBER WD73107

DATE: FEBRUARY 1, 2011

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Marco A. Roldan, Judge

Appellate Judges:

Division Two: Karen King Mitchell, P.J., Joseph M. Ellis and Victor C. Howard, JJ.

Attorneys:

Daniel G. Barry, for Respondent

Connor J. Sears, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT

IN THE INTEREST OF: A.R.,
JUVENILE OFFICER, RESPONDENT
v.
R.R. (PUTATIVE FATHER), APPELLANT

WD73107 Circuit Court of Jackson County, Missouri

Before Division Two Judges: Karen King Mitchell, P.J., Joseph M. Ellis and Victor C. Howard, JJ.

R.R. (Father) appeals the juvenile court's disposition judgment committing his son, A.R., to the custody of the Children's Division for placement with his grandmother. On appeal, Father contends that in denying him custody of A.R., the juvenile court exceeded the bounds of its limited jurisdiction, violated procedural and substantive due process, and failed to apply section 211.037, RSMo Cum. Supp. 2009. Father also argues that even if section 211.037 was applied, the statute is unconstitutional.

AFFIRMED.

(1) Where evidence presented at disposition hearing showed that Father abused marijuana, had not yet enrolled or participated in a treatment program to which he was referred by the Children's Division or submitted to a hair test, and was either homeless or temporarily living with a cousin and was unemployed and unable to provide for the child financially, Father did not meet the conditions for placement as a nonoffending parent under section 211.037.1, and the juvenile court properly exercised its discretion to place the child elsewhere.

(2) Where Father was sufficiently notified of the pendency of the proceeding, attended with his attorney and fully participated in the adjudication and disposition hearing, was given an opportunity to cross-examine witnesses and present evidence, and was denied custody of the child as a nonoffending parent only after the juvenile court examined the evidence of Father's history of drug abuse, Father's procedural and substantive due process rights were not violated. Additionally, where Father failed to raise his constitutional challenge to section 211.037 in the juvenile court, the claim was not preserved for appellate review.

Opinion by: Victor C. Howard, Judge Date: February 1, 2011

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