

Civil Cases

State ex rel. CYFD v. Lance K., CA 26,632 (Fry) Feb 11, 2009

In this very lengthy opinion, the Court of Appeals reversed the termination of Father's parental rights to two children because there was insufficient evidence to conclude that: (1) the conditions and causes of the abuse or neglect were unlikely to change in the foreseeable future when the children's ongoing problem with lice and Father's substance abuse issues had been resolved long before the TPR; and (2) the parent-child relationship had disintegrated (thereby precluding a finding of abandonment). After reversing the TPR, and in light of the 6 years that had passed since the children had been removed from Father's custody, the Court engaged in a detailed discussion of the transition plan that should be developed upon remand. In addition, the Court affirmed an order requiring Father to submit to paternity testing with respect to a third child, Emily, because Father had waived his objection by stipulating to the testing. The Court also affirmed an order denying Father visitation with Emily because paternity testing showed that Emily was not his biological child and Father failed to convince the Court that continued visitation was in Emily's best interest.

State ex rel. CYFD v. John R., CA 27,880 and 27,985 (Bustamante) Feb 2, 2009

Father and Mother appealed the termination of their parental rights. Father argued, and the Court agreed, that the District Court's failure to appoint an attorney for Child when she turned 14 was reversible error. The Court held that when a 14-year-old requests an attorney (separate from the GaL) or the GaL requests to be removed, Section 32A-4-10(E) is mandatory and a separate attorney must be appointed for the child; under these circumstances, the district court has no discretion. The Court also held that Father had standing to raise Child's claim of right to counsel and that the District Court did not err by giving primary consideration to the best interests of the child and secondary consideration to Mother's parental rights in TPR proceedings.

State ex rel. CYFD v. Jeremy N., CA 27,397 (Vigil) Jun 27, 2008

Where CYFD filed a petition against Father contending that he abused the child and a petition against Mother contending that she negligently permitted the abuse, and where the lower court granted Mother a directed verdict (really a decision under Rule 1-041) that CYFD did not make out a case against Mother, and that is the only thing Father is appealing, he does not have standing because he was not injured by such a ruling; he was allowed to present any admissible evidence he wished to establish that it was Mother that abused the child, and hearsay inculcating Mother would not have been allowed to be presented by Father in any event since he was not a party opponent.

State ex rel. CYFD v. Lisa A., CA 27, 188 (Castillo) May 13, 2008

Where a child is in CYFD custody because of adjudications of abuse against Mother and neglect against Father and where Father's adjudication of neglect was reversed on appeal, the district court could return the child to Father and dismiss the case as to Mother, which would mean that Mother would not get the services she was getting; this scenario does not deprive Mother of due process and Mother was not denied effective assistance of counsel when her counsel below made the same arguments as are being made on appeal; nor did the district court ignore the best interests of the child.

State ex rel. CYFD v. Hector C., CA 26,807 (Kennedy) Mar 4, 2008

Evidence did not support that causes and conditions of neglect were not likely to change in future because Father was in prison and was doing the best he could when the petition for termination was filed, but when Father was released he started doing better and therefore this case was like *Natural Mother*; there was clear and convincing evidence that Department made reasonable efforts; but termination of Father's parental rights on ground of presumptive abandonment is upheld because as to one child, Father was imprisoned when the child was one month old and therefore there was never a bond and as to the other child, he was only sixteen months old, and all the other elements of presumptive abandonment were met.

In re Adoption of Rebecca M., CA 26,675 (Castillo) Jan 16, 2008

Trial court did not err in refusing to set aside an adoption granted to a domestic partner after the partners began disputing custody of the child borne by the other domestic partner; where the motion to set aside was before the same judge who earlier took the consent and that judge disclosed what he usually does and offered to step down and the moving party did not ask him to step down, there was no abuse of discretion in denying recusal; when an independent adoption proceeds by way of a request for placement, followed by a pre-placement study and adoption petition, and where the petition here was not filed until after the adoption decree, this was not a jurisdictional error because the district court had before it all the information required to be before it; neither equitable estoppel nor exceptional circumstances apply on the facts of this case.

State ex rel. CYFD v. Michael T., CA 27,366 (Fry) Nov 8, 2007

Exclusionary rule does not apply to abuse and neglect cases.

State ex rel. CYFD v. Senaida C., CA 26,545 (Kennedy) Nov 5, 2007

When grandmother was denied visitation and later dismissed from the case, the appeal from the dismissal order was timely to raise the question of visitation; trial court did not err in using abuse of discretion standard for determining whether CYFD considered grandmother as a placement; trial court did not err in terminating grandmother's visitation when child was adopted after mother's parental rights were terminated; grandmother's due process rights were not violated when she was given the opportunity to be heard throughout the case; trial court was not required to order an open adoption although it had equitable power to do so; even where counsel is raising issues at indigent client's request, there still must be citations to the record and relevant authority.

State ex rel. CYFD v. Andre G., CA 25,869 (Alarid) May 10, 2007 withdrawn and filed on rehearing October 15, 2007

Where there was an abuse/neglect case in NM that resulted in a order for a Texas father to reimburse CYFD for the time child was in CYFD's custody, and when Mother sought services from HSD, which filed (together with the Texas Attorney General) an action for support in Texas, which resulted in a time-limited order that no one appealed, HSD's argument that Texas lacked jurisdiction is not one of the exceptions to Restatement of Judgments Section 12, which states that jurisdiction cannot be challenged after a contested proceeding unless certain exceptions are present, and therefore HSD could not reopen the CYFD case and HSD is now precluded from collaterally attacking the Texas court's jurisdiction; nor do various statutes on

child support jurisdiction alter this result; in particular the Texas order did not modify the NM order because they were directed at different time periods and to different obliges.

State ex rel. CYFD v. Brandy S., CA 26,814 (Bustamante) Aug 24, 2007

Although children's court in TPR case should ordinarily not take judicial notice of the file after the completion of evidence without telling the parties what it proposes to rely on, in this case it did not appear that the court relied on anything that was not repeated at the hearing and therefore mother's due process rights were not violated and there was not structural error in the proceedings.

State ex rel. CYFD v. Benjamin O., CA 26,551 (Pickard) Apr 19, 2007

When an abuse/neglect adjudication is reversed on appeal on substantive grounds (the appellate court finding the evidence insufficient), but the trial court has been proceeding in a termination of parental rights hearing and then finds out about the appellate reversal, the trial court may allow CYFD to amend its TPR petition and may proceed to termination, but only if it carefully ensures that there is new abuse/neglect (no reliance on the past, reversed adjudication) as well as the other elements of TPR and only if it makes findings based on clear and convincing evidence that the prior, reversed adjudication did not play a part in the causes and conditions of the current abuse/neglect; case is remanded for district court to make such findings and it does not need to recuse on remand.

State v. Trujillo, CA 25,898 (Kennedy) Mar 7, 2007 When a mentally retarded defendant is found incompetent to stand trial, the trial court cannot proceed to commit him or her pursuant to the general statutes on incompetency and instead must release the person (unless civil commitment proceedings are initiated) unless the person is charged with one of the four specific crimes enumerated in Section 31-9-1.6; mental retardation in New Mexico does not have to begin during a person's minority (Wechsler, dissenting on the ground that nothing in the statutes would preclude reading Section 31-9-1.6 consistently with 31-9-1 to 1.5 in a way that would allow mentally retarded defendants to be committed for the potential length of their sentences if incompetent and if evidence supports that they committed the crimes charged).

In re Damion M.C., State ex rel. CYFD v. Kathleen D.C., SC 29,134 (Maes) Mar 6, 2007

Where litigation involving abuse of child 1 was affirmed on appeal and mother relinquished parental rights to that child but another child was taken away during pendency of cert proceedings, the case was not moot; mother's filing of motion for expert after trial but prior to trial court's findings and judgment sufficiently preserved issue; whether trial court erred in refusing to appoint second expert to assist mother in defending against abuse allegation based on cause of child's injuries depends on whether such an expert might be found and as to that question, case must be remanded to give mother an opportunity to show that such an expert exists; if mother does not make such a showing, the adjudication is affirmed (Chavez and Bosson, specially concurring and specifying the showing that mother must make, and stating that mother may be entitled to an expert to help develop a defense theory).

In re Adoption Petition of Romero, CA 25,877 (Fry) on rehearing Sep 7, 2006

Where mother and father had a sexual relationship that ended 7 months prior to the child's birth and where father first found out about the child 2 months after birth although he should have

known about the child sooner, his pre-birth actions cannot be used to terminate parental rights under the theory that the parent caused a disintegration of the parent-child relationship; a putative father can become an acknowledged father by filing a paternity petition, thereby satisfying the statute, even if that happens after the adoption petition is filed; a father does not have a relationship with the child in utero and therefore cannot cause the relationship to disintegrate by not supporting the mother; nor is such failure to support abandonment.

State ex rel. CYFD v. Amanda M, CA 26,220 (Kennedy) Sep 7, 2006

Doctrine that allows appellate court to take jurisdiction over an appeal where the notice is filed late due to ineffective assistance of counsel is expanded to include abuse and neglect adjudications, and not just termination of parental rights and criminal cases; there was sufficient evidence that Mother neglected the child where she did not recognize and seek treatment for the child's severe head trauma which was visible to others who later saw the child and which the testimony established would have been visible to Mother.

State ex rel. CYFD v. Amanda H., CA 25,623 (Alarid) Aug 15, 2006

A neglect case is not moot although it is dismissed while on appeal because these matters are capable of repetition while evading review and thus the court does not reach whether the adjudication of neglect can adversely affect a parent's rights in later proceedings; evidence that child tested weakly positive for barbiturates upon birth (which the doctor testified could have been a false positive), that mother used drugs during first trimester and smoked marijuana once during third trimester, and that mother left child with nurses while she went outside to smoke was not sufficient to establish neglect under section providing that a neglected child is one without proper parental care; evidence that mother had a past criminal and drug history and current personality disorders were not sufficient to establish neglect under section providing that neglected child is one whose parent cannot discharge responsibilities due to mental illness or incarceration because there was no evidence that mother was not discharging responsibilities.

State ex rel. CYFD v. Athena H., CA 25,979 (Wechsler) Aug 3, 2006

Even though Mother complied with treatment plan to the best of her ability, substantial evidence supported district court's termination of her parental rights because children had been so abused and had such difficult issues and Mother had her own issues, which she was incapable of addressing, that the conditions of abuse and neglect would not change in the foreseeable future despite reasonable efforts; no ineffective assistance of counsel because matters not of record present no issue for review.

In re Adoption Petition of Romero, CA 25,877 (Fry) Jul 26, 2006

Where mother and father had a sexual relationship that ended 7 months prior to the child's birth and where father first found out about the child 2 months after birth although he should have known about the child sooner, his pre-birth actions cannot be used to terminate parental rights under the theory that the parent caused a disintegration of the parent-child relationship; a putative father can become an acknowledged father by satisfying the statute even if that happens after the adoption petition is filed; a father does not have a relationship with the child in utero and therefore cannot cause the relationship to disintegrate by not supporting the mother; nor is such failure to support abandonment.

Grygorwicz v. Trujillo, CA 25,317 (Sutin) Jun 13, 2006

Legislative changes in statutes of limitations are matters of remedial procedure that operate retrospectively as to acts occurring before their effective dates, at least when vested rights are not implicated, such as might be the case when the statutory time limit had passed when the statute was amended, and at least as to common law causes of action (as opposed to causes of action that are legislatively created at the same time as a limitation is created); here, child sexual abuse statute of limitations was changed to extend it to age 24 at a time when the statute had not passed as to defendant, so the new statute applied to plaintiff's case against him.

Upton v. Clovis Municipal School Dist., CA 24,051 (Wechsler) Apr 20, 2005, rev'd SC 29,226 (Bosson) Jun 12, 2006

A substitute gym teacher's making an asthmatic student do running drills beyond her capabilities, from which the student died of an asthma attack, is not within the waiver of immunity for operation or maintenance of buildings or equipment because it was not a condition that made the building dangerous to the general public and was instead a condition involving negligent supervision (Sutin, specially concurring on the ground that the legislature should pass a waiver of immunity for damages resulting from conduct by school authorities that place children known to be at risk in dangerous situations).

Rev'd because the essence of plaintiff's claim is that the school failed to implement safety policies for at-risk students (Minzner, dissenting on the ground that the majority reads the language operation or maintenance of a building out of the statute).

Estate of Rudy Romero v. City of Santa Fe, SC 28,816 (Chavez) Jun 8, 2006

While current rules of evidence and constitution do not provide privilege for city to refuse to disclose what might be sensitive police records in on-going criminal investigation to litigants engaged in civil proceedings arising out of the same events, court holds that some matters should be immune from discovery and outlines factors that district courts should consider in determining such immunity; Court also refers matter to Rules of Evidence Committee to recommend a privilege.

State ex rel. CYFD v. Frank G, CA 23,497 & 23,787 (Robinson) Dec 17, 2004, aff'd SC 29,018 & 29,042 (Chavez) Apr 20, 2006

Statements made by child to various social and medical workers regarding sexual abuse were properly admitted in abuse and neglect case under catch-all exception to hearsay rule and medical diagnosis exception; trial court did not abuse discretion in ruling that child could not testify in court but that prior hearsay was reliable; evidence of abuse and neglect is sufficient; confrontation clause does not apply to civil cases, but similar analysis shows that due process was not violated; an adjudication of abuse and neglect, prior to termination of parental rights, is sufficiently final for appeal, but trial court retains jurisdiction to continue with judicial review and termination aspects of case.

Aff'd with the Supreme Court indicating that parents did not explain what they would have hoped to accomplish by cross-examining the child and did not ask the trial court to interview her in camera, which might have made their due process argument stronger and they never suggested any alternative procedures, such as asking written questions and videotaping them.

Campos v. Murray, SC 29,422 (Bosson) Apr 20, 2006

Child who was eight when sexually abused by Mother's boyfriend, whom police were investigating for sexually abusing another child, and was eleven when claim was filed against officers was not barred by tort claims act statute of limitations because that statute would operate to deny due process if it were to be applied to child under these circumstances; in light of this decision, court declines to address another question certified from federal court, which would have provided another rationale for finding the claim timely although it was late under the tort claims act statute of limitations.

State ex rel. CYFD v. Donna J. CA 25,872 (Wechsler) Jan 12, 2006

Where Texas had a custody proceeding pending in which it awarded custody to Paternal Grandmother after Mother killed Father and was incarcerated in Texas, but New Mexico court was acting based on the presence of child here in a separate CYFD proceeding, New Mexico court properly dismissed NM case because exclusive jurisdiction was in Texas based on exclusive continuing jurisdiction provision of the child custody jurisdiction statutes.