

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NUMBER 2006 CJ 1342**

**STATE OF LOUISIANA  
IN THE INTEREST OF M.M. AND C.M.**

**Judgment Rendered: November 3, 2006**

**Appealed from the  
Juvenile Court**

**In and for the Parish of East Baton Rouge, Louisiana  
Docket Number J 9116**

**Honorable Pamela Johnson, Judge Presiding**

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**BEFORE: CARTER, C.J., WHIPPLE AND McDONALD, JJ.**

**WHIPPLE, J.**

In this appeal, the State of Louisiana, Department of Social Services, Office of Community Services (“OCS”), appeals the trial court’s judgment, which dismissed the State’s petition to terminate the parental rights of C.D.M., the mother of M.M. and C.M. For the following reasons, we reverse.

**FACTS AND PROCEDURAL HISTORY**

C.D.M. is the mother of two minor children, M.M., a daughter who was born on August 10, 1995, and C.M., a son who was born on January 7, 2000. On February 23, 2003, police went to the home of C.D.M. and N.M., the father of M.M. and C.M., to investigate a report that there were stolen vehicles at the residence. Officers observed that the house was filthy and in complete disarray, with no running water or electricity. M.M. and C.M., who were present at the home, also appeared to be dirty, although they did not exhibit any other visible injuries. Based on these observations and his belief that the children would be at risk if they remained in the home, Officer Raymond Klug contacted OCS.

On that day, N.M. and C.D.M. were arrested and charged with possession of stolen things and two counts each of cruelty to a juvenile based upon their failure to provide appropriate care for the children. On February 24, 2003, an instant order was issued, taking the children into the State’s custody, and by order dated February 25, 2003, the children were placed in the temporary custody of the State, based on the findings that they were in need of care and that such custody was in their best interests. Initially, M.M. and C.M. were placed in the custody of relatives (the children’s half-brother and his wife).

On November 10, 2003, C.D.M. and N.M. pled guilty to two counts each of cruelty to a juvenile. On March 25, 2004, each was sentenced to five years imprisonment on each count, with the sentences to run concurrently to any other time served at hard labor.

In April 2004, the children's brother and sister-in-law were no longer able to continue to care for the children, due to financial difficulties and marital problems. Thus, the children were returned to the State's custody. While C.D.M. did provide OCS with various relatives' names at that time for alternative placement, OCS determined that there was no other viable relative placement.

Thus, the children were placed in a foster home, where they resided from April 2004 to April 2005. When that placement did not work out, the children were moved to another foster family, with whom they remained until the time of the trial below.

On May 11, 2005, OCS filed a Petition for Termination of Parental Rights and Certification for Adoption, seeking to terminate the parental rights of C.D.M. and N.M. pursuant to LSA-Ch. C. art. 1015(3) and 1015(6). Specifically, OCS averred in the petition that when the children were initially taken into the State's custody, the family home was in deplorable condition with no running water; that the parents had substance abuse problems; that M.M. was forced to care for her younger brother C.M. and to get herself ready for school; that C.M. was the victim of medical neglect; that N.M. and C.D.M. pled guilty to two counts of cruelty to juveniles and were sentenced to five years imprisonment on each count to run concurrently; that both parents were incarcerated for those offenses at the time the petition was filed; that the criminal conduct of the parents constituted extreme neglect, see LSA-Ch. C. art. 1015(3); that the sentences

imposed were of such duration that the parents would not be able to care for the children for an extended period of time; and that the alternative placements suggested by the parents were not viable, see LSA-Ch. C. art.1015(6). Furthermore, OCS averred that termination of N.M. and C.D.M.'s parental rights would be in the best interests of M.M. and C.M., so that the children could be freed for adoption.

Following trial in this matter, the trial court found that OCS had failed to carry its burden of establishing the grounds for termination under either LSA-Ch. C. art. 1015(3) or (6). Accordingly, the trial court rendered judgment dismissing the petition for termination of parental rights and certification for adoption. Pursuant to the judgment, however, legal custody of M.M. and C.M. remained with the State.

From this judgment, OCS has appealed, contending that: (1) the trial court committed manifest error in concluding that the conduct of C.D.M. and N.M. toward their minor children did not rise to the level of grossly negligent behavior; (2) the trial court committed legal error in finding that the parents had not been convicted and sentenced to a period of incarceration of such duration that they would be unable to care for their children for an extended period of time; and (3) the trial court committed legal error when it dismissed OCS's petition.

After the judgment was rendered below, N.M. voluntarily executed acts of surrender as to M.M. and C.M, and the court approved the acts of surrender, thereby terminating N.M.'s parental rights. Thus, our review of the judgment herein is directed to the trial court's dismissal of the petition to terminate the parental rights of C.D.M.

## DISCUSSION

Parents have a natural, fundamental liberty interest to the continuing companionship, care, custody and management of their children, warranting great deference and vigilant protection under the law, and due process requires that a fundamentally fair procedure be followed when the State seeks to terminate the parent-child legal relationship. State in the Interest of J.A., 99-2905 (La. 1/12/00), 752 So. 2d 806, 810. However, a child has a profound interest, often at odds with those of his parents, in terminating parental rights that prevent adoption and inhibit establishing secure, stable, long-term and continuous relationships found in a home with proper parental care. State in the Interest of J.A., 99-2905, 752 So. 2d at 810-811; State in the Interest of S.M., 98-0922 (La. 10/20/98), 719 So. 2d 445, 452. In balancing these interests, the courts of this state have consistently found the interest of the child to be paramount over that of the parent. State in the Interest of J.A., 99-2905, 752 So. 2d at 811; State in the Interest of S.M., 98-0922, 719 So. 2d at 452.

Louisiana Children's Code article 1015 provides the statutory grounds by which a court may involuntarily terminate the rights and privileges of a parent. The State need only establish one ground, but the trial court must also find that the termination is in the best interest of the child. State in the Interest of S.M.W., C.D.W., C.N.W., and E.S.W., 2000-3277 (La. 2/21/01), 781 So. 2d 1223, 1233. Additionally, the State must prove the elements of one of the enumerated grounds by clear and convincing evidence to sever the parental bond. State in the Interest of J.A., 99-2905, 752 So. 2d at 811. Accordingly, a two-pronged inquiry is posed in parental termination proceedings: (1) has the State established by clear and convincing evidence at least one ground for termination under LSA-Ch.C. art. 1015, and, if so, (2)

is the termination in the best interest of the child? State in the Interest of L.B. v. G.B.B., 2002-1715 (La. 12/4/02), 831 So. 2d 918, 922.

It is well settled that an appellate court cannot set aside a juvenile court's findings of fact in the absence of manifest error or unless those findings are clearly wrong. State in the Interest of S.M.W., C.D.W., C.N.W., and E.S.W., 2000-3277, 781 So. 2d at 1233.

In the instant case, OCS relied upon LSA-Ch. C. art. 1015(3) and (6) as the grounds for which it sought termination of C.D.M.'s parental rights. Pursuant to LSA-Ch. C. art. 1015(3), parental rights may be terminated when there is:

**Misconduct of the parent toward this child** or any other child of the parent or any other child in his household **which constitutes** extreme abuse, cruel and inhuman treatment, or **grossly negligent behavior below a reasonable standard of human decency, including** but not limited to the conviction, commission, aiding or abetting, attempting, conspiring, or soliciting to commit any of the following:

\* \* \*

(i) Abuse or **neglect which is chronic**, life threatening, or results in gravely disabling physical or psychological injury or disfigurement. (Emphasis added).

In ruling that OCS had failed to prove this ground for termination of C.D.M.'s parental rights by clear and convincing evidence, the trial court reasoned that when the children were removed from the home on February 23, 2003, the children appeared to be adequately fed, and did not exhibit any outward injuries. While recognizing that C.D.M had clearly pled guilty to two counts of cruelty to a juvenile, and that the criminal acts involved these children, the court decided that the convictions did not in and of themselves establish proof by clear and convincing evidence that her conduct toward the children rose to the level of grossly negligent behavior.

The court also stated that while the condition of the home was “filthy” on that day, as evidenced by photographs and a videotape of the condition of the home, she felt the situation “could have easily been remedied with a mop along with some disinfectant” and by increasing the resources available to the family. With regard to the lack of running water, the court noted that N.M. was in the process of making arrangements with the parish to have a water line installed at the time of his and his wife’s arrest.

The court stated that it felt that because an OCS child protection investigator had visited the home in virtually the same condition on five prior occasions, with no complaints or recommendations resulting from those visits, the children were taken into custody on that day, not because of the condition of the house, but only because the parents were being taken into custody.

The trial court then stated that OCS had failed to prove by clear and convincing evidence that C.D.M.’s behavior toward her constituted gross negligence as would justify termination of her parental rights.

After reviewing the record herein in its entirety, we find that the trial court manifestly erred in its finding that under the facts established by OCS herein, OCS failed to prove by clear and convincing evidence that C.D.M.’s parental rights should have been terminated.

At the outset, we note that while the trial court felt that the demonstrated problems with the home herein could have been remedied with “a mop along with some disinfectant,” the photographs and videotape of the home, as well as the testimony of those present that day, utterly belie this statement. Officer Raymond Klug of the East Baton Rouge Parish Sheriff’s Office, testified that when he investigated the home on a report of stolen vehicles at the location, the vile and filthy condition of the home led him to

believe that the children were at risk. There was no electricity, running water or working plumbing in the house. Moreover, Klug testified that a neighbor indicated that the water had been cut off from the home for over two years. As noted by Klug, there were holes in the walls, and there were blankets covering holes in the windows. He did not observe any edible food in the home, which was filthy throughout and in complete disarray. Regarding the children, he observed that they were also dirty and that they were walking around without shoes, despite the presence of automobile parts, transmissions, engines and glass strewn all over in the yard.

At that point, Klug requested assistance in the investigation based on his observations of the poor condition of the home and the physical appearance of the children. Lieutenant Dale Hodges responded to the call, and he also testified as to his observations of the home and the children. Hodges noted that the living conditions in the home were "horrible," that there was no electricity or running water, and that one room of the house was missing a wall. Based on the condition of the home and the appearance of the children, Hodges determined that it was unreasonable for any child to be living there at the time. Accordingly, the officers contacted OCS.

Julie Richard, the OCS worker who responded to the call from the police, similarly testified as to the filthy, unlivable condition of the house. She noted that throughout the yard, household trash and other items were discarded and were just left wherever they landed. With regard to the interior of the home, she observed that all the kitchen countertops were covered with glass liquor bottles, and old rotten food, open beer cans and dishes, most of which were dirty. She noted that there were various pots on the stove containing food that was rotten or molding. The sink was also filled with dirty dishes. Because there was no running water in the home,



there was an ice chest on the floor in the kitchen that was filled with dirty water (purportedly carried from the nearby river), with more dishes in the water. The dogs also drank the water out of the ice chest. The only edible food she observed in the entire house consisted of a couple of boxes of cereal.

Regarding the bedrooms, she testified that there was no way to actually walk into them, because of the piles of furniture, debris, filth, and other items, some of which were broken, simply tossed on the ground. As depicted in the photographs, none of the beds in the bedrooms were usable. In the bathroom, the walls were falling out, with exposed pipes over the toilet, and, as depicted in the photographs, there appeared to be mold growing on the wall. The tub was filthy, and because there was no plumbing, the tub was unusable, and the toilet could not be flushed. The toilet was filled with human waste, and stuffed with toilet paper. The bathroom countertop was also littered with debris, with what appeared to be electrical appliances lying in the sink.

The floor of the closed-in porch off of the kitchen was littered with piles of discarded appliances, glass beer bottles, empty beer boxes, refuse and a mound of laundry. The floor was so littered with debris that it was not even visible. The floor of the laundry area was also mounded with dirty clothes. A photograph of this area depicts paneling from either a wall or the ceiling falling down over the dryer. Moreover, as evidenced by the photographs, the family was sleeping in the living room, the only area not totally covered with filth and debris, and the mattresses strewn on the living room floor were covered with dirty linens. At the outset, we observe that while a trial court's factual findings are generally entitled to great weight, we find it truly difficult to imagine how any person could live and breathe in

the conditions depicted in the photographs and established in the testimony of record herein.

Moreover, in addition to the proven filthy, disgusting and unsanitary condition of the house, we are unable to uphold the trial court's view of the case presented by OCS, given the evidence of C.D.M.'s drug and alcohol addiction and willful neglect, also presented at trial. Specifically, when asked to explain the condition of the home, C.D.M. candidly admitted that her home was in the condition shown in the photographs, but excused her role in subjecting the children to such conditions because she was an alcoholic and a drug addict. C.D.M., who was 30 years old at the time of trial, admitted that she had been an alcoholic since she was 18 years old, and she was a binge drinker. She further testified that she was a drug addict by the age of 26. Indeed, C.D.M.'s ongoing alcohol abuse was clearly documented in the photographs of the home, where bottles of alcohol and beer cans were strewn across the kitchen counters and thoughtlessly discarded on the floor of the enclosed porch. Significantly, C.D.M. openly admitted that due to her addictions, she "didn't even care about [herself,] much less [her] children, husband, home" at the time the children were placed in the State's custody.

C.D.M. also acknowledged that OCS had investigated the situation at her home five to seven times in the two years prior to the children being placed in State's custody **because of her past incidents of fighting when she was intoxicated.** At trial, C.D.M. first claimed that she is an addict in recovery, but then conceded that she still has a long way to go with regard to her addictions. She candidly admitted that upon her release from the work release program in May of 2006, she would still require additional help to

address her substance abuse problems and would still be unable to assume parental care of her children due to her ongoing addictions.

Thus, the record is replete with evidence that C.D.M. habitually abused alcohol and drugs for an extended length of time to the degree that she chronically neglected her children and the home in which the children were forced to live. Nonetheless, while the trial court peripherally noted in its reasons the allegations concerning C.D.M.'s substance abuse problems, the court inexplicably made no specific findings as to the impact of C.D.M.'s continuing substance abuse on her ability to care for the children, despite the overwhelming evidence of the negative impact that her addictions had on her past ability to care for her children.

M.M., who was 10 years old at the time of trial, also testified. M.M. openly expressed anxiety about having to return to live with her parents. She testified that she was worried that her parents would get into fights again. She related that when her parents had gotten into fights (obviously while they were abusing alcohol and drugs), she would try to intervene to break it up or would seek help from the neighbors. According to M.M., she would run up and down the street to try to get help and when she found someone to help her, she would ask the neighbor to call 911.

Moreover, with regard to C.D.M.'s care of her children, Julie Richard, the OCS worker originally involved in the casefile, also testified that M.M. had not been attending school on any regular basis and that on the day the children were taken into custody, C.M., who was approximately 2 years old, was totally non-communicative. At that time, M.M. explained to Richard that C.M. could not understand her attempts to communicate with him. Barbara Pace, the CASA volunteer assigned to the children, similarly

testified that when the children came into custody, C.M. rarely spoke, which suggests he was obviously developmentally delayed.

Considering the foregoing and the record as a whole, we conclude that the trial court manifestly erred in concluding that the evidence presented by OCS failed to establish by clear and convincing evidence that C.D.M.'s behavior toward her children constituted gross negligence and chronic neglect. Instead, on review, we find OCS overwhelmingly established this ground for termination of C.D.M.'s parental rights by clear and convincing evidence.<sup>1</sup>

Because we reverse the trial court's finding that OCS failed to prove by clear and convincing evidence that C.D.M.'s parental rights should have been terminated pursuant to LSA-Ch. C. art. 1015(3), we pretermitt consideration of whether it committed manifest error in its additional determination that OCS failed to prove by clear and convincing evidence that C.D.M.'s parental rights should have been terminated pursuant to LSA-Ch. C. art. 1015(6), based on her sentence of five years incarceration.

In the instant matter, given its finding that OCS had failed to prove the existence of one of the grounds for termination set forth in LSA-Ch. C. art. 1015, the trial court did not consider the second prong of the inquiry herein, *i.e.*, whether termination of C.D.M.'s parental rights is in the children's best interest. See State in the Interest of L.B. v. G.B.B., 2002-1715, 831 So. 2d at 922. Based upon our review of the record, we conclude that the evidence overwhelmingly supports a conclusion that termination of parental rights is in the children's best interest herein. Toni Bankston, the licensed clinical

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<sup>1</sup>As noted above, C.D.M. pled guilty to two counts of cruelty to a juvenile based upon her neglect of her children. While the trial court attempted to minimize the significance of these criminal convictions on the basis that the parents were not well educated and had merely relied upon the advice of counsel, we observe that a criminal

social worker who was retained by OCS to provide counseling services for M.M. and C.M., opined that the children need to have a permanent placement in a family and recommended that the children should continue with their current placement at that time.<sup>2</sup> Similarly, the CASA representative for these children also opined that it was in the children's best interest to be freed for adoption. The record clearly demonstrates that the children have little attachment to C.D.M. and that M.M., the older child, actually expressed anxiety about having to live with C.D.M. again. Additionally, the children have made significant improvements since being placed in the State's custody.

Thus, considering the foregoing and the record as a whole, we conclude that the trial court's judgment dismissing OCS's petition for termination of C.D.M.'s parental rights must be reversed.

### **CONCLUSION**

For the above and foregoing reasons, the portion of the trial court's January 13, 2006 judgment dismissing OCS's petition for termination of C.D.M.'s parental rights and certification for adoption is reversed. Judgment is hereby rendered terminating C.D.M.'s parental rights as to M.M. and C.M. and decreeing that M.M. and C.M. are now free for adoption. This matter is remanded for further proceedings consistent with the views expressed herein. Costs of this appeal are assessed against C.D.M..

**REVERSED, RENDERED, AND REMANDED.**

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conviction cannot be collaterally attacked in a juvenile court proceeding. See State in the Interest of M.S., 99-2190 (La. App. 4th Cir. 6/23/00), 768 So. 2d 628, 633.

<sup>2</sup>OCS noted in its appellate brief that the children are no longer in their placement with the family who wished to adopt them at the time of the trial below. However, according to OCS, the children have been placed in another certified adoptive home.