



Iowa General Assembly

2004 Legal Updates

Legislative Services Agency – Legal Services Division

<http://www.legis.state.ia.us>

Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

TERMINATION OF PARENTAL RIGHTS - APPOINTMENT OF COUNSEL FOR INDIGENT PARENT

Filed by the Iowa Supreme Court
May 12, 2004

In the interest of S.A.J.B., Minor Child, J.E.B., Father, vs. K.C., Mother, No. 37/03-1364

<http://www.judicial.state.ia.us/supreme/opinions/20040512/03-1364.asp>

Factual and procedural background: James and Krista are the biological parents of Shi Anne. The couple never married and Shi Anne lives with James and his wife, Cynthia. James filed a petition under Iowa Code chapter 232 in district court to terminate Krista's parental rights on the ground that Krista had abandoned Shi Anne, and indicating that his wife, Cynthia, wanted to adopt Shi Anne. After the petition was filed, Krista's attorney, an Iowa Legal Aid attorney, appeared before the district court for the sole purpose of assisting Krista in obtaining court-appointed legal counsel. Krista noted that under Iowa Code section 232.113, if a parent is financially unable to employ legal counsel, the court is directed to appoint counsel at public expense. Krista also noted that even if the petition for termination of parental rights were brought under Iowa Code chapter 600A, which does not specifically provide for appointment of counsel for indigent persons, under the equal protection and due processes clauses of the state and federal constitutions, she would be guaranteed appointed counsel at public expense. James amended the original petition to bring the action under Iowa Code chapter 600A rather than Iowa Code chapter 232. The district court then denied Krista's request for appointment of counsel noting that even though she was indigent, chapter 600A did not authorize appointment of counsel at public expense.

Issue: The issue on interlocutory appeal is whether an indigent parent is guaranteed the right to appointed counsel at public expense, in an involuntary termination of parental rights action brought under Iowa Code chapter 600A

Analysis: Krista asserted that the court was required to appoint counsel at public expense under the equal protection and due process clauses of the federal and state constitutions.

Under the equal protection clause, Krista asserted that (1) the failure of the district court to appoint counsel unjustifiably discriminates against indigent parents in an involuntary termination of parental rights action under Iowa Code chapter 600A in favor of those involved in such proceedings under Iowa Code chapter 232 and (2) the failure to appoint counsel denies indigent parents the same access to the courts as non-indigent parents in Iowa Code chapter 600A termination cases. Krista also asserted that due process requires the appointment of counsel at public expense.

The Iowa Supreme Court noted that the Iowa Code provides proceedings under both Iowa Code chapter 232 and 600A for termination of parental rights. Under Iowa Code chapter 232, a number of entities (a child's guardian, guardian ad litem, or custodian, the Department of Human Services, a juvenile court officer, or the county attorney) may file a petition for termination of parental rights. Once a petition is filed, the county attorney, generally, is authorized to represent the state or the department in the proceedings and to provide evidence in support of the petition. Under Iowa Code section 232.113(1), if the parent identified in the petition is financially unable to employ counsel, the court is required to appoint counsel. In contrast, under Iowa Code chapter 600A, only a parent, prospective parent, custodian, or guardian of a child may petition for termination of parental rights. Once the petition is filed, the private party presents evidence in support of the petition. Under chapter 600A there is no provision for appointment of counsel for those financially unable to employ counsel.

The Court first addressed Krista's claim under the Iowa equal protection clause that similarly situated parents are treated differently under Iowa Code chapter 232 than under Iowa Code chapter 600A under the Iowa Constitution. The Court noted that it had recently explained the nature of the equal protection analysis under the Iowa Constitution and that in analyzing claims under the Iowa equal protection clause, the Court independently applies federal principles, i.e. federal decisions are merely considered persuasive by the Iowa Supreme Court in its consideration of claims based on the Iowa Constitution. The Court noted that in prior equal protection cases, the Court had held that parental rights are fundamental rights and in order to withstand a challenge under the state constitution, the statute involved must withstand strict scrutiny, i.e., the statute must be narrowly tailored to serve a compelling state interest.

The Court then distinguished an earlier case, *In re J.L.L.*, 414 N.W. 2d 133 (Iowa 1987) in which the parents of a child voluntarily agreed to release of custody of their child to an uncle. The uncle filed a termination of parental rights petition under Iowa Code chapter 600A. On appeal the mother claimed that her equal protection and due process rights were violated because counsel was not provided at public expense. The Court in that case held that it was appropriate for the legislature to distinguish between voluntary and involuntary proceedings, and to provide for counsel at public expense only in the case of involuntary proceedings. The Court noted that because the decision in *In re J.L.L.* was based on a voluntary proceeding under Iowa Code chapter 600A, the issue of whether the equal protection clause is violated if a person in involuntary proceedings under Iowa Code chapter 600A is not provided counsel at the public expense, had not been determined.

The Court looked to two state supreme court cases in North Dakota (*In re adoption of K.A.S.*, 499 N.W. 2d 558 (N.D. 1993)) and Oregon (*Zockert v. Fanning*, 800 P. 2d 773 (Ore. 1990)), in which the court concluded that statutes similar to Iowa's violated the equal protection clause. In those cases the argument was made that denying counsel at the public expense to indigent parents in involuntary proceedings, similar to Iowa Code chapter 600A proceedings, furthered the state's compelling interest to conserve fiscal resources. The courts dismissed this argument noting that the pecuniary interest of the state is a legitimate but not a compelling state interest, and that the legislative framework was not narrowly tailored in that other measures could be taken to recoup any costs. The Iowa Supreme Court added that the pecuniary interest also would not explain the difference between providing counsel under Iowa Code chapter 232 proceedings but not under Iowa Code chapter 600A proceedings. Another argument advanced in the North Dakota case to support the distinction between provision of counsel under Iowa Code chapter 232 proceedings but not under Iowa Code chapter 600A proceedings was that in Iowa Code chapter 600A terminations, the state is not an active participant and therefore the indigent person did not have to overcome the vast resources of the state. The Court found that even though a private party brings the action in chapter 600A terminations, the state is still involved in ending the parent-child relationship as no other entity than the state has the power to do so, thereby eliminating any real distinction between Iowa Code chapter 232 and Iowa Code chapter 600A with regard to the level of state action involved.

The Court therefore held that there was no narrowly tailored compelling state interest in denying counsel at public expense to indigent parents involved in an involuntary termination of parental rights proceeding under Iowa Code chapter 600A. The statutory framework did not withstand an equal protection challenge and was unconstitutionally underinclusive, because it did not include all who were similarly situated. The Court noted that when a statute is underinclusive there are two remedies: the Court may declare the statute null so that the benefit of the statute does not extend to the class that it was intended to benefit, or the court may extend coverage to those who were harmed by the exclusion. The Court found that in this case, the benefit of having counsel appointed at the public expense should be extended to Krista.

Conclusion. The Court held that the Iowa equal protection clause guarantees an indigent parent the right to counsel in an involuntary termination of parental rights proceeding under Iowa Code chapter 600A. The Court reversed the district court's ruling and directed that on remand counsel be appointed for Krista at public expense. Because the Court reached this conclusion on the first equal protection claim, the Court did not address the other equal protection claim or the due process claim.

LSA Contact: Patty Funaro, Legal Services, (515) 281-3040