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Termination of parental rights

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Termination of Parental Rights

The purpose of this subarticle is to establish procedures for the reasonable and compassionate termination of parental rights where children are abused, neglected, or abandoned in order to protect the health and welfare of these children and make them eligible for adoption by persons who will provide a suitable home environment and the love and care necessary for a happy, healthful, and productive life.

Adoption by a suitable caregiver is one method by which a foster child may achieve permanence. Except in the case of stepparent adoption, a child can only be adopted when both parent's legal rights have been terminated involuntarily or when both parents voluntarily relinquish custody and consent to adoption. The statutes governing termination of parental rights are to be liberally construed in the interest of freeing children from the custody and control of their parents. When there is a conflict between the interests of the child and the interests of the parent, the interests of the child shall prevail.

Jurisdiction

Termination of parental rights (TPR) is within the exclusive jurisdiction of the family court. DSS or any interested party may file a complaint for TPR. DSS does not have to obtain the family court's approval to change the permanent plan of a child whose plan might be reunification before filing a complaint for TPR: nor must DSS obtain the court's approval to amend a child's placement plan before filing a petition for TPR.

In its discretion, DSS may file a complaint for TPR anytime there are statutory grounds and TPR is in the best interests of the child. However, in some instances, DSS is required to file a complaint for TPR or the agency must join in a petition for TPR.

DSS is required to petition the family court for TPR or must join in a petition to TPR when:

- A child has been in foster care for 15 of the most recent 22 months;
- An infant has been abandoned;
- A parent has committed murder or voluntary manslaughter of another child of the parent; or
- A parent has committed felony assault that results in serious bodily injury to the child

DSS need not initiate a termination proceeding if the family court has determined that TPR is not in the child's best interests. In addition, DSS is not required to petition for TPR if the agency has not offered services to the parents in a manner that is consistent with timely completion of the placement plan, or if court hearings have been delayed in such a manner as to interfere with the timely completion of the placement plan.

Due Process

A summons and complaint for TPR must be filed in the family court. All parties, including the child, must be served with the summons, complaint, notice of the right to counsel, and notice to appoint a GAL.

The petition to terminate parental rights must set forth the basis for the court's jurisdiction; the child's name, sex, date, and place of birth; the plaintiff's name, address, and relationship to the child; the parents' names, dates of birth, and addresses, if known; the name and address of the child's legal guardian—or the person or agency having custody of the child; and the grounds supporting TPR, as well as the underlying factual circumstances.

Standard of Proof

Eleven grounds for TPR are found in S.C. Code Ann. § 20-7-1572 (Supp. 2006). In *Santosky v. Kramer*, 455 U.S. 745 (1982), the United States Supreme Court held that due process requires clear and convincing evidence to terminate parental rights. In South Carolina, for the court to order that parental rights be terminated, the court must find clear and convincing evidence that termination is in the best interests of the child and must find that at least one of the eleven grounds has been proven by clear and convincing evidence.

Note: If the child belongs to a federally recognized tribe, the requirements of the Indian Child Welfare Act (ICWA) apply. Under the ICWA, termination of parental rights must be supported by evidence beyond a reasonable doubt and must include an expert's opinion. See 25 USC § 1901 et. seq. and 25 C.F.R. Part 23.

Representation by Counsel and Appointment of a Guardian *Ad Litem*

A parent who is named as a defendant in a TPR action is entitled to be represented by counsel. If unable to afford counsel, the family court must appoint counsel to represent the parent, unless the parent is in default. In addition, pursuant to SCRCF 17, if a parent suffers from a disability such as mental illness or retardation, or if the parent is incarcerated outside the state of South Carolina, the court must appoint a GAL.

A GAL must also be appointed for the child in a TPR proceeding. In the court's discretion, the GAL from the underlying abuse and neglect action may be appointed to serve as the guardian in the TPR proceeding. If the child's GAL is not an attorney and believes that appointment of counsel is necessary to protect the rights and interests of the child, an attorney must be appointed to represent the GAL. In all contested TPR proceedings the court must appoint an attorney to represent a GAL who is not a lawyer. If the GAL is an attorney, the court determines on a case-by-case basis whether representation by counsel is necessary.

Grounds for Termination of Parental Rights

South Carolina Code Ann. § 20-7-1572 (Supp. 2006) lists the following grounds for TPR:

- 1) The child or another child in the home has been harmed as defined in S.C. Code Ann. § 20-7-490, and because of the severity or repetition of the abuse or neglect, it is not reasonably likely that the home can be made safe within 12 months. In determining the likelihood that the home can be made safe, the parent's previous abuse or neglect of the child or another child in the home may be considered.
 - See *South Carolina Dept. of Soc. Servs. v. Sims*, 598 S.E.2d 303 (S.C. Ct.App. 2004), affirming a family court order terminating parental rights on the ground of repetitious neglect and *Hooper v. Rockwell*, 513 S.E.2d 358 (S.C. 1999), affirming a family court order terminating parental rights on the ground of severe and repetitious abuse.
- 2) The child has been removed from the parent pursuant to S.C. Code Ann. § 20-7-736, has been out of the home for a period of six months following the adoption of a placement plan by court order or by agreement between the department and the parent, and the parent has not remedied the conditions which caused the removal of the child from the home.
 - See *South Carolina Dept. of Soc. Servs. v. Cochran*, 589 S.E.2d 753 (S.C. 2003), family court order terminating parental rights was reversed and remanded because DSS failed to establish a proper chain of custody in its introduction of the mother's positive drug screens; *South Carolina Dept. of Soc. Servs. v. Cummings*, 547 S.E.2d 506 (S.C. Ct.App. 2001), holding that evidence of the mother's multiple failed attempts to complete drug treatment was clear and convincing evidence that the mother failed to remedy conditions; *Dept. of Soc. Servs. v. Mr. H. and Mrs. H.*, 550 S.E.2d 898 (S.C. Ct.App. 2001), affirming the family court's decision to terminate parental rights on the ground of failure to remedy conditions of removal; *South Carolina Dept. of Soc. Servs. v. Lail*, 516 S.E.2d 463 (S.C. Ct.App. 1999), holding that DSS failed to present clear and convincing evidence that the mother failed to remedy conditions of removal because the merits order unfounded the allegations of abuse and neglect; *South Carolina Dept. of Soc. Servs. v. Broome*, 413 S.E.2d 835 (S.C. 1992), holding that evidence supported termination of parental rights on the ground of failure to remedy conditions of removal; and *Dept. of Soc. Servs. v. Phillips*, 618 S.E.2d 922 (S.C. Ct.App. 2005), holding that the mother was procedurally barred from challenging the sufficiency of a removal order and affirming the family court order terminating parental rights based upon failure to remedy the conditions of removal. See also,

South Carolina Dept. of Soc. Servs. v. Sims, 598 S.E.2d 303 (S.C. Ct.App. 2004) and *Hooper v. Rockwell*, 513 S.E.2d 358 (S.C. 1999).

- 3) The child has lived outside the home of the parent for a period of six months, and during that time the parent has willfully failed to visit the child. The court may attach little or no weight to incidental visitations, but it must be shown that the parent was not prevented from visiting by the party having custody or by court order. The distance of the child's placement from the child's home must be considered when determining the ability to visit.
 - See *South Carolina Dept. of Soc. Servs. v. Headden*, 582 S.E.2d 419 (S.C. 2003), holding that the family court is not limited to considering the months immediately preceding the termination of parental rights hearing in determining whether a parent has willfully failed to visit; *South Carolina Dept. of Soc. Servs. v. Wilson*, 543 S.E.2d 580 (S.C. Ct.App. 2001), holding that DSS failed to present clear and convincing evidence that an incarcerated father failed to visit because DSS actually prevented the father from visiting with his children; and *Charleston County Dept. of Soc. Servs. v. Jackson*, 627 S.E.2d 765 (S.C. Ct.App. 2006), holding that the family court erred in terminating the parental rights of an incarcerated father for failure to visit.
- 4) The child has lived outside the home of either parent for a period of six months, and during that time the parent has willfully failed to support the child. Failure to support means that the parent has failed to make a material contribution to the child's care. A material contribution consists of either financial contributions according to the parent's means or contributions of food, clothing, shelter, or other necessities for the care of the child according to the parent's means. The court may consider all relevant circumstances in determining whether or not the parent has willfully failed to support the child, including requests for support by the custodian and the ability of the parent to provide support.
 - See *South Carolina Dept. of Soc. Servs. v. Wilson*, 543 S.E.2d 580 (S.C. Ct.App. 2001), holding that the family court erred by not considering an incarcerated father's means and his ability to pay before ordering that the father's parental rights be terminated for willful failure to support; *South Carolina Dept. of Soc. Servs. v. Cummings*, 547 S.E.2d 506 (S.C. Ct.App. 2001), holding that the statute does not require that the parent receive notification of an obligation to pay child support; *South Carolina Dept. of Soc. Servs. v. Lail*, 516 S.E.2d 463 (S.C. Ct.App. 1999), holding that DSS failed to present clear and convincing evidence that the mother willfully failed to support her children; *South Carolina Dept. of Soc. Servs. v. Parker*, 519 S.E.2d 351 (S.C. Ct.App. 1999), holding that the father was not relieved of the obligation to support because he was incarcerated; *South Carolina*

Dept. of Soc. Servs. v. Phillips, 391 S.E.2d 584 (S.C. Ct.App. 1990), holding that the father's incarceration did not relieve him of the obligation to support the child; *Stinecipher v. Ballington*, 620 S.E.2d 93, (S.C. Ct.App. 2005), holding that an incarcerated father willfully failed to support the child; *South Carolina Dept. of Soc. Servs. v. Seegars*, 627 S.E.2d 718 (S.C. 2006), affirming the family court order terminating parental rights on the ground of willful failure to support; and *Charleston County Dept. of Soc. Servs. v. Jackson*, 627 S.E.2d 765 (S.C. Ct.App. 2006), holding that the family court erred in terminating the parental rights of an incarcerated father for failure to support.

- 5) The presumptive legal father is not the biological father of the child, and the welfare of the child can best be served by termination of parental rights of the presumptive legal father.
- 6) The parent has a diagnosable condition unlikely to change within a reasonable period of time including, but not limited to, alcohol or drug addiction, mental deficiency, mental illness, or extreme physical incapacity, and the condition makes the parent unlikely to provide minimally acceptable care for the child. If substance abuse is the basis for pleading this ground, it is presumed that the parent's condition is unlikely to change within a reasonable time upon proof that the parent has been required by the department or the family court to participate in a treatment program for alcohol or drug addiction, and the parent has failed two or more times to complete the program successfully or has refused at two or more separate meetings with the department to participate in a treatment program.
 - See *South Carolina Dept. of Soc. Servs. v. Cochran*, 614 S.E.2d 642 (S.C. 2005), affirming an order terminating parental rights on the ground of diagnosable condition and holding that DSS met its burden of establishing a chain of custody for two positive drug screens because DSS established that the procedures utilized in handling and testing the specimens ensured the integrity of the evidence; *Orangeburg County Dept. of Soc. Servs. v. Harley*, 393 S.E.2d 597 (S.C. Ct.App. 1990), holding that reasonable efforts to provide rehabilitative services are not necessary prior to terminating parental rights on the ground of diagnosable condition; *South Carolina Dept. of Soc. Servs. v. Seegars*, 627 S.E.2d 718 (S.C. 2006), affirming a family court order terminating parental rights because the parent had a diagnosable condition that was unlikely to change; and *South Carolina Dept. of Soc. Servs. v. Jane Doe*, No. 4191 (S.C. Ct.App filed December 21, 2006 (Shearouse Adv. Sh. No. 48 at 68), affirming a family court order terminating the mother's parental rights on the ground that the mother has a diagnosable condition that is unlikely to change within a reasonable time.

- 7) The child has been abandoned as defined in S.C. Code Ann. § 20-7-490(19).
 - See *South Carolina Dept. of Soc. Servs. v. Ledford*, 593 S.E.2d 175 (S.C. Ct.App. 2004), holding that the father willfully abandoned the child and *South Carolina Dept. of Soc. Servs. v. Truitt*, 603 S.E.2d 867 (S.C. Ct.App. 2004), holding that the facts and circumstances of the case supported a determination that the parents willfully deserted their children without making appropriate arrangements for the continuing care of the children.
- 8) The child has been in foster care under the responsibility of the state for 15 of the most recent 22 months.
 - See *South Carolina Dept. of Soc. Servs. v. Sims*, 598 S.E.2d 303 (S.C. Ct.App. 2004), holding that parental rights may be terminated solely on the basis of a child being in foster care for 15 of the most recent 22 months, *Doe v. Baby Boy Roe*, 578 S.E.2d 733 (S.C. Ct.App. 2003), holding that grounds for termination of parental rights exist once a child has remained in foster care for any 15 month period within the most recent 22 months.
- 9) The physical abuse of a child of the parent resulted in the death or admission to the hospital for inpatient care of that child and the abuse is the act for which the parent has been convicted of or pled guilty or nolo contendere to committing, aiding, abetting, conspiring to commit, or soliciting an offense against the person as provided for in Title 16, Chapter 3, criminal domestic violence as defined in S.C. Code Ann. § 16-25-20, criminal domestic violence of a high and aggravated nature as defined in S.C. Code Ann. § 16-25-65, or the common law offense of assault and battery of a high and aggravated nature.
- 10) A parent of the child pleads guilty or nolo contendere to or is convicted of the murder of the child's other parent.
- 11) Conception of a child as a result of the criminal sexual conduct of a biological parent, as found by a court of competent jurisdiction, is grounds for terminating the rights of that biological parent, unless the sentencing court makes specific findings on the record that the conviction resulted from consensual sexual conduct where neither the victim nor the actor were younger than fourteen years of age nor older than eighteen years of age at the time of the offense.

Outcomes of Termination of Parental Rights Proceedings

Court terminates parental rights. After considering all evidence presented, if the court finds that at least one of the grounds for TPR exists and that it is in the best interests of the child, the court has discretion to issue an order forever terminating the rights, obligations, and responsibilities between the parent and child. However, the child's right to inherit from a natural parent is only severed by a final decree of adoption.

An order terminating parental rights means that the child is legally free for adoption, provided that the termination decision is not appealed. DSS is required to file a plan for permanency within 30 days of the court ordering TPR. Within an additional 60 days, DSS must submit a report on the implementation of the permanency plan. The court, on its own motion, may schedule a hearing to review the progress of the implementation of the plan.

Note: Termination of parental rights is perhaps the most common method by which a foster child is made legally free for adoption. However, a child is also legally free for adoption when a parent dies or if both parents execute a voluntary relinquishment for the purpose of adoption pursuant to S.C. Code Ann. §§ 20-7-1690 and 20-7-1700 (Supp. 2006). It is not necessary to use judicial proceedings to terminate the parental rights of any parent who has voluntarily relinquished custody for the purpose of adoption.

Court denies termination of parental rights. The order denying termination of parental rights must specify a new permanent plan for the child or order a hearing on a new permanent plan. This hearing is to be held within 15 days of the date of the order denying termination of parental rights and must be held before the judge who denied termination of parental rights if reasonably possible.

The court may return custody of the child to the parent, but only if the parent has counterclaimed for custody and the court finds that returning custody would not place the child at risk of harm. The court may also require DSS to provide protective services for a period not to exceed 12 months after the child is returned.

Confidentiality. All TPR records are confidential. Court records must be sealed and may be opened only by order of the court, upon a showing of good cause.

Best Interests of the Child

To terminate parental rights, the court must have clear and convincing evidence that a ground to terminate exists and that termination of parental rights is in the best interests of the child. What is in the best interests of the child must be determined by the factors present in each case.

A review of the case law in South Carolina reveals that the best interests of the child may be determined based upon such factors as the length of time a child has lived with prospective adoptive parents, the stability of the child's current placement, the bond between the children in a sibling group, and the importance of maintaining a sibling group in the same placement. See *South Carolina Dept. of Soc. Servs. v. Richardson*, 378 S.E.2d 601 (S.C. Ct.App. 1989); *Hooper v. Rockwell*, 513 S.E.2d 358 (S.C. 1999); and *McCutcheon v. Charleston County Dept. of Soc. Servs.*, 396 S.E.2d 115 (S.C. Ct.App. 1990).

The best interests of the child may also turn on an analysis of the bond between the child and his or her natural parents or siblings, the bond between the child and prospective adoptive parents, and the child's progress while in the agency's care. See *Charleston County Dept. of Soc. Servs. v. King*, 631 S.E.2d 239 (S.C. 2006). The court may also consider whether the child is placed with an adoptive resource, as well as the agency's efforts to engage a parent in rehabilitative efforts or the agency's response to a parent's efforts to be involved with the child. See *Charleston County Dept. of Soc. Servs. v. Jackson*, 627 S.E.2d 765 (S.C. Ct. App. 2006).

In determining whether TPR is in the child's best interests, the court may wish to consider the following:

- The opinion of experts, including psychologists and therapists;
- The opinion of the child's caseworker;
- The opinion of the child's GAL;
- Whether witnesses have interviewed the child's parents and if appropriate, the child;
- The bond that exists between siblings;
- The availability of an adoptive resource;
- The child's view of the natural parent;
- The natural parent's participation in rehabilitation efforts;
- Risk of harm to the child if the child is returned to the natural parent;
- Permanence of child's current placement;
- The child's relations with extended relatives;
- Whether the child has special needs, ethnic or cultural considerations;
- The child's wishes;
- Services offered to a parent who was not involved in the initial removal;
- Grounds for TPR;
- The parent's efforts to eliminate risks of harm;

- The parent's efforts to establish and maintain a relationship with the child;
- The length of time the child has been in foster care.

Conclusion

Termination of parental rights forever severs the rights, privileges, duties, and obligations that exist between a child and a natural parent. For this reason, it is perhaps the most serious matter considered by the family court.

References

South Carolina Code Ann. (Supp. 2006)