

Case Study Synopsis

1. Family Law
2. Termination of Parental Rights
3. Court of Appeals of Oregon
4. State ex rel State Office for Services to Children and Families v. Lehtonen
5. Andrea Salow
6. Termination of parental rights, substance abuse, mental illness, child integration into home, stability
7. Mother was an alcoholic and suffered from bipolar disorder. Of the child's five years, she had spent half of them in foster homes. The appellate court affirmed termination of mother's parental rights because mother was unfit by reason of conduct seriously detrimental to the child, improbable integration of child into mother's home within a reasonable time, and it was in the child's best interests.

FAMILY LAW

Handout

Termination of Parental Rights

State ex rel State Office for Services to Children and Families v. Lehtonen, 172 Ore. App. 584, 20 P.3d 210 (2001).

FACTS

Mother is a 49-year old divorced Army veteran who suffers from alcoholism and bipolar disorder. In October 1994, when child was four months old, a State Office for Services to Children and Families (SCF) worker visited the mother after receiving information that mother was consuming alcohol and then breast-feeding child. No further action was taken because of lack of evidence. In April 1995, mother was in a car accident and her blood alcohol level was .268 and was arrested for DUII. Child was in the car at the time and was placed in the temporary custody of SCF. In January 1996, mother was arrested for violating her DUII probation because she was visibly intoxicated when a police officer contacted her at home. Child was again placed in foster care. In July 1996, after community complaints about mother's drinking, mother entered into a service agreement with SCF, where she agreed to maintain sobriety and continue treatment. In August 1996, mother was arrested again for DUII. Child was in the car, and placed in foster care for the third time. After mother completed a dual recovery program (for substance abuse and mental health) a caseworker recommended that SCF's case be dismissed. However, prior to dismissal, mother began drinking again and required in-patient detoxification. SCF changed its recommendation from dismissal to adoption.

Under Oregon law, in order to terminate parental rights, the state must show by clear and convincing evidence that the parent is "unfit by reason of conduct or condition seriously detrimental to the child" and that the "integration of the child into the home of parent or parents is improbable within a reasonable time due to conduct or conditions not likely to change." The court must also find that termination of parental rights is in the best interests of the child.

HANDOUT QUESTIONS

1. If you were the appellants, what arguments would you make against the validity of Oregon statute permitting termination of parental rights?
2. Who has the burden of proof?
3. What is the burden of proof?
4. What are the elements that must be proved to terminate parental rights?
5. What are the policy arguments on each side?
6. After reading the case, answer the following:
 - a. How did the Court of Appeals of Oregon rule?
 - b. What reasons did the Court of Appeals of Oregon give for its decision?
 - c. How did your decision compare with that of the Court of Appeals of Oregon?

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ISSUE

Did the trial court err in terminating mother's parental rights to her daughter?

WHAT HAPPENED AT TRIAL?

Mother's parental rights to her daughter were terminated. The trial court found the mother unfit because she engages in addictive or habitual use of intoxicating liquors or controlled substances to the extent that parental ability has been substantially impaired; suffers from an emotional or mental illness of such nature and duration as to render her incapable of providing proper care for the child for extended periods of time; and has failed to effect a lasting adjustment after a reasonable time.

HOW DID THIS CASE GET TO THE COURT OF APPEALS OF OREGON?

Mother appealed the decision of the circuit court.

ARGUMENTS

Appellant argues that the state failed to prove by clear and convincing evidence that her condition has impaired her ability to care for her child to the point that her child suffered serious detriment. Appellant argues that the state failed to prove that it is unlikely that she will be able to effect a lasting change within a reasonable time. Appellant argues that her trial counsel was inadequate because counsel did not present evidence that was favorable to appellant concerning child's dental care.

The State of Oregon's position is that the trial court did not err in terminating appellant's parental rights.

WHO WON?

The State of Oregon won. The trial court's decision was affirmed.

THE COURT'S REASONING

The court held that addiction or habitual use of alcohol or controlled substances may so impair a person's ability to care for a child that termination is justified. Here, the child has spent 32 out of 54 months in foster care. The evidence showed that this instability in the child's life has been seriously detrimental to her: reactive attachment disorder. The child has also been placed in high-risk circumstances. On at least three occasions, the child has been with the mother when the mother has been consuming alcohol and unable to care for the child.

The court also held that during the child's life, the mother has relapsed at least four times, and each time it has been necessary to remove the child from the home. The court

considered the mother's history and pattern of successful treatment and relapse, the length of time the mother has been given to stabilize her life, and the child's age and needs, and held that it is improbable that the mother's conduct or condition will change within a reasonable time.

Finally, the court rejected appellant's argument that trial counsel was inadequate because the mother's handling of the child's dental needs did not appear to have been a factor in the trial court's decision.

APPLICATION

1. As a policy matter, is it a good idea to cut off all rights that a parent has to a child?
2. What harm(s) do you think the legislature had in mind to prevent when enacting this statute?