

ADOPTION:
JUVENILE COURT:
NEGLECTED CHILDREN:

Juvenile Court first acquiring jurisdiction over neglected child has exclusive jurisdiction in proceedings to terminate parental control.

OPINION NO. 298

August 17, 1967



Honorable Earl R. Blackwell
State Senator - 20th District
Missouri Senate
Capitol Building
Jefferson City, Missouri

Dear Senator Blackwell:

In your letter of June 2, 1967, you requested an opinion from this office concerning a letter you received from a Juvenile Officer which reads as follows:

"On December 2, 1963 by Court Order, Child Welfare of Washington County was given custody of a child born out of wedlock. This child was born on April 9, 1963. In order to find a home with proper religious background, they placed this child in a foster home in St. Charles County and have paid for the maintenance of this child continually up to the present time.

"At this time we would like to terminate parental rights. The question that our office would like to have answered is whether we have jurisdiction in Washington County, or whether termination proceedings should be initiated in St. Charles County where the child is living at the present time."

We infer from the letter that the Juvenile Court of Washington County assumed jurisdiction over the child in question in 1963 under the provisions of Chapter 211, RSMo,

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and awarded custody of said child to the Child Welfare Agency, and that the Juvenile Court has not relinquished this jurisdiction. You also state that the Child Welfare Agency in Washington County placed the child in a foster home in St. Charles County where apparently the child is now living, and you inquire whether the Juvenile Court of Washington County or the Juvenile Court of St. Charles County has jurisdiction in a proceeding to terminate parental rights. Section 211.011, RSMo 1959, provides:

"1. The purpose of sections 211.011 to 211.431 is to facilitate the care, protection and discipline of children who come within the jurisdiction of the juvenile court. Sections 211.011 to 211.431 shall be liberally construed, therefore, to the end that each child coming within the jurisdiction of the juvenile court shall receive such care, guidance and control, preferably in his own home, as will conduce to the child's welfare and the best interests of the state and that when such child is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which should have been given by them."

Reference to Sections (211.011 to 211.431) in the above statute was substituted by the Revisor of Statutes for the words "the purpose of this act" which were in the statute when enacted in 1957, Laws of Missouri 1957, p. 644.

Section 211.041, RSMo 1959, provides:

"When jurisdiction over the person of a child has been acquired by the juvenile court under the provisions of sections 211.011 to 211.431 in proceedings coming within the applicable provisions of section 211.031, the jurisdiction of the child may be retained for the purpose of sections 211.011 to 211.431 until he has attained the age of twenty-one years, except in cases where he is committed to and received by the state board of training schools."

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Likewise, the section numbers referred to in this section were substituted by the Revisor of Statutes for the words "when any petition under this act" as it appeared in the above section when it was first enacted in 1957.

Section 211.051, RSMo 1959, states that the provisions of Section 211.011 to 211.431 does not deprive other courts of the right to determine legal custody or guardianship of children when the legal custody is incidental to causes pending in other courts. The statutory sections referred to in this statute are likewise substituted by the Revisor of Statutes for the word "act", as used when this statute was first enacted in 1957.

Section 211.251, RSMo 1959, provides that the orders of the Juvenile Court may be modified at any time on its own motion. Section 211.241, RSMo 1959, authorizes the Juvenile Court to order parents to support the child and provides the method which financial support may be obtained from the parent.

In State v. Mueller, 233 SW 2d 700, the question concerned the adoption of a child by the Juvenile Court of St. Louis County, Missouri, when the jurisdiction over the child had been acquired by the Juvenile Court of Bates County which found that the child was a neglected and abandoned child. The question was whether the fact that the child was under the jurisdiction of the Juvenile Court of Bates County deprived the Juvenile Court of St. Louis County of jurisdiction in an adoption proceeding. Our Supreme Court held that the Juvenile Court of St. Louis did have jurisdiction over the child in an adoption proceeding. In discussing this matter the court referred to the case of State ex rel Dew v. Trimble, 360 Mo. 657, 269 SW 617, and quoted as follows:

"* * *In that case we said:
* * *when the juvenile court has in a given case assumed jurisdiction with respect to any such child, its jurisdiction supersedes that of any and all other courts touching the same subject-matter.' (Italics ours) The 'same subject-matter' in that case was the neglected child.

"The 'same subject-matter' before the Bates County Court in the case at bar was the neglected child, while the 'subject-matter' before the respondent is the adoption of the child."

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Chapter 211 was amended in 1959 by adding seven new sections dealing with the termination of parental rights of the parents including Section 211.441. (L. 1959, H.B. No. 437 Sec. 1 [Sec. 211.283])

Section 211.441 provides in part as follows:

"1. The juvenile court may, upon petition filed as provided in other cases of children coming under the jurisdiction of the court, terminate all rights of parents to a child when it finds that such termination is in the best interest of the child and one or more of the following conditions are found to exist:

(1) When the parents have consented in writing to the termination of their parental rights.

(2) When it appears by clear, cogent and convincing evidence that for one year or more immediately prior to the filing of the petition

(a) The parents have abandoned the child;

(b) The parents have willfully, substantially and continuously or repeatedly neglected the child and refused to give the child necessary care and protection;

(c) The parents, being financially able, have willfully neglected to provide the child with the necessary subsistence, education or other care necessary for his health, morals or welfare or have neglected to pay for such subsistence, education or other care when legal custody of the child is lodged with others;

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- "(d) The parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs or repeated lewd and lascivious behavior, which conduct is found by the court to be seriously detrimental to the health, morals, or well-being of the child;
- (e) The parents have been found incompetent under chapter 475, RSMo, and are incapable, and there are reasonable grounds to believe that they will continue to be incapable of giving the child necessary care and protection."

It must be observed that under this section "the juvenile court" may when petition is filed as provided in other cases as children under the jurisdiction of the court terminate the rights of parents when the court finds, after a hearing, that certain conditions regarding the child exist. Under Section 211.501 the court, if certain conditions are found to exist and that the termination of parental rights of the child would be in the best interest of the child, terminate all rights of the parents with reference to the child, and may transfer the guardianship and legal custody of a child to a suitable person or State Division of Welfare or a licensed child welfare agency. These statutory provisions concerning the authority of the court are in general the same as those of the court in proceedings when the court has assumed jurisdiction as provided in Sections 211.011 to 211.431, RSMo 1959.

The statutory provisions that were enacted in 1959 authorizing the Juvenile Court to terminate parental rights have been before the appellate court on three different occasions, none of which involved the question of jurisdiction of the court. The only case that we believe has any probative value on the question at issue is the case of In re Burgess, 359, SW2d 484. In this case the Juvenile Court, after a hearing, terminated the rights of adoptive parents and had transferred the legal custody to the State Division of Welfare. The adoptive father appealed from the decision of the Circuit Court and on appeal the contention was made that the provisions of Section 211.261, RSMo 1959, allowing an appeal to be taken from an order or decree of the Juvenile Court, had no application to proceedings under Section 211.441. In discussing this matter the court pointed out that the Revisor of Statutes in 1959 had changed the wording of Section 211.011 and 211.261 by substituting these section numbers for the word "chapter" or "act". The court

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held the Revisor of Statutes had no authority to alter the sense, meaning or effect of any statute in such manner and that the provisions of Section 211.261 enacted prior to the sections that were added in 1959, applied and that the parent had a right to appeal from the order or decree entered under the statutes that were enacted in 1959.

Applying these principles of law to the question at issue, we believe that Chapter 211, RSMo 1959, must be considered as one act with each section read and considered in the light of the other sections, that it should be considered as though all sections were enacted at the same time and that the statutory provisions enacted in 1957 are applicable also to proceedings brought under the sections enacted in 1959 providing for the termination of parental rights unless there is a conflict, in which case no doubt the later enactment would govern. It is our opinion that the Juvenile Court that first acquired jurisdiction over the neglected child under Chapter 211 retains jurisdiction over the child for the purpose of terminating parental control. Proceedings for the termination of parental control primarily involve the same issues that the Juvenile Court has to consider when it takes jurisdiction over an abandoned or neglected child under Sections 211.010 to 211.431 and it involves the same "subject-matter". State v. Mueller, supra.

CONCLUSION

It is the opinion of this department that the Juvenile Court which first acquires jurisdiction over a child under Chapter 211, RSMo 1959, has exclusive jurisdiction of said child in proceedings brought for the termination of parental rights unless and until such jurisdiction is terminated by the Juvenile Court first acquiring jurisdiction.

The foregoing opinion, which I hereby approve, was prepared by my Assistant Moody Mansur.

Yours very truly,


NORMAN H. ANDERSON
Attorney General