

degree of culpability. A defendant's history of mental illness requires critical consideration of the presence and significance of psychiatric symptoms during the crime. In these cases, testimony by forensic psychiatrists often serves as the key in determining *mens rea*. The court's decision reemphasized the importance of psychiatric testimony in such cases.

Termination of Parental Rights

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Termination of Parental Rights of a Mother With Borderline Personality Disorder and Chronic Depression Who Was Absent at Trial and Was Found to Have Deliberately Delayed Trial and Not to Have Remedied the Causes and Conditions That Resulted in Substantial Risk of Harm to Her Daughter

In the case of *Alyssa B. v. State*, 165 P.3d 605 (Alaska 2007), the Alaska Supreme Court considered whether a mother's due process rights were violated by the judicial proceedings that terminated her parental rights. The trial court's hearing was repeatedly delayed by Ms. B.'s refusal to work with court-appointed attorneys and her filing of numerous motions and requests for continuances. When the trial was held, Ms. B. did not appear in court. The trial proceeded in her absence, and her parental rights were terminated after the court ruled that she had failed to remedy the causes or conditions that created a risk of harm to her daughter.

Facts of the Case

In October 2003, Jaelyn (pseudonym) was adjudicated a child in need of aid. She was committed to the Department of Health and Social Services' custody in February 2004. In March 2005, the department petitioned to terminate the parental rights of her mother, Ms. B. The trial date was postponed several times to match Ms. B. with an attorney who was acceptable to her. She ultimately declined legal

representation by her court-appointed attorney and chose to represent herself *pro se*. The court appointed an attorney to serve as her advisory counsel. Ms. B. filed numerous motions and requests for continuances.

Ms. B. was notified by mail of the termination hearing but failed to appear in court in August 2006. She informed the court by phone that she was vacationing in Mexico and requested a continuance so that she could participate in court at a later date. When the superior court judge refused to delay the trial and suggested that she participate by phone, she objected, disconnected the call, and did not call back. The trial proceeded, and a department social worker testified that Ms. B. had not had contact with her daughter since February 2003 and had failed to complete a single goal of the case plan created to help her regain custody of her daughter. The social worker recommended that Jaelyn be adopted by her foster parents because she was thriving in their care. A clinical psychology expert testified that a review of Ms. B.'s history showed that she had severe psychological problems and was socially maladjusted and that it would not be in her daughter's best interest to be returned to her custody.

To terminate parental rights pursuant to Alaska Stat. § 47.10.088 (2005), it must be found by clear and convincing evidence that the child is in need of aid as described by Alaska Stat. § 47.10.011 (2005), that the parent has not remedied the conduct or conditions in the home that place the child at substantial risk of harm, and that the Department of Health and Social Services has made reasonable efforts to restore custody under the provisions of Alaska Stat. § 47.10.086 (2005). The court must also find by a preponderance of the evidence that termination of parental rights is in the child's best interest. In this case, the court ruled that Ms. B. had abandoned her daughter by not complying with the reunification plan, refusing all services, and making a minimal effort to communicate with Jaelyn. The court also ruled that Ms. B. had a mental illness that if not remedied would result in substantial risk of harm to Jaelyn should she be returned to her mother's custody. The court found that the department's efforts to reunite Ms. B. and Jaelyn were reasonable and had failed because Ms. B. repeatedly refused the department's offers of assistance. Finally, the court decided it was in Jaelyn's best interest that Ms. B.'s parental rights be terminated. A final order was issued in September 2006.

Ms. B. appealed the decision based on numerous claims, including that the decision to conduct the termination trial in her absence violated her right to due process and that the superior court improperly used her mental illness rather than her conduct to terminate her parental rights.

Ruling and Reasoning

The state supreme court addressed each of Ms. B.'s arguments on appeal. For example, she alleged the court had ignored the psychological evaluations she had submitted. The court considered the evaluations but found both to be unreliable because the Department of Health and Social Services did not have the opportunity to provide collateral information, she had misled one of the evaluators, and they did not cover her parenting skills or consider the custody matter. Thus, the state supreme court found that the superior court did not err in discounting the evaluations submitted by Ms. B.

Ms. B. argued that the trial court violated her due process rights by conducting the termination hearing in her absence, thereby preventing her from calling witnesses at trial. The Alaska Supreme Court considered this issue *de novo* as a question of law. In determining the requirements for due process, the court took into account the private interest involved, the government's interest, the risk of an erroneous deprivation of an interest, and the probable value of additional or substitute procedural safeguards. The court noted that parental rights are of the highest order and that the opportunity to be heard and represent one's interests is the "crux of due process." These rights are countered by the state's interest to proceed with trial as scheduled. In Alaska, a trial on petition to terminate parental rights must be held within six months after the date on which the petition is filed, unless the court finds good cause for continuance. In determining good cause for continuance, the court must consider the age of the child and the potential adverse effect that the delay may have on the child.

In this case, the trial was held more than 16 months after the petition was filed. The trial court found that the delay in the trial was caused by Ms. B.'s numerous motions to dismiss the case or disqualify the judge, requests to change court-appointed attorneys, and appeals of trial court rulings. The trial court believed her absence in court in August 2006 was a deliberate attempt to delay the proceedings further and represented extraordinary circumstances,

so that it was not improper to proceed without her presence at the trial. The Supreme Court affirmed these findings and noted Jaclyn's interests would have been seriously harmed by further delay of the trial. Given the circumstances that led to Ms. B.'s absence at trial were caused by herself, no additional procedural safeguards existed that would have guaranteed her presence at the hearing.

Ms. B. argued that the court improperly used her "past or present or future mental illness to terminate [her] parental rights," citing the statement in *V.S.B. v. State*, 45 P.3d 1198 (Alaska 2002), that "mental illness, absent related conduct, cannot be a basis for termination of parental rights." The Supreme Court concluded that the claim had no merit, because the trial court did not terminate her parental rights solely because of her mental illness. The trial court considered her specific conduct, including her refusal to work with the department, her failure to maintain a connection with her daughter during the three years Jaclyn was in foster care, and her failure to get psychological treatment, and concluded that this conduct would continue to place Jaclyn at risk if she were returned to her mother's care.

Discussion

In this decision, the Alaska Supreme Court addressed whether due process rights were violated in the decision to proceed with a hearing to terminate parental rights in the absence of a parent with mental illness who had caused delay in the process. The court found that conducting the hearing in the absence of the parent did not violate due process rights because the delay was caused by the parent's deliberate attempt to avoid trial, the child's interest would be seriously harmed by further delay of the trial, and no other procedural safeguards could have been taken to guarantee the parent's presence at trial. In summary, a woman with borderline personality disorder lost parental rights to her child after exhausting the patience of the court. The court's description of the extensive efforts to help her and her repeated refusal of aid resembles what many therapists experience in treating patients with borderline personality disorder. This case clarifies that to avoid the termination of parental rights, a parent must work with the Department of Health and Social Services to remedy problems that place the child at risk of harm and must demonstrate some ability or desire to cooperate with the court.