

2013 Edition, 4.5; Mossman *et al.*, AAPL Practice Guideline for the Forensic Psychiatric Evaluation of Competence to Stand Trial, 2007; American Psychological Association, Specialty Guidelines for Forensic Psychology, 2013, 10.01) indicate that forensic practitioners should report only information relevant to the legal matter. Although evaluators most likely have obtained detailed historical and clinical information in preparing written reports for competence to stand trial, forensic professionals should carefully consider which information is pertinent to the determination of adjudicative competence and restoration.

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Termination of Parental Rights of Mother with Mental Disabilities

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Evidence Found Sufficient to Meet Appropriate Standard for Termination

In re Gabriella A, 127 A.3d 948 (Conn. 2015), is a case involving a respondent mother who appealed claiming that the appellate court erred in affirming the trial court ruling that terminated her parental rights and denied her motion to revoke commitment of her child (*In re Gabriella A.*, 104A.3d 805 (Conn. App. Ct. 2014)). The Supreme Court of Connecticut affirmed the decision of the appellate court, holding that the trial court had sufficient evidence to find that the petitioner proved, by clear and convincing evidence, that the respondent was unable to benefit from reunification services facilitated by the petitioner.

Facts of the Case

The respondent, Ms. E., had five children in her native Jamaica who were with their father, and two children, Gabriella A. and Erica M., in Connecticut.

During this appeal, Ms. E.'s parental rights of Erica were also terminated. The Department of Children and Families (DCF) intervened shortly after Gabriella's birth because of the hospital staff's concerns that Ms. E. lacked provisions for her care. On April 9, 2011, Ms. E. left for Jamaica, leaving Gabriella (6 weeks old at the time) and Erica (age 10 years), in the care of Ms. Nicolette R. (whose relationship to Ms. E. and her children is unclear). On August 25, 2011, a DCF social worker removed Gabriella, Erica, and a third child, Samantha R., from the care of Ms. R. after discovering a cell phone with videos of the children engaging in sexual behavior and violence against Gabriella. DCF filed an *ex parte* motion on August 29, 2011, for an order of temporary custody of Erica and Gabriella, arguing they were in immediate physical danger. On November 18, 2011, the court adjudicated Gabriella neglected and committed her to the care and custody of DCF.

During this time, Ms. E. had returned to the United States. A reunification permanency plan was established on July 3, 2012. It mandated that Ms. E. obtain adequate housing, find a legal means of income, and attend counseling to develop safe and appropriate parenting skills. DCF was ordered to facilitate this process by referring Ms. E. to appropriate services and monitoring her compliance and progress.

Ms. E. was referred to Radiance Innovative Services (Radiance) for individual therapy and classes on parenting and parenting with sexually abused children. Case management services were provided for immigration, housing, and employment assistance. Ms. E. was discharged from Radiance in December 2012 when the DCF contract expired. She had attended 14 of 24 counseling sessions. She was then referred for individual therapy. Ms. E. received supervised visits with Gabriella. In therapy, Ms. E. disclosed a significant trauma history including childhood sexual abuse, abandonment, witnessing domestic violence, and as an adult, arrest, probation sentence, and removal of six of her children.

On February 6, 2013, Ms. E. filed to revoke commitment of her children. On March 14, 2013, DCF filed to terminate her parental rights over Gabriella pursuant to Conn. Gen. Stat. § 17a-112(j) (2013). DCF claimed Ms. E. was unable or unwilling to benefit from DCF's reasonable efforts at reunification. A permanency plan for termination of parental rights and adoption was filed. Derek A. Franklin, a licensed clinical psychologist, was appointed to evaluate Ms.

E. and Gabriella. At trial he testified that Ms. E. had posttraumatic stress disorder, social anxiety disorder, borderline personality traits, and partner relationship problems and should have received trauma-focused cognitive behavioral therapy (TF-CBT). He opined that Ms. E.'s personality traits "raised grave concerns regarding her ability to parent" (*Gabriella*, p 952) and placed her at risk of treating her daughter with "benign neglect," which he defined as emotional unavailability to a child that can affect emotional development. He noted that although Ms. E. required treatment for a trauma history, she would be unable to progress in time to benefit from reunification services, given her lack of insight.

At trial the court considered testimony from Ms. E.'s providers. Tamar Draughn (licensed counselor) testified that Ms. E. progressed slightly in therapy but was unable to understand the impact of trauma on her current behavior. Regina Dyton (facilitator of a caregivers group) testified that despite consistent attendance, her participation was inappropriate as she focused on her own trauma. Beverly Coker (licensed clinical social worker) recommended reunification, but she opined that Ms. E. still had progress to make in therapy and was not yet ready for reunification. Heather Czerwinski (DCF social worker) testified that Ms. E. would benefit from referral to an intensive individual counseling provider. Gloria Walker (DCF social worker) testified that Ms. E. spent half of her visitation "venting" rather than interacting with Gabriella. The report of Nancy Burgos (clinical consultant) concluded that Ms. E.'s unresolved trauma history posed a barrier to progress in therapy.

Based on the testimony, the court determined that DCF had made reasonable efforts to reunify the respondent with her daughter, Ms. E. was unable to benefit from these services, and Ms. E. failed to rehabilitate sufficiently to meet Gabriella's needs responsibly.

Ms. E. filed two motions claiming that she was provided with the incorrect therapy (not TF-CBT) and DCF had not made reasonable efforts toward reunification. The court, clarifying its prior holding, emphasized the significance of Gabriella's age in forming an attachment to a caregiver. The court found that Ms. E.'s progression through therapy would likely not occur in the foreseeable future.

On appeal, the judgment was affirmed (*In re Gabriella A.*, 104 A.3d 805 (Conn. App. Ct. 2014)) and Ms. E. appealed to the Connecticut Supreme Court. Ms. E. claimed that the trial

court's reliance on Dr. Franklin's findings was misplaced as her failure to benefit from services was in actuality caused by DCF's facilitation of the wrong type of therapy.

Ruling and Reasoning

The court reviewed the trial court findings for clear error and ultimate determination for evidentiary sufficiency. It held that the trial court had sufficient evidence for the reasonable conclusion that the Commissioner of Children and Families made efforts to reunify Ms. E. with her daughter and found that Ms. E. was unable to benefit from reunification services. The court stated that despite the possibility of Ms. E.'s eventually making progress toward her recovery, it would be too late to reunify with Gabriella due to her age. The court reasoned that reports and testimony indicated that Ms. E.'s mental health problems affected her ability to benefit from treatment, and her need to work through her trauma history prevented her from becoming an effective parent. In specifically addressing Ms. E.'s concern that she was provided the wrong type of therapy, which precluded her from benefitting from services, the court found that she misunderstood the role of the reviewing court. The trial court could accept or reject testimony as the fact finder. The court on appeal did not select among alternatives, but only considered the sufficiency of evidence.

Dissent

Judge Robinson filed a dissent in which Judge Zarella joined. They argued that DCF had not met the burden of proving, by clear and convincing evidence, that Ms. E. was unable to benefit from reunification services and that DCF made "reasonable efforts" toward reunification. They noted that the timing of the petition to terminate parental rights was not appropriate in this particular case. The dissent recommended that Gabriella remain committed to DCF and "go from there" rather than terminating the parent-child relationship.

Discussion

The questions in this case concern the balancing of Fourteenth Amendment due process rights in determining whether parental rights are to be terminated with parent-child attachment considerations when providing rehabilitation services. Dissenting Judge Robinson cited his prior dissent (*In re Jason R.*, 23 A.3d 18 (Conn. App. Ct. 2011)) in which he opined

that terminating parental rights is “one of the most drastic actions that the state may take against its citizens” (p 35). The petitioner bears the burden of proving the respondent’s inability to benefit from such efforts by clear and convincing evidence. Under this standard, termination rulings of parental rights require evidence that it is substantially more likely than not that a parent is unfit to care for her child. In a similar case (*In re Melody L.*, 962 A.2d 81 (Conn. 2009)), Justice Schaller, concurring with the majority opinion to affirm termination, opined that the court should adopt a higher standard of review in cases concerning the termination of parental rights.

The impact of the child’s age in the development of attachment to a caregiver has long been highlighted. American Psychological Association *amicus* briefs filed in cases of adoption and parental fit based on sexual orientation (*In re Adoption of Luke*, 640 N.W.2d 374 (Neb. 2002) and *Bottoms v. Bottoms*, 457 S.E.2d 102 (Va. 1995)) emphasize research supporting that forming an attachment with a caregiver impacts a child’s subsequent development. Research in attachment theory is often cited in consideration of the healthy development of a child based on successful attachment with a caregiver during infancy and early childhood (Bowlby J: *A Secure Base: Parent-Child Attachment and Healthy Human Development*. . . . New York: Basic Books, 1988, pp 119–36). The trial court held that the possibility of eventual progress at effective parenting was not reasonable given Gabriella’s age-specific needs for healthy development.

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Consideration of the Insanity Defense for a Client With a Mental Health History

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The Supreme Judicial Court of Massachusetts Held That the Attorney’s Failure to Present an Insanity Defense Did Not Equate With Ineffective Assistance of Counsel

In *Commonwealth v. Lang*, 38 N.E.3d 262 (Mass. 2015), the Supreme Judicial Court of Massachusetts reviewed the case of a defendant convicted of first-degree murder who sought a new trial on three grounds: that the courtroom was closed to the public during empanelment of the jury; that trial counsel failed to investigate his mental health history and thereby deprived him of a criminal-responsibility (insanity) defense; and that the trial court erred in instructing the jury that they could find malice, consistent with first-degree murder, based on extreme atrocity or cruelty.

Facts of the Case

On March 18, 2005, Francis Lang was asked to leave a Boston bar. When Mr. Lang refused to leave, he was approached by the victim and 2 others. A physical altercation ensued in which Mr. Lang stabbed the victim multiple times. The victim was pronounced dead the following morning.

In 2006, Mr. Lang was convicted of murder in the first degree in accordance with the theory of extreme atrocity and cruelty. Defense counsel argued that Mr. Lang’s actions, in accordance with witness testimony, were in self-defense and that mitigating circumstances rendered the killing no more than voluntary manslaughter. The trial judge had instructed the jury on first-degree murder, second-degree murder, manslaughter, heat of passion with reasonable provocation, heat of passion induced by sudden combat, self-defense, and alcohol intoxication’s effect on intent.

In 2009, Mr. Lang moved for a new trial on several grounds. First, he claimed his Sixth and Fourteenth Amendment rights to a public trial were violated when his sister was asked to leave the courtroom during the first day of jury empanelment. Second, he claimed the trial judge’s jury instruction was in error regarding extreme atrocity and cruelty, as evidenced by elements of malice.

Mr. Lang’s third assertion for mistrial, of most interest to forensic mental health professionals, was that his trial counsel had failed to investigate his psychiatric history, rendering him unable to make an informed decision on whether to pursue a criminal-responsibility defense. Mr. Lang had been released from federal prison 22 days before the stabbing. In