



Case Law Update

2022 IDAHO APPELLATE DECISION REVIEW

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Covered Today:

- Court of Appeals Cases
 - Highlights of the unpublished cases
- Supreme Court Cases:
 - *IDHW v. John Doe*, Docket No. 49375 (August 2, 2022)
 - *IDHW v. Jane Doe*, Docket No. 49777 (November 3, 2022)
- Interesting Paternity Case: *Jane Doe I & John Doe 1 v. John Doe*, Docket No. 49529 (September 19, 2022)

Court of Appeals – Published Cases

- ▶ The Court's website shows none have been released since March 2021.

Court of Appeals - Overview of Unpublished Cases

- ▶ Briefing Issues
- ▶ Elements of a TPR
- ▶ Meeting those Elements (or not)
- ▶ Things that are NOT Elements
- ▶ Miscellaneous Notes

There were 30+ cases, I'm so sorry if I skipped your favorite one.

Court of Appeals - Briefing Issues

- ▶ The harmless error rule for termination trials is “even if the magistrate court erred by admitting certain evidence, that error is not reversible unless it adversely affects a substantial right of the objecting party.” Docket # 49799 & 49890, 49975.
- ▶ “Where a lower court makes a ruling based on alternative grounds and only one of those grounds is challenged on appeal, the appellate court must affirm on the uncontested bases.” Docket # 49205, 49614, 49643, 49730, 49988, 50046, & 50047.
- ▶ Facts undergirding arguments must be supported by citations to the record in the argument section. Docket # 49380 & 49638.
- ▶ Inaccurate statements in the FFCL do not create reversible error if the appellant fails to show how that error undermined the court’s conclusion. Docket # 49597.

Court of Appeals – Elements of a TPR

- ▶ The incarceration grounds for termination is measured from the date of the evidentiary hearing regarding termination to the time when the parent is likely to be released. There is no bright-line rule to determine what constitutes a substantial period during a child's minority. Rather, whether a likely period of future incarceration is for a substantial period during the child's minority is determined on a case-by-case basis, applying a definition of "substantial" meaning important, essential, or considerable in quantity. Docket # 49873.
- ▶ Due Process requires that the petitioner plead each independent basis for termination. Docket # 49638.

Court of Appeals – Meeting the Elements (or not)

- ▶ Abandonment finding is proper where a parent missed 23 of 49 possible visits, never progressed beyond supervised visits (because of ongoing substance use concerns) and failed to provide financial support. Docket # 49948.
- ▶ Failure to protect a child from a known dangerous person can amount to the failure to provide safe housing. There, the home was occupied by a grandfather who allegedly physically abused the child and there was some evidence that he threatened to kill a parent. Docket # 49792.
- ▶ The Court of Appeals took no issue with a magistrate's determination that refusal to test likely indicated ongoing substance use. Docket # 49948.
- ▶ A parent's ongoing drug use is not a product of impossibility and does not support a claim of impossibility. Docket #49597.
- ▶ Generally, the courts have not adopted parent's arguments where a case plan task is not completed, but that parent argues that they have made "progress" on the case plan task or have "substantially completed" a task. Docket # 49247, 49249, 49380, 49399, & 49597.

Court of Appeals – Things that are NOT Elements

- Shelter care grounds. Docket # 49643.
- Whether drug use was illegal in the jurisdiction it occurred. Docket # 49643
- Reasonable efforts by IDHW in the underlying CPA case. Docket # 49399, 49638, 49643, 49730, & 49948
- Just cause, except in abandonment cases. Docket# 49807.

Court of Appeals – The rest of it

► If you are interested in the following, please take a look here:

- Using transcripts from another proceeding. Docket # 49659.
- Re-opening a trial after the close of evidence. Docket # 50048.
- When you can take an appeal. Docket # 49399
- The link between licensure as a social worker and scope of testimony. Docket # 49379.

Idaho Supreme Court

- *IDHW v. John Doe*, Docket No. 49375 (August 2, 2022) (AFFIRMED)
 - * Late-appearing father appeared at termination via Zoom, BUT...
 - * Unstable connection
 - * Father moved to continue proceedings based on connectivity issues, BUT...
 - * Court denied the motion because the court had warned the parties that if they chose to appear virtually, they were required to ensure a reliable internet connection.
 - * Father appealed, arguing:
 - judgment was void for lack of subject matter jurisdiction,
 - the court erred when denying his motion for a continuance,
 - erred in admitting certain evidence at trial,
 - erred when granting the Department's motion for service by publication, AND
 - there was not substantial and competent evidence to support the TPR decision.

Idaho Supreme Court



- *Findings (Procedural issues)*
 - Despite raising the issue for the first time on appeal, the Court did address the SMJ argument, briefly. Found the court properly had SMJ.
 - Magistrate did not abuse discretion when denying Father's motion to continue. Opinion notes that Father had been told several times that connectivity reliability was his responsibility and that proceedings would not be delayed. Also notes that Father fails to demonstrate *how* the trial court abused its discretion in denying the continuance.
 - Business records from Tennessee Department of Health and Welfare were properly admitted based on the foundation laid by the State. Father had argued they were hearsay and did not fall within the I.R.E. 803(6) exception. The Court disagreed.
 - State's Motion for Service by Publication was proper. Father's argument was moot because personal service was ultimately successful.

Idaho Supreme Court



- *Findings (Substantive Issues)*

- Court upheld trial court's conclusion that, among other findings, Father would be "unable to discharge parental responsibilities and such inability will continue for a prolonged indeterminate period and will be injurious to the health, morals, or well-being of the child."
- Finding was based on Father's acknowledgment he was a "sexual freak", causing an unacceptable risk to his three children, based on his predilections. Father refused to seek treatment or a different living situation to protect his children. Based on that choice, the Court agreed with the trial court that there was no end in sight to the safety risk to the children, if returned to Father's care.

Idaho Supreme Court



- *IDHW v. Jane Doe*, Docket No. 49777 (November 3, 2022) (AFFIRMED)

Mother appeals TPR finding of neglect, arguing that Idaho's definition of "neglect" violates the Idaho and U.S. Constitutions. Argues that the trial court's determination that termination was in her children's best interests was not supported by substantial and competent evidence.

Idaho Supreme Court



- *Findings (Procedural issues)*
 - The Court bootied the challenge to the constitutionality of Idaho's definition of "neglect" and the due process argument she made. The Court found that while it recognized a fundamental right is at stake in all termination proceedings, this does not relieve an appellant of his or her obligation to raise issues first before the trial court. Since Mother did not specifically challenge the constitutionality of 16-2003(3)(b) at the trial court, it declined to consider it in the appeal.
 - Key in this decision was the Court's extension of the holding in *In re Doe*, 156 Idaho 682, 330 P.3d 1040 (2014), which notes that even when a question before the Court involves fundamental error, civil cases have a different standard than their criminal or quasi-criminal counterparts. The fundamental error doctrine is not applicable.

Idaho Supreme Court



- *Findings (Substantive Issues)*
 - Finally, the Court reviewed the trial court's analysis of the evidence regarding what was in the children's best interests. It noted that factors identified like prior referrals, loss of rights to other children, the 15-of-22 analysis, and the ages of the children, in addition to a failure to resolve safety issues like drug use all were appropriately used by the court in making its best interests finding.

Idaho Supreme Court

- **BONUS DECISION! (MORE) Fun with Paternity!** *Jane Doe I and John Doe I v. John Doe II*, Docket No. 49529 (September 19, 2022) (VACATED AND REMANDED)

Facts:

- Bio parents, never married, get pregnant. Father knows of pregnancy, but the couple breaks up anyway. She moves in with parents.
- Bio father attends some prenatal appointments and learns baby's gender. Father not present at birth, but mother notifies him of birth and he does get to see baby multiple times after mother and baby return to her parents' home.
- Mother and her father (baby's Grandfather) file an adoption petition on April 5, 2021, asking Grandfather to be a legal parent of baby.

Idaho Supreme Court



Facts:

- Bio father is unaware of the petition and mother did not name bio father as interested party.
- Bio father files petition to establish paternity on April 23, 2021, and registers notice of his paternity action with IDHW four days later. Mother finds out and stops allowing bio father to visit child. She still does not tell him about adoption action.
- Mother's counsel informs bio father's counsel of the adoption proceeding and father files an emergency stay of the adoption, which is granted. The adoption and paternity actions are consolidated.
- Mother moves to dismiss paternity action in May, arguing Father was barred from doing so because she filed the adoption petition.

Idaho Supreme Court



Facts:

- Father responds with a motion to strike Mother's MTD for procedural irregularities.
- Court asks for DNA testing (later confirms Dad really is Dad).
- Court asks for additional briefing addressing "the applicability of various equitable doctrines to the facts of the case, and the constitutionality of Idaho's adoption and paternity statutes", among other topics.
- Magistrate court dismisses Father's paternity petition pursuant to I.C. 16-1504 and 16-1513, holding that Father had not "perfected" his parental interest before the adoption action was filed.

Idaho Supreme Court



Issues on Appeal:

- Father appeals under 14th Amendment due process provisions. Court sums up position as: "First, he maintains that the adoption petition cannot preempt his paternity petition because it is defective for various reasons. Second, even if the petition is valid, he argues that several Idaho statutes, including Idaho Code sections 16-1504 and 16-1513, are unconstitutional on equal protection grounds. And third, he alleges several violations of his due process rights amount to reversible error."

Idaho Supreme Court

Decision:

- Court immediately boots the defective petition argument.
- Rejects Father's equal protection argument because it ignores controlling precedent from

the Supreme Court of the United States. NOTE: The Court provides an excellent 101 on *substantive* due process versus *procedural* due process. The Court then explains why Father's substantive equal protection argument must necessarily rely on substantive due process, and why that fails.

"However, as a matter of substantive due process and controlling precedent of the Supreme Court of the United States, unwed fathers do not have parental rights equal to those of unwed mothers by virtue of biology alone. Instead, a father must do something more to accrue full parental rights.

He must establish a relationship with his child."

Idaho Supreme Court

Decision:

- The Court then found that Idaho Code sections 16-1504(3)(b) and 16-1513(4) are **UNCONSTITUTIONAL** because they deny due process to unwed fathers who have formed meaningful relationships with their children prior to the filing of an adoption petition.

This is the procedural due process argument. However, the Court pauses here to educate readers about the proper structure of a constitutional challenge – the distinction between an “as applied” and a “facial” challenge. Father did not identify which he was advancing, but the Court looked at each argument through both lenses. While his arguments failed a facial challenge, the Court found that the statutes identified above actually did **FAIL** an “as applied” challenge.

Idaho Supreme Court



Decision:

- Ultimately, because the language of 16-1504(3)(b) and 16-1513(4) did not allow the trial court to consider the relationship Father had established with his child, the statutes themselves created a constitutional violation of Father's procedural due process rights under the 14th Amendment.
- Then, a post-script from the Court about the narrowness of this decision. They note it applies only to cases involving the adoption of children six months or younger, because of the way the statute's requirements are bifurcated based on the child's age. They also clarify that their holding applies only when an unwed father of a child under six months has an *actual* relationship with his child.



Questions?

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