

TERMINATION OF PARENTAL RIGHTS IN EXTREME CONDUCT CASES

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Summary

ORS 419B.502 allows a court to find that a parent is unfit “by reason of a single or recurrent incident of extreme conduct toward any child” and lists seven kinds of conduct that a court must consider in making the determination. None of the listed conduct except previous involuntary termination of parental rights explicitly requires the state to prove that the parent cannot safely care for the child at the time of trial. The language of the statute and its legislative history do not resolve the ambiguity. However, courts should interpret the statute as imposing this requirement because the statute would otherwise violate parents’ constitutional rights in some circumstances.

I. The ambiguous statute

ORS 419B.502 provides that a parent’s rights may be terminated “if the court finds that the parent or parents are unfit by reason of a single or recurrent incident of extreme conduct toward any child. In such case, no efforts need to be made by available social agencies to help the parent adjust the conduct in order to make it possible for the child or ward to safely return home within a reasonable amount of time.” The statute then lists seven kinds of conduct that the court “shall consider” in determining whether extreme conduct exists:

- 1) Rape, sodomy or sex abuse of any child by the parent.
- (2) Intentional starvation or torture of any child by the parent.
- (3) Abuse or neglect by the parent of any child resulting in death or serious physical injury.
- (4) Conduct by the parent to aid or abet another person who, by abuse or neglect, caused the death of any child.
- (5) Conduct by the parent to attempt, solicit or conspire, as described in ORS 161.405, 161.435 or 161.450 or under comparable laws of any jurisdiction, to cause the death of any child.
- (6) Previous involuntary terminations of the parent’s rights to another child if the conditions giving rise to the previous action have not been ameliorated.
- (7) Conduct by the parent that knowingly exposes any child of the parent to the storage or production of methamphetamines from precursors. In determining whether extreme conduct exists under this subsection, the court shall consider the extent of the child or ward’s exposure and the potential harm to the physical health of the child or ward.

No Oregon case has decided whether this statute means that proof of any one of

specific types of conduct listed in paragraph (1)-(5) or paragraph (7) is automatically a ground for termination or whether the state must also provide more evidence to establish that the parent is presently unfit to parent the child.

On its face, the statute could be interpreted as requiring proof only that the parent at some time in the past has committed one of the listed acts, particularly because paragraph (6), concerning prior termination of parental rights, explicitly requires proof that “the conditions giving rise to the previous action have not been ameliorated.” Dictum in *State ex rel DHS v. Rardin*, 340 Or. 436, 134 P.3d 940 (2006), adopts this interpretation. In that case the Supreme Court said,

ORS 419B.502 permits the termination of parental rights based on a single (or recurrent) incident of “extreme conduct towards any child,” and it provides a nonexclusive list of factors for the court to consider in determining extreme conduct The legislature thus provided a procedure for terminating parental rights based upon past conduct, even when the parent might be a “fit” parent at the time of the termination proceeding.

340 Or. at 448-49. On the other hand, less than a month after *Rardin*, the Court of Appeals in *State ex rel DHS v. Keeton*, 205 Or. App. 570, 135 P.3d 378 (2006), cast doubt on this interpretation. Without deciding the issue, the court said,

We note that, to read the statute in the manner the state suggests, would, in essence, eliminate any requirement for a finding of present unfitness--that is, that unfitness and extreme conduct would be conflated notwithstanding the “by reason of” language of ORS 419B.502. On the other hand, to read the statute as mother does--to require the state to establish by clear and convincing evidence a nexus between a parent's extreme conduct and serious detriment to the children--would render ORS 419B.502 redundant of some aspects of ORS 419B.504.

205 Or. App. at 585.

Neither court considered a third possible interpretation of the statute: that proof of one of the listed acts could be sufficient if no other evidence about the parent’s present condition was presented, but that the parent could present evidence to suggest that at the time of trial s/he was not unfit. This interpretation would mean that proof of one of the acts would satisfy the state’s burden of production, but it would still have the burden to persuade the judge by clear and convincing evidence of the ultimate issue, that the parent was unfit. *Cf. Santosky v. Kramer*, 455 U.S. 745 (1982),

The legislative history of ORS 419B.502 is unclear and can support an argument for any of these interpretations, as the next section describes.

II. Legislative history of ORS 419B.502

The Oregon legislature first enacted a statute allowing termination of parental rights for “extreme conduct” in 1989. H.B. 3200 of the 1989 legislative session added the following language to ORS 419.523, which at the time was the statute that set out grounds for termination.

(2) The rights of the parent or parents may be terminated as provided in subsection (1) of this section if the court finds that the parent or parents are unfit by reason of a single or recurrent incident of extreme conduct toward the child or another child and that continuing the parent and child relationship is likely to result in serious abuse or neglect. In such case, no efforts need to be made by available social agencies to help the parent adjust the conduct in order to make the return of the child possible. In determining extreme conduct, the court shall consider the following:

- (a) Rape or sodomy of the child by the parent.
- (b) Intentional starvation or torture of the child by the parent.
- (c) Parental abuse or neglect of the child resulting in serious physical injury, as defined in ORS 161.015.
- (d) Parental abuse or neglect resulting in death or serious physical injury, as defined in ORS 161.015, of a sibling or another child.

HB 3200 was introduced at the request of Children’s Services Division, the predecessor agency to the Children, Adults and Families Division of the Department of Human Services. Assistant Attorney General Debbie Wilson, Oregon Department of Justice, testified that the purpose of the new provision was to give CSD discretion to proceed immediately to termination of parental rights without making reasonable efforts to reunite the parent and child in cases where the parent’s conduct was so egregious that it presented a great risk to the child. She said that the new language provides,

that when there has been a “single or recurrent incident of extreme conduct” towards the child and continuing the parent child relationship would be a risk to the child that we can, CSD can immediately file for termination of parental rights. What you need to understand, currently, under the current statute for termination of parental rights it is what we call and “conduct or condition” case. Conduct [meaning] they harm the child. Condition [meaning] that they have a condition such as mental illness or alcoholism or something like that. We actually have to work with the parents now to show that if we provide reasonable social services to this parent that they in fact will not be able to parent this child within the foreseeable future. We also have to work to reunite the parent and the child. We would suggest to this committee that there are some circumstances where there has been *extreme conduct* toward the child and where in fact we *could prove in court* that trying to reintegrate this child and parent would be a risk to the child that in fact we should be able to immediately file a termination petition without doing any more. Without trying to have visits with the parent and child without providing a lot of services. *That would not stop in any way the parents ability to go out on their own and attempt to get services or attempt to show how in fact their conduct would not put this child at risk.* But it would stop the agency from having to work with them usually for about one year. The type of cases we’re talking about here in terms of extreme conduct are defined in the statute you can find them on page 21 *Again we do not want to just automatically say that they are an unfit parent, but we want the ability to file in court and not have to*

work with them. If in fact they can come to court and prove for some reason that they have now been rehabilitated, that they are not a risk to their other children then they would have the opportunity to do that in court. (all emphasis added)
(audio tape)

Later in the hearing, Representative Kevin Mannix asked,

You talk about death or serious physical injury of a sibling or another child due to parental abuse or neglect. What about death or serious physical injury of the child's other parent? Why should you have to go through a year of services when the father has killed the mother for example?

Ms. Wilson replied,

That's a good argument. One would like to say though, that what we are really out to do is protect kids. There could potentially be situations where a parent would kill another parent and he may in fact be able to parent that child. I know that sounds ridiculous, but again we are very cautious What we want to make sure is that if their action is extreme conduct toward the child and that that child would be at risk if put back in that home.

Rep. Mannix continued,

Your own bill says "if the court finds that the parent or parents are *unfit* by reason of a single or recurrent incident" so don't you take care of that problem with your own bill? (emphasis in original oral testimony)

Ms. Wilson answered,

Ya I think we do. I think there would definitely be a safe guard there in our own bill. (audio tape)

The language enacted in 1989, now codified in ORS 419B.502, remained essentially unchanged until 1999, when the phrase, "and that continuing the parent and child relationship is likely to result in serious abuse or neglect." was deleted and additional terms were added by SB 408. As amended, the section read (*italicized language deleted, words in bold added*):

The rights of the parent or parents may be terminated as provided in ORS. 419B.500 if the court finds that the parent or parents are unfit by reason of a single or recurrent incident of extreme conduct toward any child *and that continuing the parent child relationship is likely to result in serious abuse or neglect*. In such a case no efforts need be made by available social agencies to help the parent adjust the conduct in order to make it possible for the child or ward to return safely home within a reasonable amount of time. In determining extreme conduct the court shall consider the following:

- (1) Rape, Sodomy or sex abuse of any child by the parent.
- (2) Intentional starvation or torture of any child by the parent.
- (3) Abuse of neglect **by the parent** of any child resulting in death or serious physical injury.

(4) Conduct by the parent to aid or abet another person who by abuse or neglect caused the death of any child.

(5) Conduct by the parent to attempt, solicit, or conspire, as described in ORS 161.405, 161.435 or 162.450 or under comparable laws of any jurisdiction, to cause the death of any child.

(6) Previous involuntary termination of parents rights to another child and the conditions giving rise to the previous action have not been ameliorated.

Linda Guss, Assistant Attorney General, Oregon Department of Justice, submitted written testimony that explained that the purpose of the legislation was to bring Oregon into compliance with the federal Adoption and Safe Families Act (ASFA) “in Oregon as minimally disruptive as possible while staying true to the principles of current Oregon public policy as well as federal policy regarding the state’s responsibility to victims of abuse and neglect What is offered in SB 408 proposes the minimum that is necessary to [incorporate ASFA into Oregon’s Juvenile Code].”

The significance of the repeal of the language explicitly requiring the court to find that “continuing the parent child relationship is likely to results in serious abuse or neglect” is unclear. On its face, the repeal supports an argument that the legislature intended to relieve the state of the burden of proving anything other than the conduct of the parent in its case in chief. On the other hand, Ms. Guss explains that the amendment is intended only to bring Oregon legislation into compliance with AFSA, not to make other changes. This, then, raises the question of whether ASFA and another provision of federal law, enacted by the 1996 amendments to the Child Abuse Treatment and Prevention Act (CAPTA), require states to allow termination of parental rights upon proof of a parent’s extreme conduct, regardless of when it occurred and how the parent may have changed over the years.

III. The requirements of CAPTA and AFSA

The ASFA, which was enacted in 1997, and the 1996 amendments to CAPTA both address termination of parental rights. The purpose of the termination provisions in both statutes is similar to the purpose of the 1989 amendments to Oregon law discussed above -- to insure that state law permits but does not require state child welfare agencies to proceed to termination of parental rights cases in egregious circumstances, without first having to make efforts to reunite the parent and child.

A. CAPTA

The 1996 amendment to CAPTA, P.L. 104-235, § 106, codified as 42 U.S.C. § 5106a(b)(2)(A)(xvi), provides that state law may not require reunification of a child with a parent who has been found guilty of murder or voluntary manslaughter of another child of the parent; or of aiding, abetting, attempting, conspiring, or soliciting such a murder or manslaughter; or of a felony assault that results in the serious bodily injury to the child or another child of the parent. However, the section continues, “case-by-case determinations of whether or not to seek termination of parental rights shall be within the sole discretion of the State.”

B. ASFA

P.L.105-89, commonly known as ASFA, requires states to enact laws that complement the CAPTA termination rules. First, AFSA requires that states allow courts to relieve state child welfare agencies from making reasonable efforts to prevent removal and to effect reunification upon a finding that

- i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);
- ii) the parent has
 - I) committed murder of another child of the parent;
 - II) committed voluntary manslaughter of another child of the parent;
 - III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or
 - IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or
- (iii) the parental rights of the parent to a sibling have been terminated involuntarily.

42 U.S.C. § 671(a)(15)(D). ASFA also requires states to initiate or join proceedings to terminate parental rights for children

in the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent ...unless--

- i) at the option of the State, the child is being cared for by a relative;
- ii) a State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or
- iii) the State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home, if reasonable efforts of the type described in section 471(a)(15)(B)(ii) are required to be made with respect to the child.

42 U.S.C. § 675(4)(B)(5)(E).

The legislative history of the CAPTA amendments and ASFA does not clarify the issue discussed here.

IV. Constitutional limitations

Decisions from both the Oregon and the U.S. Supreme Court hold that the constitution requires significant procedural and substantive safeguards for parents in termination of parental rights cases. These opinions suggest that if ORS 419B.502 were interpreted as allowing termination of parental rights only upon proof of one of the acts listed, without regard to the parent's present fitness to care for the child, the statute would be unconstitutional. Decisions from other states' courts support this conclusion.

A. U.S. Supreme Court on TPR

The Supreme Court has decided three cases concerning termination of parental rights: *Lassiter v. Dept. of Social Services*, 452 U.S. 18 (1981), *Santosky v. Kramer*, 455 U.S. 745 (1982), and *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996). All of these cases concerned procedural safeguards at trial and on appeal, rather than the substantive standard for termination. However, all three emphasize the importance of the parental interests at stake in termination proceedings and consequent limitations that due process and equal protection place on the states. They strongly indicate that a challenge to the substantive grounds for termination would be subject to heightened scrutiny and would at least have to be closely related to the important state interest of protecting children.

In *Lassiter* the Court held that parents have a constitutional right to the assistance of counsel in complex cases termination cases, leaving to trial courts to determine on a case-by-case basis whether any particular case is sufficiently complex. In reach this conclusion, the Court said,

This Court's decisions have by now made plain beyond the need for multiple citation that a parent's desire for and right to "the companionship, care, custody, and management of his or her children" is an important interest that "undeniably deference and, absent a powerful countervailing interest, protection." *Stanley v. Illinois*, 405 U.S. 645, 651. Here the State has sought not simply to infringe upon that interest, but to end it. If the State prevails, it will have worked a unique kind of deprivation. Cf. *May v. Anderson*, 345 U.S. 528, 533; *Armstrong v. Manzo*, 380 U.S. 545. A parent's interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one.

452 U.S. at 27. Similarly, in *Santosky* the Court said,

The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.

455 U.S. at 753-54.

Lassiter declared it ‘plain beyond the need for multiple citation’ that a natural parent's "desire for and right to 'the companionship, care, custody, and management of his or her children'" is an interest far more precious than any property right. When the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it. ‘If the State prevails, it will have worked a unique kind of deprivation. . . . A parent's interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one.’”

Id. at 758-59 (citations omitted). Therefore, the court held, due process requires that the grounds for termination be proven by clear and convincing evidence.

Finally, in *M.L.B.* the Court held that a termination of parental rights proceeding is a rare exception to the general rule that challenges to state-imposed fee requirements are examined only for rationality. It said,

[O]ur cases solidly establish two exceptions to that general rule. The basic right to participate in political processes as voters and candidates cannot be limited to those who can pay for a license. Nor may access to judicial processes in cases criminal or "quasi criminal in nature" turn on ability to pay. In accord with the substance and sense of our decisions in *Lassiter* and *Santosky*, we place decrees forever terminating parental rights in the category of cases in which the State may not “bolt the door to equal justice.”

519 U.S. at 123-24.

[The parent] is endeavoring to defend against the State's destruction of her family bonds, and to resist the brand associated with a parental unfitness adjudication. Like a defendant resisting criminal conviction, she seeks to be spared from the State's devastatingly adverse action.

Id. at 125. The court concluded that due process prevents a state from condition a parent’s appeal from a termination of parental rights order on the ability to pay the cost of transcribing the record.

B. Oregon Supreme Court on TPR

The leading case in Oregon on the constitutionality of termination of parental rights statutes is *State v. McMaster*, 259 Or. 291, 486 P.2d 567 (1971), which held that the statutory provision allowing termination of parental rights upon proof that the parent is “unfit by reason of conduct or condition seriously detrimental to the child” was not unconstitutionally vague in violation of the Fifth and Fourteen Amendments to the U.S. Constitution and Art. I, § 10 of the Oregon Constitution. In reaching this conclusion, the Court said, “The procedure here is not the state against the parents. Three parties are

involved: the state, the parents and the child. The welfare of the child is the primary consideration of the Juvenile Code of 1959. That the welfare of the child is the primary purpose does not lead to the conclusion that the rights of the parents are without constitutional protections.” 259 Or. at 296. The Court emphasized the importance of the nexus between the parent’s conduct and harm to the child:

In our opinion, to accomplish its primary purpose of caring for the welfare of the child, the legislature would have extreme difficulty being more specific. The legislature could specify certain conduct upon the part of the parents which would cause them to be deprived of their parental rights; however, that is not the intent of the legislature or of this court in interpreting this statute. The legislature and this court do not desire to sever parental rights for any conduct by the parents unless such conduct seriously affects the child's welfare. For example, imprisonment was not held conduct "seriously detrimental to the child," in *State v. Grady*, 231 Or 65, 371 P2d 68 (1962); wilful fraud upon the court likewise was held not sufficient to sever parental rights. *Cutts v. Cutts*, 229 Or 33, 43, 366 P2d 179 (1961)

Id. at p. 298-99. *McMaster* relied in part on *State v. Jamison*, 251 Or. 114, 444 P.2d 15 (1968), which held that every parent in a termination of parental rights case is entitled to a court-appointed attorney under the U.S. Constitution. While this specific holding was negated by *Lassiter*, the Oregon Supreme Court has continued to cite it for the proposition that parents have constitutionally protected rights at stake in termination proceedings. *See, e.g., In re Marriage of Hruby*, 304 Or. 500, 505 n. 3, 748 P.2d 57 (1987).

C. Decisions from other states

Courts in Florida and Illinois have held unconstitutional state statutes that allow termination of parental rights upon proof of a prior event without requiring proof of the parent’s present unfitness. In *Florida Department of Children and Families v. F.L.*, 880 So.2d 602, 611 (Fla. 2004), the court struck down a statute that allowed termination of a parent’s rights upon proof of the involuntary termination of the parent’s rights as to another child.¹ The court said, “[t]he circumstances surrounding a prior involuntary termination are highly relevant to a court’s determination of whether a current child is at risk and whether termination is the least restrictive way to protect the child. However [prior decisions] require that a termination decision be based not on any single act or omission with respect to a previous child, but rather on the totality of the circumstances surrounding the current petition.” *Id.* The court said that prior cases established that the state must show by clear and convincing evidence that reunification will pose a substantial risk of significant harm to the child. While this can be demonstrated by previous abuse of another child, the state must establish that termination is the least restrictive means of protecting the child from serious harm. *Id.* at 608 (citing *Padgett v.*

¹ The Florida statute, unlike ORS 419B.502(6), did not require proof that “the conditions giving rise to the previous action have not been ameliorated.”

Dep't of Health & Rehab. Servs., 577 So.2d 565 (Fla. 1991)). “In some cases, *but not all cases*, a parent’s conduct toward another child may demonstrate a substantial risk of significant harm to the current child.” *F.L.*, 808 So.2d at 608. A statute “may not constitutionally permit a termination of parental rights without proof of substantial harm to the child . . . the statute allows DCF to file a petition for termination of parental rights without the prerequisite case plan, based on a prior involuntary termination. But to be constitutional under *Padgett*, the statute must be interpreted as requiring DCF to also prove that reunification would be a substantial risk to the child and that termination is the least restrictive way to protect the child. *Id.*”

Similarly, the Illinois Court of Appeals held that a statute which permits termination upon proof of conviction of aggravated battery to a child was unconstitutional. The court said that proof of the crime is “not an adequate proxy for unfitness” because it “fails to take into account several things relevant to the ultimate fitness determination.” *In re Amanda D.*, 811 N.E.2d 1237, 1242 (Ill. App. 2004). The court observed that “it makes no room for consideration of things such as the passage of time without similar incident, the circumstances of the crime, or the parent’s rehabilitative efforts. Such factors are of obvious relevance.” *Id.*

In *In re D.W.*, 827 N.E.2d 466 (Ill. 2005), the Illinois Supreme Court also found subsection 1(D)(q) of the Adoption Act unconstitutional because it violated equal protection. The court consolidated two cases in which the circuit court had found a parent unfit based solely upon her conviction of an offense listed in that provision, and subsequently terminated her parental rights after a “best-interests” hearing. Under the Illinois extreme conduct statute, a parent is irrefutably presumed unfit if the parent “has been criminally convicted of aggravated battery, heinous battery, or attempted murder of any child” whether or not the parent is capable of adequately caring for his or her child. *Id.* at 470 (quoting 750 ILCS 50/1(D)(q) (West 2000)). Under another subsection of the same statute, a parent is presumed to be unfit upon proof of some of the same offenses as (D)(q), but under that subsection is allowed to rebut the presumption. *Id.* (quoting 750 ILCS 50/1(D)(i) (West 2000)). Basically, [a] parent “who is the subject of a petition alleging unfitness under section 1(D)(q) is denied the procedural right of rebuttal that is afforded to a person convicted of the same offense, but alleged to be unfit under section 1(D)(i).” *Id.* at 483.

The court held that there was no rational basis for treating parents subject to fitness proceedings under the two subsections differently, “much less a justification that would survive strict scrutiny.” *Id.* at 485. As a result, the court held 1(D)(q) unconstitutional for violating equal protection. *Id.* In reaching its decision, the court reasoned:

As the Supreme Court stated in *Stanley*, addressing another mandatory conclusive (irrebuttable) presumption that also impacted the fundamental family relationship between parent and child: ‘Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care . . . it needlessly risks running roughshod over the important interests of both parent and child. It therefore cannot stand.’

Id. at 316-17 (quoting *Stanley v. Illinois*, 405 U.S. 645, 656-57 (1972)).

In *In re S.F.*, 834 NE2d 453, 457 (Ill. App. 2005), an Illinois appellate court held a similar provision of the Illinois Adoption Act unconstitutional. That subsection provided for termination upon proof that the parent had previously been convicted of a crime because of the death of any child by physical abuse. The statute defined an “unfit person” as “any person whom the court shall find to be unfit to have a child,” on grounds including “a criminal conviction resulting from the death of any child by physical child abuse. *Id.* at 456 (quoting the applicable sections of the Adoption Act). The *SF* Court applied the reasoning from *In re D.W.* and held the statute unconstitutional because it effectively created an irrebuttable presumption of unfitness, which a parent was required to overcome to avoid termination. Such a presumption violates due process. *Id.* at 457.

V. Conclusion

The wording of ORS 419B.502 will support arguments for and against the proposition that proof of one of the listed acts, regardless of when it occurred, is sufficient evidence to prove that the parent is “unfit,” and the legislative history of the statute does not clarify the issue. However, given the important constitutional interests of the parents at stake, the statute would likely be held unconstitutional as applied if it were interpreted to allow the termination of a parent’s rights in the face of other evidence that the parent was able to care for the child safely. To avoid this result, courts should resolve the ambiguity in the meaning of the statute in such a way that renders it constitutional. A possible interpretation that preserves the requirement that the state prove the parent’s unfitness but that does not overlap with provisions of ORS 419B.504 is that proof of one of the listed acts would be sufficient to satisfy the state’s burden of production on the issue of unfitness, but the factfinder would consider other evidence on this issue as well, and the state would have the burden to persuade the judge by clear and convincing evidence of the ultimate issue, that the parent was unfit.