

SUPREME COURT OF LOUISIANA

No. 2011-CJ-2258

**In RE: DOUG EDWARD TAYLOR AND VALERIE ANN TAYLOR,
APPLYING FOR THE PRIVATE ADOPTION OF
S. J. B.**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
SECOND CIRCUIT, PARISH OF UNION**

JOHNSON, Justice, would deny the writ application, with reasons.

This litigation began when applicants, Douglas Edward Taylor and Valerie Ann Taylor, filed an Application for Court Approval of Adoptive Placement. The court granted the placement order, allowing the Taylors physical custody of the minor child, S.J.B. On January 8, 2010, the biological parents of the minor child, attempted to regain physical custody of the child, but because of the placement order they were advised that they must proceed through the courts. Thereafter, the Taylors filed a Petition to Terminate the Mother's Parental Rights on the grounds of abandonment pursuant to LSA-Ch. C. art. 1015(4). The district attorney appointed the Taylors' private attorney as a special assistant, thus allowing the Taylors to petition for the termination of parental rights under LSA-Ch.C. art. 1004(F). Thereafter, the biological parents of the minor child filed an Exception of No Right of Action, challenging the Taylors' right, as private petitioners, to bring the termination action. The trial court denied the exception and ordered the Taylors' attorney to execute a written affidavit affirming that he represents the State of Louisiana, and he will continue representing the State exclusively by special appointment in the termination of parental rights proceedings. The court of appeal denied the Taylors' writ application.

LSA-Ch.C. art. 1004(F) provides:

By special appointment for a particular case, the court or the district

attorney may designate private counsel authorized to petition for the termination of parental rights of the parent of the child on the ground of abandonment authorized by Article 1015(4).

There is an apparent conflict among the appellate courts regarding the interpretation of LSA-Ch.C. art. 1004(F), as embodied in *In re H.R.K.*, 07-1310 (La.App. 3 Cir. 3/26/08), 980 So.2d 200 (which allows specially appointed private counsel to petition for the termination of parental rights on behalf of a private party); *In re T.E.R.*, 43, 145 (La.App. 2 Cir. 3/19/08), 979 So. 2d 663 (which allows the State to appoint a private attorney to represent the State);¹ and *S.J.G. v. A.A.G.*, 07-625 (La.App. 1 Cir. 9/19/07), 970 So.2d 1022 (which allows the State or an authorized State official, not a parent, to institute an action to terminate parental rights). In a 2004 amendment to LSA-Ch.C. art. 1004, the comments note that “[a]lthough foster parents should be authorized to file termination of parental rights proceedings, their action should ripen only after a court has determined that adoption is the most appropriate permanent plan in the best interest of the child.” In other words, the court [not a private party] has the primary authority and responsibility to oversee the initiation of termination of parental rights actions. *In re T.E.R.*, at p. 666.

Courts have widely acknowledged the sanctity of parental rights, stating that “[p]arental rights to the care, custody, and management of children is a fundamental liberty interest warranting great deference and vigilant protection under the law.” Thus, termination of parental rights “is one of the most drastic actions the State can take against its citizens.” As a result, the Louisiana legislature “has imposed strict procedural and evidentiary requirements that must be met before the issuance of a judgment terminating parental rights.”

¹In *In re T.E.R.*, at p. 668, the court of appeal noted:

The best interests of a parent seeking termination may not be the same as the best interests of the children. To permit the appointment of the lawyer representing one parent who wants to terminate the parental rights of the other parent creates an unnecessary and potentially serious conflict of interest. . . . [T]here is no private right of action to terminate another parent’s parental rights, and there are no circumstances under which one parent may file a petition to terminate the parental rights of another parent.

Mouret v. Godeaux, 04-496, p. 4 (La.App. 3 Cir. 11/10/04), 886 So.2d 1217, 1220 (citations omitted).

In the present case, the Taylors are parties to the litigation, and clearly have an interest in the litigation. Appointing their attorney to represent the State's interest creates a conflict of interest. In my view, both the Taylors' interest and their attorney's interest are adverse to the interest of the biological parents. Ergo, it is absurd to suggest that the Taylors' attorney can be neutral. The better policy is to appoint a disinterested attorney to represent the State in this litigation.