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City Settles Suit over Separating Abused Mothers from Children

By Leslie Kaufman

The city settled a long-running class-action lawsuit by victims of domestic violence yesterday, essentially conceding that children could not be placed in foster care just because their mothers had been abused.

The settlement was not a surprise, as it came just months after the state's highest court had ruled explicitly that the city could not remove children in cases in which the sole problem in a family was domestic violence.

Still, the agreement decisively ended a contentious battle about how New York should handle the delicate issue of abusive households and children in a manner that will probably influence practices throughout the country. Child welfare agencies everywhere struggle with how to handle households where domestic violence occurs. Such homes can be particularly dangerous, even lethal, for children, but removal from the abused parent – often a loving guardian – can also be crushing to young children.

Both parties to the lawsuit and the judge agreed not only that removals were not the right answer, but also that the city's practice had reformed so much in the years since the suit was brought that court relief was no longer really necessary.

"The city has come a long way since we first filed the lawsuit," said Carolyn Kubitschek, a lawyer for the plaintiffs. "We think they are serious about attempts to change practices. They said they could do it without a court order, and so we said, 'Let's try.'"

When the lawsuit, *Nicholson v. Scoppetta*, was first certified as class action in 2001, the city denied that it had a practice of taking children into foster care solely because their mothers had been victims of domestic violence. Yet the city maintained that if it had such a practice, it would be perfectly legal.

But in January 2002, the Federal District Court in Brooklyn disagreed, ruling that city agencies had engaged in "widespread and unnecessary cruelty" against victims of domestic violence, and issued an injunction explicitly preventing city child welfare workers from removing children from homes solely because their parents are abused.

The city appealed to the United States Court of Appeals for the Second Circuit, which in turn asked for advice from the state's highest court. In no uncertain terms, the appellate court agreed with the lower court that such removals in cases in which the sole parental vice was to have been abused would be wrong.

The court then added that removing a child from its primary guardian in any case – domestic violence or not – should be done with court review except in the most extreme circumstances.

Because the federal court heard the case, many think *Nicholson* will influence practices far beyond New York. “Unquestionably, *Nicholson* is a landmark and will set precedent through the country,” said Barrie Goldstein, a lawyer with Legal Aid Society, who helped argue the appeal. “It is already being widely cited. It was on the cutting edge.”

City officials were also calling the settlement a victory yesterday because it allows the court injunction to lapse at the end of the year and because, they said, it confirmed that the city's current case practices with regard to domestic violence victims already met the court standard.

In the years since the court injunction, the city says, it has retrained workers to be more sensitive to domestic violence and has instituted more rigorous levels of review internally before removals take place in such cases.

John B. Mattingly, the commissioner of children's services, said: “This agreement will not change current practice at all. But that doesn't mean we don't need to hold onto the improvements we have made as a result of the lawsuit.”

In fact, the settlement contains several provisions to prevent such backsliding, including the creation of a review process within the child welfare agency where lawyers for battered parents can bring complaints and receive written responses.

In addition, according to the settlement, the city's practices are still subject to a nine-month probationary period after the injunction elapses. If at any time during that period plaintiffs believe the city is violating the settlement, they can ask the court to reactivate the case.

“Believe you me, we will be watching closely,” Ms. Goldstein said.

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