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Court Limits Removing Child When Mother Is Abuse Victim

By Leslie Kaufman

New York State's highest court ruled yesterday that child welfare authorities cannot take children from parents and place them in foster care merely because they have been exposed to domestic abuse at home.

The court formalized specific standards for removing children from homes where domestic abuse occurs, requiring that authorities exhaust alternatives and insisting that the possible threat to the child's health or welfare be imminent.

The seven-member New York State Court of Appeals, in a unanimous decision, said it simply was not acceptable to take children out of their homes solely because they had seen the mother being beaten, suggesting that it would unfairly punish innocent women and even harm the children themselves. Instead, it said the authorities would have to show that the mother was indifferent to the psychological harm that repeated exposure to beatings caused the child in order to justify asking the courts to consider a removal.

Further, it ruled that removing children from such homes without prior court approval – emergency actions that a federal court found the city had used for years – should be contemplated only in the rarest of instances.

City child welfare officials called yesterday's ruling thoughtful, but said it would have little effect on day-to-day practice. John B. Mattingly, the city's commissioner for children's services, said the city stuck by the argument it had made in federal court – that its practice for dealing with children in violent households was already "nuanced and very sound," and already met the standards set by the court.

City officials said they regarded the court's determination that, at least in some domestic violence cases, emotional trauma could be severe enough to warrant removal of children as a validation of the city's position.

Some child welfare experts, as well as many lawyers with experience in the state's Family Court system, quickly predicted that the ruling could have profound implications for how the city handles the full range of child welfare cases, even those not directly involving domestic violence.

They said that the court's standard for when children can be taken into foster care, as laid out in its decision, might be applied in a wide array of other instances.

In particular, they pointed to language in the ruling saying that child welfare officials would have to balance the risk of leaving children in potentially dangerous homes with the possible trauma caused by being separated from their parents. Many said it was the first time such a standard had been spelled out by a court.

"I definitely think this will go beyond the context of domestic violence," said Karen Freedman, executive director of Lawyers for Children, a local nonprofit group that represents children in foster care.

A spokesman for the Court of Appeals would not comment on whether the ruling might be applied in cases not involving domestic violence.

The ruling, written by Chief Judge Judith S. Kaye, grew out of a federal class action suit, *Nicholson v. Scoppetta* that has challenged the city's practice of removing children from homes where there is domestic violence. A district court found in 2002 that the city, by placing children in foster care, routinely violated the rights of mothers whose only crime had been to be beaten by their husband or lover. Judge Jack B. Weinstein wrote that the city's failure to train its child welfare caseworkers in domestic violence matters, and the inappropriate placements in foster care that resulted, amounted to "widespread and unnecessary cruelty by agencies of the city."

The city appealed to the United States Court of Appeals for the Second Circuit. Before ruling, the circuit court asked the state's top court to clarify New York law on removing children from possibly dangerous homes, especially as it pertained to witnessing domestic violence.

The question of how to deal with children in homes where domestic violence exists has bedeviled experts, social workers and city officials for years. And the Court of Appeals decision broadly acknowledged that caring for children who live in homes with domestic violence is fraught with perils; such homes are extremely volatile and children in such homes can wind up being killed.

But in yesterday's decision, the court spelled out what child welfare workers and the state's family courts must do in deciding whether to remove children from such homes.

In response to the request from the circuit court, the Court of Appeals ruled that a parent's inability to prevent a child from witnessing domestic abuse did not amount to formal neglect, a standard used for taking a child into foster care. To conclude that a mother had been neglectful, the court held, the authorities would have to prove that the mother had failed to exercise a basic level of care in shielding the child as best she could from the scenes of abuse.

The court ruled that there could be no "blanket presumption" favoring removing a child who had merely witnessed a parent being abused.

The court did say there could be instances in which city officials could seek to remove a child from an abusive household. But it listed specific stages that would have to be followed before the removal was allowed, including seeking approval of a family court judge.

The judge "must do more than identify the existence of risk of serious harm," the decision said, adding that the court "must balance that risk against the harm removal might bring, and it must determine factually which course is in the child's best interest."

"Additionally, the court must specifically consider whether imminent risk to the child might be eliminated by other means, such as issuing a temporary order of protection or providing security services to the victim."

As for the city, the court said, it could remove a child without a court order only in circumstances so dire they were hard to imagine. "While we cannot say, for all future time, that the possibility can never exist, in the case of emotional injury caused by witnessing domestic violence," the court wrote, "it must be a rare circumstance."

Lawyers who represent children in foster cases said that they would use the court's language dealing with emergency removals to mount challenges in cases not involving domestic violence where children had been removed. Of the 2,651 child removals the city says it did in the first nine months of the year, 54 percent were done on an emergency basis without a court order, something the lawyers say they would like to stop.

"It is now routine practice to do emergency field removals," said Ms. Freedman, "and that practice needs to change to be consistent with this ruling."

Now that the Court of Appeals has answered its inquiries, the Second Circuit is expected to swiftly formulate its own decision on the federal lawsuit. Potentially, the court could find a constitutional violation in New York's practices that would immediately affect cases involving domestic violence in other states, including Vermont and Connecticut.

But Jill Zuccardy, a lawyer involved in the suit against the city, said progress for victims of domestic violence and their children had already been achieved. She said the federal lawsuit, and yesterday's state ruling, amounted to a wake-up call for child welfare agencies across the country.

"It says you'd better listen to domestic violence agencies or you will wind up being sued," she said.

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