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Policy Altered on Taking Children from Victims of Domestic Abuse

By William F. Hammond, Jr., Staff Reporter of the Sun

[Albany, NY] – In a ruling that could affect battered women across the country, the state’s highest court declared yesterday that social workers cannot take custody of children simply because they have witnessed violence against their mother.

The Court of Appeals decided unanimously that children exposed to domestic violence, though harmed emotionally, are not necessarily “neglected” under state law. A social service agency that removes children to foster care on that basis alone is acting illegally, the court said.

The state court provided this analysis at the request of a federal appeals court that is considering a class action against the city of New York.

Domestic violence activists hailed the ruling as a further repudiation of a policy they say victimized battered women. Some women have avoided reporting abuse to law enforcement authorities out of fear they would forfeit custody of their children, the activists said.

“The court ruled resoundingly, unanimously, that being a victim of domestic violence does not make a woman a neglectful mother,” said one of the attorneys who brought the suit, Carolyn Kubitschek of Lansner & Kubitschek.

City officials and Family Court judges “have to recognize that removing children is traumatic to the children,” Ms. Kubitschek said. “They have to balance the harm of removing the children against the harm of leaving them in the situation.”

City attorneys, who defended the Administration for Children’s Services in the case, also expressed satisfaction with the ruling. The high court upheld the city’s position that exposure to domestic violence could be grounds for putting children in foster care under some circumstances, the attorneys said.

“Depending on the facts of the case, it may be perfectly appropriate to bring a child-neglect proceeding against the mother ... if her children are in danger of harm from witnessing the violence and the mother hasn’t exercised a minimum degree of care to protect those children from the harm,” said an attorney with the corporation counsel’s office, Alan Krams.

The original lawsuit in U.S. District Court began four years ago, when battered women charged that city officials were routinely charging the victims of domestic violence with neglect and placing their children in foster care.

The lead plaintiff is Sharwline Nicholson, who lost custody of her children after a single incident in which she was hit by an ex-boyfriend, Ms. Kubitschek said.

“She called EMS immediately,” Ms. Kubitschek said. “She gave the cops all the information she had on this guy so they could find him. And her kids were taken anyhow. She wasn’t given the option of leaving or not leaving. They just took her kids while she was in the emergency room getting treatment.”

Another plaintiff, Ekeate Udoh, was beaten over a period of 20 years, but could not obtain a court order to remove her husband from the house.

Although city officials denied having the policy that was alleged, a federal judge ruled against them and ordered them to change their procedures in 2002. The case is now being heard by the U.S. Court of Appeals, which asked the state Court of Appeals to clarify exactly how state law should apply in such cases.

“This is a landmark decision that will have an impact throughout this country,” said the executive director of the New York State Coalition Against Domestic Violence, Sherry Frohman. “The Nicholson case has created an environment where local departments of social services ... have been reevaluating and reexamining their policies and procedures, to make sure the work they’re doing is not increasing the harm to women and their kids.”

In a 31-page decision, the chief judge of the Court of Appeals, Judith Kaye, said the mere fact that a child witnessed violence against a parent, while possibly emotionally harmful, is not enough reason for the state to take custody.

“Plainly, more is required for a showing of neglect under New York law than the fact that a child was exposed to domestic abuse against a caretaker,” Judge Kaye wrote.

If officials can prove that exposure to domestic violence is causing serious harm to the child, and that the parent has failed to take minimal steps to correct the problem, then the city should seek a court order before intervening, she said. As for acting without such an order, she said, “it must be a rare circumstance in which the time would be so fleeting and the danger so great that emergency removal would be warranted.”

City officials said they agree with the distinctions drawn by the court.

“This is a thoughtful decision that clearly affirms our existing practice of considering each case carefully when weighing the risk of harm to children,” said the commissioner of the Administration for Children’s Services, John B. Mattingly.

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