Administrative Office of the Courts

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Supreme Court rules on evidence required to prove child neglect

SANTA FE – The state Supreme Court today issued an opinion clarifying the evidence necessary to prove child neglect under New Mexico law.

In a unanimous opinion, the justices reversed decisions of a Bernalillo County district court and the Court of Appeals that found a child to be neglected. The Children, Youth and Families Department (CYFD) had taken custody of the young boy.

"Absent clear and convincing evidence of a serious risk to Child, which is not present here, removal and foster care should not be CYFD's first course of action and Child cannot be adjudicated neglected," the Court wrote in an opinion by Justice Julie J. Vargas.

The Supreme Court ordered the district court to toss out its adjudication of neglect and to dismiss the case against Heather S., the child's mother. New Mexico appellate courts, in their written opinions, do not fully identify the names of children and their parents in cases involving abuse and neglect proceedings.

CYFD filed an abuse and neglect petition in court in 2018 alleging that the mother neglected her son because of unresolved domestic violence issues in the household, substandard conditions in the home, school absences and tardiness, and lapses in medication to treat hyperactivity and impulsiveness.

New Mexico law defines a neglected child as one "without proper parental care and control … necessary for the child's well-being." Additionally, the law requires that the lack of parental care and control must be "because of the faults or habits" of the parent or the "failure or refusal" of the parent to provide needed care and control.

The Court noted that the state statute does not provide "specific guidance to explain what amount of care and control a parent is required to provide to avoid an adjudication of neglect under the statute."

In interpreting the statutory language, the Court concluded that the Legislature intended that a "child must be subjected to circumstances that create a serious risk to the child's mental or physical health and safety" for the child to be removed from the family because of parental neglect.

"A serious risk is one that is likely to result in important or dangerous consequences for the child," the Court explained. "This standard balances the Legislature's concern for the preservation of the family, when possible, while retaining as the paramount concern, the health and safety of the child."

The justices added, "Courts must be cautious to avoid finding neglect in every lapse in parental care or control and must focus on those instances or circumstances likely to have a serious or significant impact on a child's health and safety. Evidence that supports only a 'vague inference of future harm' does not rise to the level of neglect as defined" in state law.

The Court also provided guidance to trial court judges when they find a child lacking necessary care.

"It is not the court's role to determine whether a child would be better off in foster care than with the child's parent when considering whether a child is neglected," the Court wrote. "Instead, it is the court's obligation to consider whether a child's parent is providing those things absolutely needed for the child's well-being, and if not, whether it is the parent's acts or omissions, rather than poverty, or some other unfavorable status that are the cause of the parent's shortcomings."

The Court further explained that "where there are multiple failures to provide proper parental care or control, which alone may have been insufficient to rise to the level of neglect, the combined effect of these failures may be sufficient to constitute neglect under" state law.

Evidence presented to the district court by CYFD did not prove the boy was medically neglected or that the mother failed to provide proper care over her son's education, the justices determined. The Court also concluded that there was not enough evidence to show the mother had failed to protect her son from domestic violence between the mother and a man with whom she shared a daughter. Evidence at trial involved one incident that occurred outside the presence of her son, "there was no evidence of any ongoing abuse," and CYFD took no steps to protect the boy from any identified dangers, the Court explained.

Evidence about unsafe conditions in the home included an exposed electrical outlet, trash, piles of clothing, a steak knife left on the kitchen table, and car parts scattered through the yard and house. However, the Court found the "safety risks were merely speculative" and that the mother had worked to resolve the issues after they were raised by CYFD.

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To read the decision in *CYFD v. Heather S.*, No. S-1-SC-38922, please visit the New Mexico Compilation Commission's website using the following link:

https://nmonesource.com/nmos/nmsc/en/item/530762/index.do