

SUPREME COURT OF NEW HAMPSHIRE

In re G.G.

166 N.H. 193 (2014) · No. Rockingham No. 2012-873 · Decided April 18, 2014

SUMMARY

The New Hampshire Supreme Court considered whether a parent in an abuse and neglect proceeding had an absolute statutory right to subpoena and cross-examine the child after admission of the child's videotaped interview. The court held that trial courts have discretion under the governing statutes and their inherent authority to determine whether a child should be compelled to testify, while encouraging consideration of factors concerning the child's age, potential harm, reliability of statements, probative value, and alternatives to in-court testimony. The court affirmed in part, vacated in part, and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Bassett, J.; Dalianis, C.J.; Hicks, J.; Conboy, J.; Lynn, J.
JURISDICTION	New Hampshire
DECIDED	April 18, 2014
DOCKET	Rockingham No. 2012-873
DISPOSITION	other
PROCEDURAL POSTURE	The respondent father appealed the Superior Court's order, entered after de novo review, upholding a finding by the 10th Circuit Court—Portsmouth Family Division that he had abused and neglected G.G. The appeal challenged the admission of G.G.'s videotaped interview without her testimony and the denial of the respondent's request to cross-examine or subpoena her.
STANDARD OF REVIEW	De novo review of statutory interpretation and the superior court's decision.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion
PARTIES	Respondent father of G.G. v. New Hampshire Division for Children, Youth and Families

TOPICS

family law procedure

statutory interpretation

evidence

hearsay

appellate procedure

PRACTICE AREAS

family law

child welfare

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether RSA 169-C:18, III, RSA 169-C:12, and RSA 169-C:11 gave the respondent an absolute right to call or subpoena G.G. as a witness despite the potential harm to her.
2. Whether trial courts in abuse-and-neglect proceedings have discretion, based on statutory authority and inherent authority to control proceedings, to determine whether the child should be compelled to testify.
3. Whether the trial court adequately considered the competing interests of the respondent and G.G. before denying the request to subpoena her.
4. What factors trial courts should consider when deciding whether to compel testimony from a child who is the subject of an abuse-and-neglect proceeding.

HOLDINGS

1. RSA 169-C:18, III does not give an accused parent an absolute right to call or subpoena the child who is the subject of an abuse-and-neglect proceeding. The right to present evidence and witnesses is qualified by RSA 169-C:11, RSA 169-C:12, and the court's inherent authority to control its proceedings.
2. The trial court did not err by rejecting the respondent's claim of an absolute right to subpoena G.G., but its decision had to be vacated because the record was unclear whether it adequately considered the competing interests of the respondent and the child.
3. Trial courts should consider, as a non-exhaustive guide, the child's age; specific potential harm from testifying; indicia of reliability surrounding admitted out-of-court statements; corroborating evidence; the incremental probative value of in-court testimony; and alternatives that would permit meaningful examination without jeopardizing the child's well-being. Courts are encouraged to make express findings regarding the factors on which they rely.

KEY QUOTATIONS

“Therefore, we conclude that given the plain language of the pertinent statutes and the court’s inherent authority to control the proceedings before it, trial courts have the discretion in abuse and neglect proceedings to determine whether any witness, including the child, should be compelled to testify.” (197)

“Although we encourage trial courts to consider these enumerated factors, we stress that our list is not exhaustive and that trial courts are not required to consider all of the factors or to give them equal weight.” (198)

FACTUAL BACKGROUND

The case concerned an abuse-and-neglect proceeding involving G.G., an eleven-year-old child. DCYF sought to introduce a videotaped interview conducted by a Child Advocacy Center worker without calling G.G. to testify.

The respondent sought to cross-examine or subpoena G.G., while the State asserted that testifying could harm the child and noted that she was expected to testify in a related criminal case.

PROCEDURAL HISTORY

DCYF introduced a videotaped interview of G.G. at the superior court adjudicatory hearing. The superior court permitted the recording to be admitted without G.G. testifying and denied the respondent's request to subpoena her, concluding that he lacked a compelling or necessary need for her testimony. After de novo review, the superior court upheld the underlying abuse-and-neglect finding. The Supreme Court of New Hampshire affirmed the determination that the respondent had no absolute right to subpoena G.G., but vacated and remanded because the record did not show that the trial court adequately considered the competing interests of the respondent and the child.

DISPOSITION

other

REMAND INSTRUCTIONS

Vacate the trial court's decision denying the subpoena request and remand for further proceedings consistent with the opinion. On remand, the court should reconsider whether to compel G.G. to testify using the identified factors and should make express findings regarding the factors on which it relies. The court may also consider whether G.G. testified at the respondent's criminal trial and whether that testimony would suffice for this proceeding.

CASES CITED

- In re Cierra L., 161 N.H. 185, 188 (2010)
- Petition of Carrier, 165 N.H. 719, 721, 82 A.3d 917, 920 (2013)
- State v. Fecteau, 140 N.H. 498, 504 (1995)
- In re Shelby R., 148 N.H. 237, 241 (2002)
- In re C.M., 163 N.H. 768 (2012)
- In the Matter of Jeffrey G. & Janette P., 153 N.H. 200, 204 (2006)
- State v. Chick, 141 N.H. 503, 504 (1996)
- Maryland v. Craig, 497 U.S. 836, 855 (1990)
- In the Matter of Rupa & Rupa, 161 N.H. 311, 318 (2010)
- In re Tayler F., 995 A.2d 611, 626, 628 (Conn. 2010)
- In re Quinn, 763 N.E.2d 573, 576-78 (Mass. App. Ct. 2002)