

SUPREME COURT OF NEW HAMPSHIRE

In re Diane R.

146 N.H. 676 (2001) · Decided July 31, 2001

SUMMARY

The New Hampshire Supreme Court held that RSA 169-C:28 does not provide a right to de novo review of post-final dispositional orders in child-abuse and neglect proceedings. The court explained that such orders may instead be challenged through a petition for writ of certiorari, but concluded that any such challenge in this case would have been untimely. The court affirmed dismissal of the parents’ appeal.

CASE DETAILS

|                       |                                                                                                                                                                                                                                     |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of New Hampshire                                                                                                                                                                                                      |
| WRITING FOR THE COURT | Broderick, J.; Brock, C.J.; Nadeau, J.; Dal, J.; Duggan, J.                                                                                                                                                                         |
| JURISDICTION          | New Hampshire                                                                                                                                                                                                                       |
| DECIDED               | July 31, 2001                                                                                                                                                                                                                       |
| DISPOSITION           | affirmed                                                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | The plaintiffs appealed to the New Hampshire Supreme Court from the superior court's dismissal of their request for de novo review of a district court post-final-dispositional order continuing a long-term foster-care case plan. |
| STANDARD OF REVIEW    | Statutory interpretation was reviewed de novo; the court also independently reviewed the record concerning whether the June 15, 1999 order substantially changed the case plan.                                                     |
| PRECEDENTIAL VALUE    | Published memorandum opinion                                                                                                                                                                                                        |
| PARTIES               | Diane R.'s mother, Diane R.'s stepfather v. State of New Hampshire, Division for Children, Youth and Families                                                                                                                       |

TOPICS

- family law procedure
- appellate procedure
- writ of certiorari
- statutory interpretation
- due process

PRACTICE AREAS

- family law
- juvenile law
- appellate procedure
- administrative law
- constitutional law

## QUESTIONS PRESENTED

1. Whether RSA 169-C:28 authorizes a de novo appeal to superior court from a post-final-dispositional review order issued by the district court.
2. Whether the June 15, 1999 order substantially changed the case plan so as to constitute a new final dispositional order subject to de novo review.
3. Whether denial of de novo review violated the plaintiffs' state or federal constitutional due-process rights.

## HOLDINGS

1. RSA 169-C:28 does not provide a statutory right to de novo review in superior court of post-final-dispositional review orders issued by the district court.
2. The June 15, 1999 order did not constitute a new final dispositional order because the material change from reunification to long-term foster care occurred no later than the 1997 order.
3. Even if the appeal were treated as a petition for writ of certiorari challenging the 1997 order, it would be untimely.

## KEY QUOTATIONS

*“We agree with the trial court that there is no statutory right to de novo appeal from post-final dispositional orders issued by the district court.” (at 677)*

*“The lack of a de novo appeal from post-final dispositional review orders does not, however, foreclose all avenues of review.” (at 678)*

## FACTUAL BACKGROUND

Diane R. reported that her stepfather had sexually abused her, and DCYF initiated neglect proceedings. Her mother consented to a neglect finding and to DCYF's legal custody, while the district court ordered that Diane remain initially in her mother's physical custody and that she have no contact with her stepfather. In 1997, after repeated district court reviews, the court changed the case plan from reunification to long-term foster care, and later orders, including the June 15, 1999 order, continued that plan.

## PROCEDURAL HISTORY

In 1993, the district court approved a consent agreement finding Diane R. neglected and awarding legal custody to DCYF, and entered a final dispositional order. In 1997, the district court changed the case plan from reunification to long-term foster care; a June 15, 1999 order continued that plan. The plaintiffs sought de novo review in superior court, which dismissed the appeal because RSA 169-C:28 did not authorize de novo review of post-final-dispositional orders. The Supreme Court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- In re Cindy G., 124 N.H. 51 (1983)
- In re Bill F., 145 N.H. 267 (2000)
- Wilson v. Personnel Commission, 117 N.H. 783 (1977)

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