

DISTRICT OF COLUMBIA COURT OF APPEALS

In re S.S.

821 A.2d 353 (D.C. 2003) · Decided April 17, 2003

SUMMARY

The District of Columbia Court of Appeals affirmed an adjudication that S.S. was a neglected child because her non-custodial mother failed to take reasonable steps to protect her from alleged sexual abuse by older siblings. The court held that non-custodial-parent status does not categorically preclude a neglect proceeding under D.C. law when the parent has contact with the child and personally fails to discharge parental responsibilities. The court also concluded that the evidence, viewed in the light most favorable to the District, was sufficient to support the neglect finding.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Schwelb, Associate Judge; Ruiz; Schwelb; Washington
JURISDICTION	District of Columbia
DECIDED	April 17, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	The mother appealed from an adjudication that S.S. was a neglected child under D.C. Code §§ 16-2301(9) and (23), arguing that a noncustodial parent could not be subject to the neglect statute and that the evidence was insufficient.
STANDARD OF REVIEW	The unpreserved claim concerning the mother's noncustodial status was reviewed for plain error. The sufficiency challenge was reviewed by considering the evidence in the light most favorable to the District, giving full deference to the trial judge's credibility determinations, weighing of evidence, and reasonable inferences. The trial court's factual findings were reviewed for clear error under D.C. Code § 17-305(a).
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	E.D., the mother of S.S. v. District of Columbia

TOPICS

- family law procedure
- parental rights
- statutory interpretation
- hearsay
- appellate procedure

PRACTICE AREAS

family law

child welfare

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether a noncustodial parent who has regular unsupervised visitation may be subject to an adjudication of child neglect under D.C. Code § 16-2301(23).
2. Whether the evidence was sufficient to establish that the mother failed to make reasonable efforts to protect S.S. from sexual abuse.
3. Whether the evidence was sufficient to establish neglect under D.C. Code § 16-2301(9)'s provision concerning lack of proper parental care and control.

HOLDINGS

1. A noncustodial parent may be the subject of an adjudication of neglect when, as a result of the parent's own conduct, the child is subjected to neglect. Noncustodial status does not automatically provide a defense, but the parent must personally have failed to discharge parental responsibilities toward the child.
2. The evidence, although less than overwhelming, was sufficient to support the finding that the mother failed to make reasonable efforts to prevent the infliction of sexual abuse upon S.S.
3. The evidence was insufficient to show that the mother violated the separate provision defining neglect as a child being without proper parental care and control necessary for physical, mental, or emotional health.

KEY QUOTATIONS

"We hold only that a non-custodial parent may be the subject of an adjudication of neglect if, as a result of the parent's own conduct, the child is subjected to neglect." (359)

"In other words, the status of non-custodial parent does not automatically provide a defense to a neglect proceeding, but there can be no finding of neglect unless the parent has been shown, by a preponderance of the evidence, to have personally failed in the discharge of her parental responsibilities vis-a-vis the child." (359)

FACTUAL BACKGROUND

S.S. lived with her paternal great-aunt pursuant to a Maryland court order but regularly spent unsupervised weekends at her mother's home. The great-aunt observed increasingly sexualized behavior and learned that S.S.'s older brothers had allegedly touched or abused her. Although the great-aunt warned the mother in August 1999, the mother disbelieved the allegations and continued unsupervised visitation. The trial judge credited the District's witnesses and found that the mother failed to take adequate steps to protect S.S.

PROCEDURAL HISTORY

The District of Columbia instituted a neglect proceeding on January 4, 2000. After an evidentiary hearing, the trial court found that S.S. had been sexually abused and that the mother failed to take reasonable steps to protect her. The court ordered S.S. to remain with her great-aunt under protective supervision and allowed the mother supervised visitation. The Court of Appeals affirmed the adjudication under § 16-2301(23), while concluding that the evidence did not establish a violation of § 16-2301(9)'s separate proper-care-and-control provision.

DISPOSITION

affirmed

CASES CITED

- District of Columbia v. WICAL Ltd. P'ship, 630 A.2d 174, 182 (D.C. 1993)
- United States v. Frady, 456 U.S. 152, 163 n. 14, 102 S. Ct. 1584, 71 L. Ed. 2d 816 (1982)
- In re A.R., 679 A.2d 470, 478 (D.C. 1996)
- James Parreco & Son v. District of Columbia Rental Hous. Comm'n, 567 A.2d 43, 45-46 (D.C. 1989)
- In re S.G., 581 A.2d 771, 774 (D.C. 1990)
- Galindo v. United States, 630 A.2d 202, 210 (D.C. 1993)
- Sullivan v. United States, 404 A.2d 153, 159 n. 11 (D.C. 1979)
- Hunter v. United States, 606 A.2d 139, 144 (D.C.), cert. denied, 506 U.S. 991 (1992)
- Yee v. Escondido, 503 U.S. 519, 534, 112 S. Ct. 1522, 118 L. Ed. 2d 153 (1992)
- West v. United States, 710 A.2d 866, 868 n. 3 (D.C. 1998)