

MASSACHUSETTS SUPREME JUDICIAL COURT

Adoption of Don

435 Mass. 158 (2001) · Decided September 26, 2001

SUMMARY

The Massachusetts Supreme Judicial Court affirmed adjudications that five children were in need of care and protection, commitments to the Department of Social Services, and decrees dispensing with the parents’ consent to adoption. The court held that the evidence supported current parental unfitness, that the Massachusetts constitutional right to face-to-face confrontation does not apply in civil child-custody and parental-rights proceedings, and that the seating arrangements for child witnesses did not violate due process. The court also rejected the parents’ claim that the duration of the proceedings caused prejudicial constitutional delay and affirmed the denial of stays pending appeal.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Cordy, J.
JURISDICTION	Massachusetts
DECIDED	September 26, 2001
DISPOSITION	affirmed
PROCEDURAL POSTURE	The parents directly appealed Juvenile Court adjudications that their five biological children were in need of care and protection, orders committing the children to the permanent custody of the Department of Social Services, decrees dispensing with parental consent to adoption, and the denial of stays pending appeal.
STANDARD OF REVIEW	Subsidiary findings supporting parental unfitness must be proved by at least a fair preponderance of the evidence, while unfitness itself must be established by clear and convincing evidence. The Supreme Judicial Court does not disturb factual findings absent clear error and does not conduct a de novo review of the evidence; credibility determinations are left to the trial judge.
PRECEDENTIAL VALUE	Published precedential opinion of the Massachusetts Supreme Judicial Court
PARTIES	The mother, The father v. Department of Social Services, The children

TOPICS

termination of parental rights

parental rights

due process

family law procedure

appellate procedure

PRACTICE AREAS

family law

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether the Juvenile Court improperly relied on stale evidence rather than more recent evidence in finding the parents currently unfit to care for their children.
2. Whether article 12 of the Massachusetts Declaration of Rights gives parents in a civil care and protection or termination-of-parental-rights proceeding a right to face-to-face confrontation with child witnesses.
3. Whether the trial judge's seating arrangement, which allowed the parents to view the child witnesses only from the rear and in profile, violated due process.
4. Whether the nearly five-year duration of the care and protection proceedings violated the parents' due process rights.
5. Whether the Appeals Court single justice properly denied the parents' motions to stay the adoption-consent decrees pending appeal.

HOLDINGS

1. A finding of current parental unfitness may rely on prior patterns of neglect or misconduct when those patterns have prognostic value and are not rebutted by more recent evidence demonstrating parental capacity. The trial judge did not clearly err in finding the parents currently unfit.
2. The article 12 right to confront witnesses face to face, as applied in criminal cases, does not apply to civil care and protection or termination-of-parental-rights proceedings.
3. The trial judge's instruction that the parents sit in the back row while the children testified did not violate due process because the parents remained present, could choose their position in the row, were represented by counsel, and had the opportunity to cross-examine the witnesses and present opposing evidence.
4. The lengthy proceedings did not violate due process because the parents failed to show that the delay prejudiced them or that the outcome would have been different had the proceedings concluded sooner.
5. The Appeals Court single justice properly denied the parents' motions to stay the decrees dispensing with parental consent to adoption.

KEY QUOTATIONS

"To be sure, stale information cannot be the basis for a finding of current parental unfitness. . . . Prior history, however, has prognostic value." (435 Mass. at 166)

“As parens patriae, the State does not act to punish misbehaving parents but to protect children,” (435 Mass. at 168)

“Due process was satisfied here because the parents had the opportunity, through counsel, to cross-examine the child witnesses vigorously, in addition to presenting witnesses and other evidence on their own behalf.” (435 Mass. at 169-170)

FACTUAL BACKGROUND

The parents had longstanding problems involving substance abuse, domestic violence, inadequate parenting, and failure to comply with department service plans. The children were placed outside the home beginning in 1992 and were removed permanently in stages during 1995 after additional reports of abuse and neglect. Despite years of services and supervised visitation, the trial judge found that the parents had not addressed the conditions that endangered the children and remained currently unfit, with that unfitness likely to continue indefinitely.

PROCEDURAL HISTORY

The Department of Social Services filed an emergency care and protection petition in December 1994, and the children were removed from the parents' home in stages during 1995. After a trial conducted over forty-five nonconsecutive days, the Juvenile Court found both parents currently unfit, committed all five children to the department's permanent custody, and terminated the parents' rights to consent to adoption of the four youngest children. In a later proceeding based on the existing evidence, the court also terminated the parents' rights to consent to Don's adoption. The Appeals Court single justice denied stays, and the Supreme Judicial Court granted direct appellate review and affirmed.

DISPOSITION

affirmed

CASES CITED

- Santosky v. Kramer, 455 U.S. 745, 748 (1982)
- Care & Protection of Laura, 414 Mass. 788, 793 (1993)
- Adoption of Mary, 414 Mass. 705, 710-711 (1993)
- Care & Protection of Martha, 407 Mass. 319, 327, 330 (1990)
- Adoption of Helen, 429 Mass. 856, 859 (1999)
- Adoption of Hugo, 428 Mass. 219, 224 (1998), cert. denied sub nom. Hugo P. v. George P., 526 U.S. 1034 (1999)
- Custody of a Minor (No. 1), 377 Mass. 876, 883, 886 (1979)
- Adoption of Quentin, 424 Mass. 882, 886 & n.3 (1997)
- Adoption of Carla, 416 Mass. 510, 517 (1993)
- Petitions of the Department of Social Services to Dispense with Consent to Adoption, 399 Mass. 279, 289 (1987)

- Adoption of Paula, 420 Mass. 716, 730 (1995)
- Care & Protection of Three Minors, 392 Mass. 704, 705 n.3, 711 (1984)
- Adoption of Diane, 400 Mass. 196, 204 (1987)
- Custody of Two Minors, 396 Mass. 610, 616-617, 621 (1986)
- Commonwealth v. Amirault, 424 Mass. 618, 628 (1997)
- Commonwealth v. Johnson, 417 Mass. 498, 503 (1994)
- Opinion of the Justices, 406 Mass. 1201, 1218 n.15 (1989)
- Commonwealth v. McGruder, 348 Mass. 712, 716 (1965), cert. denied, 383 U.S. 972 (1966)
- Commonwealth v. Daye, 393 Mass. 55, 57 n.2 (1984)
- Little v. Streater, 452 U.S. 1, 13 (1981)
- Petition of the Department of Public Welfare to Dispense with Consent to Adoption, 383 Mass. 573, 587 (1981)
- Custody of a Minor (No. 2), 392 Mass. 719, 725 (1984)
- Department of Public Welfare v. J.K.B., 379 Mass. 1, 6 (1979)
- Petition of the Department of Social Services to Dispense with Consent to Adoption, 384 Mass. 707, 711 (1981)
- Custody of a Minor, 375 Mass. 733, 746 (1978)
- Adoption of Edmund, 50 Mass. App. Ct. 526, 529 (2000)
- Adoption of Duval, 46 Mass. App. Ct. 916, 917 (1999)
- Jones v. Manns, 33 Mass. App. Ct. 485, 492-493 & n.9 (1992)
- Custody of Eleanor, 414 Mass. 795, 800 (1993)