

SUPREME JUDICIAL COURT OF MAINE

In re Tabitha R.

2003 ME 76, 827 A.2d 830 · Decided June 12, 2003

SUMMARY

The Maine Supreme Judicial Court affirmed a jeopardy determination and Department of Human Services custody award as to the mother of three children. It vacated the judgment as to Tiffany’s father because the trial court’s findings did not establish that Tiffany would face prospective jeopardy in his custody, and remanded for a new evidentiary hearing.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Calkins, J.; Alexander; Calkins; Clifford; Dana; Rudman; Saufley
JURISDICTION	Maine
DECIDED	June 12, 2003
DISPOSITION	other
PROCEDURAL POSTURE	The mother and Tiffany's father appealed from a District Court jeopardy order finding the children in circumstances of jeopardy to their health and welfare and awarding custody to the Department of Human Services.
STANDARD OF REVIEW	The sufficiency of the evidence supporting a jeopardy finding is reviewed for whether the evidence supports the trial court's findings; witness credibility determinations are within the sole province of the trial court as fact-finder. The legal sufficiency of the findings to support a prospective-jeopardy determination is reviewed on appeal.
PRECEDENTIAL VALUE	Published Maine Supreme Judicial Court opinion; precedential.
PARTIES	Linda T., mother of Tabitha R., Linda R., and Tiffany R., Father of Tiffany R. v. Department of Human Services

TOPICS

- family law procedure
- child custody
- parental rights
- appellate procedure
- evidence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support the District Court's finding that the children would be in jeopardy if returned to their mother's custody.
2. Whether the District Court's findings established that Tiffany would be in prospective jeopardy if placed in her father's custody.
3. Whether the appropriate remedy for insufficient findings concerning the father's custody was remand for a new evidentiary hearing.

HOLDINGS

1. The evidence, including Tabitha's testimony and corroborating evidence of the mother's drug addiction and abusive behavior, was sufficient to support a finding that the children would be in jeopardy to their health and welfare if returned to the mother's custody.
2. A finding that a parent previously failed to protect a child from jeopardy while the child was in the other parent's custody does not, by itself, establish that the child would be in jeopardy if placed in that parent's custody.
3. Because of the lapse of time and the insufficiency of the existing findings, the District Court must conduct a new evidentiary hearing rather than merely supplement the findings on the existing record.

KEY QUOTATIONS

"Evidence of past jeopardy is relevant to the future, and in the case of a custodial parent it is highly probative, but the question before the court is necessarily whether there is prospective jeopardy." (¶ 7)

"Given the court's meager findings about the father, its conclusion that he failed to protect Tiffany from her mother's abuse when the mother had custody does not, by itself, determine whether she would be in jeopardy if she resided with the father." (¶ 8)

FACTUAL BACKGROUND

Tabitha testified that her mother physically and emotionally abused her and Linda and had a serious prescription-drug addiction; other witnesses corroborated the mother's drug abuse and abusive behavior. Tiffany had witnessed fights and became afraid, although there was no evidence that the mother had physically abused Tiffany. Tiffany's father had been largely absent after the parents' divorce, but resumed regular visits when Tiffany was seven or eight and maintained frequent visits after DHS assumed custody; he lived in a stable Massachusetts home with family support. The District Court found that the father had failed to protect Tiffany from the mother's abuse but also described him as a potentially strong resource for Tiffany.

PROCEDURAL HISTORY

The District Court granted an ex parte preliminary protective order placing the children in DHS custody. After a five-day jeopardy hearing, the court found jeopardy as to the mother based on abuse and drug addiction, and

found that Tiffany's father had placed Tiffany in jeopardy by failing to protect her from the mother's abuse, but did not make sufficient findings concerning prospective jeopardy in the father's custody. The Supreme Judicial Court affirmed the judgment against the mother, vacated the judgment against Tiffany's father, and remanded for a new evidentiary hearing and further findings.

DISPOSITION

other

REMAND INSTRUCTIONS

The District Court must hold a new evidentiary hearing and determine whether Tiffany would be in jeopardy if placed in her father's custody. If it finds jeopardy, it must allow evidence relevant to disposition under 22 M.R.S.A. § 4036 and fully consider the Interstate Compact on the Placement of Children and its implementing regulations. The judgment against the mother is affirmed; the judgment against Tiffany's father is vacated.

CASES CITED

- In re Nikolas E., 1998 ME 248, ¶ 21, 720 A.2d 562, 567
- In re Dorothy V., 2001 ME 97, ¶¶ 12-13, 774 A.2d 1118, 1122
- In re Shawn II, 667 A.2d 1377, 1378 (Me. 1995)
- In re David W., Jr., 568 A.2d 513, 515 (Me. 1990)
- In re Rachel J., 2002 ME 148, ¶¶ 18-19, 804 A.2d 418, 424

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