

SUPREME JUDICIAL COURT OF MAINE

In re Rachel J. et al., 2002 ME 148

804 A.2d 418 (Me. 2002) · Decided August 28, 2002

SUMMARY

The Supreme Judicial Court of Maine affirmed a jeopardy determination removing two children from their father's home based on a threat of sexual abuse. The court held that excluding reputation evidence was harmless error and upheld the admission of evidence concerning the father's prior sexual abuse of family members, while a concurrence disagreed that the exclusion was error.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Dana, J.; Saufley, C.J.; Clifford, J.; Rudman, J.; Alexander, J.; Calkins, J.; Levy, J.
JURISDICTION	Maine
DECIDED	August 28, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	The father appealed from a District Court jeopardy determination in a child-protection proceeding that removed Rachel and Frank from his home and placed them with their mother.
STANDARD OF REVIEW	Exclusion of reputation evidence was reviewed for abuse of discretion. Evidentiary rulings concerning prior sexual-abuse evidence were reviewed for clear error and abuse of discretion. The jeopardy finding was upheld unless no evidence supported it. Preserved error in a child-protection proceeding was reviewed for harmlessness under the highly-probable-no-prejudice standard.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Judicial Court of Maine.
PARTIES	Father of Rachel J. and Frank J. v. Department of Human Services

TOPICS

- family law procedure
- parental rights
- evidence
- relevance
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the District Court improperly excluded testimony concerning K.B.'s reputation for truthfulness.
2. If exclusion of the reputation testimony was error, whether the error was harmless.
3. Whether evidence of the father's prior sexual abuse of family members was admissible in the child-protection proceeding and whether its probative value was substantially outweighed by unfair prejudice.
4. Whether competent evidence supported the District Court's finding that the children were in jeopardy because the father posed a threat of sexual abuse.

HOLDINGS

1. The District Court erred in refusing to admit Rachel's testimony about K.B.'s reputation for truthfulness because the testimony described contacts with K.B.'s family, school acquaintances and their families, and other people in the community sufficient to establish an adequate foundation.
2. The erroneous exclusion of the reputation testimony was harmless and did not require vacatur of the jeopardy determination.
3. The District Court did not err in admitting testimony that the father had sexually abused his nephew and nieces when he was a minor.
4. Competent evidence supported the District Court's finding that the children were in jeopardy because the father posed a threat of sexual abuse, and the court was entitled to credit the testimony of witnesses other than the father.

KEY QUOTATIONS

"The burden is on the proponent of reputation evidence to satisfy the foundational requirements of such evidence including the requirement that the community be sufficiently large and diverse to give the reputation evidence the reliability required for admissibility." (423)

"The nature of the proof required in the child protective context is different than in the criminal context; the court is assessing a risk, not determining whether the father committed a criminal act." (424)

FACTUAL BACKGROUND

After the parents' divorce, the children lived with their father. A sixteen-year-old pregnant girl, K.B., temporarily lived in the father's home, and she testified that she had sex with the father during that period; other witnesses reported that K.B. had made similar statements. The father's nephew and two nieces also testified that he had sexually abused them when they were children. The District Court found that Rachel and Frank were in jeopardy because the father posed a threat of sexual abuse.

PROCEDURAL HISTORY

The Department of Human Services filed a petition alleging that the children faced a threat of sexual abuse by their father. After a jeopardy hearing, the District Court found jeopardy, removed the children from the father's

home, and placed them with their mother. The father timely appealed, challenging exclusion of reputation evidence, admission of evidence of his prior sexual abuse of family members, and the sufficiency of the evidence supporting jeopardy.

DISPOSITION

affirmed

CASES CITED

- State v. Kalex, 2002 ME 26, ¶¶ 16-17, 20, 789 A.2d 1286, 1290-91
- State v. Cyr, 2001 ME 35, ¶ 8, 767 A.2d 307, 310
- State v. Ricker, 2001 ME 76, ¶¶ 6-8, 770 A.2d 1021, 1023-24
- State v. Walker, 506 A.2d 1143, 1149 (Me. 1986)
- In re Michelle W., 2001 ME 123, ¶ 12, 777 A.2d 283, 286
- In re Scott S., 2001 ME 114, ¶¶ 29-30, 775 A.2d 1144, 1153
- In re Kayla S., 2001 ME 79, ¶ 9, 772 A.2d 858, 862
- State v. Huntley, 681 A.2d 10, 13 (Me. 1996)
- In re Nathaniel B., 1998 ME 99, ¶ 6, 710 A.2d 921, 922
- In re Alexander D., 1998 ME 207, ¶ 18, 716 A.2d 222, 228
- Hartwell v. Stanley, 2002 ME 29, ¶ 10, 790 A.2d 607, 611
- Jenkins, Inc. v. Walsh Bros., Inc., 2001 ME 98, ¶ 22, 776 A.2d 1229, 1236-37