

DISTRICT OF COLUMBIA COURT OF APPEALS

In re T.T.C.; E.T.O., Appellant; In re T.C.; E.T.O., Appellant; In re V.T.C.; E.T.O., Appellant

855 A.2d 1117 (D.C. 2004) · No. No. 02-FS-136, C2-FS-152, 02-FS-153 · Decided August 5, 2004

SUMMARY

The District of Columbia Court of Appeals affirmed neglect adjudications concerning three children whose father was incarcerated. The court held that incarceration does not automatically establish neglect under D.C. Code § 16-2301(9)(C); rather, the government must show a nexus between the incarceration and the parent's inability to discharge parental responsibilities, which was established by the father's failure to provide legally effective care arrangements.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Steadman, Associate Judge; Glickman, Associate Judge; Washington, Associate Judge
JURISDICTION	District of Columbia
DECIDED	August 5, 2004
DOCKET	No. 02-FS-136, C2-FS-152, 02-FS-153
DISPOSITION	affirmed
PROCEDURAL POSTURE	E.T.O., the birth father of three children, appealed from adjudications of neglect under D.C. Code § 16-2301(9)(C), arguing that the evidence did not establish a nexus between his incarceration and the children's condition.
STANDARD OF REVIEW	A neglect adjudication will be set aside only if plainly wrong or without evidence to support it. Findings of neglect must be supported by a preponderance of the evidence, and the evidence is viewed in the light most favorable to the government, with deference to the trial judge's credibility determinations, weighing of evidence, and reasonable inferences.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	E.T.O. v. District of Columbia

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QUESTIONS PRESENTED

1. Whether D.C. Code § 16-2301(9)(C) requires the government to establish a nexus between a parent's incarceration and the parent's inability to discharge parental responsibilities.
2. Whether the evidence established the required nexus and supported the adjudication that the appellant's children were neglected.

HOLDINGS

1. The government must establish a nexus between the parent's incarceration and the parent's inability to discharge responsibilities to and for the child; incarceration per se does not constitute neglect under § 16-2301(9)(C).
2. The evidence supported the neglect adjudication because the appellant's incarceration rendered him unable to protect the children or authorize N.H. to act on their behalf when the mother claimed custody and the children were placed at risk.

KEY QUOTATIONS

"We cannot accept the government's argument to the trial court that incarceration per se constitutes an inability to discharge parental responsibilities." (855 A.2d at 1120)

"The trial court did not err in finding that appellant's inability to protect the children when an emergency occurred was the required "nexus" between his incarceration and inability to discharge his responsibilities to his children." (855 A.2d at 1121)

FACTUAL BACKGROUND

The appellant had raised his three sons with his longtime girlfriend, N.H., for approximately five years before he was incarcerated on February 13, 2001. After the children's birth mother reentered the situation and demanded custody, N.H. moved out because she lacked legal standing to contest the mother's custody, and the children were temporarily locked out of the apartment and later exposed to crack cocaine paraphernalia within their reach. Although the father maintained regular visits, telephone contact, and correspondence and N.H. was found to be a suitable caregiver, he had not given her legal authority to act on the children's behalf, leaving the children vulnerable when the mother claimed custody.

PROCEDURAL HISTORY

The trial court adjudicated the three children neglected after their father was incarcerated and the children were left in circumstances that exposed them to instability, an unfit custodial parent, and crack cocaine paraphernalia.

The court placed the children with N.H. and later made that placement permanent. The District of Columbia Court of Appeals affirmed the neglect adjudications as to the appellant father.

DISPOSITION

affirmed

CASES CITED

- In re Am. V., 833 A.2d 493, 497 (D.C. 2003)
- In re J.W., 837 A.2d 40, 44, 46 (D.C. 2003)
- In re E.H., 718 A.2d 162, 169 (D.C. 1998)
- In re B.L., 824 A.2d 954, 956 (D.C. 2003)
- In re C.A.S., 828 A.2d 184, 193-94 (D.C. 2003)
- In re Thomas M., 141 N.H. 55, 676 A.2d 113, 116 (1996)

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