

DISTRICT OF COLUMBIA COURT OF APPEALS

In re N.P.

882 A.2d 241 (D.C. 2005) · Decided September 8, 2005

SUMMARY

The District of Columbia Court of Appeals reviews neglect adjudications involving two children exposed to domestic violence and parental dysfunction. The court affirms the neglect judgment against the father and upholds the mother's neglect finding under D.C. Code § 16-2301(9)(B), while vacating the finding under subsection (9)(C) because court-ordered mental-examination evidence was improperly admitted without sufficient factual allegations in the neglect petition. The court also addresses hearsay, sufficiency of the evidence, and whether concurrent findings under subsections (9) (B) and (9)(C) are impermissibly contradictory.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Terry, Associate Judge; Belson; Glickman; Terry
JURISDICTION	District of Columbia
DECIDED	September 8, 2005
DISPOSITION	other
PROCEDURAL POSTURE	Parents appealed consolidated adjudications finding their two daughters neglected under D.C. Code § 16-2301(9).
STANDARD OF REVIEW	Unpreserved evidentiary claims are reviewed for plain error. Sufficiency of the evidence is reviewed by considering the evidence in the light most favorable to the government and upholding the trial court's finding unless it is plainly wrong or without evidence to support it.
PRECEDENTIAL VALUE	published and precedential
PARTIES	M.P., B.P. v. District of Columbia

TOPICS

- family law procedure
- hearsay
- evidence
- statutory interpretation
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court plainly erred by admitting Dr. Washington's hearsay testimony concerning I.P.'s statements during a court-ordered mental examination.
2. Whether sufficient evidence supported the father's adjudications of neglect under D.C. Code § 16-2301(9)(A) and (B).
3. Whether Dr. Gilliard's testimony concerning the mother's court-ordered mental examination was admissible under D.C. Code § 16-2315(e)(4) when the neglect petitions lacked factual allegations supporting a subsection (9)(C) claim.
4. Whether sufficient evidence supported the mother's adjudication of neglect under subsection (9)(B).
5. Whether sufficient valid evidence supported the mother's adjudication of neglect under subsection (9)(C).
6. Whether neglect findings under subsections (9)(B) and (9)(C) were mutually exclusive or contradictory.

HOLDINGS

1. Although Dr. Washington's testimony about I.P. was hearsay and did not fall within a hearsay exception, its admission was not plain error because it merely duplicated N.P.'s firsthand testimony concerning the abuse.
2. Evidence that I.P. was present during repeated episodes of domestic violence, including N.P.'s corroborating testimony and I.P.'s behavior showing that she recognized and was affected by the violence, was sufficient to support a finding of mental abuse under subsection (9)(A).
3. The evidence was sufficient to establish that I.P. was without proper parental care or control under subsection (9)(B), and the father's challenge failed.
4. Under D.C. Code § 16-2315(e)(4), results of a court-ordered parental mental examination are inadmissible at a factfinding hearing unless the neglect petition alleges facts supporting a subsection (9)(C) claim. Because the petitions contained only conclusory allegations, Dr. Gilliard's testimony was improperly admitted.
5. Willfulness or an affirmative act of wrongdoing is not an element of neglect under subsection (9)(B); the government need only establish that the children were without proper parental care or control.
6. The mother's subsection (9)(C) neglect finding could not stand because Dr. Gilliard's improperly admitted testimony was the only valid evidence linking her diagnosed conditions to an inability to provide proper parental care.
7. Neglect findings under subsections (9)(B) and (9)(C) are independent and may properly be made concurrently; the findings are not mutually exclusive or contradictory.

KEY QUOTATIONS

“Hearsay is a statement, made out of court, which is offered in evidence to prove the truth of the matter asserted.” (247)

“Neglect does not require a finding of parental fault, only the inability or unwillingness to provide proper care for the child.” (250)

“Contrary to what B.P. suggests, the two sections are independent of one another; indeed, the trial court’s findings in this case serve as an example of their independence.” (252)

FACTUAL BACKGROUND

M.P. and B.P. were the parents of N.P. and I.P., who came to the attention of child-protection authorities after a history of domestic violence, instability, and shelter placements. The evidence showed that the children witnessed repeated violence by their father against their mother, that the father abused alcohol and physically abused N.P., and that the children suffered significant emotional consequences. The trial court also found that the mother was unable to provide proper parental care and control and that the family environment involved severe role confusion and psychological harm.

PROCEDURAL HISTORY

The District of Columbia filed neglect petitions concerning N.P. and I.P. After a four-day evidentiary hearing, the Superior Court found both children neglected under subsections (9)(A), (9)(B), and (9)(C), placed them in foster care, and entered related orders concerning visitation and parental services. The parents appealed. The Court of Appeals affirmed the judgment as to the father, vacated the mother's subsection (9)(C) finding because improperly admitted examination testimony was necessary to that finding, and affirmed the judgment as to the mother because the subsection (9)(B) finding remained independently supported.

DISPOSITION

other

REMAND INSTRUCTIONS

None. The father's judgment of neglect is affirmed in its entirety; the mother's subsection (9)(C) finding is vacated, while the subsection (9)(B) finding and judgment of neglect are affirmed.

CASES CITED

- In re S.S., 821 A.2d 353, 358 (D.C. 2003)
- In re S.C.M., 653 A.2d 398, 404 (D.C. 1995)
- Rose v. United States, 629 A.2d 526, 531 (D.C. 1993)
- In re Ca.S., 828 A.2d 184, 190-191 (D.C. 2003)
- In re Kya. B., 857 A.2d 465, 472 (D.C. 2004)
- Jones v. United States, 813 A.2d 220, 227 (D.C. 2002)
- Sullivan v. United States, 404 A.2d 153, 158 (D.C. 1979)

- Brown v. United States, 627 A.2d 499, 508 (D.C. 1993)
- In re E.H., 718 A.2d 162, 168-171 (D.C. 1998)
- In re S.G., 581 A.2d 771, 774 (D.C. 1990)
- In re L.D.H., 776 A.2d 570, 575 (D.C. 2001)
- In re B.C., 582 A.2d 1196, 1198 (D.C. 1990)
- In re O.L., 584 A.2d 1230, 1231-1234 (D.C. 1990)
- In re T.G., 684 A.2d 786, 788 (D.C. 1996)
- In re T.T.C., 855 A.2d 1117, 1119 (D.C. 2004)
- In re N.H., 569 A.2d 1179 (D.C. 1990)

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