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“PREDICTIVE NEGLECT” CASES BASED ON PARENT’S MENTAL HEALTH

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You asked for information on child neglect cases where Connecticut courts affirmed the use of the “predictive neglect” doctrine and removed a child from a parent’s custody based on that parent’s mental illness.

SUMMARY

By law, the Department of Children and Families (DCF) can remove children from their parents’ custody and move to terminate parental rights if it believes the children have been neglected. Predictive neglect is a common-law doctrine that the state’s child welfare system uses to determine whether neglect has occurred on the basis of conditions that are “injurious to the child’s well-being.” Under this doctrine, the child has not been harmed; rather, there is an allegation that the child could be harmed in the future. DCF has regularly relied on the predictive neglect doctrine to both (1) remove children from their parents’ custody and (2) terminate parental rights.

DCF policy establishes factors that could constitute predictive neglect. Although the policy does not include a parent’s unstable mental health as one such factor, DCF has routinely pointed to such as grounds for removing children from their parents’ custody. Likewise, the courts have regularly affirmed these cases and have upheld DCF’s removal. In these

cases, the courts have insisted that the parties petitioning for removal meet a burden of proof threshold.

CHILD NEGLECT

Definition

The law provides that “[a] child or youth may be found ‘neglected’ who (A) has been abandoned, (B) is being denied proper care and attention, physically educationally, emotionally or morally, (C) is being permitted to live under conditions, circumstances or associations injurious to the well-being of the child or youth, or (D) has been abused” (CGS § [46b-120\(8\)](#))

Process

The law allows DCF, among others, to file a neglect petition with the local Superior Court alleging that a child or youth is “neglected.” Often, this filing is accompanied with a Motion for Order of Temporary Custody (OTC). In these cases, if the court determines, based on affidavits provided by DCF, that there is “reasonable cause to believe that (1) the child or youth is suffering from serious physical illness or serious physical injury or is in immediate physical danger from the child's or youth's surroundings, and (2) that as a result of said conditions, the child's or youth's safety is endangered and immediate removal from such surroundings is necessary to ensure the child's or youth's safety,” the court may issue an ex parte order of temporary custody, placing the child or youth with DCF. In emergency cases, DCF also has the power to initiate a 96-hour administrative hold, allowing the department to immediately take custody of a child or youth without court approval. Following this, the agency must go to court as soon as possible to move for an OTC.

Whether the neglect petition is filed on its own or as part of an OTC, parents are entitled to a neglect trial, a full trial to determine whether the child or youth is “neglected” under state law. DCF has the burden of proof by a preponderance of the evidence in these trials. The court considers any evidence pertinent to the child or youth’s living situation and the parent or parents’ ability to care for the child or youth. A finding by the court that the child or youth is “neglected” may result in an order of protective supervision, the commitment of the child or youth, a transfer of custody or, in severe cases, termination of parental rights (CGS § [46b-129](#)).

Predictive Neglect

DCF may allege that a child has been “neglected” based on one or more of the law’s four criteria. It is under the third criteria, that the child or youth is “being permitted to live under conditions, circumstances of associations injurious to his or her well-being”, that DCF has invoked, and the courts have recognized, the doctrine of “predictive neglect.”

While state law does not establish the doctrine, the DCF Policy Manual attempts to clarify which situations may qualify as “conditions injurious to the child’s well-being” for the purpose of alleging predictive neglect. These include when the child:

1. has witnessed repeated episodes of domestic violence,
2. lives in a home where drug trafficking takes place,
3. is repeatedly exposed to alcohol or substance abuse,
4. is exposed to inappropriate sexual conduct by adult caretakers,
5. is left with inappropriate caretakers,
6. has siblings who have been neglected or abused and the conditions leading to that neglect or abuse have not abated, or
7. is a newborn whose parents are unable to provide adequate care ([DCF Policy Manual § 46-3-10](#))

The courts have ruled that predictive neglect exists when a child is in danger of being harmed in the future, even if no harm has presently occurred. The Connecticut Appellate Court has stated that Connecticut’s statutes “clearly and explicitly recognize the state's authority to act before harm occurs to protect children whose health and welfare may be adversely affected and not just children whose welfare has been affected. The [person filing the neglect petition] need not show, but simply allege, that there is a potential for harm to occur” (*In re Michael D.*, 58 Conn. App. 119, 123-24 (2000)). Courts also have ruled that under the doctrine, a child can be considered neglected without ever having been under the custody of a parent (*In re Jermaine S.*, 86 Conn. App. 819, 829 (2005)).

Superior court decisions involving the doctrine of predictive neglect are numerous and have attempted to answer the question as to the “bare minimum of findings” that would be essential to meeting the

preponderance of evidence threshold. In the case cited above, the court stated that “[o]ne generalization that emerges from [predictive neglect cases] is that when a parent cohabits with a sexual predator and exposes her children to him, the likelihood is high that a neglect allegation will be sustained. Similarly, a parent who has demonstrated neglectful behavior towards older children will likely raise sufficient alarm to warrant concern about the wellbeing of a newborn. Lastly, chronic abuse of a child, or chronic inability to meet minimal expectations of parenting skills, will sustain a finding that prospective harm to the child of such a parent is predictable” (In re Olivia O., 2007 WL 4239785 (Conn. Super. Ct., Nov. 15, 2007) (internal citations omitted)).

Mental Illness

Although the DCF Policy Manual’s list of examples of predictive neglect does not include mental illness, Connecticut courts have consistently considered a parent’s mental health as a factor in neglect petitions. For example, a Connecticut trial court has stated that “even chronic mental illness is not alone a ground to support a neglect adjudication. If, however, that proof is successfully coupled with evidence of the impact such illness has or might have upon the child, a finding of predictive neglect can be justly made” (In re Olivia O., 2007 WL 3261395 (Conn. Super. Ct., Aug. 13, 2007) (internal citations omitted)). In reviewing neglect petitions on this basis, Connecticut trial courts have often quoted a predictive neglect case in which the court stated that “[c]ourts have long been supportive of neglect adjudications which are, in effect, based on the prediction that the parent would neglect the child based on the parent’s prior conduct or mental illness and the danger such conduct would present to a child left in her care” (In re Eric A., 1999 WL 1328085 (Conn. Super. Ct., Dec. 28, 1999)).

Case law. We found 74 cases in which a Connecticut court considered whether a child or children had been neglected based on the predictive neglect doctrine. This is not an exhaustive list. In 68 of these cases, the court found the child or children to be neglected. We identified 36 cases in which the court specifically cited a parent’s or both parents’ mental health as a factor in the court’s conclusion that the child would be in danger of neglect if allowed to continue living with the parent. In 15 of the 36 cases, the finding of neglect was coupled with a termination of parental rights. Many of these cases involved a child who had been removed from the custody of their parent or parents immediately after birth.

One Connecticut Appellate Court decision provides a thorough analysis of adjudicating a newborn child under the theory of predictive

neglect based on a parent's mental health. There, the court adjudicated predictive neglect based upon evidence of the mother having obsessive thoughts of harming herself since she was seven years old. Also, after her child was born and the mother was still in the hospital, the mother reported to the staff that she had obsessive thoughts about hurting herself and the baby. The mother was also diagnosed with obsessive compulsive disorder, and regularly saw a psychiatrist, who had prescribed for her antidepressant and antipsychotic medications. The record also disclosed that the father had suicidal thoughts himself. The court concluded that there was sufficient evidence, as a matter of law, to find the child neglected on the theory of predictive neglect (In re T.K., 105 Conn. App. 502, 509, (2008)).

In comparison, a trial court case represents a circumstance where a child was not found neglected under predictive neglect even though the mother (1) suffered a sudden, but debilitating, psychiatric breakdown and (2) over a span of about two months, spent a total of several weeks in the hospital. Following the breakdown, DCF brought its petition contending that mother's condition was such that she could not provide care for her daughter. DCF asserted that the child was, therefore, predictably susceptible to harm and required the state to intervene on her behalf. The court determined that there was no suggestion that mother brought her condition upon herself by anything she did, or that she could have anticipated or avoided it. Also, aside from this period of acute crisis, there was no indication that the mother was otherwise deficient in any respect as a parent. The case came down to the question of whether Olivia was in present jeopardy during the mother's incapacitation, or in potential jeopardy on account of the lack of an appropriate plan for her protection during that crisis. Unable to affirm these contentions, the court refused to find the child to be neglected (In re Olivia O., 2007 WL 4239785 (Conn. Super. Ct., Nov. 15, 2007)).

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