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STATE SUPREME COURT DECISION REGARDING PREDICTIVE NEGLECT

By: Robin K. Cohen, Principal Analyst

As a follow up to OLR report [2012-R-0103](#), we offer a summary of a recent state Supreme Court case (*In Re Joseph W., Jr., et. al.*, 305 Conn. 633 (2012)) involving the doctrine of “predictive neglect.”

SUMMARY

Recently, the state Supreme Court ruled unanimously that the trial court had failed to properly prove “predictive neglect” when terminating the parental rights of the parents of two children. The court found that the trial court had relied on a “potential risk of neglect” standard, which the Appellate Court had previously used, when a higher burden would be required. The Supreme Court remanded the case to the trial court to apply the proper standard.

CASE FACTS

The respondent parents brought the case on separate appeals. They challenged the trial court’s decision to terminate their parental rights on the basis that they were unable to care properly for their two children, and therefore potentially placing their children at risk of neglect under the common law doctrine of “predictive neglect.” Although state law does not explicitly recognize this doctrine, the Department of Children and Families (DCF) has successfully invoked it when bringing neglect petitions under the law against a parent when the child or youth is

“being permitted to live under conditions, circumstances or associations injurious to his or her well-being” (see OLR report [2012-R-0103](#) for a more detailed summary of the doctrine and related state case law).

In this case, DCF had 10 years of involvement with the family. In 2007, a trial court terminated the parental rights of the mother to her daughter. When the girl was born in 2002, the mother exhibited strange behavior at the hospital and, despite efforts to address “child protection” concerns, the court ultimately determined that the mother’s “mental problems impaired her ability to safely parent” her daughter (*In Re. Joseph*, at 637).

In 2005 and 2006, the mother gave birth to Joseph and Daniel, respectively. (The boys share the same father.) The parents did not inform DCF of her pregnancy with Joseph (the implication here seems to be that they were obliged to do so given the mother’s history) and left the state, giving birth to Joseph in Pennsylvania. Hospital personnel there notified the local child protection agency that the mother was exhibiting “bizarre behavior” and that both parents had “failed to provide accurate information regarding their housing situation and financial status.” Also, the father “appeared to lack insight as to the mother’s mental problems” and how this might affect Joseph’s safety. Pennsylvania authorities notified DCF and held Joseph in the hospital.

Subsequently, the DCF commissioner filed an ex parte motion for temporary custody, which the trial court granted, and then filed a neglect petition alleging that the parents were denying Joseph proper care. The petition stated that the mother had a “significant and longstanding mental health condition” that impaired her ability to provide a safe environment for Joseph. DCF alleged that Joseph’s mother, despite having received psychiatric services, had failed to benefit from them and Joseph’s father had no insight or acceptance of the mother’s condition and how it might affect Joseph. Joseph was placed in a foster home and DCF made referrals to services in order to help the family reunify.

Almost exactly a year after Joseph was born, his mother gave birth to another boy, Daniel. (The court opinion does not indicate where Daniel was born, nor does it mention the mother’s behavior in the hospital.) Within days, DCF filed an ex parte motion for temporary custody of Daniel and the trial court granted it. At the same time, DCF filed a neglect petition, alleging that Daniel’s parents were denying him proper care and that he was being allowed to live “under conditions injurious to his well-being” (*In re Joseph*, at 638). As it had for Joseph, DCF made similar claims about Daniel’s mother’s mental health issues. DCF’s

petition further stated that Daniel's father "had not demonstrated an ability to care for the child independent of the mother." Daniel was ultimately placed in the same foster home as Joseph (which happened to be the same home where their half-sister was residing).

In August 2007, the first trial on the neglect petitions was held at which the mother entered a plea of no contest; the father did not enter a plea. The court rendered neglect adjudications for both boys and committed them to DCF custody. Thereafter, DCF filed petitions to terminate parental rights. The trial court granted the termination after a trial and the parents appealed. However, because the father had been prevented from entering a plea, both the Appellate and Supreme Court reversed and sent the case back to the trial court.

At the second trial, the trial court found by a fair preponderance of the evidence that both children had been neglected under the predictive neglect doctrine. That court looked at each child, as well as the mother's mental health problems, and agreed with DCF's claim that the mother was unable to care for both boys. It likewise found that the father had failed to "comply completely" with recommendations that he attend parenting education, secure a home for Daniel, and abide by the court orders on restricting the mother's access to his home. The court did acknowledge that during supervised visits with Joseph before Daniel was born, the boy's father had demonstrated "love and affection" for the boy and had been able to "properly care" for him with some assistance. The court ultimately concluded that both boys were at risk of harm in the parents' care.

In disposing of the case, the trial court found by a fair preponderance of the evidence that it was in the interests of both children that they be committed to DCF custody, relying on the same evidence that was presented during the adjudication phase.

On appeal, the father claimed:

1. that the standard of proof applied by the trial court as to the doctrine of predictive neglect was inconsistent with the standard of proof required for "neglect," as provided for in [CGS § 46b-120 \(8\)](#);
2. there was insufficient evidence to support a predictive neglect finding; and

3. that the trial court improperly denied the respondents' request for relief under the Americans with Disabilities Act (ADA) (presumably given the mother's mental illness).

The mother's appeal contained similar claims. The Supreme Court agreed with the father's first claim and ordered the case to be remanded to the trial court to apply a proper standard of proof. (The court also addressed the ADA claim but ultimately rejected it, agreeing with the trial court. It did not take up the father's second claim since the case was being remanded.)

ANALYSIS

To address the respondents' claim that the trial court applied an improper standard of proof in making a determination of predictive neglect, the Supreme Court reviewed the law governing neglect proceedings ([CGS § 46b-129](#)), which consist of adjudication and disposition. It found that the statute contained no standard of proof, and thus asserted that due process required a standard appropriate to the issue at hand.

The court, again relying on its own precedent, said that the standard had to be a fair preponderance of the evidence because depriving rights was "reviewable and nonpermanent" and the "private interests involved are relatively balanced between the safety of the child and combined family integrity interests of the parent and the child." (*In Re Joseph* at 644).

The court stated that the trial court, in disposing the case, had applied the standard of "potential risk of neglect," as set forth in an earlier appellate holding in a neglect proceeding that had used this standard. Yet the father claimed that such standard was improper, and that the court should instead rely on a reading of the statute ([CGS § 46b-120](#)), which in the court's mind, would require the state to prove with virtual certainty that if the children were to remain in the parents' custody, they would be harmed.

The court agreed that showing a preponderance of evidence that there was a "potential risk" of neglect would be inconsistent with the due process principles called for in an earlier Supreme Court decision, but it disagreed with the father's standard of "virtual certainty." The court suggested that the trial court, in granting the parents a new trial, had to find that it was "more likely than not" that if the children remained with the parents, they would be "denied proper care and attention."

It added that in cases where the predictive neglect doctrine was the basis for a neglect proceeding, the petitioner had to meet the standard with respect to each parent contesting the petition who “has expressed a desire, or at least a willingness, to care for the child independently of the other parent,” contrasting this test with one required when actual neglect occurred (*In Re Joseph*, at 646).

But the court noted that in predictive neglect proceedings, the trial court could treat the parents as a single unit if (1) the parents indicate their intention to care for the child together or (2) the trial court discredits a parent’s claim to independently care for the child (*In Re Joseph*, at 647-648).

RC:ts