

CHILD DEPENDENCY AND NEGLECT CASES :
THE LEGAL PROCESS

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December, 1978

62836

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INTRODUCTION

In 1967, 7,000 cases of suspected child abuse were reported in the United States. By 1974, this figure had jumped to 200,000 cases. It is presently estimated that there are 1.6 million children abused per year resulting in 2,000 deaths. Experts estimate that there may be as many as 6.4 million children who are neglected in the United States per year.

In Douglas County, the county in which Omaha, Nebraska is located, there were 265 cases filed in Juvenile Court alleging parental abuse or neglect for the three-year period 1975 through 1977. In the vast majority of these cases, there was a request for the termination of parental rights. These figures understate the problem in that they reflect only those cases which were contested by the parents. Uncontested cases, such as abandonment and voluntary relinquishment, are not included in the count.

The purpose of this paper is to give a broad overview of Nebraska law concerning child abuse and neglect, and the termination of parental rights.

BACKGROUND MATERIALS ON THE LAW

I. The Autonomous Family Tradition

It is a basic tenet of our law that there should be as little governmental interference as possible with family decisions, choice of life styles and child rearing practices. This tradition of family autonomy has fostered a spirit of independence and diversity which is vital to Americans. The American family has found protection from governmental interference in the Due Process

and Equal Protection Clauses of the Fourteenth Amendment and the Ninth Amendment to the U.S. Constitution.

Hand in hand with a family's right to be relatively free from governmental intrusion is the right of parents to raise their natural or adopted children. Additionally, a child has a corresponding right to live with his or her parents and siblings and receive love, care and affection from them.

II. Children's Rights

Even though Nebraska has not affirmatively legislated the rights of children, these rights may be inferred from the duties the law imposes on parents.

Under the law, children are special since they are presumed to be incomplete beings who are not fully competent to determine and safeguard their own interests. They are seen as dependent and in need of direct, intimate, and continuous care by adults who are personally committed to assume this responsibility. For this reason, the state seeks to assure each child in a family with at least one adult whom the law designates as "parent". This person need not be the natural parent, but only an adult who is in the psychological position of parent with respect to the child.

Right to Necessities - Support and Maintenance

Children have a right to the basic necessities of life, including adequate food, shelter, clothing and medical attention. But these rights are qualified in that as long as certain minimum standards are met, parents are required to only do the best they can to support their children; this largely being determined by the health, means and station in life of the parents.

Right to Protection From Injury and Abuse

Children have a right to be protected from harm, injury or abuse at the hands of their parents or other persons.

Other Rights

Children also have qualified rights to an education, an emotionally stable environment, a right to inherit and a right to basic Constitutional protections.

THE LEGAL PROCESS - DEPENDENCY AND NEGLECT CASES

A parent's rights may be limited or terminated by a court upon a finding of dependency, neglect or abuse. The following material is intended as a general outline of the process through which child dependency, neglect and abuse cases go. Since some of the procedures vary from place to place throughout the state, it is only possible to give a general outline of the process.

I. Reporting Child Abuse and Neglect

Whenever any person has reasonable cause to believe that a child has been subjected to abuse or neglect, that person must report the incident or circumstances to either the local police department or to the county sheriff. For purposes of reporting, abuse or neglect is defined as follows: Knowingly, intentionally or negligently causing or permitting a minor child or incompetent or disabled person to be (a) placed in a situation that may endanger his life or physical or mental health; (b) tortured, cruelly confined, or cruelly punished; (c) deprived of necessary food, clothing, shelter, or care; (d) left unattended in a motor vehicle, if such minor child is six years of age or younger; or (e) sexually abused.

Any person who willfully fails to make a report which is required by law may be found guilty of a misdemeanor.

II. Investigation

Upon receiving a complaint, the law enforcement agency will make the determination as to whether or not an investigation should be conducted. If, in its opinion, an investigation is warranted, the law enforcement agency has the authority to take immediate steps to protect the abused or neglected person. A child under the age of eighteen may be taken into custody by an officer of the peace without a warrant or an order of the court when a child is seriously endangered in his or her surroundings, and immediate removal appears necessary for his or her protection.

In Omaha, the protective services unit of the county welfare department makes the initial investigation. Following the investigative stage, if warranted, the family is offered appropriate social services or counseling. The purpose of this is twofold; protection of the abused or neglected person and preservation of the family unit. Most abuse and neglect proceedings end at this stage.

III. Initiation of Court Proceedings Alleging Dependency or Neglect

If the investigation reveals conditions which the investigator believes require more than the mere providing of services or counseling, a recommendation is made to the county prosecuting attorney asking that legal proceedings be commenced which would declare the child to be a dependent or neglected person.

At this stage, the prosecuting attorney is given exclusive authority to make the decision whether to file a petition alleging

dependency or neglect. The statute also states that any "reputable" person residing within the county may file appropriate papers with the court alleging dependency or neglect but that person may file only with the consent of the county attorney.

The prosecutor may decide not to file a complaint if the evidence is insufficient, if court action is premature or inappropriate, or if the best interests of the child and the family would be better served by further help from the appropriate social service agency.

IV. Court of Jurisdiction

In cases involving dependent and neglected children, Nebraska statutes give the Juvenile Court exclusive authority to take jurisdiction, try the case and pass judgment.

V. Dependency and Neglect - Circumstances Necessary for Such a Finding

If the prosecutor determines that there is sufficient evidence, and that it is in the best interests of the child, the jurisdiction of the juvenile court may be invoked in order to have the child adjudicated a dependent or neglected child.

Dependency

Any child who is "homeless", "destitute" or "without proper support" is a dependent child. A finding of dependency requires no need to make a showing that the parent was at fault in failing to provide for the child.

Neglect

In contrast, the neglect statutes imply parental fault or culpability. In order to sustain a finding of neglect, a person under eighteen must fall into one of the following categories:

- (a) Abandonment by his/her parents;

- (b) Lack of proper parental care by reason of parental habits or fault;
- (c) Deprivation of necessary subsistence, education or other care necessary for his/her health, morals and well-being;
- (d) Parental refusal to provide special care made necessary by the mental condition of the child.

Additionally, children may be found to be neglected if they are found in a situation or occupation which is dangerous or damaging to their health or morals.

Petitions alleging dependency or neglect often contain a statement asking for termination of parental rights. To avoid confusion, the statutory requirements for termination will be discussed in Section IX.

VI. Seizure of Children - The Detention Hearing

A child under the age of eighteen may be taken into custody at the time of the initial investigation by a police officer if the child is seriously endangered by his/her surroundings. A petition alleging dependency or neglect may contain a request for the temporary removal of the child if the prosecutor believes the conditions of the particular case warrant such action. In either case, a hearing must be held within a reasonable time to determine whether conditions do in fact exist which make such drastic action necessary. This initial hearing is called a Detention Hearing.

Detention Hearing

The detention hearing's purpose is to determine whether probable cause exists to believe the child is seriously endangered by his or her surroundings and whether custody should be continued temporarily by some person or agency other than the parents. All

parties are represented by an attorney at this hearing, including a guardian who represents the interests of the child. In some counties, this hearing is usually informal, that is, strict rules of evidence do not apply.

Removal of the Child - Placement Alternatives

Should the judge decide to remove the child from the custody of the parents, the judge must then make a determination as to where the child should be temporarily placed. Placement alternatives include friends, relatives, and foster homes.

VII. The Adjudicatory Hearing

The next step in the process is the Adjudicatory Hearing which is a full trial on the merits. This trial provides all the procedural safeguards which any other trial has. There is, however, no right to a trial by a jury.

Should the judge determine that the evidence is insufficient to make a finding of neglect or dependency, the case will be dismissed. If there is sufficient evidence to warrant a finding of dependency or neglect, the judge will move to the next stage in the process which is the Dispositional Hearing.

Because parental rights are so important, all parties are given the opportunity to have legal counsel. In any proceeding for the termination of parental rights, the judge must advise the parents and minor(s) of their right to representation by an attorney; if they cannot afford legal counsel, an attorney will be appointed for them at the expense of the county. In any juvenile proceeding, the court is authorized, on its own motion, or at the request of any party to the proceeding, to appoint a guardian to represent the interests of the child.

VIII. Dispositional Hearing

If a child is found to be dependent or neglected, the judge must then move to the dispositional stage of the hearing. At this stage, the law allows the judge maximum flexibility. The child may be allowed to remain in the home (subject to supervision of the court), committed to a "suitable institution", placed with a "reputable" citizen, given to the care of an approved association, given to a suitable family or to the Department of Welfare. In placing the child, reasonable efforts must be made to place the child with persons holding the same religious beliefs as the parents of the child or with some institution which is controlled by persons of like religious faith as the parents.

If the court's order of disposition permits the child to remain in his/her own home, the court may require the parents or guardian to do one or more of the following:

- (1) Eliminate the specified conditions constituting or contributing to the problems which led to juvenile court action;
- (2) Provide adequate food, shelter, clothing and medical care and for other needs of the child;
- (3) Give adequate supervision to the child in the home;
- (4) Take proper steps to insure the child's regular school attendance;
- (5) Cease specified conduct or practices which are injurious to the welfare of the child;
- (6) Resume proper responsibility for the care and supervision of the child.

The maximum duration of any such terms or conditions is one year unless the court finds that exceptional circumstances require an extension for an additional year.

If the child is placed with some institution or family (other than his or her own), that family or institution becomes the guardian of the child. With the exception of the Department of Welfare, the guardian cannot give the child consent to marry or join the military without approval of the court. If the child has been placed with the Department of Welfare or an approved private institution, then that institution or the Department of Welfare has the authority to place the child with a "suitable family" or "institution".

The final alternative available to the judge at the dispositional stage is the total termination of parental rights.

IX. Termination of Parental Rights

Notice

In addition to facts alleging that a child is dependent or neglected, facts may also be set forth in the original petition alleging that grounds exist for the termination of parental rights. Termination of parental rights can only be decreed by a juvenile court in a proceeding brought for that purpose. Therefore, there must be notice in the summons that the proceeding is one to terminate these rights.

Grounds for Termination

A court may terminate parental rights only when it has determined that termination is in the "best interests" of the child and when the court finds that one or more of the following conditions exist as outlined in the termination statute:

- (a) The parents have abandoned the child for six months or more immediately prior to the filing of the petition;
- (b) The parents have substantially and continuously or repeatedly neglected the child and refused to give the child necessary parental care and protection;
- (c) The parents, being financially able, have willfully neglected to provide the child with the necessary subsistence, education or other care necessary for his health, morals or welfare, or have neglected to pay for such subsistence, education or other care when legal custody of the child is lodged with others and such payment has been ordered by the court;
- (d) The parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs or repeated lewd and lascivious behavior, which conduct is found by the court to be seriously detrimental to the health, morals, or well-being of the child;
- (e) The parents are unable to discharge parental responsibilities because of mental illness or mental deficiency, and there are reasonable grounds to believe that such conditions will continue for a prolonged, indeterminate period; or
- (f) Following upon a determination that the child is one as described in subdivision 1) or 2) of section 43-202 (the dependency and neglect statute), reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the determination.

A word about "best interests". The adjudicatory hearing may clearly establish that one or more of the six conditions exist which would authorize the court to terminate parental rights. However, judges need not terminate parental rights if they believe to do so would not be in the best interests of the child.

Before making a decision to terminate, the judge must weigh all of the circumstances. For example, a judge may decide that it is in the best interests of the child not to terminate parental rights where the child will soon reach the age of majority, the child is seriously handicapped, where placement alternatives may be unacceptable, or where termination would produce serious emotional damage in the child.

X. Consequences of Termination

An order terminating parental rights divests the parent and the child of all legal "rights, privileges, duties and obligations" with respect to each other. Regarding rights of inheritance, the parents have no rights with respect to the child, however, it is unclear in Nebraska whether termination cuts off the child's right to inherit from its parents.

An order of termination is a final decree which may be appealed to the Supreme Court.



END