Catholic University Law Review

Volume 30
Issue 4 *Summer 1981*

Article 20

1981

Governmental Services and Social Welfare

Mary Elizabeth Frederick

GOVERNMENTAL SERVICES AND SOCIAL WELFARE

I. JUDICIAL DECISIONS

A. Juveniles

In a case of first impression, the District of Columbia Court of Appeals held, in *In re J.M.W.*,[1] that family division courts lacked jurisdiction to revoke the aftercare status of a minor once the minor is placed in the custody of the Commission on Social Services.[2] A delinquent juvenile was placed by court order in the care of the Commission and granted aftercare status by the Commission. Then, after the juvenile had twice violated curfew, the District of Columbia Corporation Counsel successfully petitioned the family court to revoke the aftercare status. The District of Columbia Court of Appeals found that, as a matter of statutory construction,[3] the commitment of a minor to the care of a social service agency, unlike probation, was a dispositional alternative that could not subsequently be modified by the family court. According to the appeals court, the family court retained the power to modify a Commission aftercare decision only if the original court order granting custody to the Commission (or other social service agency) specifies that release of the child must be court-ordered.

The District of Columbia Court of Appeals, in *In re T.L.J.*,[4] found that the District of Columbia Corporation Counsel had standing to move to extend the commitment of a juvenile where the extension was necessary for the juvenile's welfare or for protection of the public interest. The defendant, convicted and placed in the custody of the Commission on Social Services to be released only upon court order, challenged the Corporation Counsel's standing. The defendant argued that District of Columbia law permitted the extension of juvenile disposition orders only upon motion of the institution holding the juvenile in custody, or upon a court finding that such an extension would benefit the minor or would be in the public inter-

1. 411 A.2d 345 (D.C. 1980).

2. *Id.* at 346. Aftercare status means that the juvenile either is returned to his home with follow-up counseling for the juvenile and his family, or is placed in a supervised group house. The Commission on Social Services was previously known as the Social Rehabilitation Agency.

3. The court construed D.C. CODE §§ 16-2301(21) & 16-2322(a) (1973).

4. 413 A.2d 154 (D.C. 1980).

est.[5] The court of appeals rejected the defendant's contentions. It held that the authority granted custodial institutions was not exclusive in light of the broad statutory authority of the District of Columbia to participate in all family division proceedings, and in light of the Corporation Counsel's authority to act on behalf of the Commission on Social Services in all matters.[6]

B. Mental Health

Refusing to follow its earlier decisions, the District of Columbia Court of Appeals held, in *In re Nelson*,[7] that the proper standard of proof in civil commitment proceedings was clear and convincing evidence, not proof beyond a reasonable doubt. While denying the defendant's claim that there was insufficient evidence to find that she was incompetent beyond a reasonable doubt, the court expressly adopted the clear and convincing standard recently enunciated by the Supreme Court in *Addington v. Texas*.[8] The court of appeals noted that its previous decisions, which adhered to a beyond-a-reasonable-doubt standard, expressed the belief that the potential deprivations of liberty embodied by civil commitment and by criminal proceedings were comparable.[9] Adopting the reasoning of *Addington*, the District of Columbia Court of Appeals rejected this belief. The court stated that, unlike a criminal proceeding, civil commitment was not an adversarial process, and that hospitalization, unlike a penal sentence, was based on the government's beneficial *parens patriae* power.

5. D.C. CODE § 16-2322(b)(2) (1973).
6. D.C. CODE § 16-2305(f) (1973).
7. 408 A.2d 1233 (D.C. 1979).
8. 441 U.S. 418 (1979).
9. The issue of standard of proof for civil commitment proceedings was squarely addressed in *In re* Hodges, 325 A.2d 605 (D.C. 1974). In that case, the District of Columbia Court of Appeals adopted the reasoning of *In re* Bally, 482 F.2d 648 (D.C. Cir. 1973) and concluded that the proper balance between individual liberty and the legitimate interests of the state in institutionalization could only be struck by a standard requiring proof beyond a reasonable doubt.

II. LEGISLATION[10]

A. Health

1. Newborn Screening

Under the District of Columbia Newborn Screening Act,[11] all District of Columbia hospitals must now test newborn infants for hyperthyroidism and phenylketonuria, which are metabolic disorders that can result in mental retardation. The Act requires that parents be fully informed of the purpose and the risks of such testing, and that no tests shall be administered over parental objection. The Act also provides that positive test results are to be returned to the parents and that the District designate a physician to assist the parents in arranging follow-up examinations or therapy.

The Act also directs the Mayor to appoint a Committee on Metabolic Disorders, comprised of four consumers and five nonconsumers. Four of the latter must be physicians knowledgeable in metabolic disorders. The Committee's duties include informing the public about metabolic disorders and available programs, evaluating the efficacy of the new early detection program, and submitting annual reports of its activities to the Mayor. The Mayor retains the authority to order, through regulations, additional testing.

2. Certificate of Need

The District of Columbia Council enacted the District of Columbia Certificate of Need Act of 1980,[12] repealing a similar 1977 act and continuing the District's qualification for federal assistance under the National Health Planning and Resource Development Act of 1974.[13] The new Certificate

10. The District of Columbia Council also passed the following: Public Service Commission General Counsel Act of 1980, D.C. Law No. 3-124, 28 D.C. R. Reg. 90, 970 (1981) (to be codified in D.C. CODE § 43-204) (establishes an Office of General Counsel for the Commission and grants the General Counsel authority to represent and appear for the Commission in all actions); District of Columbia Office of Energy Act of 1980, D.C. Law No. 3-132, 28 D.C. R. Reg. 445, 1168 (1981) (to be codified in D.C. CODE tit. 1, ch. 19) (transforms the District of Columbia Energy Unit of the Mayor's Executive Office into a separate executive office charged with the development of a comprehensive long-range energy plan and a fuel allocation program, and promotion of energy-related business and low income assistance policies. The Act also establishes a 21 member Citizen's Energy Advisory Committee).

11. D.C. Law No. 3-89, 27 D.C. R. Reg. 1087, 3389 (1980) (to be codified in D.C. CODE § 6-2231.

12. D.C. Law No. 3-99, 27 D.C. R. Reg. 3599, 4268 (1980) (to be codified in D.C. CODE §§ 32-341 to -357).

13. 42 U.S.C. §§ 300k to 300n-5 (1976 & Supp. III 1979). The National Health Planning

of Need Act narrows the circumstances in which a certificate is required. Only persons proposing new inpatient institutionalized health services, acquisition of major medical equipment, or investments of over $150,000 in capital expenditures need apply to the District of Columbia Department of Human Resources. The Department will determine whether the public need warrants such change in health services.

To qualify for a certificate of need, an applicant's proposal must meet all appropriate federal statutory or regulatory requirements and the applicant must pledge that a reasonable volume of its services (up to 3% of its total operating expenses) will be provided without charge or at reduced rates. The District of Columbia Department of Human Resources shall specify in each certificate the maximum amount of capital expenditures that may be obligated by each applicant. Certificates are for one year and may be renewed for no more than four years. They may not, however, be sold or transferred.

The Department retains the right to withdraw the certificate of need if, after public hearing, the Department determines that a certificate holder is not making a good faith effort to meet the conditions specified in the certificate. Certificate applicants or current holders who wish to transfer their interests may appeal the Department's decisions to the District of Columbia Board of Appeals and Review and, upon the exhaustion of administrative remedies, may file suit in the District of Columbia Court of Appeals.

B. Elections

In 1980, the District of Columbia Board of Elections and Ethics issued new rules governing District campaigns.[14] Candidates now have ten days (instead of five) after the candidacy is announced to designate a principal campaign committee. The rules specify that candidates who run for more than one office must designate a campaign committee for each office sought. New procedures also govern notice to the Director of the Board

---

and Resources Development Act of 1974 provides federal loans and grants for the construction and improvement of institutional health care facilities. 42 U.S.C. §§ 300q, 300r (1976 & Supp. III 1979). Each state seeking to apply for federal funding must establish a state agency to perform specified regulatory functions, 42 U.S.C. § 300m (1976 & Supp. III 1979), including the granting of certificates of need. 42 U.S.C. § 300m-2(a)(H)(B) (1976 & Supp. III 1979). In accordance with the federal Act's provisions, 42 U.S.C. § 300m(b)(1) (1976 & Supp. III 1979), the Department of Human Resources was designated as the agency in charge of health planning and development in the District of Columbia. Mayor's Order 76-59, 22 D.C. R. Reg. 4302 (1976).

14. 27 D.C. R. Reg. 1510 (1980). The District of Columbia election laws governing the financial disclosures of candidates are codified in D.C. CODE §§ 1-1133 to -1141 (Supp. V 1978 & Supp. VII 1980).

upon a substantial change in the campaign committee's status. Notice must be given within ten days after the committee ceases to accept contributions or to make expenditures. The Board must also be notified within ten days of a committee's dissolution.

The new rules also modified the statutory limitations on campaign contributions.[15] While the maximum aggregate amount any person can contribute to a single election remains a total of $4,000,[16] "one election" was defined by the new rules as the primary, general and specific election for each office or any initiative, referendum or recall measure. The new rules require the Director of the Board to examine and audit the statements of every candidate and campaign committee after each election. Candidates will be required to repay contributions that the Director determines exceed statutory limits. Candidates may contest the Director's findings at a hearing, but the Director's subsequent determination is final.

Mary Elizabeth Frederick

15. D.C. CODE §§ 1-1161 to -1162 (Supp. V 1978 & Supp. VII 1980).
16. D.C. CODE § 1-1161(c) (Supp. VII 1980).