

Washington Supreme Court rules kids don't have a right to a lawyer in dependency hearings

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The Washington state Supreme Court in Olympia. (Rachel La Corte / The Associated Press, 2015)

A divided Washington Supreme Court has ruled that children who are involved in dependency hearings are not guaranteed an attorney to represent their interests; dissenters say the decision treats children like "chattel."

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Children who have been taken from their homes by the state do not have an automatic right to an attorney who represents their rights, and their rights alone, in dependency court, a divided state Supreme Court ruled in an opinion published Thursday.

In so ruling, the majority court also established criteria for family court judges to consider when deciding whether to appoint an attorney to children who are involved in dependency cases, according to Candelaria Murillo, directing attorney at Columbia Legal Services' Children & Youth Project. Last year, the Legislature provided resources for attorneys to be appointed to children in dependency cases in limited circumstances as part of a pilot project.

“It wasn’t a complete victory, but it’s a step in the right direction,” said Murillo, [who argued the case before the Washington Supreme Court](#) in March. She said that arguably the most important people in dependency hearings are the ones too often without a voice.

The appeal before the Supreme Court was on behalf of two children in two separate cases in King and Pierce counties. The children, who are identified only by their initials, were not granted legal counsel during their dependency cases. The cases were filed in 2015 and 2016, although the issue of whether children should have guaranteed legal representation at the hearings has been debated for more than a decade.

Murillo said her organization will turn its efforts next toward the state Legislature for a remedy. As in any other battle for civil rights, she said, “We have to keep pushing and we have to keep asking.”

Although numerous studies — including those conducted by the [University of Washington Child & Youth Advocacy Clinic](#), and the [University of Chicago](#) — have shown dramatically improved outcomes for children with legal counsel, Washington is among the minority of states who do not assign legal counsel automatically to children in dependency cases.

In a report on the legal representation of abused and neglected children nationwide [by First Star and the Children’s Advocacy Institute](#), Washington was among only 10 states to receive an “F.”

In the majority opinion, authored by Justice Susan Owens, the court determined that Washington state’s current statute regarding the appointment of counsel for children in dependency proceedings — which gives judges discretion on a case-by-case basis — sufficiently protects their constitutional right to due process.

Each dependency case is different, Owens wrote, and some are more fraught with tension and conflict than others. In some cases where the needs and desires of children and parents are aligned, the court said, children may not need their own attorney.

“In other instances, where the dependency is contested or when the State assumes custody of a child, the tension may be heightened,” Owens wrote. “Accordingly, the amount of process due to children in dependency proceedings will vary with each case.”

Justice Mary Yu, in a strongly worded dissent that was signed by Justice Steven C. González and, in part, by Justice Barbara A. Madsen, wrote that the court’s decision reversed course and halts progress, “reverting to the view that children in dependency cases are commodities to be allocated, not individuals to be heard.”

“I cannot join the lead opinion’s retreat to a perspective that treats children as mere ‘chattels incident to adult domestic relations,’ ” Yu wrote.

In its ruling, the state's high court directed dependency court judges to consider the following criteria when deciding whether to assign legal counsel to a child: the child's age, whether the child is in the physical custody of the state, whether the child's interests are aligned with those of other parties in the case, whether the child disputes the facts, and whether the child has voiced complex independent ideas about their fate.

Justice Sheryl Gordon McCloud, who voted with the majority, wrote in a separate opinion that full consideration of the criteria and other factors raised when considering whether to appoint counsel for the child "should go a long way toward addressing the problems detailed in the dissent."

"We'll see what happens when the courts start applying this," said Candelaria. "But some criteria is always helpful."

Children most often end up in dependency court following allegations of abuse, abandonment or neglect by their parents or caregivers. In Washington, parents involved in dependency cases are always assigned attorneys of their own.

Last year, a bill that would have mandated the assignment of legal representation to children in dependency cases [stalled in the House committee](#). The state Legislature, however, funded a pilot project in four counties to collect additional data on the impact on outcomes for children who have lawyers during dependency proceedings, and is scheduled to revisit this issue again in December 2018.

Although two justices dissented, the high court also set a precedent by ruling to seal the case, thereby protecting the parties involved from public scrutiny. Murillo said dependency cases are sealed when they are in the lower courts, but in the past were unsealed during the appeals process, which could discourage people from appealing a case due to privacy concerns.

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