

appeals of this nature must guard against confirmation bias.

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## The Best-Interest Model of Termination of Parental Rights

**Shree Sarathy, MD**  
Fellow in Forensic Psychiatry

Department of Psychiatry  
University Hospitals Case Medical Center  
Cleveland, OH

**Sherif Soliman, MD**  
Assistant Professor of Psychiatry

Case Western Reserve University School of Medicine  
Cleveland, OH

### Despite False Allegations of Abuse Against the Mother of a Child, the Child's Best Interest Supersedes Consideration of the Unfair Nature of the Termination of Maternal Contact With the Child

In *Knutsen v. Cegalis*, 137 A.3d 734 (Vt. 2016), Raymond Knutsen moved to terminate reestablishment of parent–child contact with Karen Cegalis, the mother of the child, claiming that Ms. Cegalis and her previous partner had sexually abused the child, an allegation that was never factually substantiated. The Superior Court denied Ms. Cegalis' motion to modify parental rights and responsibilities and denied her any parent–child contact unless the child's therapist recommended such contact. Ms. Cegalis appealed, and the Supreme Court of Vermont affirmed the lower court's decision, citing the best interest of the child.

#### Facts of the Case

Mr. Knutsen and Ms. Cegalis had a son in August 2005. Mr. Knutsen was awarded primary custody of their son in 2009. The court concluded that he had a greater ability to foster the child's relationship with his mother. He eventually remarried.

In 2012, according to Mr. Knutsen, his son reported that he had been sexually abused by Ms. Cegalis and her boyfriend. Mr. Knutsen filed a motion for a restraining order placed against Ms. Cegalis. The court found that he failed to prove the abuse by a preponderance of the evidence, and thus, his motion was denied. The court requested that a psychol-

ogist help to initiate and carry out a reunification plan. The court also requested that the parents and child undergo forensic psychiatric evaluations.

The following year, in October 2013, the court grappled with the question of what type of reunification plan would be in the best interest of the child. Dr. Craig Knapp conducted forensic evaluations of the parents and the child. He observed the child with Ms. Cegalis and determined that despite his continued belief about the abuse, he was rapidly able to form a positive bond with her once again. The court once again asserted that despite investigation by the Department for Children and Families, the allegations of abuse were not substantiated. They concluded that it was in the child's best interest to reestablish his relationship with his mother.

Despite the court's order, the reunification process was subsequently terminated by the child's therapists. In February 2015, the court was forced to decide what schedule of contact was in the child's best interest. The therapists noted that the child was deeply traumatized and that he truly believed that his mother would kill him. The concern of the therapists was not why the child believed the mother would kill him but rather the risk to the child of reunification.

During the February 2015 hearing, Ms. Cegalis offered her own expert, Dr. Eric Mart, who presented his opinion on parental alienation. The court found that Dr. Mart's description of parental alienation fit the facts of this case. The child's father and stepmother had indoctrinated the child to believe that Ms. Cegalis wanted to kill him. His stepmother even drove him to Ottawa, where Ms. Cegalis' former boyfriend lived, to report the alleged abuse to the police.

Despite the false allegation of abuse against Ms. Cegalis and the determination that the father and stepmother were responsible for the child's trauma and estrangement from his mother, the court found the testimony of the child's therapists regarding the risk of traumatizing him further to be compelling. It found that the factors to consider were the quality of the child's present adjustment to his home, school, and community and the potential effect of any change and further determined that changing his environment and forcing him to live with his mother would be a "violent dislocation."

The court therefore ordered the halting of the reunification process and denied Ms. Cegalis any fur-

ther contact with her son. It added that if not already done by the child's 11th birthday (August 2016), the reunification process would once again commence.

Ms. Cegalis appealed this decision to the Supreme Court of Vermont based on several arguments: first, the court's findings did not support its final decision; second, she was being punished for the actions of the father and stepmother; third, allowing her son to continue to be "brainwashed" was subjecting him to further abuse; and fourth, the court was rewarding Mr. Knutsen and his wife for their inappropriate behavior.

#### *Ruling and Reasoning*

The Supreme Court of Vermont rejected Ms. Cegalis' arguments and affirmed the decision of the lower court.

In *Miller-Jenkins v. Miller-Jenkins*, 12 A.3d 768 (Vt. 2010), the Supreme Court of Vermont held that it was in a child's best interest to nurture a relationship with both parents. They further held that conduct by one parent that intentionally interferes with the child's relationship with the other parent should raise concern about that individual's ability to parent. However, the child's best interest remains the primary point, and the determination of custody should not be based on the desire to punish the parent who has alienated the child from the other parent.

The court indicated that it did not matter why the child was at risk but only that the risk existed. They held that the expert's testimony on the risk of reunification satisfied the necessary clear-and-convincing-evidence burden of proof. The court found, by a preponderance of the evidence, that awarding Ms. Cegalis custody would cause the child to experience a "violent dislocation."

The Vermont Supreme Court determined that there was no abuse of discretion by the lower court. They affirmed the decision of the lower court, not because the father and stepmother were correct in their accusations and not because they wanted to reward them for their behavior, but rather because the trial court's judgment about the best interests of the child was based on fact and legally correct.

Justice Robinson wrote a concurring opinion in which he noted that both the Vermont and United States Constitutions require proof by clear and convincing evidence that a parent has engaged in con-

duct that renders the parent unfit before that parent's custodial rights are terminated. To that end, he indicated his willingness to support the trial court's decision only on a temporary basis while expressing his skepticism that reunification would be successful in the future.

#### *Discussion*

The most frequent reasons for termination of parental rights include physical abuse, sexual abuse and neglect. In *Santosky v. Kramer*, 455 U.S. 745 (1982), permanent termination of parental rights was deemed to be in the best interest of the child by a preponderance of the evidence, which was New York's standard for parental-rights termination at the time. An appeal was eventually taken to the U.S. Supreme Court by the Santoskys. The Court determined that the minimum constitutional standard for terminating parental rights should be clear and convincing evidence, given the interest of preserving family unity and the risk associated with an erroneous finding.

In cases involving the termination of parental rights, the court must balance the preservation of family integrity with the rights and interests of the child. In Justice Robinson's concurring opinion, he cited the prior Vermont Supreme Court case of *Mullin v. Phelps*, 647 A.2d 714 (Vt. 1994), in which the court stated that a determination of sexual abuse by the father of a child by a preponderance of the evidence was insufficient due process for terminating the father's parental rights. In the *Mullin* case, neither the majority nor the dissent determined that the allegation of sexual abuse need not be proven. The disagreement was solely on the degree of certainty that had to be proven. The court used the "balancing test" as outlined in the United States Supreme Court case of *Mathews v. Eldridge*, 424 U.S. 319 (1976). They noted that due process did not permit the termination of the father's parental rights, absent proof of the allegations against him. Justice Robinson pointed out that it was clear that Ms. Cegalis was not unfit to parent her son.

According to Vt. Stat. Ann. tit. 15A, § 3-504 (2016), the court may terminate parental rights if it finds, by clear and convincing evidence, that certain grounds for termination are present and that the termination would be in the best interest of the minor. According to the statute's language, the court must always consider the best interests of the child in mak-

ing its determination. When considering what the best interests of the child are, the court should take into account the likelihood that the parent in question would be able to resume parental responsibilities within a reasonable period of time; the child's adjustment to home, school, and community; the interaction of the child with the parents and siblings; and whether the parent has played or continues to play a constructive role in the child's life.

In this case, the court made it clear that, given the false allegations and the fitness of Ms. Cegalis, the decision of the court was a challenging one. The court relied heavily on the testimony of the child's therapists, who opined that the child would endure further trauma if abruptly placed in the care of his mother without having first received trauma-informed care. Although the court's goal was not to reward Mr. Knutsen and his wife for their behavior, the central concern was the child's psychological well-being.

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## Mental Health Staff at Prison Not Liable for Failure to Warn Unidentifiable Victim Upon Release of Inmate

**Alexis Beattie, MD, MPH**  
Fellow in Forensic Psychiatry

**Phillip Resnick, MD**  
Professor of Psychiatry

Department of Psychiatry  
Case Western Reserve University  
Cleveland, OH

### Liability and Duty to Warn Clarified for Mental Health-Contracted Employees Who Do Not Hospitalize Inmates at the End of Their Prison Terms

*Holloway v. State*, 875 N.W.2d 435 (Neb. 2016), reviewed the decision of a district court in Nebraska. Shamecka Holloway sued the State of Nebraska, the Department of Corrections, a contracted mental health company, and the contracted physicians after she was shot and injured by Nikko Jenkins after his release from prison. Ms. Holloway stated that the named parties had an obligation to the citizens of Nebraska to treat all inmates in their care and that

they had breached their duty in the release of Mr. Jenkins. The district court granted the defendants' motions to dismiss the case. Ms. Holloway appealed to the Nebraska Supreme Court, arguing that the district court erred in granting the motion to dismiss, in finding that the commitment of Mr. Jenkins at the end of his prison term was discretionary, and in finding that the employees exercised due care.

#### Facts of the Case

Mr. Jenkins was sentenced to 21 years in the Nebraska Department of Corrections. During his incarceration, he "repeatedly exhibited signs of a serious mental health problem" (*Holloway*, p 441) and requested treatment. He was treated by physicians who were contracted by the prison to provide treatment.

Mr. Jenkins was released after serving 10 years of his sentence on July 30, 2013. On August 24, Mr. Jenkins shot Ms. Holloway, resulting in her injury.

Ms. Holloway sued the State of Nebraska, the Department of Corrections (DOC), the behavioral health administrator for the DOC, Correct Care Solutions (CCS, the contract company for mental health services), and two physicians who treated Mr. Jenkins during his incarceration, through a contract with CCS. Ms. Holloway alleged that the named individuals "evidenced a deliberate indifference to the mental health needs" of Mr. Jenkins, because of their knowledge that Mr. Jenkins "presented a substantial risk of serious bodily harm to the citizens of Nebraska" (*Holloway*, p 441) and, specifically, to Ms. Holloway. She alleged that the appellees' acts of omission and commission caused her emotional damage. She alleged that the appellees had a duty to protect all the citizens of Nebraska and that this duty was breached when they released Mr. Jenkins. She claimed that the state knew or should have known that harm to her was foreseeable after Mr. Jenkins was released.

The appellees filed motions to dismiss the case. One motion stated that Ms. Holloway failed to state a claim on which relief could be granted. Another motion was to halt discovery pending the motion to dismiss the case. Ms. Holloway later moved to dismiss the complaint against one of the physicians, which the court then dismissed.

The district court granted the motion to dismiss with prejudice. The district court found that the ap-