

## **Case 9**

Bobbijean P. was placed in foster care a few days after her birth on March 23, 2003 following a petition from the Department of Health and Human Services in Rochester, NY for her determination as “a neglected child”. Bobbijean was the fourth child of her mother, Stephanie, to be the subject of neglect proceedings and was taken away from her parents on an emergency basis even before the petition had been filed. During the court proceedings the Family Court judge reaffirmed orders issued during prior neglect proceedings for the other children for the couple to attend parenting classes and receive mental health treatment.

The baby’s parents, who are not married, have struggled for years to keep steady jobs and permanent housing arrangements. Both have admitted to frequent and ongoing drug abuse, as a result of which three of the children tested positive for cocaine at birth. The mother had been referred for substance abuse treatment numerous times but she never completed one or showed particular interest in revisiting the center. Neither parent showed interest in the baby’s future nor contacted the DHHS caseworker to indicate willingness to take care of the child or get her back. Instead they agreed with the caseworker’s recommendation that she be placed in foster care just as the other three siblings had been. The father did not appear in court or show any interest in Bobbijean’s welfare while Stephanie showed up only once.

One year later, after the parents had failed to present themselves for three scheduled meetings with DHHS to discuss plans for the baby, Judge Marilyn L. O’Connor ordered the girl’s parents, in addition to the other provisions, not to have any more children until they would be able to take care of the ones they already have. The 12-page decision states “...It is the intention of the court that the mother be required not to get pregnant until all of her children are being raised by a natural parent or are no longer cared for at the expense of the public. It is similarly the intention of this court that the father be required not to father another child until all his children are being raised by a natural parent or are no longer cared for at the expense of the public. It is further the intention of this court that neither parent shall conceive another child until found capable of having custody of all their current children....”. The court made it clear that, while this was an unusual statement, it would not and did not compel the mother –should she become pregnant- to terminate her pregnancy. Instead, the parents were ordered to attend family planning sessions and, should they choose to, take advantage of publicly offered sterilization. Should the parents violate the order they could be jailed for contempt of court.

The executive director of New York Civil Liberties Union criticized the ruling as “fundamentally at odds with the ingrained constitutional right to procreate”, and other civil libertarians condemned the ruling as an unconstitutional violation of the couple’s

right to privacy. Judge O'Connor's ruling, however, explained that while the constitution provides protection of basic rights, this is not the case when the right to have a child equals the right to neglect it and commit a crime against it or force others to raise it.

In April 2004 Stephanie was charged with prostitution and a bench warrant was issued for her arrest when she failed to appear in drug court. During a hearing in May 2004 to explore whether the foster parents (relatives of the mother) of the 2-year old son could adopt him, it was revealed that Stephanie became pregnant in mid-March with her fifth child, just 2 weeks before the orders of the family court judge were issued.

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