State Supreme Court Decision on Eric Dean – A Win for Children

Recently the Minnesota Supreme Court unanimously overturned lower court rulings in the wrongful death lawsuit against Pope County brought by relatives of Eric Dean, whose 2015 murder at age 5 prompted significant child protection reforms.

The combined impact of previous state and federal decisions, notably the U.S. Supreme Court opinion in DeShaney vs. Winnebago County, was to shield child protection caseworkers from lawsuits related to child deaths unless they had engaged in willful or malicious conduct. The Minnesota decision requires workers to also act in good faith and exercise due care, which lowers the threshold for successful litigation.

This decision increases the potential to hold workers and counties accountable for decisions that knowingly put children at grave risk and which lead to their death.

Time will tell how this plays out, but it looks like a big win for Minnesota children.

So why is this potentially a big win for children? And we say potentially because this case known as Jepsen vs. Pope County isn't over yet. The next step is to go back to the District Court and a civil jury trial. We are told that this will be heard by a jury of six, unless there is a negotiated settlement before the trial begins. And however this case is decided, whether in favor of the plaintiffs, who are surviving relatives of Eric Dean, or against them, it may not be clear until it is finally settled and perhaps until some additional lawsuits are brought along the same lines what new boundaries this decision places on child protection practices.

Overall there is a lot to unpack in this situation. Please keep in mind that I am myself not a lawyer, however what I am about to describe here is based on conversations with attorneys who are knowledgeable in this area and what is stated in the relevant state and federal court decisions.

The first step thing to know is the distinction between legal findings in child protection cases as opposed to foster care. There has been successful litigation on behalf of children and youth in foster care, primarily in class-action lawsuits but also in favor of surviving relatives of children who were killed in foster care. The class-action lawsuits have been primarily brought by an attorney named Marcia Lowry over the past 30 years, currently through organization called ABC, which stands for A Better Childhood, and previously through a center known as Children's Rights. Lowry's lawsuits have been responsible for many reforms in foster care across many states.

Individual lawsuits have also been brought. In Minnesota For example the 2013 case of Kendrea Johnson led to a sizable settlement from Hennepin County to the surviving relatives. You may remember that Kendrea was a six-year-old in foster care who hung herself. Currently similar lawsuits are underway in the case of Layla Mary Ann Jackson, an 18 month old Black infant who was brutally murdered by her foster father, who is a white supremacist. Also, the grandparents of Arianna Hunzicker are suing their County for removing their granddaughter from their custody and placing her with a couple who systematically tortured and killed her over a period of months. All of these lawsuits are brought by the same attorneys so there is some prospect for success. In contrast there have been virtually no successful lawsuits in child protection cases since the US Supreme Court decision in 1989 known as DeShaney versus Winnebago County. This was a close decision, 6 to 3. In which the majority argued as follows

“State's failure to protect an individual against private violence generally does not constitute a violation of the Due Process Clause, because the Clause imposes no duty on the State to provide members of the general public with adequate protective services. The Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security; while it forbids the State itself to deprive individuals of life, liberty, and property without due process of law, its language cannot fairly be read to impose an affirmative obligation on the State to ensure that those interests do not come to harm through other means.”

It is not clear to me, and to others as well, why the state has no obligation to protect a child if that obligation is based not on the Due Process Clause but rather on the fact that both federal and state law have assigned it that responsibility. In his dissent, Justice Brennen, arguing on behalf of the minority, seemed to agree with this view, stating that the state had an affirmative obligation to intervene: “My disagreement with the Court arises from its failure to see that inaction can be every bit as abusive of power as action, that oppression can result when a State undertakes a vital duty and then ignores it. Today's opinion construes the Due Process Clause to permit a State to displace private sources of protection and then, at the critical moment, to shrug its shoulders and turn away from the harm that it has promised to try to prevent.” Brennan is basically saying that the due process clause cannot be cut that thin, and that custody of the child is not a decisive consideration. If the state has assumed an obligation to protect a child, they are obligated to take appropriate action including to remove that child from the home/parents if necessary.

In his own dissent Justice Blackmun added that “the facts here involve not mere passivity active state intervention in the life of Joshua DeShaney — intervention that triggered a fundamental duty to aid the boy once the State learned of the severe danger to which he was exposed.” Justice Blackmun went on to say in a well-known summary: “Poor Joshua! Victim of repeated attacks by an irresponsible, bullying, cowardly, and intemperate father, and abandoned by respondents who placed him in a dangerous predicament and who knew or learned what was going on, and yet did essentially nothing except, as the Court revealingly observes, *ante*, at 193, "dutifully recorded these incidents in [their] files."

Despite the compelling nature of Justice Brennan and Justice Blackmun’s dissent, the DeShaney case virtually closed off the ability to so caseworkers, and by extension their counties or states, if children were in child protection but not in foster care.

The Minnesota case brought by surviving relatives of Eric Dean however is not based on the due process clause of the 14th amendment. Rather it is based on state child protection statutes in section 260E of state law, which requires caseworkers to exercise due care and operate in good faith. The significance of this phrase is that it essentially adds a layer of responsibility to common law. Common law gives caseworkers, and by extension their County, official immunity from lawsuits if they are exercising independent judgment in the course of carrying out their duties. What Eric Dean’s surviving relatives successfully argue is that the state would not have added these additional requirements to the law if they did not mean to advocate, or set aside, the official immunity normally granted in common law.

We should say that granting initial official immunity to child protection caseworkers is overall a good and necessary thing because it enables them to make decisions in very complex situations without fear that their every move will result in being sued. However the DeShaney

case has basically meant that this immunity is virtually limitless. The standard is that in order to lose the protection of common law and no longer be entitled to official immunity the caseworker has to operate in a willful or malicious manner. So willful or malicious means that the workers deliberately did something to harm the child, for example handing the parent a baseball bat knowing they would probably beat the child to death with it. That's an impossible standard. The Eric Dean decision however effectively lowers the bar for successful litigation to something more like, in layman's terms, gross negligence.

Now, this may not be entirely logical, but one thing that gives me confidence that the state Supreme Court decision is correct and will stand the test of time is that it is actually understandable, at least as far as legal opinions go. You can actually follow the logic and see how it connects to the state law. The Appellate Court decision in contrast is like reading a medieval Jesuit argument about how many angels can dance on the head of a pin. The logic is complex, hard to follow, frustrating to read, and in the end unconvincing at least the layperson.

It is impossible to know at this point what long-term impact the Eric Dean decision will have. But the fact that it was based on requirements written in the state law as opposed to challenging the due process argument in the federal DeShaney vs Winnebago case hopefully means that it will be difficult to appeal the decision beyond on the state level. The downside however of course is that this is not a victory for children beyond Minnesota.

The next step as I understand it is a civil jury trial back in Polk County with a jury of six citizens. Given the emotional nature of the case and the degree to which the county left poor Eric to his own devices, I think it's likely that the county will negotiate a settlement, figuring that they don't stand a very good chance at trial. But even if there is a jury trial and Eric Dean's relatives lose the case, the Supreme Court decision has opened the door a crack for suing workers and counties when they knowingly decide to leave children in settings where there is great danger and that ultimately results in great harm or the child's murder.

Just based on my own experience in government, I am optimistic that this case will have an impact on the ways that counties and the State Department of Human Services think. Their current practices are to take the goal of family preservation to such an extreme that we have numerous situations like Eric Dean, as well as other child murders where there is not the same degree of torture involved, all in the name of keeping families out of child protection or returning them from foster care as soon as possible, often to situations that are little different from what they left. I predict that this case will be discussed by the counties and by their associations in some depth, it will probably make its way into the official training curriculum, and will become a part of the decision-making of workers and supervisors going forward.

Now, the bar for suing a county is still very high. There's no need for caseworkers to worry about frivolous lawsuits. Gross negligence is still tough to prove. But the fact that there are some guardrails on workers and county contact as opposed to none, will I think over time moderate the extreme family preservation policies and practices in place. It may take a while for all of this to play out, but those are the reasons I think this decision is a big win for children.

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