Who Is The Real Parent? Or How Far Can Child Protective Services (DCPP) Go To Let Your Child Play Alone?

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The Media recently reported an incredible situation arising in Maryland when parents were investigated for permitting their 2 young children to walk to and from a nearby park. The children, ages 10 and 6, walked to a neighborhood park by themselves. Someone reported the 2 unattended children to the police. Protective Services was called. The parents informed the Agency that they permitted the 2 children to take walks on their own to the park located approximately 1 mile from the home. The children made it half-way to the park before they were stopped by the police. Child Protective Service entered an "unsubstantiated" finding meaning that "no evidence of abuse or neglect was found, but that the Agency would maintain a file on the family for at least 3 years."

The obvious issue in the case is the degree to which a Government Agency can intrude upon the freedom of parents to supervise their children. Obviously, the case raises significant issues regarding the Government's right to be involved in day-by-day parenting issues. According to the Maryland Protective Agency, a local law required that children under the age of 8 must be left with a reliable person who is at least 13 years of age. However, that particular regulation is for children left or confined in a building, dwelling, motor vehicle or other enclosed space. It did not mention children walking outdoors or playing.

Should such a situation arise in New Jersey, what would our Child Protection Agency DCPP do? The answer to that question is not a simple one since it depends upon the facts of each case. Any investigation has great significance since a finding of abuse or neglect means that the offender's name is placed in the central registry and interferes with the accused ability to obtain certain types of employment, become a foster parent, or adopt. There are also other negative ramifications.

Our Courts have considered “children left alone” cases with various results. In one case, DYFS v. J.L., a former school teacher, took her children to a recreational area in her condominium complex. She then permitted the children to return to their home while she remained at the playground watching them as they returned to their condo. When the children entered to the home, they inadvertently locked the door which was equipped with a child-proof cover. The boys were unable to open it and the older boy called 911. The police arrived, the older child appeared to be crying. As this was occurring, the mother realized that the children had not returned and that dinner time was approaching. She then returned home after her son’s 911 call. The police contacted DYFS which substantiated neglect. Criminal charges were not lodged. The Division argued that the mother had harmed the children by placing them at risk of harm. The parents took an appeal of that decision. The Appellate Court reversed the finding stating that although the mom’s conduct was “arguably in attentive, or even negligent, it did not meet the requisite standard of willful and wanton misconduct which the Statute requires or a finding of abuse or neglect can be entered. DYFS had argued that the mother was grossly negligent because of the potential for harm to the children when they were unsupervised and that was rejected by the Court. The mother’s name was removed from the central registry.

A similar result was reached in DYFS v. T.B. Here, a mother and her then 4-year old son were living at the grandparents’ house. The grandparents cared for the child while the mother was working. One night after the mother and son returned home, the child was put to bed. He had fallen asleep in the car. Mom assumed that the grandmother was home because her car was in the driveway. The mother then left the home to go to dinner. However, without notice the grandmother had made a decision to go with her husband to New York and was not home at all. The child then woke up, found no one was home and crossed the street to go to a neighbor’s house. The police were contacted and the mother returned home shortly. DYFS then made a finding of neglect against the mother. The Appellate Division criticized the position taken by the Division finding that the mother did not fail to exercise a minimum degree of care, in violation of the statutory standard. Specifically, the Court found that the mother’s failure to perform the cautionary act of determining whether the grandmother was home was merely negligent and not grossly or wantonly negligent. It noted that the concept of willful and wanton misconduct in an abuse and neglect case implies that a person has acted with reckless disregard to the safety of others. No such act or conduct was found in the case.

In DYFS v. T.M., a Court up-held a finding of neglect when a mother left her 2 1/2 year-old daughter in an unattended car for 20 minutes while the mother went shopping for a birthday present in a mall. The child had fallen asleep and the mother did not want to awaken her. She parked within 10 spaces of the store's entrance. An Administrative Law Judge held that DYFS had not established neglect and the Division reversed that finding. The Appellate Court agreed with the Division and found neglect. The Court agreed that there was a significant likelihood of harm to the 2-year old child.

Our Appellate Courts had uniformly stated when evaluating whether a parent or guardian has engaged in acts of abuse and neglect, an analyse must be made on a case-by-case basis in light of the dangers and risks associated with the situation. Therefore, a Court considering whether a parent or guardian's conduct meets the statutory standard must analyze all of the facts to determine whether a parent has exercised a minimum degree of care under the circumstances.

In a "child left alone" case, the important facts are the age and intelligence of the children, length of time the children were alone, the ability of the children to deal with the situation and contingency plans made by the parent where the children were left, the danger to the children, the responsibility and fitness of the parent and whether the incident was an isolated one.

In a recent unreported decision, a mother left a 4-year old child alone for 3 minutes in a car parked outside a store while she went inside to buy groceries, the Appellate Court rejected the Division's position that abuse and neglect had occurred. It deemed the situation to be mere negligence. The mother had no advantage point from inside the store of visual contact. However, the Court found that the incident was an aberrational since the mother had been characterized as an otherwise excellent parent who the Division had assessed at low risk. The Court also noted that there were other precautionary measures undertaken by the mother that reduced the potential risk of harm to the child. They also noted that the incident occurred in broad daylight in a safe area near the entrance to the store and the child was securely buckled in the car seat with the doors locked and windows closed. The vehicle was also inoperable without the key and inaccessible to 3rd parties. The ignition had been left on for the child's comfort and the child appeared calm and unfazed for the 13 minutes that she was left alone.

What conclusion can be drawn from these cases. It is clear that DCPP positions in “children alone” cases are not reasonable since they do not reflect the realities of parenthood and places undue emphasis on the potential for risk of harm and fails to respect the right of parents to control their children’s up bringing.