

**Social Work
The Court's
Casebook**

**Daniel
Pollack**

华东政法

SOCIAL WORK
AND THE COURTS
A CASEBOOK

DANIEL POLLACK

Copyright © 1997 by Daniel Pollack
All rights reserved

Library of Congress Cataloging-in-Publication Data

Pollack, Daniel.

Social work and the courts : a casebook / by Daniel Pollack.

p. cm. — (Garland reference library of social science ; v. 1046)

Includes bibliographical references and index.

ISBN 0-8153-2069-8 (alk. paper) — ISBN 0-8153-2070-1 (paperback)

1. Public welfare—Law and legislation—United States—Cases. 2. Social workers—Legal status, laws, etc.—United States—Cases. I. Title. II. Series.

KF3721.A7P65 1997

344.73'0313—dc20

[347.304313]

96-44894

CIP

Paperback cover design by Mark Azzolina, Café Design.

Printed on acid-free, 250-year-life paper
Manufactured in the United States of America

With love, to my parents,
Leonard and Betty Pollack

ISSUES & DECISIONS

CHAPTER 1 CHILD WELFARE

A. CUSTODY

***Bottoms v. Bottoms*, 444 S.E.2d 276 (Va.App. 1994):** As a matter of law, is a person who is involved in a sexually active lesbian relationship an unfit parent whose rights as a parent may be revoked and custody given to a third party? No.

***In re Kirchner*, 164 Ill. 2d 468 (1995):** May a child be available for adoption if parental rights have not been properly terminated? No.

***In re Marriage of Kovash*, 858 P.2d 351 (Mont. 1993):** May a court change the terms of a temporary custody order without definitely identifying a change in circumstances of the parties? Yes.

***Sherman v. Sherman*, 1994 Tenn. App. Lexis 660:** Where a parent lives with or has contact with an HIV positive person, can the court restrict visitation and require HIV testing in order to address the other parent's fear of the children's potential contact with the HIV positive person? No.

***State ex rel. S.C. v. Chafin*, 444 S.E.2d 62 (W.Va. 1994):** Does a service plan filed by a department of human services constitute an adequate case plan for the placement of a child who is in the custody of the state? No.

***Kingsley v. Kingsley*, 623 So.2d 780 (Fla.App. 5 Dist. 1993):** Do children have the right to initiate termination of their parents' rights and to petition for their own adoption proceedings? No.

***Nance v. Arkansas Dept. of Human Services*, 870 S.W.2d 721 (Ark. 1994):** Does a juvenile court, having found a child to be dependent-neglected, have the authority to make a change of custody award? Yes.

***In re Marriage of Carney*, 598 P.2d 36 (Cal. 1979):** Within the context of custody awards, does a disability necessarily imply an inability of a parent to serve in a child's best interest? No.

***Brossoit v. Brossoit*, 36 Cal.Rptr.2d 919 (Cal.App. 1 Dist. 1995):** In a child custody dispute, what law controls in determining which state has jurisdiction? The Uniform Child Custody Jurisdiction Act is controlling.

***Mezo v. Elmergawi*, 855 F.Supp. 59 (E.D.N.Y. 1994):** If a country does not participate in the Hague Convention on the Civil Aspects of Child Abduction, may there be a valid claim filed under the Convention? No.

B. FOSTER CARE

***DeShaney v. Winnebago County DSS*, 109 S.Ct. 998 (1989):** Does the government have a constitutional duty to protect a child against physical abuse if it has not taken that child into custody? No.

***Pfoltzer, et al. v. County of Fairfax*, 775 F.Supp. 874 (E.D.Va. 1991):** Does a department of social services have a duty to provide a foster home with a desired religious background of the biological parents so as to avoid any violation of the right to the free exercise of religion? No.

***Artist M. v. Johnson*, 917 F.2d 980 (7th Cir. 1990):** Does the federal Adoption Assistance and Child Welfare Act of 1980 create a right under which a plaintiff may bring a claim that an organization bound under that legislation has violated such legislation and that the state is equally bound by such federal legislation under 42 U.S.C. § 1983? Yes.

***Wildauer v. Frederick County*, 993 F.2d 369 (4th Cir. 1993):** Are a foster parent's rights violated by neglect investigations, searches, and removal of the foster children? No.

C. TERMINATION OF PARENTAL RIGHTS

***Ferguson v. Stafford County DSS*, 417 S.E.2d 1 (Va.App. 1992):** Is incarceration in and of itself just cause for termination of parental rights? No.

***Ybarra v. Texas Dept. of Human Services*, 869 S.W.2d 574 (Tex.App.-Corpus Christi 1993):** Absent clear and convincing evidence, may parental rights be terminated? No.

***Helen W. v. Fairfax County*, 407 S.E.2d 25 (Va.App. 1991):** Can a court terminate residual parental rights of parents who refuse to comply with reasonable and appropriate efforts of social service, medical, and mental health agencies, if such termination is in the best interest of the child? Yes.

D. ADOPTION

***Kennedy v. Children's Serv. Society of Wisconsin*, 17 F.3d 980 (7th Cir. 1994):** May adoptive parents successfully sue an adoption agency for withdrawing from services based on claims of defamation, breach of contract and intentional infliction of emotional distress when such charges involve adoptive parents who are members of a cult? No.

***Engstrom v. State*, 461 N.W.2d 309 (Iowa 1990):** In the context of a preadoption agreement, can social workers be held liable for social worker malpractice, the infliction of emotional distress, breach of contract, and denial of due process rights when the cause of action is not specified in the applicable statute and administrative rules? No.

***Michael J. v. County of Los Angeles, Dept. of Adoptions*, 247 Cal.Rptr. 504 (Cal.App. 2 Dist. 1988):** Should a county department of adoptions be immune from liability for intentional or negligent misrepresentation or concealment in relation to the health of a prospective adoptee? No.

***Matter of Baby M*, 537 A.2d 1227 (N.J. 1988):** Regarding a contract for surrogate motherhood, are the best interests of the child the sole controlling question pertaining to termination of parental rights? No.

***Meracle v. Children's Serv. Society of Wisconsin*, 437 N.W.2d 532 (Wis. 1989):** May adoptive parents successfully sue for emotional distress and extraordinary medical expenses when an adoption agency negligently misrepresents the health of a pre-adoptive child? No, as to the emotional distress; yes, as to the medical expenses.

***In re Roger B.*, 418 N.E.2d 751 (Ill.App. 1981):** By restricting the access to birth records of adopted children and their biological families, does a state violate a “fundamental” right, a privacy right, or a right to freedom of information? No.

E. CHILD ABUSE & NEGLECT

***State v. Hosto-Worthy*, 877 S.W.2d 150 (Mo.App.E.D. 1994):** When acting jointly with a social worker, are law enforcement officers required to give *Miranda* warnings in a situation in which child abuse is suspected? Yes.

***In Interest of M.A.V.*, 425 S.E.2d 377 (Ga.App. 1992):** Is evidence from termination of parental rights for one child useable to support a decision to terminate a parent's rights with regard to another child of the same parent? No.

***A.Y. v. Dept. of Public Welfare*, 583 A.2d 515 (Pa.Cmwlth. 1990):** Can the report of a small child regarding alleged sexual abuse be presented through hearsay testimony by her mother? Can the testimony of a social worker be admitted into evidence when no videotape was made of the interview and no psychologist evaluated the child's credibility? Yes.

***The People v. Cabral*, 15 Cal.Rptr.2d 866 (Cal.App. 5 Dist. 1993):** May a letter written to a psychotherapist, other than for the purpose of securing a diagnosis or treatment, be protected under the psychotherapist-patient privileged communication statute? No.

***M.R.F. v. Dept. of Public Welfare*, 595 A.2d 644 (Pa.Cmwlth 1991):** In cases of expungement of a name from a child abuse registry, will “substantial evidence” be sufficient to keep a perpetrator's name on the registry? Yes.

***Hildebrand v. Hildebrand*, 736 F.Supp. 1512 (S.D.Ind. 1990):** May a statute of limitations be a bar to a successful civil lawsuit regarding physical and sexual abuse? Yes.

CHAPTER 2 SOCIAL WORKER LIABILITY AND IMMUNITY

***Tobias v. County of Racine*, 507 N.W.2d 340 (Wis.App. 1993)**: May a department of social services be liable for damages caused by a superseding cause? No.

***Gloria G. v. State DSRS*, 833 P.2d 797 (Kan. 1992)**: May a state social services agency be liable for acts its employees commit which are “discretionary” under a Tort Claims Act? No.

***Caldwell v. LeFaver*, 928 F.2d 331 (9th Cir. 1991)**: Does a theory of absolute immunity or qualified immunity apply where a social worker removes children from one guardian to the care of another legal guardian in an emergency situation and the original guardian brings a civil suit? Absolute immunity.

***Babcock v. Tyler*, 884 F.2d 497 (9th Cir. 1989)**: Are social workers who perform investigative and placement services following child dependency proceedings entitled to absolute immunity? Yes.

***Rowe v. Bennett*, 514 A.2d 802 (Me. 1986)**: May a client successfully sue a social worker for negligent infliction of emotional distress if the client cannot show any physical injuries or if the client cannot show an underlying tort? Yes.

***Franz v. Lytle*, 997 F.2d 784 (10th Cir. 1993)**: Does a police officer have qualified immunity to conduct a warrantless search of a child's body for child abuse? No.

CHAPTER 3 MENTAL HEALTH ISSUES

***In re Schouler*, 723 P.2d 1103 (Wash. 1986)**: Can a court decide for an incompetent individual whether or not ECT treatment is an appropriate medical treatment? Yes.

***Brookhouser v. State of California*, 13 Cal.Rptr.2d 658 (Cal.App. 6 Dist. 1992)**: Can a social worker's and state's breach of duty to care, via a negligent act of omission, be construed as causing harm that might otherwise have been avoided? No, unless it can be determined that the injury would not have occurred *but for* the defendant's conduct, or, if the defendant's conduct was a *substantial* factor in causing the injury.

***O'Connor v. Donaldson*, 422 U.S. 563 (1975):** Is it a violation of the Constitution's Fourteenth Amendment for a state to confine a non-dangerous individual who is capable of living safely in society? Yes.

***Ricci v. Okin*, 781 F.Supp. 826 (D.Mass. 1992):** If there is a plan for the closing of an institution, does that institution remain responsible during the interim for adhering to previously agreed-upon rules and guidelines governing the care of the residents of the institution? Yes.

***Lessard v. Schmidt*, 349 F.Supp 1078 (1972):** Does an involuntary civil commitment statute violate a person's right to due process by denying a timely fair hearing and by failing to provide an easily understandable standard for detainment and commitment? Yes.

***Addington v. Texas*, 441 U.S. 418 (1979):** What standard of proof is required by the Fourteenth Amendment in a civil proceeding brought under state law to commit an individual involuntarily for an indefinite period of time to a state mental hospital? Clear and convincing evidence.

***Grkman v. Dept. of Public Welfare*, 637 A.2d 761 (Pa. Cmwlth. 1994):** Must a hearing officer's decision confirming the transfer of a nursing home patient to domiciliary care be supported by substantial evidence? Yes.

CHAPTER 4 AGING

***McKennon v. Nashville Banner Publishing Co.*, 115 S.Ct. 879 (1995):** Is employee misconduct discovered after an employee has been unfairly discharged in violation of the Age Discrimination in Employment Act of 1967 a complete bar to recovery? No.

***Billingslea v. State of Texas*, 780 S.W.2d 271 (Tex.Cr.App. 1989):** Does failure to care for and secure medical attention for an ailing, live-in parent constitute criminal negligence? No, unless there is an explicit statutory duty to act on behalf of the ailing individual.

***In re Byrne*, 402 So.2d 383 (Fla. 1981):** Is an adult protective service statute constitutional which allows a department of social services to take emergency involuntary custody of an elderly person if sufficient probable cause and safeguards are evident? Yes.

***Goldman v. Krane*, 86 P.2d 437 (Colo.App. 1989):** May a department of social services be liable for damages when a social worker uses a pre-signed petition for guardianship to take custody of and transport a person? Yes.

CHAPTER 5 WOMEN

***The People v. Hudson*, 6 Cal.Rptr.2d 690 (Cal.App. 2 Dist. 1992):** May a state enact a stalking law which is sufficiently narrow to be constitutional? Yes.

***Syndex Corp. v. Dean*, 820 S.W.2d 869 (Tex.App. - Austin 1991):** If an employer does not ratify or authorize a supervisor's sexually harassing conduct, can the employer still be liable under the state's Human Rights Act? Yes.

***Thurman v. City of Torrington*, 595 F.Supp. 1521 (1984):** May a city police department be sued for failure to adequately enforce an order of protection? Yes.

***Simmons v. State*, 504 N.E.2d 575 (Ind. 1987):** Is "rape trauma syndrome" admissible as evidence in a criminal proceeding? Yes, but only in some states.

***Webster v. Reproductive Health Services*, 109 S.Ct. 3040 (1989):** Does a state statute regulating abortions in public facilities by public employees violate the Constitution? No.

CHAPTER 6 INCOME SUPPORT

***Loper v. New York City Police Dept.*, 802 F.Supp. 1029 (S.D.N.Y. 1992):** Is a statute which criminalizes all forms of begging in public constitutional? No.

***State of Louisiana, Dept. of Social Svcs. v. Jones*, 638 So.2d 699 (La.App. 3 Cir. 1994):** Is DNA testing alone, sufficient proof of paternity? No.

***Dexter v. Kirschner*, 984 F.2d 979 (9th Cir. 1992):** Do limitations of Medicaid statutes in state law signify a lack of constitutional-based rights for program participants? No.

***King v. Smith*, 88 S.Ct. 2128 (1968):** Can a state disqualify an otherwise eligible needy child solely because the state wishes to discourage what it perceives to be parental immorality? No.

***Goldberg v. Kelly*, 90 S.Ct. 1011 (1970):** Does the Due Process Clause of the Fourteenth Amendment require that a recipient of Aid to Families with Dependent Children (AFDC) be afforded an evidentiary hearing before the termination of benefits? Yes.

***Wyman v. James*, 400 U.S. 309 (1971):** May a beneficiary of AFDC refuse a mandated home visit by a caseworker without risking the termination of benefits because of the beneficiary's rights protected by the Fourth and Fourteenth amendments? No.

***Pickett v. Brown*, 462 U.S. 1 (1983):** Does a statute which imposes a two-year limitation on paternity and child support actions violate the Equal Protection Clause of the Fourteenth Amendment? Yes.

***Siegel v. Kizer*, 15 Cal.Rptr.2d 607 (Cal.App. 2 Dist. 1993):** Are discretionary trust funds in which the beneficiary's access to the principal is restricted considered to be available property in determining Medicaid eligibility? No.

***Anderson v. Edwards*, 115 S.Ct. 1291 (1995):** Does the federal family filing unit law prohibit California from removing the distinction between a “nuclear” family unit and a family consisting of an adult and various dependents not directly related, thereby decreasing benefits under the AFDC? No.

CHAPTER 7 SOCIAL WORKERS IN COURT

***State v. Bush*, 442 S.E.2d 437 (W.Va. 1994):** Does expert testimony concerning a defendant's mental capacity from witnesses who had performed psychological evaluations on a defendant at the request of the state violate that defendant's right against self-incrimination? No.

***Polotzola v. Missouri Pacific R. Co.*, 610 So.2d 903 (La.App. 1 Cir. 1992):** Can client communications to a board-certified social worker lose their privileged status granted them under a state statute? Yes.

***State v. Decker*, 842 P.2d 500 (Wash.App.Div 1 1992):** Absent a showing of special circumstances, do juvenile defendants in non-capital cases have a right to have an attorney present during a psychological examination for pre-sentencing purposes? No.

***Gentry v. State*, 443 S.E.2d 667 (Ga.App. 1994):** Are results of a penile plethysmograph test admissible as scientific evidence? No.

CHAPTER 8 SOCIAL WORKERS AS EMPLOYEES

***Birthisel v. Tri-Cities Health Services*, 424 S.E.2d 606 (W.Va. 1992):** Is a social worker protected against discharge by claiming that her employer's requests of her would constitute a violation of a state's public policy? No.

***Doe v. City of Chicago*, 883 F.Supp. 1126 (N.D.Ill. 1994):** May a public employer test employment applicants for HIV? Yes.

***Cunico v. Pueblo School District No. 60*, 917 F.2d 431 (10th Cir. 1990):** May a board of education rehire a black and an Hispanic social worker in keeping with its affirmative action plan, while its seniority policy, if followed, would have retained a white social worker with more seniority? No.

***Murdock v. Higgins*, 527 N.W.2d 1 (Mich.App. 1994):** Does a supervisor have a duty to divulge an employee's sexual activities and suspected homosexuality? No.

***Ross v. Denver Dept. of Health and Hospitals*, 883 P.2d 516 (Colo.App. 1994):** Does the language "immediate family" discriminate against same-sex partners under Colorado's Career Service Authority Rules, when family sick leave benefits are sought? No.

***Belmont v. California State Personnel Board*, 111 Cal.Rptr. 607 (1974):** May a department of social welfare lawfully suspend its employees for refusing to obey an order? Yes.

***Kilroy v. Lebanon Correctional Institution*, 575 N.E.2d 903 (Ohio.Ct.Cl. 1991):** If it is shown that defamatory remarks about a social worker are true, can a successful legal action be maintained? No.

***Osborn v. Harrison School District No. 2*, 844 P.2d 1283 (Colo.App. 1992):** Must mental health professionals performing identical duties receive comparable salaries despite differences in training? No.

CHAPTER 9 MISCELLANEOUS

***Matter of Guardianship of Matejski*, 419 N.W.2d 576 (Iowa 1988):** Does a district court have subject-matter jurisdiction to hear a case regarding the sterilization of a mentally retarded adult by her parents? Yes.

***Wisconsin v. Mitchell*, 113 S.Ct. 2194 (1993):** Is a “hate crime” statute overbroad because it has a possible chilling effect on a person's First Amendment right to free speech? No.

Table of Cases

- Addington v. Texas*, 441 U.S. 418 (1979)
Anderson v. Edwards, 115 S.Ct. 1291 (1995)
Artist M. v. Johnson, 917 F.2d 980 (7th Cir. 1990)
A.Y. v. Dept. of Public Welfare, 583 A.2d 515 (Pa.Cmwlth. 1990)
Babcock v. Tyler, 884 F.2d 497 (9th Cir. 1989)
Belmont v. California State Personnel Board, 111 Cal.Rptr. 607 (1974)
Billingslea v. State of Texas, 780 S.W.2d 271 (Tex.Cr.App 1989)
Birthisel v. Tri-Cities Health Services, 424 S.E.2d 606 (W.Va. 1992)
Bottoms v. Bottoms, 444 S.E.2d 276 (Va.App. 1994)
Brookhouser v. State of California, 13 Cal.Rptr.2d 658 (Cal.App. 6 Dist. 1992)
Brossoit v. Brossoit, 36 Cal.Rptr.2d 919 (Cal.App. 1 Dist. 1995)
Caldwell v. LeFaver, 928 F.2d 331 (9th Cir.1991)
Cunico v. Pueblo School District No. 60, 917 F.2d 431 (10th Cir. 1990)
DeShaney v. Winnebago County DSS, 109 S.Ct. 998 (1989)
Dexter v. Kirschner, 984 F.2d 979 (9th Cir. 1992)
Doe v. City of Chicago, 883 F.Supp. 1126 (N.D.Ill. 1994)
Engstrom v. State, 461 N.W.2d 309 (Iowa 1990)
Ferguson v. Stafford County DSS, 417 S.E.2d 1 (Va.App. 1992)
Franz v. Lytle, 997 F.2d 784 (10th Cir.1993)
Gentry v. State, 443 S.E.2d 667 (Ga.App. 1994)
Gloria G. v. State DSRS, 833 P.2d 797 (Kan. 1992)
Goldberg v. Kelly, 90 S.Ct. 1011 (1970)
Goldman v. Krane, 86 P.2d 437 (Colo.App. 1989)
Grkman v. Dept. of Public Welfare, 637 A.2d 761 (Pa.Cmwlth. 1994)
Helen W. v. Fairfax County, 407 S.E.2d 25 (Va.App. 1991)
Hildebrand v. Hildebrand, 736 F.Supp. 1512 (S.D.Ind. 1990)
In Interest of M.A.V., 425 S.E.2d 377 (Ga.App. 1992)
In re Byrne, 402 So.2d 383 (Fla. 1981)
In re Kirchner, 164 Ill. 2d 468 (1995)
In re Marriage of Carney, 598 P.2d 36 (Cal. 1979)
In re Marriage of Kovash, 858 P.2d 351 (Mont. 1993)
In re Roger B., 418 N.E.2d 751 (Ill.App. 1981)
In re Schouler, 723 P.2d 1103 (Wash. 1986)
Kennedy v. Children's Serv. Society of Wisconsin, 17 F.3d 980 (7th Cir. 1994)
Kilroy v. Lebanon Correctional Institution, 575 N.E.2d 903 (Ohio.Ct.Cl. 1991)

King v. Smith, 88 S.Ct. 2128 (1968)
Kingsley v. Kingsley, 623 So.2d 780 (Fla.App. 5 Dist. 1993)
Lessard v. Schmidt, 349 F.Supp. 1078 (1972)
Loper v. New York City Police Dept., 802 F.Supp. 1029 (S.D.N.Y. 1992)
Matter of Baby M, 537 A.2d 1227 (N.J. 1988)
Matter of Guardianship of Matejski, 419 N.W.2d 576 (Iowa 1988)
McKennon v. Nashville Banner Publishing Co., 115 S.Ct. 879 (1995)
Meracle v. Children's Serv. Society of Wisconsin, 437 N.W.2d 532 (Wis. 1989)
Mezo v. Elmergawi, 855 F.Supp. 59 (E.D.N.Y. 1994)
Michael J. v. County of Los Angeles, Dept. of Adoptions, 247 Cal.Rptr. 504 (Cal.App. 2 Dist. 1988)
M.R.F. v. Dept. of Public Welfare, 595 A.2d 644 (Pa. Cmwlth. 1991)
Murdock v. Higgins, 527 N.W.2d 1 (Mich.App. 1994)
Nance v. Arkansas Dept. of Human Services, 870 S.W.2d 721 (Ark.1994)
O'Connor v. Donaldson, 422 U.S. 563 (1975)
Osborn v. Harrison School Dist. No. 2, 844 P.2d 1283 (Colo.App. 1992)
The People v. Cabral, 15 Cal.Rptr.2d 866 (Cal.App. 5 Dist. 1993)
The People v. Hudson, 6 Cal.Rptr.2d 690 (Cal.App.2 Dist. 1992)
Pfoltzer, et al. v. County of Fairfax, 775 F.Supp. 874 (E.D.Va. 1991)
Pickett v. Brown, 462 U.S. 1 (1983)
Polotzola v. Missouri Pacific R. Co., 610 So.2d 903 (La.App. 1 Cir. 1992)
Ricci v. Okin, 781 F.Supp. 826 (D.Mass. 1992)
Ross v. Denver Dept. of Health & Hospitals, 883 P.2d 516 (Colo.App. 1994)
Rowe v. Bennett, 514 A.2d 802 (Me. 1986)
Sherman v. Sherman, 1994 Tenn. App. Lexis 660
Siegal v. Kizer, 15 Cal. Rptr.2d 607 (Cal.App. 2 Dist. 1993)
Simmons v. State, 504 N.E.2d 575 (Ind. 1987)
State ex rel. S.C. v. Chafin, 444 S.E.2d 62 (W.Va. 1994)
State of Louisiana, Dept. of Social Svcs. v. Jones, 638 So.2d 699 (La.App. 3 Cir. 1994)
State v. Bush, 442 S.E.2d 437 (W.Va. 1994)
State v. Decker, 842 P.2d 500 (Wash.App.Div. 1 1992)
State v. Hosto-Worthy, 877 S.W.2d 150 (Mo.App. E.D.1994)
Syndex Corp. v. Dean, 820 S.W.2d 869 (Tex.App. - Austin 1991)
Thurman v. City of Torrington, 595 F.Supp. 1521 (1984)
Tobias v. County of Racine, 507 N.W.2d 340 (Wis.App. 1993)

Webster v. Reproductive Health Services, 109 S.Ct. 3040 (1989)
Wildauer v. Frederick County, 993 F.2d 369 (4th Cir. 1993)
Wisconsin v. Mitchell, 113 S.Ct. 2194 (1993)
Wyman v. James, 400 U.S. 309 (1971)
Ybarra v. Texas Dept. of Human Services, 869 S.W.2d 574 (Tex.App.-
Corpus Christi 1993)