

DCFS threats to take children ruled illegal

By Ofelia Casillas and Matt O'Connor
Tribune staff reporters - March 15, 2005

A federal judge ruled that Illinois families were deprived of their constitutional rights when state child welfare officials threatened to separate parents from their children during abuse investigations.

In a decision made public Monday, U.S. District Judge Rebecca Pallmeyer found "ample evidence" that families suffered emotional and psychological injuries because the separations lasted "for more than a brief or temporary period."

The judge didn't fault the Illinois Department of Children and Family Services for erring on the side of caution in such cases, but she held that parents had a right to know the length of the expected separations and how to contest the restrictions.

In telephone interviews with the Tribune, families described being shocked, paranoid and frightened by the allegations that some thought would result in them losing their children. Parents felt that caseworkers assumed them to be guilty.

A father from Skokie spent almost a year away from his family, and the effects of the rift that developed between them remain years later.

"I don't think it can ever be repaired. We are all broken up; we are not bonded the way that we used to be," said the father, who requested that he only be identified by his first name, Patrick. "I cannot get over what they did to me. It devastated my whole entire life. I can never be the same again."

The ruling shows the dilemma facing the oft-criticized DCFS in its charge to protect children from harm but also keep families together when possible.

At issue are safety plans, part of the wholesale reforms instituted by DCFS after the public uproar over the horrific 1993 death of 3-year-old Joseph Wallace, who was killed by his mentally ill mother after he was returned to her by the state.

In her decision, Pallmeyer essentially held that DCFS had gone too far in protecting children and had eroded the constitutional rights of parents.

The safety plans are supposedly voluntary

agreements by parents in most cases to leave their home indefinitely or stay under constant supervision after investigations into child abuse or neglect are launched, often based on tips to DCFS.

But most of the families who testified at a 22-day hearing in 2002 and

2003 said the investigators threatened to take away their children unless they agreed to the safety plans.

"When an investigator expressly or implicitly conveys that failure to accept a plan will result in the removal of the children for more than a brief or temporary period of time, it constitutes a threat sufficient to deem the family's agreement coerced, and to implicate due process rights," Pallmeyer wrote in the 59-page opinion.

"Significantly, [DCFS] has not identified a single family that, faced with such an express or implied threat of protective custody, chose to reject the plan," the judge said.

Pallmeyer gave DCFS 60 days to develop "constitutionally adequate procedures" for families to contest the safety plans.

Diane Redleaf, one of the plaintiffs' attorneys, said about 10 families were involved in the court case, but that Pallmeyer's decision would affect thousands of families who agree to safety plans each year.

"Instead of protecting children, the state is actually destroying families and hurting children," Redleaf said.

Diane Jackson, a DCFS spokeswoman, said Pallmeyer's review of safety plans was limited to 2002 and before and didn't consider changes since then.

"We have definitely made changes," said Jackson, declining to be more specific until DCFS can report to Pallmeyer.

Cook County Public Guardian Robert Harris applauded Pallmeyer's decision.

'No real due process'

"It's abridging both the children's and the parents' rights to have that amorphous safety plan

that could go on forever," he said. "There is no real due process. There is no [procedure] to complain unless you have some money to hire a lawyer."

This is the second significant ruling by Pallmeyer to go against DCFS stemming from the same lawsuit. In 2001, she found that DCFS investigators often made findings of child abuse on little evidence, unfairly blacklisting professionals accused of wrongdoing. The judge extended new protections to teachers, day-care providers, nannies, social workers and others who work directly with children. Those protections are intended to keep the falsely accused from losing their jobs.

As part of assessing whether a child is in danger, DCFS specialists determine whether one of 15 safety factors is present, including if a household member is violent or sexual abuse is suspected. For DCFS to determine a child to be unsafe requires the finding of only one safety factor, some of which require little or no evidence of risk of harm--a fact that drew the criticism of plaintiffs.

But Pallmeyer defended that practice, concluding that "it is not improper for DCFS to err on the side of caution given the significant state interest in protecting children from harm."

But the plans can't remain in place indefinitely, she held.

According to the decision, one day-care worker accused of improperly touching a child was forced out of his own home for nearly a year before a judge at an administrative hearing cleared him of the charges--based in part on information available early on.

Patrick, the father from Skokie, spent 11 months away from his three children and his wife, missing their birthdays and a wedding anniversary.

Even though the allegations concerned his workplace, a DCFS investigator threatened to put his children--a boy, then 10, and two girls, then 12 and 13--in a foster home unless he moved out of their home, Patrick said Monday.

He went home, grabbed a few belongings and later moved in with his sister in Chicago.

"I was put out on the street," said Patrick, crying. "I was just totally violated."

It wasn't until a month later that he was able to explain the circumstances to his children after the caseworker allowed a visit.

Heart-wrenching goodbyes

Soon, the father was able to see his children at church and later had supervised visits. The goodbyes were heart-wrenching, Patrick recalled.

"I would have to come here after my wife got off work, and then I would have to leave," the father said. "It was really emotional every time I left, every single night. And my kids didn't understand why I had to leave. They were very confused and very hurt. They still are."

At the time, his son was acting up at school. His daughters cried in class, their grades falling, he said.

After he was cleared of the allegations in December 2001, Patrick was unable to find a job in child care, despite about a decade of experience. The lengthy separation changed his relationship with his family, he said.

"I never got any type of apology, any type of thing to say your kids might be messed up, let us give you counseling," Patrick said of DCFS.

In another case, James Redlin, a teacher, was accused by a passenger of inappropriately touching his son, Joey, then 6, who suffers from a mild form of autism, during a Metra train ride to the Field Museum in the summer of 2000.

Joey's mother, Susan Redlin, said Monday that her husband was tickling their son, carrying the boy on his lap and holding him up to look out the window.

DCFS required that the father not act as an independent caretaker for his son until the case was resolved, effectively leaving the family "prisoners" in their own home, according to the court ruling.

Joey's mother, responsible for supervising her son under the safety plan, has multiple sclerosis and uses a wheelchair. "My husband and son could not be out of my sight," she said.

The husband was cleared of wrongdoing by September. Until then, father and son were forced to forgo trail hikes, carnival adventures, movie outings--and plans to teach Joey how to ride a bike.

"It made Jim awfully leery of being alone with Joey, even hugging him, even holding hands," Susan Redlin said. "That was the worst. If I enjoy hugging my [son], am I a pervert?"

Just Sunday, Susan Redlin said, she was out with her son and was about to swat him jokingly on the rear when she stopped herself.

"I did not do that," she said. "What if someone is watching?"

Chicago Tribune

<http://www.chicagotribune.com>