

9-1-2000

What Should Be the Standards for Intervening Between Parent and Child? The Parental Prosecution for a Young Boy's Obesity

Laura A. Kelley

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/bwlj>



Part of the [Family Law Commons](#)

Recommended Citation

Kelley, Laura A. (2000) "What Should Be the Standards for Intervening Between Parent and Child? The Parental Prosecution for a Young Boy's Obesity," *Buffalo Women's Law Journal*: Vol. 9 , Article 4. Available at: <https://digitalcommons.law.buffalo.edu/bwlj/vol9/iss1/4>

This Court Watch is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Women's Law Journal by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

**WHAT SHOULD BE THE
STANDARDS FOR INTERVENING
BETWEEN PARENT AND
CHILD?
THE PARENTAL PROSECUTION
FOR A YOUNG BOY'S OBESITY**

Laura A. Kelley

The average weight for a 4-year-old is about 35 pounds.¹ Approximately one in 20 children at age four exceed 45 pounds.² At age 3, Cory Andis tipped the scales at 111 pounds. Upon reaching 138 pounds, almost four times the average weight of a 4-year-old, the Marion County prosecutors and child welfare officials in Indianapolis, Indiana, took action against his parents. Cory was placed into foster care and his parents, Heather Andis and Bradley York, were charged with five counts of criminal neglect.³ Did Indiana have a right to intervene?

The parent's natural right to custody of children is not absolute. The state's power

¹ Mike Ellis, *Parents Being Prosecuted for Young Son's Obesity*, INDIANAPOLIS STAR, November 29, 2000.

² *Id.*

³ *Id.*

as *parens patriae* includes the power to protect minors from neglect, ill treatment, abuse, or danger to health or morals.⁴ The state may intervene in order to insure that minors receive treatment not just for physical ills but also for mental and emotional problems. The Court is obligated to balance the fundamental parental rights with those of the state's duties to protect children. Ultimately, the state holds the power to determine whether a petitioner shows that the child's welfare requires a custody order. Once a court agrees that it has sufficient cause to assume jurisdiction in order to protect a child, there is a high probability that the child will be separated from his family for months or years, or even permanently.⁵ Although it is widely accepted that the state may intervene to protect children who are neglected by their parents, there is no simple way to define what level of neglect justifies this intervention.

⁴ Judith Areen, *Intervention Between Parent and Child: A Reappraisal of the State's Role in Child Neglect and Abuse Cases*. 68 GEO. L.J. 887-889 (1975).

⁵ *Id.*

In this case, Cory's weight surpassed 130 pounds. This alarmed doctors at Riley Hospital for Children in Indianapolis who strongly urged his parents to enforce a strict, health-conscious diet.⁶ Obese children are at risk for serious health problems including diabetes, high blood pressure, liver problems, sleep apnea and coronary artery disease. Child welfare officials and nutritionists grew increasingly concerned that Cory's parents were not providing a proper diet. The boy's parents told welfare officials and nutritionists they did not understand the suggested diets because they were too hard to follow. There is also evidence that the parents were resentful and complained to a nurse about being instructed on how to properly feed Cory.⁷ The record also indicates that although it was in direct violation of the diet, Cory's parents were seen giving him a fast-food meal while he was hospitalized.⁸

⁶ See *supra* note 1.

⁷ *Id.*

⁸ *Id.*

Cory's obesity has physically effected him in numerous ways. Cory has trouble breathing and moving and wears a portable oxygen machine. He also has experienced obstructed sleep apnea. Sleep apnea is defined as brief interruptions of breathing that can be life threatening.⁹ As a result, Cory's tonsils and adenoids were removed.

In addition to his weight problem, Cory's living conditions at home were deplorable. The police visited the home and stated that it was filled with debris, garbage, rotting food, cockroaches and rats.¹⁰ The cockroaches were particularly dangerous because they crawled into a portable oxygen machine used to help Cory breathe. After officials discovered these conditions in the house, child welfare workers removed Cory from his parent's custody and filed neglect charges.¹¹

Cory was placed into foster care and he is showing signs of improvement. The foster parents placed him on a

strict starvation diet due to his lethal obesity. He has lost more than 50 pounds. His weight lose has significantly diminished his health problems.¹²

Cory has had the opportunity to visit with his parents. However, visitation was suspended as a result of the criminal case.¹³ Cory's parents, Heather Andis and Bradley York, believe that they have been treated unfairly. They question the authority of the legal and child welfare systems. The couple's attorney believes that sentencing the parents to a jail term will not solve Cory's obesity problem. Instead, the attorney argues that Cory's obesity is a social and cultural issue.¹⁴ Cory's parents question the validity of turning this family issue into a court issue. The parents legal counsel insist that the criminal case could be easily resolved by simply assigning home health aides to help clean the apartment and educate Cory's parents on how to provide a healthier diet for their child.¹⁵

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

Local welfare agencies assert that officials decided to remove the child from the home after several failed efforts by the parents to improve the living conditions. Under Indiana State Child Welfare Statutes, failure to provide a proper diet can be considered a form of abuse or neglect. Criminal charges were ultimately sought after Andis and York repeatedly disregarded the advice of medical professionals. They were repeatedly warned that Cory needed to lose weight or he would eventually die due to his morbid obesity. The prosecutor's office argues that Cory's parents were guilty of neglecting their child by repeatedly ignoring the medical advice. Therefore, a criminal case was filed against the parents.

There is concern that Cory's placement in foster care, while the criminal charges are still pending, will have additional adverse and long-term consequences on his emotional and physical health. The constant upheaval may result in long-term emotional damage on children due to frequently moving within the foster care system as well as

living in numerous homes over the course of one year.¹⁶ However, these concerns do not supercede the underlying best interest of the child standard that the state must follow. The State has a responsibility and an affirmative duty to intercede on Cory's behalf. The State argues that it is the better course of action to investigate a possible neglect situation than to allow the neglect to continue. In other words, it is better to err on the side of caution and protect the child.

It is undisputed that Indiana has a legitimate interest in the welfare of children. The state's interest will become compelling enough to sever the parent-child relationship only when the child is subjected to real physical or emotional harm and less drastic measures would be unavailing.¹⁷ The court must delicately balance the parent's right to parent their child with the state's duty as guardian of neglected children.

¹⁶ See *supra* note 1.

¹⁷ *Roe v. Conn.*, 417 F. Supp. 769 (N.D. Ala. 1976).

The best interest of the child is paramount.¹⁸

In early Spring 2001, the criminal justice system will determine what is in Cory Andis' best interest. Until then, the debate between the state's need to intervene on behalf of the child and a parent's right to parent free from state intervention will continue.

¹⁸ *People in Interest of D.K.*, 245 N.W.2d 644 (S.D. 1976).