University of Baltimore Law Forum

Volume 16
Number 2 *Winter, 1986*

Article 13

1986

Recent Developments: In re Herbert B.: Restitution in Juvenile Proceedings

Marilys Fernandez

In Re Herbert B.: RESTITUTION IN JUVENILE PROCEEDINGS

In the case of *In Re Herbert B.*, 303 Md. 419, 494 A.2d 680 (1985), the Court of Appeals of Maryland granted certiorari to consider whether a judgment of restitution was proper for damages caused by a juvenile even though the court found as a matter of fact that the juvenile was not a delinquent and dismissed the matter.

In 1982, a laundromat located in Prince George's County was broken into and certain property damaged. The appellant, sixteen-year-old Herbert B., was apprehended. At an adjudicatory hearing conducted by the Circuit Court for Prince George's County, sitting as a juvenile court, appellant was found to have been involved in storehouse breaking, petty theft, and destruction of private property. The court ordered an investigation and report to be completed by the Juvenile Services Administration, imposed court costs, and ordered a restitution hearing.

A restitution hearing was held and restitution in the amount of $228.50 was recommended. Later, at a disposition hearing, the court determined as a matter of fact that despite the commission of a delinquent act, appellant was not a delinquent child and therefore was not in need of treatment or guidance and the matter was dismissed. Nevertheless, the court directed appellant and his mother to pay $228.50 restitution to the owner of the laundromat.

The issue raised on appeal was whether a court could enter a judgment of restitution after a case had been dismissed. The court of special appeals held that MD. CTS. & JUD. PROC. CODE ANN. § 3-829(a) (1984) established the necessary criteria for a judgment of restitution: first, that the child committed a delinquent act; secondly, that the property of another was destroyed, stolen or damaged. Because the appellant satisfied these criteria, the court of special appeals affirmed the lower court's decision. *See, In Re Herbert B.*, 58 Md. App. 24, 472 A.2d 95 (1984).

Similarly, the court of appeals rejected appellant's argument and held that, although the lower court decided that the child was not delinquent and that "the matter will stand dismissed," this was meant as an indication for the record that the child was not delinquent. Thus, the court was not acting upon the petition itself but merely determining the underlying issue in the dispositional hearing.

Additionally, appellant argued that the court at the dispositional hearing had to find him a "delinquent child" before it could enter a judgment of restitution under Section 3-829(a). MD. CTS. & JUD. PROC. CODE ANN. (1984). The court rejected this contention citing section 3-829(a). The court stated that the plain language of section 3-829(a) clearly did not require that a child be adjudicated a delinquent as a prerequisite for ordering restitution. Furthermore, section 3-829(e) states that a restitution hearing may be held "as part of" or "contemporaneously with" either the adjudicatory or dispositional hearing. *See, In Re Dan D.*, 57 Md. App. 522, 528, 470 A.2d 1318, 1321 (1984). The court in an adjudicatory hearing does not sit to determine whether a child is delinquent or not. Rather, the primary purpose of this particular hearing is to hear the merits of the allegations in the petition. MD. CTS. & JUD. PROC. CODE ANN. § 3-801(b) (1984); *See, In Re Ernest J.*, 52 Md. App. 56, 60, 447 A.2d 97, 100 (1982). In other words, an adjudicatory hearing is to determine whether the child committed the delinquent act alleged. If the court determines that the child committed the delinquent act, a separate disposition hearing is conducted. MD. CTS. & JUD. PROC. CODE ANN. § 3-820(a) (1984). Clearly, Maryland law allows entry of a judgment of restitution at an adjudicatory hearing. Moreover, there is no statutory requisite that a child be adjudged a delinquent prior to ordering restitution.

Here, at the adjudicatory hearing, the court found that appellant had committed a delinquent *act.* At the dispositional hearing, the court found that appellant was not a delinquent *child.* However, since appellant was found to have committed a delinquent act during which he stole, damaged and destroyed the property of another, the court properly ordered restitution.

–Marilys Fernandez

City of Cleburne, Texas v. Cleburne Living Center, Inc.: THE COURT REJECTS MENTAL RETARDATION AS A SUSPECT CLASS

In *City of Cleburne, Texas v. Cleburne Living Center, Inc.*, 105 S.Ct. 3249 (1985), the Supreme Court of the United States recently held that mental retardation is not a quasi-suspect classification for equal protection clause purposes, and thus the Constitution requires only that legislation relating to this classification be rationally related to a legitimate state interest. Mentally retarded persons, because of their reduced capacity to function in the everyday world, differ from other persons, and the states' interests in dealing with them and providing for them are clearly legitimate ones. The Court reasoned that the mere "rational basis" standard of judicial review affords government the necessary latitude to both pursue policies which assist the retarded, and to engage in activities which burden them in an incidental manner.

In July, 1980, Jan Hannah, Vice President and part owner of Cleburne Living Centers, Inc. (CLC), purchased a home with the intention of leasing it to CLC. It was anticipated that the building would house 13 retarded men and women under the constant supervision of the CLC staff. The city informed CLC that a special use permit was required for the construction of "[h]ospitals for the feebleminded", and that the group home proposed by CLC should be classified as such an institution. After holding a public hearing on CLC's application, the City Council voted to deny the special use permit.

CLC then filed suit in federal district court alleging that the zoning ordinance was invalid on its face and as applied be-