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Recent Developments: City of Cleburne, Texas v. Cleburne Living Center, Inc.: The Court Rejects Mental Retardation as a Suspect Class

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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.

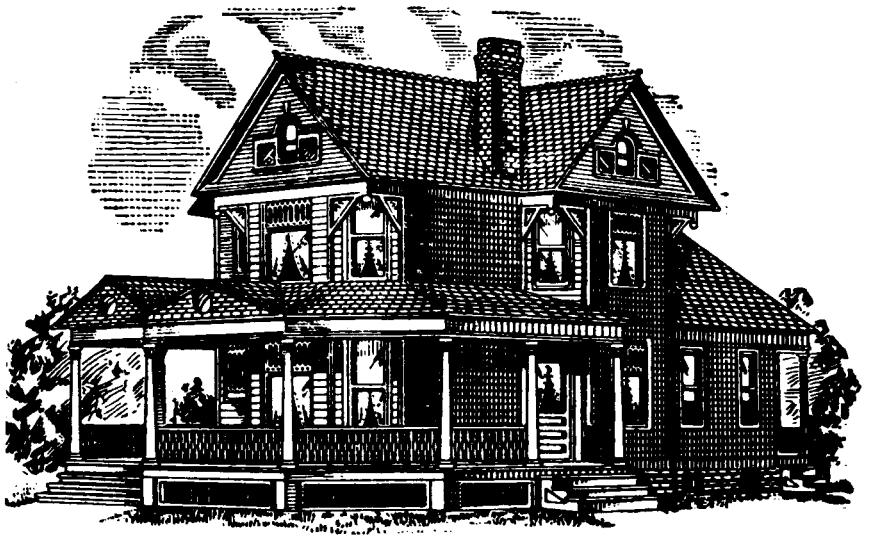
–Marilys Fernandez

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-



cause it discriminated against the mentally retarded in violation of the equal protection clause of the fourteenth amendment. The district court, while finding that the city council decision was motivated primarily by the fact that the residents of the home would be mentally retarded, held the ordinance constitutional both as written and as applied. Upon concluding that no fundamental right was implicated, and that mental retardation was neither a suspect nor quasi-suspect classification, the court applied the "rational basis" standard of review. The ordinance was found to be rationally related to the city's interest in the legal responsibility of CLC, the safety and fears of the neighborhood residents, and the number of residents within a home.

The Court of Appeals for the Fifth Circuit reversed, holding that mental retardation was a quasi-suspect classification, and that the ordinance should be assessed under intermediate level scrutiny. *City of Cleburne, Texas v. Cleburne Living Center, Inc.*, 726 F.2d 191 (5th Cir. 1984). The fifth circuit, in recognizing that mental retardation is relevant to many legislative actions, concluded that strict scrutiny was not appropriate. However, the court also concluded that the mentally retarded have suffered from a history of mistreatment which they have been politically powerless to combat. This, and other factors, led the court to hold the ordinance facially invalid because it did not further any important government interest. The court also went on to hold the ordinance invalid as applied.

In its majority opinion, the Supreme Court, after a brief review of the background of equal protection analysis, held that the court of appeals erred in holding mental retardation a quasi-suspect classification. First, the Court reasoned that the judiciary is not properly suited to substantively judge legislative decisions concerning a group as large and diverse as the mentally retarded. Second, the Court found that the mentally retarded have not been subjected to a history of discrimination; by reviewing Federal and Texas legislation concerning the retarded, the Court concluded that the nature of existing legislation was indicative of society's intent to assist the retarded and to provide for their needs in a rational manner. Third, the Court considered the existence of the ordinance itself inconsistent with the fifth circuit's reasoning that the retarded are politically powerless, and fourth, the Court declined from setting a precedent which would distinguish the retarded from any other group with immutable characteristics which had failed to illicit its desired legislative responses. By refraining from invoking quasi-suspect status upon the mentally retarded, the Court indicated a belief that government should be free to pursue policies which assist the retarded, and to engage in activities which burden them in an incidental manner. Government need only act in a manner which is neither arbitrary nor capricious.

The Court reserved the issue of zoning ordinance's facial validity, and addressed the manner in which it was applied in this case using the rational basis standard. The Court found that the city council's denial of the special permit based on the legal responsibility of CLC, the interests of the neighborhood residents, and the number of individuals living in a home was not rational in light of the fact that the CLC residents differed from other residents of similar group houses only in their mental retardation. This difference, in turn, posed no special threat to the city's legitimate interests, and was therefore an unjustified discriminatory practice.

There were two separate opinions in *City of Cleburne* in addition to the majority opinion. Justices Stevens and Burger, while concurring in the Court's judgment, declined to accept the traditional tiered equal protection analysis in this case. Tiered analysis, according to Stevens, is an overly regimented way of explaining a single principle. The Court should, in Stevens' view, perform equal protection analysis on a case by case basis, applying the factors repeatedly emphasized by the Court, such as political powerlessness, and a history of purposeful discrimination. Justice Marshall, with whom Justices Brennan and Blackmun joined, also concurred in the judgment, but disagreed with the majority's avoidance of the broad constitutional issue of whether the ordinance was facially invalid. Justice Marshall would have applied a more exacting level of scrutiny, and held the ordinance facially invalid as had the court of appeals.

–John D. Warfield