

YOUTH LAW NEWS



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U.S. Supreme Court Rules Against Foster Youth in *Keffeler*

by Patrick Gardner

On February 25, 2003, the U.S. Supreme Court reversed Washington State's highest court in *Washington State Dept. of Social and Health Servs. v. Guardianship Estate of Keffeler*.¹ The case involved Washington's use of foster children's social security benefits to reimburse itself for their care.² Attorneys for the foster children argued that the practice ran afoul of the Social Security Act's anti-attachment provision, § 407(a),³ and failed to serve the children's best interest as required by the Act and its implementing regulations. The Supreme Court disagreed, unanimously ruling that the state's practice of acting as representative payee in order to reimburse itself for foster care expenses did not constitute "execution, levy, attachment, garnishment, or other legal process" within the meaning of §407(a). Moreover, the court concluded

that the state's practice serves the children's interest inasmuch as their "basic needs are met."⁴

Analysis: A Restrictive Reading of "Other Legal Process"

Two provisions of the Social Security Act are at issue in this case. One provision, § 407(a), provides, in part, that:

none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.⁵

The other, § 405(j),⁶ authorizes the Social Security Administrator to designate an individual or group as representative payee to manage a social security recipient's benefits when it is in the beneficiary's interest to do so.

At issue was whether the state violates § 407(a) by reimbursing itself for the purchase of services for foster children for whom the state also served as representative payee. The court concluded, without dissent, "that it does not."⁷

The decision looks past § 407(a)'s more specific measures because the state's "efforts to become a representative payee and to use respondents' benefits do not even arguably employ any of these traditional procedures."⁸ Instead, the court focuses on the catch-all provision "other legal process." Applying the statutory interpretive canon of *ejusdem*

generis,⁹ the court concludes that for the purposes of the statute,

"other legal process," should be understood to be process much like the processes of execution, levy, attachment, and garnishment, and at a minimum, would seem to require utilization of some judicial or quasi-judicial mechanism, though not necessarily an elaborate one, by

(continued on p.2)

⁹ As used in the construction of laws, the maxim signifies that "[w]here general words follow an enumeration of person or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned." Black's Law Dictionary, rev. 4th Edition (1968).

⁷ *Keffeler*, slip op. at 1.
⁸ Slip op. at 10.



Marilyn Nolt

¹ No. 01—1420, 2003 WL 431631 (U.S. Feb. 25, 2003).

² For a more complete discussion of *Keffeler*, see Patrick Gardner, *Keffeler v. DSHS: Picking the Pockets of America's Neediest Children*, Youth Law News, Jul.-Sept. 2002, 1-12.

³ 42 U.S.C. § 407(a).

⁴ *Keffeler*, slip op. at 17.
⁵ 42 U.S.C. § 407(a).

⁶ 42 U.S.C. § 405(j).

by Patrick Gardner

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Supreme Court Rules Against Foster Youth

which control over property passes from one person to another in order to discharge or secure discharge of an allegedly existing or anticipated liability.¹⁰

Accordingly, “[o]n this restrictive understanding of ‘other legal process,’ it is apparent that the [state’s] efforts to become respondents’ representative payee and its use of respondents’ benefits in that capacity involve nothing of the sort.”¹¹ The court observes that as the children’s benefits are already in the state’s possession and control, the process does not involve gaining control over another’s property. Additionally, because the state has no enforceable claim against the children and there is no discharge of debt, the court concludes that the state’s practice cannot amount to execution, levy, attachment, garnishment, or other legal process.¹²

The foster children’s counsel had urged the court to accept a more expansive view of § 407(a) relying on *Philpott v. Essex County Welfare Bd.*,¹³ and *Bennett v. Arkansas*,¹⁴ in which the court established that the anti-attachment provi-

sion “imposes a broad bar against the use of any legal process to reach all social security benefits.”¹⁵ The court declined the invitation, however, distinguishing *Philpott* and *Bennett* on the grounds that both “involved forms of legal process expressly prohibited by § 407(a).”¹⁶ As well, “[i]n neither case was the State acting as a representative payee in seeking to use the funds as reimbursement for the costs incurred in providing for the beneficiary’s care and maintenance.”¹⁷ The court further pointed out that “the State is dealing with the funds consistently with Social Security regulations,”¹⁸ and the court below should have given deference to the Administrator’s regulations allowing the practice.¹⁹

Straining for the Mantle of Child Advocate

Having dispensed with § 407(a) and the question presented, the court turns to the issue of “best interest” under § 405(j), offering a bit of dictum²⁰ that bears the distinctive features of spin control.²¹

The campaign begins with the court observing that, “respondents’ position and the State Supreme Court’s holding reflects a view that allowing a

state agency to reimburse itself for the costs of foster care is antithetical to the best interest of the beneficiary foster child.”²² This position is not only wrong, contends the court, it is “demonstrably antithetical...to the best interest of many foster care children.”²³

The proof supporting this contention in its entirety is this:

If respondents had their way, however, public offices like the department [of social and health services] might well not be there to serve as payees even as the last resort, for there is reason to believe that if state agencies could not use Social Security benefits to reimburse the State in funding current costs of foster care, many States would be discouraged from accepting appointment as representative payees by the administrative cost of acting in that capacity. And without such agencies to identify children eligible for federal benefits and to help them qualify, many eligible children would either obtain no social Security benefits or need some very good luck to get them. With a smaller total pool of money for their potential use, the chances of having funds for genuine needs beyond immediate support

would obviously shrink, to the children’s loss.²⁴

This argument falls well short of demonstrable proof. As well, it is substantively flawed. First, as the court grudgingly acknowledges,²⁵ federal law limits representative payee compensation to the lesser of 10 percent or \$25 per month. Under Washington state law, the department is directed to serve as representative payee for foster children without compensation.²⁶ If the state as a matter of law declines any compensation—even that allowed under federal law—what sense can be made of the court’s claim that limiting compensation will impede the state from serving as payee of last resort?

Second, the court confuses two distinct services provided by the state of Washington: serving as representative payee and providing application assistance. Representative payees do not screen potential applicants and apply for benefits because, after all, a representative payee does not come into being until after a child is determined eligible. The court’s argument that “without such [representative payee] agencies to identify children eligible for federal benefits and to help them qualify, many eligible children would...obtain no social Security benefits...” simply misunderstands the representative payee function.

10 Slip op. at 11-12.

11 *Keffeler*, slip op. at 12-13.

12 Slip op. at 13.

13 409 U.S. 413 (1973).

14 485 U.S. 395 (1988) (*per curiam*).

15 Slip op. at 9 (quoting from *Philpott* at 417).

16 Slip op. at 15.

17 Slip op. at 15-16.

18 Slip op. at 13.

19 Slip op. at 14-15.

20 The court declined to reach respondents’ § 405(j) arguments as the allegations and arguments “are far afield of the question on which we granted certiorari... [and] respondents’ complaint and the class action certification related only to § 407(a).” Slip op. at 17, n.12.

21 See slip op. at 16-19.

22 Slip op. at 16.

23 Slip op. at 17.

24 Slip op. at 18-19 (citations omitted).

25 Slip op. at 18, n.13.

26 Wash. Rev. Code § 74.13.060.

Finally, the court claims that having less money available for the state from social security benefits will mean that children have less potential to have their “genuine needs” met. This argument ignores the undisputed fact that Washington acts as representative payee only to secure reimbursement for foster care payments.²⁷ As well, this claim brazenly disregards the import of the court’s judgment: the decision relieves the state of any obligation

²⁷ *Guardianship Estate of Danny Keffeler v. Dept. of Soc. and Health Serv.*, 32 P.3d 267, at 274-5 (Wash. 2001).

beyond immediate support to spend social security benefits on the individual needs of the recipients for whom the state serves as representative payee. Thus the court has absolved the state of the duty to use “funds for genuine needs beyond support” in the name of securing the same.

It is true that gaining social security benefits is a good thing for foster children. But on the facts of this case, the benefit to foster children only accrues when the state is not the child’s representative payee.

Common sense confirms what the Washington Supreme Court concluded: the state’s practice of reimbursing “itself for costs of foster care is antithetical to the best interest of the beneficiary foster child.”²⁸

Conclusion

At a time when states are struggling to make ends meet, the importance of preserving individual entitlements for impoverished youth is paramount. This decision fails to protect

²⁸ Slip op. at 16 (citations omitted).

foster children from near certain reductions in services and support. The final section of this opinion seeks to portray the U.S. Supreme Court as a friend to America’s poorest and most vulnerable children. Don’t be fooled. This is a decision that puts administrative expedience first, and the interests of disabled, impoverished foster children last.

Patrick Gardner is a senior attorney with the National Center for Youth Law, specializing in Children’s Mental Health and Public Benefits.

NATIONAL CENTER FOR YOUTH LAW

405 — 14TH Street, 15TH Floor
Oakland, CA 94612

(510) 835-8098

(510) 835-8099 (fax)

info@youthlaw.org

Youth Law News
National Center for Youth Law
405 — 14th Street
15th Floor
Oakland, CA 94612

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