

Intent is key in the legal definition of ‘abandonment’

Elisa M. Reiter and Daniel Pollack | February 8, 2022



“Two Texas moms charged with abandoning their six children in squalor” —*Daily Mail*, Feb. 7, 2022.

The headline is certainly eye-catching. The story goes on to relate that the “mothers have been charged with abandoning their six children and leaving them in squalor after authorities found them covered in lice and so hungry that a one-year-old boy resorted to eating his own feces.”

The Houston case referenced above was just initiated. Two young mothers, Riccy Padilla-Hernandez and Yures Molina, left six children unattended. “Padilla-Hernandez’s children are aged 2, 3 and 7 years old while Molina’s children are aged 1, 8 and 9. It is not clear if the two suspects are friends or relatives, but they and the children were living in the same property.” One of the children—only a toddler—was apparently found barefoot, dirty, and walking around an apartment complex pool. A maintenance man found the child and called the Houston Police Department. On arrival at the apartment complex, police officers “found Molina’s 1-year-old son inside a crib who was so hungry that he resorted to eating his own feces while her 9-year-old son was infested with lice and covered in dirt. It is not clear how long the children were left” alone. Apparently, one of Padilla-Hernandez’s children has special needs, and is unable to look after himself. Padilla-Hernandez returned to the apartment while the officers were on the scene, and advised the officers that she had been away from the apartment “doing her taxes.” The other mother, Molina, who is reportedly seven months pregnant, was not present at the scene.

Did these mothers abandon their children? The Oxford English Dictionary defines abandonment as, “the act of leaving a person, thing or place with no intention of returning.” What is the legal definition of abandonment? Texas Penal Code § 22.041 [Abandoning or Endangering Child] reads, in pertinent part:

“(a) In this section, ‘abandon’ means to leave a child in any place without providing reasonable and necessary care for the child, under circumstances under which no reasonable, similarly situated adult would leave a child of that age and ability.

(b) A person commits an offense if, having custody, care, or control of a child younger than 15 years, he intentionally abandons the child in any place under circumstances that expose the child to an unreasonable risk of harm.

(c) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that places a child younger than 15 years in imminent danger of death, bodily injury, or physical or mental impairment.”

The Texas Department of Protective and Family Services may file cases seeking to remove the children from their respective mother’s care to protect the children. The department may also offer services to these mothers. In addition, the department may file alternative pleadings, seeking to terminate each of the mother’s parental rights, pursuant to Family Code Section 161.0019(b)(1)(A)-(G), which provides in pertinent part:

“(b) The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:

(1) that the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for

the adequate support of the child, and remained away for a period of at least three months;

(C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;

(F) failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition;

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence.”

In this case, the children seem not to have been left in the care of an adult. What will guide the Texas Department of Family Protective Services and the ADA prosecuting such a case? The editors' Comment in Sampson, Tindall and England's Texas Family Code Annotated, Section 161.001, reads:

“Since the initiation of the code, subsections (b)(1)(A) through (b)(1)(C) have described discrete species of abandonment of a child by a parent.

Time and experience have demonstrated that the length of time necessary to prove ‘abandonment’ varies significantly, depending on the express or implied intent of the parent to abandon the child. When the intent is clear, there is no minimum time requirement. ... Where the parent’s intent to abandon is unclear or only implied, three months minimum, (B), or a six-months period is required, i.e. (C) or (N).”

The key, in regard to the instant case will depend on a number of issues, including whether or not clear and convincing evidence is presented that the mothers left the children without expressing an intent to return. Indeed, in *Schiesser v. State*, the Texas Supreme Court found that termination of parental rights was improper where the state failed to prove by clear and convincing evidence that a mother had left her children expressing an intent to not return to care for the children. Moreover, it would still be incumbent upon the attorney prosecuting the case to present evidence that termination of parental rights serves the children’s best interest even if the parties entered into a mediated settlement agreement that provides for termination of the mothers’ parental rights. Such evidence may not be limited to the issue of abandonment.

Establishing clear and convincing evidence that a parent has been neglectful—leaving the children in potentially dangerous circumstances—could be a ground for termination regardless of whether or not physical abuse occurred. There is not necessarily a requirement to show that a child suffered actual injury. Instead, parental conduct that creates an environment that endangers the child could be sufficient to establish the need for termination of parental rights. Abandonment—

especially proving each mother's intent to abandon children—may be a difficult burden of proof to sustain.

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