

NEW YORK COURT OF APPEALS ROUNDUP

LEGITIMACY OF DOMESTIC VIOLENCE PARTS AND BRONX CRIMINAL DIVISION

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Havoc would have ensued had the Court of Appeals upheld challenges to the subject matter jurisdiction of the Integrated Domestic Violence (IDV) parts of the Supreme Courts over misdemeanors charged in an information, or the Bronx Criminal Division (BCD) of the Supreme Court, Bronx County, over cases commenced in New York City Criminal Court. Such a result could have invalidated vast numbers of convictions. In [*People v. Correa*](#), the Court found both authority for the transfer of cases to the IDV and BCD, and jurisdiction of those parts over the cases on appeal. This month we discuss that decision, as well as the Court's decision in *City of New York v. Maul*, which upheld certification of a class of developmentally disabled youngsters and young adults in the foster system in an action against city and state agencies, but left for another day the question of whether claims against governments for "systemic failure" are susceptible to class certification.

IDV Courts

In January 2004, then-Chief Judge Judith S. Kaye promulgated a Rule of the Chief Judge directing that a part be devoted to adjudicating in a single forum domestic violence cases in a Criminal, Family and/or Supreme Court involving the same persons. Up until that time, the parties and witnesses to incidences of domestic violence might have been required to appear in different courts separately addressing criminal, order of protection, child custody, and matrimonial matters arising out of the same events. The purposes of allowing multiple cases involving one family to be resolved in one court include relieving parties of burden and cost, giving family members better access to services, increasing judicial efficiency, and avoiding inconsistent results.

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Then-Chief Administrative Judge, now Court of Appeals Chief Judge Jonathan Lippman (who recused himself from *Correa* and its companion case, *People v. Fernandez*) implemented the new Rule of the Chief Judge by adopting a Rule of the Chief Administrator. It provided a process for transferring IDV-eligible cases to a Supreme Court's IDV part for a determination, within five days, of whether it would promote the administration of justice to keep the matters in that part for resolution.

The defendant in *Fernandez* was tried in an IDV Part for a misdemeanor and violation charged in an information that was filed in New York City Criminal Court, Kings County, and convicted of the violation. Although he had not challenged the jurisdiction of the court at trial, he was not precluded from litigating the issue on appeal because subject matter jurisdiction is non-waivable.

In the Appellate Division, Second Department, the defendant argued that the IDV Part lacked authority to exercise jurisdiction because his case was not prosecuted under an indictment or a superior court information following waiver of indictment. He also asserted that the Chief Judge and Chief Administrative Judge exceeded their authority in adopting the relevant rules. The Second Department unanimously rejected these arguments.

Bronx Criminal Division

The defendants in two BCD cases achieved a different result in the Appellate Division, First Department. The BCD was established by another Rule of the Chief Judge that established a criminal division of the Supreme Court, Bronx County, to adjudicate cases commenced in New York City Criminal Court, Bronx County, in order to alleviate a substantial backlog of trials. A Rule of the Chief Administrator directed that certain felony and misdemeanor cases in Bronx Criminal Court be transferred to the BCD following arraignment.

Correa and *People v. Mack* were transferred to the BCD following arraignment of the defendants in those cases before the Criminal Court. The defendants failed to raise any objection to the BCD at the trial level. Nor did they initially raise any issue on appeal over the BCD until the Appellate Division, sua sponte, requested that they brief both the jurisdiction of the BCD and the validity of the rules creating it. The First Department, over the dissent of Justice Rolando T. Acosta, reversed the convictions on the grounds that the Supreme Court lacked jurisdiction to try misdemeanors charged by information, and that the administrators whose directives created and governed the BCD exceeded the authority granted to them under the state constitution and statutes.

Authority and Jurisdiction

The Court unanimously decided that there was ample constitutional and statutory support for the adoption and implementation of the rules creating IDV parts and the BCD. The Judiciary Article of the New York constitution, Article V, creates a unified court system (UCS) to be administered by the Chief Judge of the State with the assistance of an Administrative Board composed of the Chief Judge and heads of the Appellate Divisions, which together may appoint a chief administrator of the system. Article V also establishes a system for the adoption of rules that "ensures critical 'multistage, multiperson review'" of broad-based administrative policies.

As long as UCS administrators comply with the system's procedures, they have "broad express and implied powers to take whatever actions are necessary for the proper discharge of their responsibilities." Both the Judiciary Article and the Judiciary Law authorize UCS administrators to transfer cases to and from the Supreme Courts. No party disputed that the Chief Administrative Judge has the power to create new parts within the Supreme Court, and the IDV and BCD were just that, the Court found.

Once it was established that authority existed to transfer the three defendants' cases to the Supreme Court, in order to uphold the convictions it was necessary to find that the respective courts had subject matter jurisdiction. The state constitution provides that Supreme Courts "shall have general original jurisdiction in law and equity." NY Const., art VI, §7(a). This jurisdiction is also concurrent. The Court therefore concluded that a Supreme Court may exercise jurisdiction over the trial of any matter unless expressly restricted from doing so by the constitution.

Finally, the Court made short shrift to any equal protection argument. None of the defendants established that he had received less favorable treatment in his respective trial part than he would have received in Criminal Court.

'Systemic Failure' Actions

Judge Victoria A. Graffeo pointed out in her opinion for the majority in *City of New York v. Maul* that the Court has never found that the Appellate Division abused its discretion, as a matter of law, on a class certification question. That still remains the case. The Court in *Maul* found that the First Department did not abuse its discretion in affirming (4-1) an order of the Supreme Court, New York County, certifying a class of individuals with developmental disabilities¹ who are or were in the care or custody of the New York City Administration for Children's Services (ACS) and who "have not received or did not receive services from ACS and the New York Office of Mental Retardation and Developmental Disabilities [(OMRDD)] to which they were or are entitled."

ACS and OMRDD have long feuded over the division of responsibility between them for funding and providing services to special needs children. In a move it may have come to regret, ACS filed an action against OMRDD in 2004, alleging that the state agency failed to properly place, treat, or care for developmentally disabled children. The complaint sought declaratory relief with respect to the seven children in foster care on whose behalf the action was brought, as well as all developmentally disabled individuals properly referred to OMRDD by ACS.

In 2006, ACS also became a defendant in the action when the Supreme Court granted the motion of 11 developmentally disabled individuals to intervene to assert claims against OMRDD and ACS. Intervenors asserted claims for declaratory and injunctive relief under the federal Americans with Disabilities Act, and State Rehabilitation Act and Mental Hygiene Law, and for damages under the Social Services Law.

The allegations against ACS included failure to refer, or delays and incompetence in referring to OMRDD, children who qualify for the state agency's services. OMRDD, it was alleged, refuses to provide non-residential services to children in the foster care system although it provides such services to children outside of the system, declines referrals unless the child's permanency planning goal is adult residential placement, and delays making appropriate placements for up to nine years.

ACS opposed the motion for certification of a class alleged to include at least 150 additional children. It also moved for summary judgment dismissing named plaintiffs' claims on the basis that, since the action had been commenced, they had either been placed in OMRDD facilities or approved for placement once vacancies opened up. The Court affirmed the denial of the ACS motion because the intervenors' claims came within an exception to the mootness doctrine by raising "substantial or novel [questions that are] likely to recur and capable of evading review," given that foster care can be temporary and children "age out" of it.

The issue that divided the Court was whether the class had been properly certified. The majority emphasized three points in its decision to uphold certification, "although this litigation may be close to the outer boundary of the concept of commonality." It stressed that the Court's jurisdiction over certification determinations is limited to review for abuse of discretion. Additionally, the Court noted that courts have recognized that the class action statute, Article 9 of the CPLR, should be broadly construed. Lastly, the Court emphasized that Article 9 affords courts considerable flexibility of which the trial court in this case might avail itself—restricting class treatment to particular issues, certifying subclasses, and even de-certifying a class if it becomes apparent that class treatment is inappropriate.

The Court cited decisions from the Second and Third Circuit Courts of Appeal certifying classes in analogous circumstances. Then the majority had to grapple with the fact that the "commonality" requirement of Article 9 is more stringent than that of its federal counterpart, Fed. R. Civ. P. 23(a)(2). Specifically, CPLR 901(a)(2) requires common questions of fact or law to predominate over questions affecting individual members in all cases, whereas federal law does not require the predominance of common questions on claims for injunctive or declaratory relief only. Judge Graffeo's opinion reasoned that, unlike the federal Court of Appeals cases it discussed, *Maul* did not constitute a "'super-claim' of systematic failure predicated on diverse and unrelated injuries, without a more particularized common thread," but instead presented narrower and more discrete common questions.

Judge Robert S. Smith dissented, and Judge Susan Phillips Read joined in his opinion (Chief Judge Jonathan Lippman took no part in the appeal). Judge Smith argued that this was a "systemic failure" case. Moreover, if it were not, class action treatment would be "plainly impossible." After all, membership in the class required failure to receive services to which that person was entitled, necessitating review in each instance of the facts establishing whether the proposed class member was developmentally disabled and had been improperly denied services. In the dissent's view, the class action device should not be used to address systemic failure, regardless of whether the allegations, if true, establish appalling treatment of individuals and a failed government system. Reforming government institutions is not the province of the courts, Judge Smith asserted, especially because the determination of what actions should be taken involves decisions exclusively within the realm of the executive and legislative branches.

Endnote:

1. The definition of "developmental disability" in Mental Hygiene Law §1.03 (22) includes mental retardation, cerebral palsy, epilepsy, neurological impairment, and autism.

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