The Burger Court Opinion Writing Database

Santosky v. Kramer

455 U.S. 745 (1982)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

File

CHAMBERS OF
THE CHIEF JUSTICE

PERSONAL AND CONFIDENTIAL

November 13, 1981

Re: No. 80-5889 - Santosky v. Kramer

Dear Lewis:

Because you exhibited at least some "unease" on this case, I venture to suggest what tips the scales for me. It goes beyond my comments at Conference and hence I "memorialize" it here.

I pointed to the distinction on Addington where the allocation of the risk of error was tilted in favor of the individual in an adversary relation to the State; here the risk is between parent and child. I should have emphasized more the crucial factor that - as I believe - the "tilt" between parent and child must be in favor of the child on a close call as to due process.

I failed also to put enough weight on the well-established concept of federalism that states are laboratories and federal courts ought to keep hands off those laboratories save in the most pressing cases warranting intervention on constitutional grounds.

The trend in the states is toward a "clear and convincing" rule by statute. Why not consider a vote the other way and let a concurring opinion signal the states to move over a bit?

That would be genuine federalism!

Regards,

WEB

Justice Powell

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

November 16, 1981

Re: No. 80-5889 - Santosky v. Kramer

MEMORANDUM TO THE CONFERENCE:

Bill Rehnquist has agreed to take on a dissent in the above.

Regards,

WEB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 18, 1982

Re: No. 80-5889 - Santosky v. Kremer

Dear Bill:

I join your dissent, March 7 draft.

Regards,

WEB

Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 13, 1981

RE: No. 80-5889 Santosky v. Kramer

Dear Chief:

Harry has agreed to take the opinion for the Court in the above.

Sincerely,

Bill

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 4, 1982

RE: No. 80-5889 Santosky v. Kramer

Dear Harry:

I agree.

Sincerely,

Bill

Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 3, 1982

80-5889 - Santosky v. Kramer

Dear Harry,

You have written a persuasive opinion, but for now I shall await the dissent.

Sincerely yours,

Byron

Justice Blackmun

Copies to the Conference

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 18, 1982

Re: 80-5889 - Santosky v. Kremer

Dear Bill,

Please join me in your dissenting opinion. Although Harry's opinion for the Court makes it closer than I thought, I am now convinced that escalating the standard of proof is not required by the Constitution and that the new rule will be needlessly destructive of state interests in this sensitive area.

Sincerely yours,

Byron

Justice Rehnquist
Copies to the Conference
cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 4, 1982

Re: No. 80-5889 - Santosky v. Kramer

Dear Harry:

Please join me.

Sincerely,

T.M.

Justice Blackmun

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Blackmun

Circulated: MAR 2 198

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–5889

JOHN SANTOSKY II AND ANNIE SANTOSKY, PETITIONERS *v.* BERNHARDT S. KRAMER, COMMISSIONER, ULSTER COUNTY DEPARTMENT OF SOCIAL SERVICES, ET AL.

ON WRIT OF CERTIORARI TO THE APPELLATE DIVISION, SUPREME COURT OF NEW YORK, THIRD JUD. DEPT.

[March ——, 1982]

JUSTICE BLACKMUN delivered the opinion of the Court.

Under New York law, the State may terminate, over parental objection, the rights of parents in their natural child upon a finding that the child is "permanently neglected." N.Y. Soc. Serv. Law §§ 384–b.4.(d), 384–b.7.(a) (McKinney Supp. 1981–1982) (Soc. Serv. Law). The New York Family Court Act § 622 (McKinney 1975 & Supp. 1981–1982) (Fam. Ct. Act) requires that only a "fair preponderance of the evidence" support that finding. Thus, in New York, the factual certainty required to extinguish the parent-child relationship is no greater than that necessary to award money damages in an ordinary civil action.

Today we hold that the Due Process Clause of the Fourteenth Amendment demands more than this. Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence.

I

A

New York authorizes its officials to remove a child temporarily from his or her home if the child appears "neglected,"

Stylistic Changes
- Footnotes 8-19 Renumbered
Pages: 3,5,9,11,13,15-19,21-23

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Blackmun

Circulated: _____

Recirculated: MAR 5 19

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-5889

JOHN SANTOSKY II AND ANNIE SANTOSKY, PETITIONERS *v.* BERNHARDT S. KRAMER, COMMISSIONER, ULSTER COUNTY DEPARTMENT OF SOCIAL SERVICES, ET AL.

ON WRIT OF CERTIORARI TO THE APPELLATE DIVISION, SUPREME COURT OF NEW YORK, THIRD JUD. DEPT.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 5, 1982

MEMORANDUM TO THE CONFERENCE

Re: No. 80-5889 - Santosky v. Kramer

My second draft of the proposed opinion was circulated this morning. I now propose that the enclosure be substituted for the present footnote 9 on page 11 of the second draft.

HAB

STYLISTIC CHANGES
PP. 9, 11, 23

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Blackmun

Circulated: _____

Recirculated: MAR 9 1982

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-5889

JOHN SANTOSKY II AND ANNIE SANTOSKY, PETITIONERS *v.* BERNHARDT S. KRAMER, COMMISSIONER, ULSTER COUNTY DEPARTMENT OF SOCIAL SERVICES, ET AL.

ON WRIT OF CERTIORARI TO THE APPELLATE DIVISION, SUPREME COURT OF NEW YORK, THIRD JUD. DEPT.

[March ——, 1982]

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Today we hold that the Due Process Clause of the Fourteenth Amendment demands more than this. Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence.

I

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New York authorizes its officials to remove a child temporarily from his or her home if the child appears "neglected,"

STYLISTIC CHANGES
pp. 11, 22

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Blackmun

Circulated: _____

Recirculated: _____ 10 198

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-5889

JOHN SANTOSKY II AND ANNIE SANTOSKY, PETITIONERS *v.* BERNHARDT S. KRAMER, COMMISSIONER, ULSTER COUNTY DEPARTMENT OF SOCIAL SERVICES, ET AL.

ON WRIT OF CERTIORARI TO THE APPELLATE DIVISION, SUPREME COURT OF NEW YORK, THIRD JUD. DEPT.

[March ——, 1982]

JUSTICE BLACKMUN delivered the opinion of the Court.

Under New York law, the State may terminate, over parental objection, the rights of parents in their natural child upon a finding that the child is "permanently neglected." N.Y. Soc. Serv. Law §§ 384-b.4.(d), 384-b.7.(a) (McKinney Supp. 1981-1982) (Soc. Serv. Law). The New York Family Court Act § 622 (McKinney 1975 & Supp. 1981-1982) (Fam. Ct. Act) requires that only a "fair preponderance of the evidence" support that finding. Thus, in New York, the factual certainty required to extinguish the parent-child relationship is no greater than that necessary to award money damages in an ordinary civil action.

Today we hold that the Due Process Clause of the Fourteenth Amendment demands more than this. Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence.

I

A

New York authorizes its officials to remove a child temporarily from his or her home if the child appears "neglected,"

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 24, 1982

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for No. 80-5889, Santosky v. Kramer

1. No. 79-6584, In the Matter of Sheryl Ann Trapp. In 1972, 10 years ago, appellee petitioned for temporary custody of four of appellant's children on grounds of neglect. After a hearing attended by appellant, the court found the four children neglected and vested custody in the local welfare department in January 1973. In February, the court entered a support order against appellant and her husband. In October 1975, the court returned appellant's oldest son to her custody. In December, appellant and her husband unsucessfully moved to set aside the custody order as void for constitutional and jurisdictional defects.

In May 1978, appellant alone filed a motion to set aside the January 1973 custody order and the February 1973 support order and to dismiss the neglect petition. Appellant alleged that the juvenile court had no jurisdiction to enter the orders and that the neglect statutes on which the orders were based, Mo. Rev. Stat. §§211.031 and 211.181, violated the Due Process Clause of the Fourteenth Amendment. The children's foster parents intervened and the court denied appellant's motions.

Appellant appealed to the state supreme court, charging, among other things, that the Missouri neglect statutes were unconstitutional on their face and as applied. Her primary claims were: (1) that the statutory standards were impermissibly vague and overbroad; (2) that the statutes did not require the State to prove alleged neglect by clear and convincing evidence; and (3) that the statutes did not require the State to show that more harm was likely to result to a child from permitting the parents to retain the child's custody than from state intervention.

Judge Welliver, writing for the majority of four judges, held that the provisions were constitutional on their face and as applied. Addressing the evidentiary question only as a side issue, and applying a deferential appellate standard of review, the majority observed: "We cannot conclude from this record that the court's finding of neglect was totally without evidentiary support." Pet. App. A-9. Chief Judge Bardgett agreed that the provisions were constitutional, but argued that the court was not reviewing a final judgment and that the February 1973 support order was invalid for a number of reasons. Judge

I would accept HAB's recommendations in each of these four cases.
RF

80-5889 file

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 1, 1982

MEMORANDUM TO THE CONFERENCE

Re: No. 80-5227 - Maffey v. Oregon ex rel. Juvenile Dept.

This case was one of those held for Santosky.

At the request of the Conference, I have taken another look at this case. As you recall, appellant's parental rights were terminated under Ore. Rev. Stat. §419.525(2), which provides that "[t]he facts on the basis of which the rights of parents are terminated, unless admitted, must be established by a preponderance of competent evidence. . . ." This statutory standard does not meet the constitutional minimum described in Santosky. The trial court found, howevever, that this appellant's inability to adjust her home life to care for the child had been established not only by a preponderance of the evidence, but also by clear and convincing evidence. The Oregon Court of Appeals affirmed without opinion, and the Oregon Supreme Court denied review.

Appellant challenged the constitutionality of §419.525(2) at each stage of the proceeding, and has appealed to this Court under 28 U.S.C. §1257(2). Since the Oregon Court of Appeals issued no opinion in this case, however, and the Oregon Supreme Court refused to hear it, we do not know whether the appellate court actually relied on the statutory standard or the trial court's "clear and convincing evidence" finding when affirming the termination of appellant's parental rights. Because it is unlikely that the Court of Appeals actually relied on the non-statutory standard, it would be possible to treat appellant's papers as a cert petition, and GVR the case in light of Santosky so that the state courts could formally declare §419.525(2) unconstitutional. Cf. Addington v. Texas, 441 U.S. 418, 422-423, 433 (1979).

On reconsideration, however, I now believe that we ought not subject the parties to further proceedings for the sake of such a declaration, especially since the judgment below will almost certainly be affirmed. Furthermore, "[w]here the highest court of the state delivers no opinion and it appears that the judgment might have rested upon a nonfederal ground, this Court will not take jurisdiction to review the judgment." Stembridge v. Georgia, 343 U.S. 541, 547 (1952) (emphasis in original). Accordingly, I now recommend that this jurisdictional statement be dismissed and denied.

HAB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 12, 1982

Memorandum to the Conference

Re: No. 79-6584 In the Matter of Sheryl Ann Trapp
May 13, 1982 Conference List 5, Sheet 2

This case was held for No. 80-5889 Santosky v. Kramer. At the request of the Conference, the Clerk's Office directed the parties to file supplemental memoranda. After examining these memoranda and taking a closer look at the procedural posture of the case, I now recommend that appellant's jurisdictional statement be dismissed for want of jurisdiction.

The relevant facts are these. Appellant Linda Mae Trapp and her first husband, Robert Trapp, Sr. had four children: Robert, Jr. (now 14), Sheryl Ann (now 13), DeeAnn (now 12), and Duane (now 9). In November 1972, when the children were 4, 3, 2, and 2 months respectively, a juvenile officer of Henry County, Missouri, petitioned the County Juvenile Court for temporary custody of the four children on grounds of neglect, citing Mo. Rev. Stat. §211.031(1).

Following a hearing attended by appellant and her counsel, in January 1973, the Juvenile Court declared the four children "neglected" and vested custody in the local welfare department pending further court order. Under Mo. Rev. Stat. §211.041, once the juvenile court acquires jurisdiction over a child, it retains continuing jurisdiction over that child until he or she attains the age of 21. Under Mo. Rev. Stat. §211.181, the court may exercise its jurisdiction to enter orders regarding the child's disposition and treatment. In February 1973, the court entered a support order against appellant and her husband. Appellant and her husband did not appeal from either the January 1973 custody order or the February 1973 support order.

In 1975, Robert, Jr. was returned to appellant's custody. Thus, only the custody of the three younger children remains at issue. Since August 1974, Sheryl Ann Trapp has lived with her foster parents, the Bridgemans, who now reside in Mounds, Oklahoma. Since July 1981, DeeAnn Trapp has lived with her foster parents, the Millams, of Clinton, Missouri. Since May 1973, Duane Trapp has lived with his foster parents, the Johnsons, who now reside in Evergreen, Colorado. The respective foster parents have attempted to adopt each of the three children, but their adoption petitions have been dismissed pending the resolution of these and related state-court proceedings. The three younger children thus remain wards of the Henry County, Missouri, Juvenile Court.

November 16, 1981

PERSONAL

80-5889 Santosky v. Kramer

Dear Chief:

Thank you for your note of November 13, that I did not have a chance to acknowledge before leaving for Williamsburg on Friday.

The points you make are persuasive, and I agree that the case is close. Yet, I gave this question a good deal of thought last Term in 79-5932 Doe v. Delaware, and concluded then that a higher standard was required. Although I voted for the dismissal in Doe (hoping that this issue would "go away"), I stated at Conference that I thought the standard should be "clear and convincing". In my letter to you of March 5, 1981, I said:

> "I also lean strongly to the view - as I stated at Conference - that a state should meet the higher standard of proof before permanently separating parents from their children."

In most situations I have no doubt that the stated standard is immaterial. Yet, I cannot defend using the same standard of proof to terminate a parental relationship as the customary standard in garden variety civil suits for damages, on contracts, and the like. Our decision should get all of the states in line, and end the litigation on this issue.

Upon my return this morning, I see that you have assigned 80-1431 Matter of R.M.J. (Missouri bar case) to me to write. I am so unsympathetic to Bates, that writing this case will be no joy. I agree, however, with the vote at Conference that, given Bates, we must reverse. I am not sure that I can write an opinion that will muster a Court. But, I will give it a try.

Sincerely,

The Chief Justice

lfp/ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 16, 1982

80-5889 Santosky v. Kramer

Dear Harry:

Please join me in the third draft of your opinion for the Court.

Sincerely,

Lewis

Justice Blackmun

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 2, 1982

Re: No. 80-5889 Santosky v. Kramer

Dear Harry:

In due course I will circulate a dissent.

Sincerely,

WHR

Justice Blackmun

Copies to the Conference

pp. 14, 16

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

Circulated: MAR 4 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-5889

JOHN SANTOSKY II AND ANNIE SANTOSKY, PETITIONERS *v.* BERNHARDT S. KRAMER, COMMISSIONER, ULSTER COUNTY DEPARTMENT OF SOCIAL SERVICES, ET AL.

ON WRIT OF CERTIORARI TO THE APPELLATE DIVISION, SUPREME COURT OF NEW YORK, THIRD JUD. DEPT.

[March ——, 1982]

JUSTICE REHNQUIST, dissenting.

A recent report of the British Royal Commission on the state of the legal profession concluded: "In a society where every aspect of life was regulated by law, we would not care to live."[1] In the "Austinian" sense of sovereignty, of course, every aspect of individual and governmental conduct is regulated by law. As between state and individual, or individual and individual, every act is either "legal" or "illegal." Few citizens of this Nation would wish for such a regimen, but today's decision certainly moves us in that direction. By parsing the New York scheme and holding one narrow provision unconstitutional, the majority invites further federal court intrusion into every facet of state family law. If ever there were an area in which federal courts should heed the admonition of Justice Holmes that "a page of history is worth a volume of logic,"[2] it is in the area of domestic relations. This area has been left to the States from time immemorial, and not without good reason.

---

[1] Citation to be provided.

[2] *New York Trust Co.* v. *Eisner*, 256 U. S. 345, 349 (1921).

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

STYLISTIC CHANGES THROUGHOUT

p. 15

From: Justice Rehnquist

Circulated: [illegible] 1982

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-5889

JOHN SANTOSKY II AND ANNIE SANTOSKY, PETITIONERS *v.* BERNHARDT S. KRAMER, COMMISSIONER, ULSTER COUNTY DEPARTMENT OF SOCIAL SERVICES, ET AL.

ON WRIT OF CERTIORARI TO THE APPELLATE DIVISION, SUPREME COURT OF NEW YORK, THIRD JUD. DEPT.

[March ——, 1982]

JUSTICE REHNQUIST, dissenting.

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[1] Citation to be provided.

[2] *New York Trust Co.* v. *Eisner*, 256 U. S. 345, 349 (1921).

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

Circulated: _____

Recirculated: MAR 2 2 1982

Stylistic Changes
& footnotes renumbered

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–5889

JOHN SANTOSKY II AND ANNIE SANTOSKY, PETITIONERS *v.* BERNHARDT S. KRAMER, COMMISSIONER, ULSTER COUNTY DEPARTMENT OF SOCIAL SERVICES, ET AL.

ON WRIT OF CERTIORARI TO THE APPELLATE DIVISION, SUPREME COURT OF NEW YORK, THIRD JUD. DEPT.

[March 24, 1982]

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE, JUSTICE WHITE, and JUSTICE O'CONNOR join, dissenting.

I believe that few of us would care to live in a society where every aspect of life was regulated by a single source of law, whether that source be this Court or some other organ of our complex body politic. But today's decision certainly moves us in that direction. By parsing the New York scheme and holding one narrow provision unconstitutional, the majority invites further federal court intrusion into every facet of state family law. If ever there were an area in which federal courts should heed the admonition of Justice Holmes that "a page of history is worth a volume of logic,"[1] it is in the area of domestic relations. This area has been left to the States from time immemorial, and not without good reason.

Equally as troubling is the majority's due process analysis. The Fourteenth Amendment guarantees that a State will treat individuals with "fundamental fairness" whenever its actions infringe their protected liberty or property interests. By adoption of the procedures relevant to this case, New

[1] *New York Trust Co.* v. *Eisner*, 256 U. S. 345, 349 (1921).

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 4, 1982

Re: 80-5889 - Santosky v. Kramer

Dear Harry:

Please join me.

Respectfully,

Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 2, 1982

No. 5889 Santosky v. Kramer

Dear Harry,

I shall await the dissent in this case.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 4, 1982

No. 80-5589 Santosky v. Kramer

Dear Bill,

Please join me in your dissent in this case.

Sincerely,

Sandra

Justice Rehnquist

Copies to the Conference