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High court: Poor parents need lawyers in child support cases

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The New Jersey Supreme Court ruled yesterday that indigent parents facing jail for failing to pay child support have a constitutional right to a court-provided lawyer.

The court called on the state Legislature to find the money to hire those lawyers. Until it does, those too poor to hire their own lawyer may not be jailed for falling behind on their child support obligations, the high court ruled.

"In the future, at child support enforcement hearings, all parents charged with violating a court order must be advised of their right to counsel," Justice Barry Albin wrote in a 6-0 ruling. Chief Justice Deborah Poritz, who as administrator of state courts was named as a defendant in the lawsuit, did not take part.

"Those parents facing potential incarceration must be advised of their right to appointed counsel if they are indigent and, on request and verification of indigency, must be afforded counsel," Albin continued. "Otherwise, incarceration may not be used as an option to coerce compliance with support orders."

Albin acknowledged that no money has been appropriated to hire lawyers and he ruled out a practice that has sometimes been used: drafting the nearest available lawyer to take the case for free.

"The benefits and burdens of our constitutional system must be borne by society as a whole," Albin wrote. "In the past, the Legislature has acted responsibly to provide funding to assure the availability of constitutionally mandated counsel to the poor."

Yesterday's ruling would not prevent judges from jailing delinquents who had the chance to argue their cases with the help of lawyers.

The ruling was a victory for Pennington lawyer David Perry Davis, who has argued for almost six years that locking up poor people to force them to pay child support was both "a futile exercise" and, unless they were given a lawyer, a violation of their constitutional rights.

"I'm obviously pleased," Davis said. "Hopefully the only ones who will be in jail will be those who can pay but are refusing to pay."

Davis said New Jersey had been one of only four states that did not consistently provide lawyers in these cases. Yesterday's ruling leaves only Pennsylvania, Virginia and New Hampshire, he said.

The high court's ruling vindicated Mercer County Assignment Judge Linda Feinberg, who ruled in 2003 that the constitution requires court-appointed counsel for indigent parents facing jail. Her ruling was overturned by a state appeals court in 2004, but the Supreme Court stayed the practice of jailing indigent parents while it considered the case.

The Attorney General's Office had argued that judges are trained to determine whether a parent who is behind on child support can afford to pay, and therefore court-appointed lawyers were unnecessary.

The justices disagreed.

"An indigent parent untrained in the law, and perhaps anxious and inarticulate, needs the guiding hand of counsel to help prove that his failure to make support payments was not due to willful disobedience of a court order but rather to his (destitute) circumstances," Albin wrote. He added that without a lawyer, there was "a high risk of an erroneous determination and wrongful incarceration."

Davis said Anne Pasqua, the lead plaintiff in the lawsuit he brought, was an example. Rounded up in a sweep of deadbeat parents, she told a judge she should be collecting child support -- not paying it -- because she had custody of her children, Davis said. He said the judge checked his records, concluded that Pasqua was "playing games" and sent her to the Mercer County workhouse.

Davis said that when he interviewed Pasqua there, "it was obvious she was having a psychiatric crisis." She was "promptly released" when that was reported to the judge, he added.

Melville D. Miller Jr., president of Legal Services of New Jersey, said that in this tight budget year, finding money to hire lawyers will "probably not" be a priority, but it may not matter.

Miller said that despite the temporary moratorium on jailing indigent parents, "we saw no observable drop in the collection rate." At oral arguments last October, Miller told the justices there are other ways to get deadbeat parents to pay, such as suspending their driver's licenses and intercepting their tax refunds.

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