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Proskauer Files Amicus Brief on Behalf of Addiction Medicine Professionals in Family Regulation Case before California Supreme Court

Proskauer For Good on **June 9, 2023**

On April 4, 2023, Proskauer submitted an amicus brief in the California Supreme Court in *In re NR*, a case in which a child was removed from his father's custody based on a finding of "substance abuse." The lower court found that the father had a "substance abuse" problem — based solely on its subjective judgments about substance use, rather than applying any objective, evidence-based standard — and separated the father and child on that basis. This case highlights the danger of allowing courts to diagnose parents with "substance abuse" problems based on their own subjective and standardless opinions. Unfounded assumptions, judgments, and stigma against substance use and substance use disorders can cause significant harm, particularly when they are used as a basis to deprive parents of their fundamental rights and separate families.

The brief was filed on behalf of AMERSA (the Association for Multidisciplinary Education and Research in Substance Use and Addiction), whose mission is to improve health and well-being through interdisciplinary leadership and advocacy in substance use education, research, clinical care, and policy, and the California Society of Addiction Medicine ("CSAM"), whose mission is to advance the ethical and compassionate treatment of addiction through physician-led education of health professionals, patients, and the public.

Appellate courts in California have split over how to define "substance abuse" in the context of California Welfare and Institutions Code § 300(b)(1), with some adopting an objective, scientific standard based on either a professional diagnosis or criteria laid out in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, and others adopting a subjective, standardless approach. We urged the Court to adopt the test developed in *Drake M.*, in which a finding of "substance abuse" can only be found by a trained professional or based on objective, scientific criteria.

We argued that the lower courts in *In re NR* erroneously conflated "substance *use*" with "substance *abuse*," noting that the term "substance abuse" is stigmatizing, outdated, and not widely used in the medical and professional community. Instead, "substance abuse" should be properly interpreted to refer to a substance use disorder, which can only be accurately diagnosed by a trained professional. The amicus brief describes the significant distinctions between substance use and a substance use disorder, and explains that frequency, duration, and/or amount of substance use alone do not constitute diagnostic criteria for substance use disorders. The brief also explains that a urine drug test alone cannot diagnose a substance use disorder, nor indicate whether or not the person was actively inebriated at the time of drug testing. Finally, we explained that scientific evidence does not support equating substance use with a "substantial risk of harm," and that parental substance use and substance use disorders do not automatically create a substantial risk of harm to children.

In re NR is likely to have significant implications in California family regulation cases, and a resolution in favor of the appellant father would help to ensure uniformity and prevent Section 300 from being enforced on an ad-hoc, subjective basis, which often disparately impacts communities of color.

The Proskauer team includes partner Jonathan Weiss, pro bono counsel Michelle Moriarty, associates Brad Presant, Justin Cohen, and Dakshina Chetti, and paralegal Sara Gothard.

View original.

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