



CASE ALERT: WASHINGTON

New Case on Children Testifying in Family Law Trials and Considering All Evidence of Domestic Violence and Sexual Assault Against Current and Past Partners and Children

In Re Wagner, 18 Wash.App.2d 588 (2021)

How Could This Case Help? This case may help if a child has witnessed abuse and might testify in a family law trial. This case may also help if someone is requesting restrictions in a parenting plan based on domestic violence or sexual assault.

Summary of the Case Mother petitioned to modify a parenting plan and asked the court to impose restrictions based on Father's history of domestic violence. She said they needed to be in place because Father had physically and emotionally abused the children, sexually assaulted Mother's adult daughter when she was younger and sexually assaulted Mother, which resulted in pregnancy. After the family law trial, the trial court entered a revised parenting plan that did not impose the restrictions Mother asked for, and she appealed.

The Court of Appeals said the trial court made a mistake by outright refusing to allow testimony from one of the children, from Mother, and from Mother's adult daughter about Father's abuse. The opinion explains the trial court must consider the circumstances of the case when deciding whether a child should testify. The court should consider things like the seriousness of the abuse allegations, whether a guardian ad litem or other professional is appointed to investigate and testify regarding the children's best interests, and whether there are other witnesses to the abuse who could testify. The appeals court also stated evidence about abuse is relevant, including sexual assault that results in pregnancy and child sexual abuse, whether or not it is related to the children at issue in the parenting plan.

PRACTICE TIPS

1. **If free or low-cost parenting plan investigators are not available** or when a person cannot afford to pay for a guardian ad litem or parenting investigator, **and a child might testify** in a family law trial, give the court this case.
2. If the **trial court refuses to consider all the circumstances of the case and refuses to allow a child to testify about abuse**, show them a copy of this case.
3. Even if the evidence of **abuse is related to the parties' other children (and not the children in the parenting plan trial)**, it is relevant to deciding if there should be restrictions in the parenting plan. If the trial court refuses to hear **evidence about past abuse**, show them a copy of this case.
4. **Sexual assault that results in pregnancy is relevant abuse under the law.** If the trial court doesn't believe sexual assault that results in pregnancy is domestic violence under the law, show them a copy of this case.

For questions or clarifications, email or call Family Violence Appellate Project at infoWA@fvaplaw.org or (360) 680-1030. Thank you!