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Louisiana Juvenile Courts - Appeals

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Concluding, then, that the result reached in these non-representative agency cases has been satisfactory, what of the techniques employed to achieve these ends? Is it *doctrinally* proper to assume that mandate includes non-representative agency even though there is no provision in our written law to that effect? The better course would seem to be a recognition by our supreme court that Louisiana jurisprudence, through a line of consistent decisions, created a set of rules, analogous to those governing "simple agency," to be applied to a situation not provided for in our written law.

FRED W. JONES

LOUISIANA JUVENILE COURTS — APPEALS

In the absence of special constitutional or statutory provisions to the contrary and except for equity proceedings, judicial review in common law states does not include questions of fact, but is generally limited to the correction of errors of law.[1] Thus, the distinction made in Louisiana between appeal on questions of law in criminal cases and appeal on questions of both law and fact in civil cases[2] is peculiar to this state. Limiting review generally to questions of law is predicated upon the philosophy that the jury should be a final judge on issues of fact and is further bolstered by the practical consideration that a review of the facts would burden the appellate court with an examination and appraisal of all testimony adduced upon the trial of the case. Juvenile court cases, however, are not heard by juries and are not conducted with the formalities of a regular criminal or civil trial. As the Louisiana Supreme Court so aptly stated in the recent case of *In re Diaz,* "Such cases are not to be classed as civil or criminal—indeed they are sui generis."[3] It is appropriate then that the scope of appeal from juvenile court judgments be considered in the light of the nature of those proceedings with balancing of the practical and policy considerations involved.

Two separate and distinct rules are presently employed in Louisiana for appeal from juvenile courts. The Louisiana Constitution[4] provides for appeal from the juvenile court in the Parish of Orleans to the Louisiana Supreme Court on questions of *law and*

1. 5 C. J. S. 550, n. 92, § 1642.
2. La. Const. of 1921, Art. VII, § 10.
3. 31 So. (2d) 195, 196 (La. 1947).
4. La. Const. of 1921, Art. VII, § 96, as amended by La. Act 322 of 1944.

fact. Outside the Parish of Orleans, appeals to the supreme court from judgments of juvenile courts on questions of law and fact are permitted only where the judgments affect custody, care, or control of a minor child. In all other cases the appellate review of juvenile court judgments is limited to questions of *law.*[5] There is no discernable reason why one rule of appeal should be used for juvenile cases from Orleans Parish and a completely different one for juvenile cases from other parishes. With a constitutional convention contemplated, it is appropriate to inquire into the reasoning of the two rules to ascertain which is more logically adapted to the nature of juvenile proceedings.

Before the adoption of the Constitution of 1921, it was the uniform rule in this state that appeals from juvenile court judgments were limited to questions of law.[6] A step in another direction was taken when Section 96 of Article VII of the Constitution of 1921 provided for appeals on questions of *law and fact* from the Orleans Juvenile Court to the criminal district court. Appeal from the criminal district court on questions of law only prevented the review of facts from reaching the supreme court. This right of appeal on questions of fact from the Orleans Juvenile Court was carried even further when Act 322 of 1944 amended Section 96 to allow such appeal to go to the supreme court, constituting a radical departure from the general rule as to such appeals. Is such a departure logical or justifiable?

In other states review of a juvenile case, if such is permitted at all, is treated the same as a review of any other final judgment.[7] Unless there is some special provision to the contrary, the review is usually limited to questions of law. Some states have gone so far as to deny any right of appeal from juvenile court judgments.[8] Oppo-

5. La. Const. of 1921, Art. VII, § 54, as last amended by La. Act 309 of 1944.

6. La. Const. (1913) Art. 118, § 1. State v. Fink, 127 La. 190, 53 So. 519 (1910); State v. Anderson, 127 La. 1041, 54 So. 344 (1911); State v. Dunn, 140 La. 385, 73 So. 240 (1916); State v. Trapp, 140 La. 425, 73 So. 255 (1916); State v. Vogt, 141 La. 764, 75 So. 674 (1917).

7. Calif. Code Welfare and Institutions (Deering, 1944) § 580; Colo. Stat. Ann. (Michie, 1935) c. 46, § 213; D. C. Code (1940) tit. 11, § 934; Ga. Code (1933) § 24-2417; Ill. Rev. Stat. (1943) c. 23, § 220; Ann. Laws of Mass. (Michie, 1942) c. 119, § 56.

8. If statute providing for juvenile court makes no provision for an appeal, failure to make such a provision was not a denial of due process of law. Wissenburg v. Bradley, 209 Iowa 813, 227 N. W. 136 (1929); Marlowe v. Commonwealth, 142 Ky. 106, 133 S. W. 1137 (1911). In ex parte Januszewski, 196 Fed. 123 (E. D. Ohio, 1911), it was held the federal court could not adjudge the Juvenile Act [Ohio Gen. Code (Page, 1926) §§ 1639-1683], regulating the control of delinquent children, invalid because it contained no provision for appeal. The quasi-criminal nature of juvenile court proceedings has been outweighed, in this

nents of such laws argue that to allow juvenile court authorities final jurisdiction over the welfare of children is to place despotic power in the hands of such judges and paves the way for modern Star Chamber proceedings.[9] The United States Supreme Court, however, in two early cases decided that the right of appeal is not a constitutional right and is wholly within the power of the legislature to grant or deny in either civil or criminal cases.[10]

It is not suggested that the right of appeal should, as a matter of policy, be completely denied in juvenile cases. Yet one may have cause to ask why Louisiana should, in regard to Orleans Parish juvenile appeals, depart from the general rule of appeal in juvenile cases and burden the state supreme court with the appellate review of both facts and law. Not only is there no seemingly logical reason for this departure, but the very nature and function of a juvenile court is such that appeals to superior courts tend to dispel the advantages which the specially constructed juvenile court is designed to achieve. One of the primary purposes of a juvenile court is to substitute informal hearings designed to assist the child in place of the formal proceedings where the juvenile is tried as a criminal. An appeal to the supreme court immediately reverts to the formal hearing. Because the juvenile court is not strictly speaking a court of justice to decide the right and wrong in each case, but is one with the primary social purpose of helping dependent, neglected, and delinquent children, the judge must of necessity exercise wide discretion in each particular situation. Appeals on questions of fact necessarily limit the discretion of the juvenile judge in Orleans Parish to a greater extent than has been deemed advisable in the majority of juvenile courts in the United States[11] and in other parishes of Louisiana.[12] It seems logical that the juvenile judge, who is especially selected because of his training and temperament to deal with children, should be given final discretion on questions of fact rather than to refer such decisions to a factual review by the supreme court. Few supreme court justices will have the same specialized training and experience as the juvenile judge. An appeal on questions of fact will also consume a considerable amount of the very valuable time

connection, by the fact that the judgment is not one of imprisonment, but merely a provision of the government, standing in loco-parentis, for the protection, correction, and care of the child.

9. Comment (1927) 27 Col. L. Rev. 968, 974.

10. McKane v. Durston, 153 U. S. 684, 14 S. Ct. 913, 38 L. Ed. 867 (1894); Andrews v. Swartz, 156 U. S. 272, 15 S. Ct. 389, 39 L. Ed. 422 (1895).

11. See note 6, supra.

12. See note 4, supra.

of the supreme court, for such an appeal involves a review and evaluation of the entire proceedings and evidence.

The appeal on questions of law is a guaranty that the liberalized procedure is followed, but does not purport to substitute the judicial discretion of the supreme court for that of the juvenile judge who has had the advantage of observing the juvenile and actually hearing all the testimony in the case.

In actual practice it is not the juvenile delinquent but the adult criminal, tried in juvenile court for misdemeanors affecting children,[13] who will most often take advantage of liberal appeal provisions. Since the purpose of the juvenile court is to help children it is seldom that the juvenile will have occasion to appeal from the disposition of his case. Where the juvenile might desire an appeal, he is usually without means to prosecute the case further for himself, and generally has no one to do it for him. Thus it naturally follows that the provision for an appeal on fact would be used largely for the benefit of adult criminals who were tried in the Orleans Juvenile Court. If these same adult criminals were tried in a regular criminal court they would not have the right of appeal on questions of fact. Is there any sound reason for giving this special advantage to the adult criminal who committed his crime against a child in Orleans Parish? It is significant that since the amendment permitting appeals to the supreme court on questions of law and fact, the two cases appealed on questions of fact from the juvenile court, *State v. Smith*[14] and *State v. Williams*,[15] were both cases of adult criminals. In *State v. Smith*,[16] where an adult was charged with the crime of indecent behavior with a juvenile, Chief Justice O'Niell stated:

> "It may seem unreasonable that the Legislature in proposing the amendment of Section 96 of Article VII of the Constitution, should have made a difference between appeals from the Juvenile Court for the Parish of Orleans and appeals from the other juvenile courts throughout the state. But that is a matter over which we have no control. Our duty is merely to read and apply the amendments of the Constitution as they are written.

13. Since it has been held that appeals from juvenile courts are suspensive only for adults, the benefit of an appeal on questions of fact would be greatly in favor of adult. State v. Smith, 209 La. 363, 24 So. (2d) 617 (1945).

14. 210 La. 581, 27 So. (2d) 359 (1946).

15. 210 La. 866, 28 So. (2d) 460 (1946).

16. 210 La. 581, 590, 27 So. (2d) 359, 362 (1946).

"It may seem strange also that if this case had been tried originally in the Criminal District Court the defendant would have had no right of appeal to the Supreme Court even on questions of law, because the penalty actually imposed is neither a fine exceeding $300 nor imprisonment for a term exceeding six months."

If the Louisiana Constitution is revised, the provision in Section 96 of Article VII should be analyzed and its respective advantages and disadvantages carefully weighed. It is submitted that this provision for appeal from the Orleans Parish Juvenile Court should be changed to conform to the rule of appeal for all other juvenile courts of this state — a rule which fits logically into the general pattern of Louisiana Supreme Court appellate jurisdiction.

LILY ROSE YOUMANS

PAYMENT OF DIVIDENDS IN LOUISIANA FROM UNREALIZED APPRECIATION OF NOTES, BONDS, OR OBLIGATIONS FOR THE PAYMENT OF MONEY

The practical impossibility of accurately evaluating corporate assets, plus the ever present temptation to overvalue those assets in order to present a favorable financial picture and to enable directors to comply with the insatiable demands of stockholders for immediate dividends, has led to the generally accepted rule of law that unrealized appreciation of corporate assets may not be used in calculating funds from which dividends may be paid.[1] Several states have by statute specifically adopted this rule.[2] Even where the state statute has failed to cover the point precisely and has merely stated that dividends are to be paid from surplus, or from net worth over capital, or from assets over liabilities, the courts have uniformly read in an implied prohibition against the inclusion of unrealized appreciation.[3] The fundamental soundness of this limitation is graphically

1. Ballantine, Corporate Capital and Restrictions upon Dividends Under Modern Corporation Laws (1935) 23 Calif. L. Rev. 229, 259; Bonbright, Theory of Anglo-American Dividend Law: Surplus and Profits (1930) 30 Col. L. Rev. 330, 341.

2. Idaho Code Ann. (1932) §§ 29-129; Ill. Rev. Stat. Ann. (Smith-Hurd, 1935) tit. 32, §§ 157.41c; Ind. Stat. Ann. (Burns, 1933) §§ 25-211; Ohio Gen. Code Ann. (Page, 1938) §§ 8623.38; Pa. Stat. (Purdon, 1938) tit. 15, §§ 2852-701-(1). Contra: Wis. Stat. (1939) §§ 182.19, criticized by Geraldson, Limitations on Dividends (1934) 10 Wis. L. Rev. 269.

3. Hills, Dividends From Unrealized Capital Appreciation (1928) 6 N. Y. L. Rev. 155 contains resume of cases showing historic attitude of American courts