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NEW YORK COURT OF APPEALS CASE COMPILATIONS: IN THE MATTER OF GEORGE T

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IN THE MATTER OF GEORGE T[1]

(decided December 17, 2002)

I. SYNOPSIS

The New York Court of Appeals reversed the appellate division and held that extensive delays resulted in the violation of the right of a juvenile defendant to a speedy trial under Family Court Act § 340.1.[2] The court therefore granted the defendant-respondent's motion to dismiss. The delays were due to, among other reasons, the trial judge's improper insistence on having the arresting officer testify at the suppression hearing. The court, with one dissent, held that the delay of the commencement of the fact-finding hearing for over 47 days due to the unjustifiably prolonged suppression hearing violated the defendant-respondent's speedy trial rights pursuant to Family Court Act § 340.1.

In his dissent, Judge Smith agreed that there were intolerable delays in the case but concluded that the issue of suppression-delay

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1. 99 N.Y.2d 307 (2002).

2. Fam. Ct. Act § 340.1. According to the court, the relevant portions of Family Court Act § 340.1"

> 1. If the respondent is in detention and the highest count in the petition charges the commission of a class A, B, or C felony, the fact-finding hearing shall commence not more than fourteen days after the conclusion of the initial appearance except as provided in subdivision four. If the respondent is in detention and the highest count in such petition is less than a class C felony the fact-finding hearing shall commence no more than three days after the conclusion of the initial appearance except as provided in subdivision four. . .
> 4. The court may adjourn a fact-finding hearing: (a) on its own motion or on motion of the presentment agency for good cause shown for not more than three days if the respondent is in detention and not more than thirty days if the respondent is not in detention; . . . or(b) on motion by the respondent for good cause shown for not more than thirty days.
> 5. The court shall state on the record the reason for any adjournment of the fact-finding hearing.
> 6. Successive motions to adjourn a fact-finding hearing shall not be granted in the absence of a showing, on the record, of special circumstances; such circumstances shall not include calendar congestion or the status of the court's docket or backlog.

had previously been determined by the order in the *habeas corpus* petition. Therefore, he argued, the issue should not have been before the court due to collateral estoppel.

II. BACKGROUND

The defendant, a juvenile, arraigned in family court on May 10th, 2001, was charged with an act which constitutes the criminal possession of marijuana in the 5th degree if committed by an adult.[3] At the time of his arrest, the defendant was absent without leave from a prior "Person in Need of Supervision" placement.[4] Therefore, the court placed him in secure detention.

On May 14th at a probable cause hearing, the family court determined that there was probable cause to believe the defendant committed the alleged acts.[5] A pre-trial suppression hearing was set for May 17th, upon the motion of the law guardian.[6]

The hearing began around 5 p.m. on May 17th and was continued on May 18th when the court denied the law guardian's request that her client be placed in non-secure detention.[7] Due to scheduling difficulties among the parties, the matter was adjourned to May 29th.[8] The cross-examination of Detective Ortiz began and the hearing was adjourned until the 31st when the cross-examination was concluded.[9] Also on that date, the presentment agency stated that it would not be calling any more witnesses.[10] The court, however, insisted that the agency call the arresting officer to provide further clarification.[11] The court declined the law guardian's request that the defendant be released under the Family Court Act.[12]

Due to the court's insistence on the questioning of the arresting officer, Detective Alvarez, the hearing could not continue until June 13th, when Detective Alvarez was to return from vacationing

3. *In re George T.*, 99 N.Y.2d at 309 (2002).
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.* at 309-310.
9. *In re George T.*, 99 N.Y.2d at 310.
10. *Id.*
11. *Id.*
12. *Id.*

out-of-state.[13] However, on June 13th, the court adjourned the matter for another day because the witness was still unavailable.[14] On that day, the court denied the law guardian's request to dismiss the case on speedy trial grounds and release her client.[15] On June 14th, the court adjourned the case until June 20th due to the illness of the law guardian and an upcoming court vacation day.[16]

Detective Alvarez began testifying on June 20th. The matter was adjourned until June 28th, the next mutually agreeable date for everyone.[17] On that day, the court denied the law guardian's request to change her client's detention status.[18] The matter was delayed until July 9th due to the unavailability of the law guardian prior to that day.[19] The matter did not resume on July 9th as scheduled due to the illness of the witness and the judge attending a judicial seminar.[20] Again the law guardian requested and the court rejected the removal of the defendant from secure detention.[21]

On July 13th, the law guardian filed a formal written motion to dismiss based on denial of a speedy trial.[22] The court denied the motion four days later in part due to the law guardian's own responsibility for the delays.[23] The hearing continued on the 18th and 19th, when the law guardian rested.[24]

The court issued its opinion on July 23rd, denying the motion to suppress.[25] This was some 67 days after the hearing began and 74 days from the defendant's arraignment.[26]

The Supreme Court granted the petition for writ of *habeas corpus* brought on the defendant-respondent's behalf but issued a stay to allow for an appeal to be brought by the presentment

13. *In re George T.*, 99 N.Y.2d at 310.
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. *In re George T.*, 99 N.Y.2d at 310.
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.* at 310-311.
25. *In re George T.*, 99 N.Y.2d at 311.
26. *Id.*

agency.[27] The appellate division reversed and denied the writ concluding that defendant-respondent's rights to a speedy trial were not violated by the suppression hearing adjournments.[28] The court pointed out that many of the delays were "caused by [the defendant's] own pre-trial motion practice, the necessity of concluding the . . . [suppression] hearing before starting the fact-finding hearing" and that adjournments were predicated on good cause.[29] The appellate division came to the same conclusion in regards to the fact-finding hearing which began on July 23rd and continued until August 23rd.[30] The fact-finding hearing consisted of a total of eight adjournments including a 15-day adjournment for the judge's vacation.[31] The defendant appealed.

III. Discussion

The Court of Appeals focused on the statute that affords the defendant the right to a speedy trial, Family Court Act § 310.2, and the legislative intent behind that statute. As the act allegedly committed by the defendant would be considered a class B misdemeanor if it had been committed by an adult[32], and the defendant was in detention during the proceedings, the court began by establishing that according to the Family Court Act, the fact-finding hearing must begin within three days of the defendant's initial appearance when the charge is less than a class C felony and the juvenile is in detention.[33]

The Family Court Act does provide for exceptions to the timeliness requirements. The fact-finding hearing may be adjourned for good cause for a maximum of three days upon the motion of the court or the presentment agency. The Family Court Act also allows

27. *In re George T.*, 99 N.Y.2d at 311.

28. New York *ex rel.* Solomon v. Fitzpatrick, 733 N.Y.S.2d 339 (App. Div. 2001).

29. *Id.*

30. *In re George T.*, 736 N.Y.S.2d 673 (App. Div. 2002). Although the court believed the court acted within its discretion, it criticized "the court's taking of evidence for only a short period of time, especially when dealing with a juvenile who is incarcerated. . .[we] find there is no excuse for the taking of testimony for five minutes or half an hour at a time and then continuously adjourning the case." *Id.* at 674.

31. *In re George T.*, 99 N.Y.2d at 311.

32. *Id.* at 309.

33. Family Ct Act § 340.1 [1].

for successive adjournments for fact-finding hearings when there is a showing of special circumstances.[34]

The court next looked at the provisions of the Family Court Act requiring a pretrial motion to suppress evidence to be decided prior to the commencement of the fact-finding hearing and, if the defendant is detained, to be determined on an expedited basis.[35]

The court concluded that these provisions of the Family Court Act illustrate clear legislative intent to ensure speedy trials for respondents in juvenile delinquency proceedings.[36] The court found that the legislature had even greater intent to provide such a right when the respondent is in detention.[37]

The court supported its conclusions with reference to precedent and statutory history. The court cited in *In re Frank C.*[38] for the proposition that § 340.1 is "a true speedy trial provision" meant to provide protection against all delays, despite their sources, and not just those delays that result for the direct acts of the presentment agency.[39] The court in *In re Frank C.* held that "dismissal is required whenever the statutory requirements for commencing a fact-finding hearing are not satisfied."[40]

The court acknowledged that a suppression hearing is in general a good cause for adjournment of the fact-finding hearing as a motion to suppress must be decided before the commencement of the fact-finding hearing.[41] However, the court warned, that is not the end of the inquiry. The court pointed to the fact that in the instant case, respondent objected to the judge's continuation of the hearing by his insistence that Detective Alvarez be called even after the presentment agency said it had no further witnesses.[42] It was the judge's requirement that the agency call the arresting officer and the "piecemeal manner in which his testimony was taken" that caused the delay which violated the respondent's rights.[43]

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34. *In re George T.*, 99 N.Y.2d at 312 n.2; Family Ct Act § 340.1[4] and [6].
35. *In re George T.*, 99 N.Y.2d at 312; Family Ct Act § 330.2[3] and 332.2[4].
36. *In re George T.*, 99 N.Y.2d at 313.
37. *Id.*
38. 70 N.Y.2d 408, 413-414 (1987).
39. *In re George T.*, 99 N.Y.2d at 313.
40. *In re Frank* C., 70 N.Y.2d 408 at 410.
41. *In re George T.*, 99 N.Y.2d at 313.
42. *Id.*
43. *Id.*

The court recognized that the presentment agency argued that the speedy trial issue was untimely due to the resolution of the habeas corpus proceeding.[44] However, the court held that he agency failed to raise the argument that the habeas corpus decision had a preclusive effect in this case.[45] Therefore, the court concluded, there was no collateral estoppel issue before the court.[46]

Accordingly, the court reversed the order of the Appellate Division and granted defendant's motion to dismiss.[47]

Judge Smith agreed with the majority that the delays in the proceedings against the defendant were "intolerable."[48] However writing for the dissent, Judge Smith felt that the majority placed too much emphasis on form rather than substance when the majority refused to consider the issue of collateral estoppel.[49] The majority concluded that the presentment agency did not adequately argue collateral estoppel as it "did not expressly content that the habeas corpus decision had preclusive effect."[50]

Judge Smith argues that the presentment agency clearly made the argument of collateral estoppel, despite the fact that the agency never used the term.[51] Smith quotes the prestatement agency as saying "we believe that in granting this leave, this Court did not intend for the pre-trial delay issue to be before it.[52] Appellant is precluded from raising that issue. . ." Therefore, Smith concluded, "the suppression-delay argument has been previously determined and is not properly before us."[53]

IV. CONCLUSION

In *George T*, the New York Court of Appeals held that a juvenile defendant's right to a speedy trial under the Family Court Act was violated when a suppression hearing took almost 70 days to complete due to the family court judge's insistence on the calling of an

44. *In re George T.*, 99 N.Y.2d at 311.
45. *Id.* at 311 n.1.
46. *Id.*
47. *Id.* at 314.
48. *Id.*
49. *Id.*
50. *Id.*
51. *In re George T.*, 99 N.Y.2d at 314.
52. *Id.* at 314-315.
53. *Id.* at 315.

additional witness and the "piecemeal manner in which his testimony was taken."[54] The court held that these delays eliminated the good cause that had previously delayed the commencement of the fact-finding hearing.[55]

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54. *In re George T.*, 99 N.Y.2d at 313.
55. *Id.*