

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	§	
	§	No. 576, 2001
Plaintiff Below,	§	
	§	Certification of Questions of
v.	§	Law from the Superior Court
	§	of the State of Delaware in and
ABIGAIL CALIBOSO and JOSE E.	§	for New Castle County in
OCAMPO,	§	Def. ID No. 0004019366
	§	Def. ID No. 0004004124
Defendants Below.	§	

Submitted: November 19, 2001

Decided: November 28, 2001

Before **VEASEY**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

**ORDER**

This 28<sup>th</sup> day of November 2001, it appears to the Court that:

(1) In this criminal case pending in the Superior Court, the defendants, Abigail Caliboso and Jose E. Ocampo, are charged with Murder by Abuse or Neglect in the Second Degree pursuant to 11 *Del. C.* § 633. The defendants have filed a joint motion to dismiss the indictments against them. The motion to dismiss questions the interpretation of 11 *Del. C.* § 1103(c), which defines the term “neglect.”

(2) By order dated November 13, 2001, the Superior Court certified the following questions of law to this Court, pursuant to Delaware Constitution, art. IV, 11(9) and Supreme Court Rule 41:

A. Does the phrase “ability and financial means to provide adequate care and protection” found in 11 *Del. C.* § 1103(c) apply to a charge of Murder by Neglect in the Second Degree where the act [of] neglect the State alleges is abandonment, or does the phrase apply only to allegations of neglect where the State alleges “inadequate care or protection?”

B. Does the statutory distinction, set forth in 11 *Del. C.* § 1103(c), between those with the “financial means” to provide adequate care and protection and those without “financial means,” violate the State and Federal Constitutional Equal Protection Clauses?

C. Does the word “ability,” in the context of 11 *Del. C.* § 1103(c), encompass both physical and psychological ability to provide adequate care and protection?

(3) The Court has considered the questions certified and has concluded that “important and urgent reasons for an immediate determination by this Court” do not exist to justify deviating from the ordinary appellate process.<sup>1</sup> The Court, in its discretion, finds that the appellate process is

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<sup>1</sup>Supr. Ct. R. 41(b).

preferable as a matter of the orderly administration of justice, “so that this Court will have the benefit of the reasoning and analysis of the trial court.”<sup>2</sup>

NOW, THEREFORE, IT IS ORDERED that the Certification of Questions of Law by the Superior Court is REFUSED.

BY THE COURT:

//Randy J. Holland//

Justice

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<sup>2</sup>*State Farm Mut. Auto. Ins. Co. v. Dann*, Del. Supr., \_\_\_ A.2d \_\_\_, No. 538, 2000 at 2, *Per Curiam*, 2001 WL 1381268 (Mar. 26, 2001).