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PENNSYLVANIA SUPERIOR COURT

In the Interest of L.B., a Minor

Date of Decision: December 27, 2017

Cite: 884 MDA 2017

Holding:

Prenatal conduct may support a finding of child abuse under Pennsylvania's Child Protective Service Law when the agency establishes that by using illegal drugs during pregnancy, the mother intentionally, knowingly, or recklessly caused or created a reasonable likelihood of bodily injury to a child after birth.

Facts and Procedural Posture:

Clinton County Children and Youth Services (CYS) filed an application for Emergency Protective Custody upon receipt of information that Mother had tested positive for opiates, benzodiazepines and marijuana while pregnant and that her newborn child was suffering from withdrawal symptoms and undergoing treatment immediately following birth. The Order granting CYS Emergency Protective Custody was granted. CYS subsequently filed a Petition seeking Adjudication of Dependency on the basis that the child was without proper parental care or control, and further alleging that the child was a victim of child abuse under the Pennsylvania Child Protective Services Law (CPSL). Specifically, CYS alleged that under §6303(b.1)(1), Mother caused bodily injury to the child through a recent act or failure to act by way of her ingestion of illegal substances during her pregnancy, which resulted in the child's suffering from drug dependence withdrawal at birth. The Court adjudicated the child dependent, but deferred its decision on the allegation of abuse under the CPSL. Following receipt and review of Memorandums of Law submitted by the parties and after hearing argument from all counsel, the trial court entered an order finding that CYS could not establish child abuse on the actions committed by Mother "while the child was a fetus." CYS appealed.

Issue:

Whether a Mother's illegal drug while pregnant constitutes child abuse under the Pennsylvania Child Protective Services Law.

Rationale:

The Superior Court began by noting that as part of a dependency proceeding, a court may find a parent to be the perpetrator of child abuse as defined by the CPSL. *In re L.Z.*, 111 A.3d 1164, 1176 (Pa. 2015). In the instant matter, CYS argued that Mother was a perpetrator of child abuse as a result of intentionally, knowingly, or recklessly causing bodily injury or creating a reasonable likelihood of bodily injury to the child through any recent act or failure to act under 23 Pa.C.S. §6303(b.1)(1), (5). While the Superior Court acknowledged that a "fetus" or "unborn child" does not meet the definition of "child" under the CPSL, the Court affirmed that once born, the infant is a "child" as defined by the CPSL. The Court also agreed that Mother's drug use constituted a "recent act or failure to act" under

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the relevant statutory provisions. The Superior Court remanded the matter to the trial court to answer the only remaining question: whether CYS established that through Mother's prenatal illegal drug use she "intentionally, knowingly or recklessly" caused or created a reasonable likelihood of bodily injury to the child after birth.

Concurring Opinion:

Justice Strassburger wrote a concurring opinion, joining the Majority based upon the language of the statute but questioning whether treating women who are addicted to drugs as child abusers results in safer outcomes for children. Specifically, Justice Strassburger articulated apprehension that treating pre-natal drug use as child abuse may discourage the mother from seeking assistance for her addiction issues or receiving pre-natal care during pregnancy, and/or from delivering her child in the hospital. Justice Strassburger also expressed concern with the potentially far-reaching consequences of intrusion upon a woman's private decision-making as to what is best for herself and her child. Justice Moulton joined this concurring opinion.

AMENDMENTS TO THE NEWBORN PROTECTION ACT

On December 22, 2017, Act 68 of 2017 was signed into law and expanded the protections available under Pennsylvania's Newborn Protection Act of 2002. Under the amended provisions of the Act, a parent of a newborn is now permitted to leave a newborn in the care of "emergency service providers," defined by the amendments as an emergency medical responder, emergency medical technician, advanced emergency medical technician, or a paramedic, provided that certain specific criteria are met. Additionally, the amendments provide for the specific actions to be taken by emergency service providers when accepting newborns, as well as signage requirements and the optional provision of incubators for placement of the newborn child. The full text of the Act can be found [here](#).