

SWAN Legal Services Initiative



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PENNSYLVANIA SUPERIOR COURT

In the Interest of L.E.A.M.

Date of Decision: February 16, 2017
Cite: 1984 EDA 2016

Holding:

Superior Court affirmed the trial court's order denying maternal Uncle's petition to declare L.E.A.M. dependent, where Uncle stood *in loco parentis* to the child and provided him with care.

Facts and Procedural Posture:

The child, L.E.A.M., was born in El Salvador in 1998 and lived there with his mother until 2015. The child had a good relationship with both of his parents, but due to gang recruitment in El Salvador, the child's parents determined it was not safe for him to stay. Upon leaving home, he headed towards the United States, where he was detained by federal authorities and released to his maternal Uncle, a legal resident of the United States, in Allentown, Pa. Uncle took him in and continued to care for him, providing him with food and clothing and sending him to school. The child remained in contact with his parents as well. Approximately four months later, Uncle filed a private dependency petition alleging parents had abandoned L.E.A.M. and he was without a parent, guardian, or legal custodian. The petition, which requested the child be found dependent and returned to Uncle's care, was denied. Uncle, joined by the child's parents, filed a joint motion for reconsideration. The motion was denied, and an appeal followed.

Issue:

Whether the trial court erred in failing to adjudicate L.E.A.M. dependent under subsection 3 or 4 of the Juvenile Act's definition of "dependent child"?

Rationale:

The dependency of a child is determined by whether the child is currently lacking proper care and control, and whether such care and control is immediately available. Subsection 3 of the Juvenile Act defines a dependent child as one who "has been abandoned by his parents, guardian, or other custodian." Subsection 4 of the Juvenile Act defines a dependent child as one who "is without a parent, guardian, or legal custodian." 42 Pa.C.S.A. 6302. The court found that the child was not abandoned because he was, and continues to be, under the care of a custodian, his uncle. Furthermore, the court found that the child is not without parents in that the parents are alive, their whereabouts are known, they are in contact with the child, and they are involved in the instant matter. As such, the court found that the child was neither abandoned by his parents nor without parents, as required by the Juvenile Act.

In the Interest of K.C.

Date of Decision: February 24, 2017

Cite: 1620 EDA 2016

Holding:

Superior Court reversed and remanded the trial court's order adjudicating the child dependent, but found that the Philadelphia Department of Human Services (DHS) failed to make "reasonable efforts" to prevent or eliminate the need for placement, where DHS did not have a placement arranged for the child at the time of the adjudication.

Facts and Procedural Posture:

DHS received a report regarding the child's truancy issues and behavior problems in the home. They filed a petition requesting that the court adjudicate the child dependent, allow him to remain at home with his mother, and enter a finding that the agency made reasonable efforts to prevent placement. A hearing was scheduled for April 26, 2016. At a prehearing conference that morning, the parties agreed that the child should be adjudicated dependent; however, the mother stated she no longer wished for him to remain in the home. DHS did not have a placement arranged for the child at that time, so the parties agreed he be committed to the custody of DHS. The court adjudicated the child dependent but found that reasonable efforts to prevent placement were not made, due to the agency not having a placement arranged for the child as concurrent planning would require. DHS subsequently filed a motion for reconsideration. The court denied the motion, and an appeal followed.

Issue(s):

Whether DHS may appeal the portion of the trial court's order denying them reasonable efforts and whether the trial court erred in applying the incorrect legal standard to determine whether DHS made reasonable efforts to prevent placement?

Rationale:

The court first determined that DHS had standing to pursue the appeal due to its status as an aggrieved party; by denying the agency reasonable efforts, DHS is ineligible for federal funding for the placement of the child, thus resulting in a significant financial burden. The court next looked to 42 Pa.C.S.A. 6351, which governs the disposition of dependent children. This section provides, in pertinent part:

"(T)he court shall enter findings on the record or in the order of court as follows...
(2) whether reasonable efforts were made prior to the placement of the child to prevent or eliminate the need for removal of the child from his home, if the child has remained in his home pending such disposition."

The court noted that the trial court's inquiry at the hearing was focused on whether DHS made reasonable efforts to finalize placement, rather than prevent placement. By doing so, the trial court misapplied Section 6351 and applied the subsection related to permanency review hearings instead. The court further noted that DHS did not seek removal of the child from his home and was not aware of a need until immediately before the hearing, when Mother expressed her desire to have the child placed. The trial court should have considered whether reasonable efforts were made prior to the hearing to prevent the placement from occurring. Instead, its conclusion was based solely on the fact that DHS did not have a placement ready at the time of adjudication. As such, the court found that the trial court abused its discretion and erred as a matter of law in making the reasonable efforts determination.

SPOTLIGHT: EDUCATION:
AMERICANS WITH DISABILITIES ACT AND REHABILITATION ACT

Fry v. Napoleon Community Schools
United States Supreme Court

Date of Decision: February 22, 2017
Cite: 2017 WL 685533

Petitioner, E.F., a minor child with a severe form of cerebral palsy, sued local and regional school districts and principals alleging a violation of Title II of the Americans with Disabilities Act (ADA) and Rehabilitation Act in the districts' refusal to allow her to bring her trained service dog to school. The United States district court for the Eastern District of Michigan granted the Defendants' motion to dismiss, holding that pursuant to 20 U.S.C. §1415(l), a Plaintiff bringing suit under the ADA, the Rehabilitation Act, or similar laws "seeking relief that is also available under [the IDEA] must first exhaust the IDEA's administrative procedures." The United States court of appeals for the Sixth Circuit affirmed, reasoning that §1415(l) and exhaustion of the IDEA's administrative procedures is applicable whenever a Plaintiff's alleged harms are "educational" in nature. The Supreme Court of the United States granted certiorari to determine and clarify the scope of §1415(l). The Supreme Court held that exhaustion of the IDEA's administrative procedures is unnecessary where the gravamen of the Plaintiff's suit is something other than the denial of the IDEA's core guarantee of a Free Appropriate Public Education (FAPE). The Court vacated and remanded, instructing the court of appeals to conduct analysis of whether Plaintiff's complaint charges and seeks relief for the denial of a FAPE.

SPOTLIGHT: EDUCATION:
INDIVIDUALS WITH DISABILITIES EDUCATION ACT

Nicholas H. v. Norristown Area School District
US District Court, ED Pennsylvania

Date of Decision: February 10, 2017
Cite: 2017 WL 569519

The Plaintiff, a 16-year-old sophomore identified as a child with a disability within the meaning of the Individuals with Disabilities Education Act, by and through his parents sought reimbursement for tuition and transportation through a Due Process Complaint with the Norristown Area School District on the grounds that it failed to provide the Plaintiff with a Free Appropriate Public Education (FAPE) following rejection of both the district's proposed Individualized Education Programs (IEP) and Notices of Recommended Educational Placement (NOREP). A special education hearing officer issued a decision denying the parents' request for tuition and transportation reimbursements, finding that the district had sufficiently offered a FAPE in both its IEP and NOREP. On appeal, the district court directed the district to reimburse the Plaintiff for the tuition and transportation costs incurred during the 2014–15 school year, but declined to extend its ruling and order to those tuition and transportation costs incurred during the 2015–16 school year, finding that the district's alteration on the IEP for the 2015–16 school year proposed a significant increase in the level of learning support in a smaller, more supportive, and intensive classroom situation which sufficiently addressed the Plaintiff's disabilities to provide FAPE.

SPOTLIGHT: FOURTEENTH AMENDMENT DUE PROCESS

Tracey D. Cimorelli v. Tioga County
US District Court, MD Pennsylvania

Date of Decision: February 10, 2017
Cite: 2017 WL 551910

United States District Court for the Middle District of Pennsylvania denied Defendant's motion to dismiss Plaintiff's complaint alleging Tioga County Department of Human Services violated her Fourteenth Amendment right to substantive due process. The Plaintiff alleged that Defendants did not complete an investigation upon receiving a report that an individual at Plaintiff's day care facility had perpetrated child abuse. Nevertheless, Defendants issued an indicated report of physical abuse against Plaintiff and her day care facility, resulting in an immediate loss of her license to operate the facility. Plaintiff's appeal to the Bureau of Hearings and Appeals was granted and her license was subsequently reinstated; however, Plaintiff contends that Tioga County deprived her of her child care license without due process. The court found Tioga County's routine noncompliance with legal requirements in child abuse investigations is a plausible claim for relief and satisfies the standard to defeat a motion to dismiss.

AMENDMENTS TO Pa.R.C.P. – ACTIONS FOR SUPPORT

On February 10, 2017, upon recommendation of the Domestic Relations Procedural Rules Committee, the following rules of civil procedure (related to Actions for Support) were amended: Rules 1910.16-1 (Amount of Support. Support Guidelines); 1910.16-2 (Support Guidelines. Calculation of Monthly Net Income); 1910.16-3 (Support Guidelines. Basic Child Support Schedule); 1910.16-3.1 (Support Guidelines. High Income Cases); 1910.16-4 (Support Guidelines; Calculation of Support Obligation, Formula); 1910.16-6 (Support Obligations. Adjustments to the Basic Support Obligation. Allocation of Additional Expenses); and 1910.16-7 (Support Guidelines. Awards of Child Support when there are multiple families). The complete rules in their amended form can be found in [Volume 47, Number 8 of the Pennsylvania Bulletin, published February 25, 2017](#).

DID YOU KNOW? HOMELESS PREVENTION FOR OLDER YOUTH

On March 12, 2017, Juvenile Law Center's Child Welfare Policy Director Jennifer Pokempner testified before Philadelphia City Council's Committee on Housing, Neighborhood Development and the Homeless on Councilwoman Blackwell's Resolution 170027 to investigate ways the city can prevent homelessness through new models. Jennifer joined other advocates across the city in sharing recommendations with council members. Specifically, she offered eight strategies for preventing homelessness for youth aging out of the foster care and juvenile justice systems. To read more about these strategies, access the full article from The Juvenile Law Center [here](#).