



SWAN Legal Services Initiative

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INSIDE THIS ISSUE:

In Re: C.M.C. (Cont'd) 2

R.J.W. v. DHS 2-3

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Pennsylvania Superior Court

In Re: C.M.C.

Date of Decision: May 26, 2016

Cite: 2016 Pa Super 112

Holding:

Vacated and remanded trial court's decision to voluntarily terminate mother's parental rights to her dependent child, where mother voluntarily relinquished her rights during a hearing based on a petition to involuntarily terminate and her relinquishment was conditioned upon post-adoption contact with her child.

Facts and Procedural Posture:

In July 2014, Blair County Children, Youth & Family Services (BCCYF) received an allegation that the child was being neglected in the home of his maternal grandfather. BCCYF obtained an emergency custody order and placed the child in foster care. The child was adjudicated dependent, and his permanency goal was later changed to adoption. In June 2015, the child's placement was modified, and he was moved to his paternal grandmother's home in Alabama. A petition for involuntary termination of parental rights of both parents was filed, and a hearing was held in August 2015. During the course of the hearing, mother determined she wished to voluntarily relinquish her parental rights. Mother's counsel then asked the paternal grandmother, on the record, if she would permit mother telephone calls and visitation with the child after the adoption. The paternal grandmother agreed, and mother was subsequently colloquied regarding her decision to relinquish her parental rights voluntarily. The trial court entered a decree voluntarily terminating the parental rights of both parents pursuant to the Adoption Act. After the hearing, the paternal grandmother refused to enter a written agreement pursuant to Act 101 of 2010. Mother appealed the trial court's decision, alleging the relinquishment was conditioned upon the entry of a post-adoption contact agreement and was therefore not knowing and voluntary.

Rationale:

The court examined the language of the Adoption Act to determine whether mother's consent to terminate was invalid. The Act provides two procedures for a parent to voluntarily relinquish his or her rights, both of which are distinguishable from the Act's involuntary termination requirements. In this case, Mother did not petition the court to relinquish her rights, either pursuant to 23 Pa.C.S. §§ 2501(a)(Relinquishment to agency), or 23 Pa.C.S. § 2502(a) (Relinquishment to adult intending to adopt child) as required by the Act. Furthermore, neither BCCYF's petition for involuntary termination nor the oral examination (colloquy) complied with the requirements for a voluntary relinquishment under those sections. By converting the hearing on the involuntary petition to a voluntary termination hearing, the court deprived mother of the ten-day waiting period given to her to consider her decision. There is no indication that the court explained this to mother or that she waived that waiting period. Moreover, because mother did not waive her right to a post-adoption contract, the court was unable to conclude that she intelligently, voluntarily, and deliberately consented to terminate her parental rights.

Continued on pg. 2

In Re: C.M.C continued...

Concurring Opinion:

Mother's argument on appeal specifically pertained to her belief that she had conditioned her consent on the paternal grandmother's testimony that she would allow continuing contact. It is not clear whether mother knew that her relinquishment could not be contingent on the paternal grandmother's statement that she would allow post-adoption contact. For this reason, mother's relinquishment of her parental rights could not be considered voluntarily or intelligently made.

Pennsylvania Commonwealth Court

R.J.W. v. DHS

**Date of Decision: May 17, 2016
No. 836 C.D. 2015**

Holding:

Affirmed order of the Department of Human Services upholding an order of its Bureau of Hearings and Appeals (BHA), which adopted a recommendation by an administrative law judge (ALJ) denying father's request for expunction of an indicated report of child abuse under the Child Protective Services Law.

Facts and Procedural Posture:

In September 2011, the Washington County Office of Children and Youth Services (CYS) received a report of possible child abuse involving a child and her father. In October 2011, after its investigation, CYS filed an indicated report identifying the father as the perpetrator of child sexual abuse. Father appealed, and the BHA assigned an ALJ to hear the appeal. The ALJ determined that the child, who was five years old at the time of the hearing, was competent to testify. Other witnesses included the child's mother, caseworker, emergency nurse, therapist, and forensic interviewer. Testimony indicated that the child underwent a forensic interview at the Children's Advocacy Center, but the recording of such interview was not presented as evidence during the hearing. Father, having not seen the forensic interview, objected to the forensic interviewer's testimony, but the ALJ overruled such objection. Father then testified on his own behalf and offered evidence that he and mother were involved in a contentious divorce. Following all of the testimony presented by both parties, the ALJ found the child to be a credible witness but found that the father was not. As a result, the ALJ issued an adjudication recommending denial of father's appeal. The BHA adopted the recommendation in its entirety. Father appealed and contended, in part, that the ALJ's decision and credibility determinations were not supported by substantial evidence and that the ALJ erred in prohibiting the viewing and admission of the child's forensic interview.

Rationale:

With regards to father's first issue, the BHA found the child's testimony credible with respect to the acts of sexual abuse perpetrated on her by her father. As such, the child's testimony regarding the incidents of abuse, by itself, constitutes substantial evidence to sustain CYS' indicated report of child abuse. Although father contended that the child's testimony on cross-examination was full of inconsistencies, the child offered clear testimony regarding the abuse. Moreover, the testimony of the child was corroborated by other witnesses. Although father presented conflicting evidence, the ALJ is not required to address all the evidence that is presented. The ALJ did not simply dismiss father's evidence with a conclusory credibility determination. Rather, the ALJ specifically considered father's position and explained reasons for expressly rejecting that contention. The court found that the ALJ adequately employed the statutory "weighing dynamic" standard, as required by 23 Pa. C.S. §6303(a), in determining that the testimony of the child was credible.

R.J.W. v. DHS continued...

As for father's second issue, it was determined that the videotape was never in CYS' possession, counsel for CYS did not view the videotape, and counsel for CYS did not offer the videotape into evidence because the child was available to testify at the hearing. Thus, the hearing proceeded as if no videotape existed. The ALJ considered testimony that the lack of a videotape of a forensic interview can make it difficult to assess the reliability of the information conveyed by a child during an interview, and that younger children may be more susceptible to suggestions made by the interviewer. As such, it was determined that the ALJ based his decision to uphold the indicated report of abuse on the child's live testimony, which was corroborated by other witnesses. Even if the forensic interviewer's testimony was excluded based on father's inability to view the videotape, it was determined that the ALJ's decision to uphold the indicated report of abuse was adequately supported.

Dissenting Opinion:

The ALJ's opinion did not discuss or even mention the evidence that father proffered at the hearing in his defense. The only reference to such evidence can be found in the findings of fact where the ALJ found that father "did not testify credibly." This statement without any further examination fails to constitute the required "weighing dynamic." Furthermore, given the potential issues with forensic interviews of extremely young children, the testimony of the forensic interviewer should not have been allowed absent production of the videotaped interview.