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Highlight: **D.P. & B.P. v. G.J.P. & A.P.**

Pennsylvania Supreme Court - Grandparents brought action for partial and physical custody of the subject children, citing to [23 Pa.C.S.A. § 5325\(2\)](#) of the Domestic Relations Code. This section, in relevant part, states:

In addition to situations set forth in section 5324 (relating to standing for any form of physical custody or legal custody), grandparents and great-grandparents may file an action under this chapter for partial physical custody or supervised physical custody in the following situations:

(2) *where the parents of the child have been separated for a period of at least six months or have commenced and continued a proceeding to dissolve their marriage;*

The mother and father had been separated for more than six months, but no divorce action had been commenced. They filed a motion to dismiss the grandparents' action, asserting that paragraph (2) of Section 5325 violated their Fourteenth Amendment rights to due process and equal protection. The trial court agreed that it was a violation of their constitutional rights to raise their children as they see fit and granted the parents' motion to dismiss the grandparents' complaint. The grandparents appealed directly to the Pennsylvania Supreme Court.

The Pennsylvania Supreme Court recognized that certain circumstances provide a compelling basis for state action. However, the state's interest in fostering grandparent-grandchild relationships over the objection of presumptively fit parents solely on the basis that they have been separated for at least six months does not justify such action. The parents' fundamental right to parent and determine who their minor children should associate with would be violated by the conferral of standing based solely on a parental separation. The order of the Court of Common Pleas dismissing the grandparents' complaint was affirmed.

The full opinion, as well as concurring and dissenting opinions, can be found [here](#).

Ferris v. Milton S. Hershey Medical Center, et al.**Date of Decision: September 29, 2016
Cite: 2016 WL 5462088****Facts and Procedural Posture:**

In the morning hours of Sunday, June 27, 2010, Plaintiff mother gave birth to A.F. prematurely. The records indicated that A.F. was blue, not breathing, and the umbilical cord was around her neck. She was resuscitated but was in need of medical treatment to prevent further complications. The Plaintiff parents refused to consent to the treatments despite the opinions of medical personnel. The hospital eventually contacted Child and Youth Services (CYS) and reported suspected neglect. The Defendant caseworker arrived at the hospital and informed the Plaintiffs that A.F. would be taken into protective custody if they did not authorize the medical care. Defendant caseworker then prepared a safety plan outlining the recommended medical treatment, but the Plaintiffs refused to sign it.

The caseworker then contacted the local police department. When the police officers arrived, they spoke with the caseworker, medical staff, and Plaintiffs. The officer concluded that there were reasonable grounds to believe the child's removal was necessary and issued an emergency custody order. A judge subsequently provided a verbal authorization for the hospital staff to provide A.F. with the necessary medical treatment. The following morning, the court entered an order directing CYS to take custody. A.F. was returned to the custody of her parents within 24 hours.

The Plaintiffs initiated a complaint alleging Fourth and Fourteenth Amendment violations and a state law false imprisonment claim. Defendants filed a summary judgment motion in response.

Rationale:

The court first noted that, although social workers are entitled to absolute immunity for their actions in petitioning, formulating, and making recommendations to state court, it was determined that the alleged constitutional violations occurred prior to the time the order was issued from the court and therefore absolute immunity would not apply.

The court next turned to the alleged violations. In order to show a Fourth Amendment violation, "a plaintiff must show that the Defendants' actions (1) constituted a "search" or "seizure" within the meaning of the Fourth Amendment, and (2) were "unreasonable" in light of the surrounding circumstances. *Adkins v. Luzerne County Children & Youth*, 2005 WL 2129921. The record indicated that the Defendant caseworker prepared the necessary paperwork for authorities to take custody prior to their arrival and encouraged them to do so. However, the officer spent a significant amount of time with the Plaintiffs and hospital staff investigating the matter before taking custody. Although the Defendant caseworker played a role in the "seizure" of A.F, her involvement did not rise to the level necessary for a seizure to occur. Therefore, the Plaintiff's Fourth Amendment allegation failed.¹

The Plaintiffs' Fourteenth Amendment allegation was based on the premise that "there was no emergency circumstance to justify deprivation of custody without parental consent of court order." However, the court found that the Defendant caseworker was justified in her reliance on the professional opinions of medical personnel. Based on this information, there was sufficient evidence of an emergency circumstance posing an immediate threat to the child, and no violation occurred.²

The summary judgment motion of the Defendant was granted in full.

¹ Even if it was determined the Fourth Amendment violation existed, Plaintiffs' claim would fail due to the defendant caseworker's qualified immunity.

² Even if it was determined the Fourteenth Amendment violation existed, Plaintiffs' claim would fail due to the defendant caseworker's qualified immunity.