



SWAN Legal Services Initiative

August Legal Report

VOLUME 3, ISSUE 2

2016

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Supreme Court of Pennsylvania

In Re: Adoption of M.R.D.

Date of Decision: August 29, 2016

Cite: 26 MAP 2016

Facts and Procedural Posture:

Mother and father met in South Dakota in 2002 before relocating to Pennsylvania. The relationship quickly ended and father returned to South Dakota. Shortly after, mother discovered she was pregnant with twins. The children were born in 2004, and father had minimal contact with them over the next few years.

In father’s absence, maternal grandfather (MGF) filled the void and assumed a father-like role to the children. He attended doctor’s appointments, helped with homework, attended school conferences, and essentially raised the children along with mother.

In 2012, despite having no contact with the children for several years, father filed for custody. In response to the custody action, mother and MGF filed a petition for Involuntary Termination of Parental Rights and Adoption. The Orphan’s Court granted the petitions, thus allowing MGF to adopt the children and co-parent along with mother. Father appealed the decision to the Superior Court. His appeal was denied, and the court affirmed the termination of his parental rights and subsequent adoption by MGF. Father then petitioned the Supreme Court.

Rationale:

The Supreme Court reversed and remanded. The Supreme Court relied on the Adoption Act and existing case law to reach its decision as to whether MGF could adopt his grandchildren and co-parent with their mother. The court recognized that in order to terminate the other parent’s rights, a petitioning parent must demonstrate that an adoption of his or her child is contemplated (23 Pa.C.S. § 2512(b)). Further, the petitioning parent must relinquish his or her parental rights, unless the petitioning parent has a spouse willing to adopt (23 Pa.C.S. § 2711 (d)(1)). The Adoption Act, 23 Pa.C.S. §2901, however, allows the party to “show cause” as to why he or she cannot meet the above requirements.

The court found that the “cause” exception was not met given the facts of the case. In reaching this decision, the court contemplated the relationships and roles of the individuals involved, noting that no new family unit would be established through MGF’s adoption of the children. Specifically, the court noted that mother and MGF did not demonstrate that the proposed co-parenting arrangement would create a new family unit or a new parent-child relationship, particularly given MGF’s existing parent-child relationship with mother, his existing marriage to grandmother, and his intention to continue living in a separate residence with grandmother following the adoption. As such, the court reversed the order affirming the termination of the father’s parental rights, and the matter was remanded back to the Orphans’ Court.

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Concurring: Justice Baer

The Adoption Act precludes termination of father's parental rights to allow MGF to adopt and become a parent along with mother. The law supports two-parent families, and neither the Adoption Act nor the case law depended upon in the majority opinion excuses the spousal requirement for long-term committed couples. As such, the Adoption Act does not support the majority's proposition that an adoption must create a "new family unit" when failing to meet the spousal requirement.

Concurring: Justice Todd

Although the Adoption Act was designed to promote two-parent families, the concept of family has evolved since the time the laws were drafted. The legislature should revisit the adoption and relinquishment requirements with today's concept of family in mind.

Concurring: Justice Wecht

Termination of parental rights are "not to be used as weapons in child custody litigation, and our courts must rebuff such attempts."

Commonwealth Court of Pennsylvania

T.H. & J.R. v. Department of Human Services

Date of Decision: August 29, 2016

Cite: 26 MAP 2016

Facts and Procedural Posture:

Child was the victim of multiple instances of non-accidental physical abuse between the ages of one month and four months. During an investigation by Children and Youth Services (CYS), neither mother nor father offered an explanation for child's injuries, other than blaming each other. CYC filed indicated reports of abuse identifying both mother, who had primary custody of child, and father, who had visitation and custodial rights, as perpetrators of child abuse¹. Child was subsequently adjudicated dependent but the juvenile court did not determine whether either parent was the perpetrator of abuse. Child was returned to mother's care with certain restrictions. On appeal, the Superior Court affirmed the lower court's order returning child to mother's physical custody.

Both parents filed appeals seeking expunction of the indicated reports of abuse. The transcripts of the dependency hearing were submitted at the hearing before the administrative law judge (ALJ). Although CYC could not identify which parent had committed the abuse, they argued that the record established a prima facie case of child abuse against both parents.² The ALJ, relying on the Supreme Court case, *In Re L.Z.*, 111 A.3d 1164 (Pa. 2015), determined that CYC was not precluded from applying the presumption against both parents. As a result, the ALJ concluded that CYC established a prima facie case of abuse against both parents; therefore, the burden shifted to them to rebut the presumption. The parents did not testify to rebut the presumption, and as a result, the ALJ denied their administrative appeals. The Department of Human Services, Bureau of Hearings and Appeals adopted the ALJ's recommendation in its entirety. Both mother and father appealed.

Rationale:

Like the ALJ, the court relied on the Supreme Court's interpretation of Section 6381(d) in the *L.Z.* case. In *L.Z.*, the Court allowed the identity of a perpetrator to be determined based on a rebuttable presumption that the abuse would not ordinarily occur absent the acts or omissions of the parent or other person responsible for the welfare of the child. The court found that CYC presented evidence that child suffered from injuries that would not normally have been sustained but for the acts or omissions of the child's parents. In applying the *L.Z.* standard, the court found that both mother and father are presumed to be perpetrators of the abuse until rebutted. Therefore, the court found that no error was made in applying the presumption to both parents. However, the court found that the factfinder failed to determine whether the evidence offered by the parents rebutted the presumption, and thus the matter was remanded for a new determination.

¹ At the time the abuse occurred, the CPSL's old definition of "child abuse" was in effect.

² Section 6381(d) of the CPSL provides: Prima facie evidence of abuse- Evidence that a child has suffered child abuse of such a nature as would ordinarily not be sustained or exist except by reason of the acts or omissions of the parent or other person responsible for the welfare of the child shall be prima facie evidence of child abuse by the parent or other person responsible for the welfare

A new policy from the Social Security Administration (SSA) allows foster youth of all ages with disabilities to apply for Supplemental Security Income benefits six months before they leave care. This policy is effective immediately and will remain in effect for one year, after which time it will be reevaluated for its success. For more information please visit the [SSA's website](#).

SPOTLIGHT

Issa v. The School District of Lancaster- The ACLU of Pennsylvania, the Education Law Center, and *pro bono* counsel filed a federal lawsuit alleging that the School District of Lancaster had been illegally refusing to allow immigrant students with limited English proficiency from attending their district's regular high school. On August 26, 2016, citing to both state law and the Equal Education Opportunity Act, the court ruled that the school district violated their rights when it diverted them to an inferior, privately operated, alternative school. **The court ordered the school district to immediately transfer the refugee students to the district's main high school immediately. For the full opinion please visit the [Education Law Center's website](#).**