SWAN Legal Services Initiative

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PENNSYLVANIA SUPERIOR COURT

In re: Adoption of R.A.B., Jr.

Date of Decision: December 21, 2016
Cite: 1070 WDA 2015

Holding:

Reversed and remanded Allegheny County Court of Common Pleas Orphans' Court order denying petition to annul or revoke the adult adoption of R.A.B., Jr. Under Pennsylvania law, the Orphan's court has the authority to annul or revoke a previously obtained adult adoption of a same-sex partner in order to exercise their fundamental right to marry.

Facts and Procedural Posture:

In 2012, prior to Pennsylvania's legalization of marriage between same-sex couples, Petitioner N.M.E. filed a petition in the Allegheny Court of Common Pleas Orphans' Court seeking to adopt R.A.B., Jr., his same-sex partner of more than 40 years. The petition was granted. Following the legalization of same-sex marriage in Pennsylvania, N.M.E. and R.A.B., Jr. sought to marry, but were unable to do so legally due to their status as a result of the previous adoption. On March 23, 2015, N.M.E. filed an unopposed petition to annul or revoke the previous adoption in order to facilitate marriage between the couple, which included an affidavit of consent signed by R.A.B., Jr. The Orphans' Court concluded that since the Adoption Act did not expressly provide for the annulment of an adult adoption, they lacked the power to grant the relief requested, and denied the petition.

Issue:

Whether the Orphans' Court committed an error of law when it denied N.M.E.'s unopposed petition for annulment or revocation of adoption in violation of the fundamental right to marry under the Fourteenth Amendment of the United States Constitution.

Rationale:

In 2015, the United States Supreme Court held "[T]he right to marry is a fundamental right inherent in the liberty of the person, and…couples of the same-sex may not be deprived of that right and that liberty. Same sex couples may exercise the fundamental right to marry… State laws …are now held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples." Obergefell v. Hodges, ___ U.S. ___, 135 S.Ct. 2584 at 2601 (2015).

Prior to the legalization of same-sex marriage in Pennsylvania, adult adoption was the only option the parties had to formalize their family unit with all of the rights conferred by law. Although the Adoption Act does not expressly provide for the annulment of an adult adoption, when the Orphans' court denied N.M.E.'s unopposed petition for annulment or revocation, the court frustrated the couple's ability to marry.

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A petition to set aside an adoption decree implicates equitable principles, and a Court sitting in equity is bound by rules of law; equitable considerations should not change, unsettle or deprive a party of their clearly defined rights. Adoption of Hilton, 2 Pa. D. & C.3d 499 (Montgomery Cty., 1975), *aff'd*, 369 A.2d 728 (1977); Bauer v. P.A. Cutri Co. of Bradford, 253 A.2d 252, 255 (1969); First Fed. Sav. and Loan Ass'n. v. Swift, 321 A.2d 895, 897 (1974). Sitting in equity, the Orphans' Court had the power to grant the petition so that the parties could legally marry. Reversed and remanded for entry of order granting the relief requested.

B.L. v. T.B. and F.L.

Date of Decision: December 13, 2016
Cite: 828 MDA 2016

Holding:
The Superior Court affirmed Schuylkill County Court of Common Pleas order granting Father's motion for dismissal of complaint for custody. The temporary nature of a guardianship agreement setting a maximum length for the guardianship of minor children rendered their absence from their home state a "temporary absence;" where that home state had not declined to exercise jurisdiction, Pennsylvania lacked jurisdiction to make an initial determination regarding custody under 23 Pa.C.S.A. §5421.

Facts and Procedural Posture:
Minor children were born and resided in Texas until 2013, when they came to Pennsylvania to reside with Mother's cousin ("Guardian") under a guardianship agreement. The agreement, signed by Mother, Father, and Guardian, provided that Mother and Father determined that it would be in the best interests of the children to be in the Guardian's primary care, and that they "consent to provide full legal and physical guardianship over the person of children to Guardian." The guardianship agreement set a maximum length date of August 29, 2014, and noted that the agreement could be revoked prior to this date so long as the revocation was "in writing and by mutual agreement of the parties or by order of court." In October 2013, Father filed a custody action in Texas, and by subsequent court order, was granted the right to designate children's primary residence; Guardian was not notified of this proceeding and therefore did not have an opportunity to participate in it. In July 2014, Guardian filed a custody complaint in the Court of Common Pleas of Schuylkill County, and following a conciliation conference, an interim order was entered maintaining the status quo pending trial. Following numerous delays in the proceedings, Father filed a Motion to Dismiss Guardian's Complaint for Custody arguing that the existence of the Texas custody order deprived the Schuylkill County Court of jurisdiction, or, alternatively, that Schuylkill County should decline to exercise jurisdiction because Texas is a more convenient forum. The Trial Court granted Father's Motion to Dismiss.

Issue:
Whether the Pennsylvania Court had jurisdiction to make a determination regarding the custody of minor children whose presence in Pennsylvania was "temporary" and where Texas had recently issued an order related to custody of said minor children.

Rationale:
Under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), once a court makes an initial custody determination, that court retains exclusive, continuing jurisdiction over the determination until that court decides that it no longer has sufficient connection to the case. Additionally, Pennsylvania law provides that a court of this Commonwealth may not modify a child custody determination made by a court of another state unless a court of this Commonwealth has jurisdiction to make an initial determination under 23 Pa.C.S.A. §5421(a)(1) or (2) (regarding the home state of the child) and the court of the other state determines it no longer has exclusive, continuing jurisdiction, or that a court of this Commonwealth (or that of another state) has determined that the child, the child's parents and any other person acting as a parent do not presently reside in the other state. 23 Pa.C.S.A. §5423.

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(**B.L. v. T.B. and F.L.** cont'd.)

The Superior Court recognized that the children had been residing with Guardian in Pennsylvania since 2013; however, the Court reasoned that their residence in Pennsylvania was pursuant to a guardianship agreement which was determined to be temporary in nature due to the maximum duration of the agreement contained therein. Therefore, the children's absence from their home state of Texas was a temporary absence. Additionally, under the UCCJEA and Pennsylvania law, since Texas had not declined to exercise jurisdiction, Pennsylvania lacked jurisdiction to make an initial custody determination.

The Superior Court noted that Guardian presented sound arguments against the propriety of the Texas determination (as she was not notified of the Texas proceeding, and thus, did not have an opportunity to participate in it) and in favor of Pennsylvania as a more appropriate jurisdiction for a custody determination, but indicated that based upon their ruling, those arguments would have to be presented to the court in Texas.

Johnson v. Johnson

Date of Decision: December 20, 2016
Cite: 2843 EDA 2015

Holding:
Superior Court vacated the order issued by the Chester County Court of Common Pleas denying Father's request to terminate an existing support order and obligation to provide health insurance coverage for his adult dependent child. Ten-year-old medical records not admitted into evidence in the instant proceeding were improperly relied upon by the trial court in making its determination of an ongoing obligation to support a child beyond the age of majority based upon continuing disability.

Facts and Procedural Posture:
Father petitioned the trial court for termination of the existing support order and obligation to provide medical coverage for his daughter, age 39, upon the basis that she no longer suffered from a continuing disability and was therefore no longer a dependent child under 23 Pa.C.S.A. §4321(3). In response to Father's petition, Mother, acting on behalf of her *pro se* daughter's interest, sought to introduce her daughter's medical records, which included records of recent treatment at a community mental health service provider. The trial court precluded Mother from doing so on the basis of hearsay, but made the decision to review medical records that had been introduced as evidence at a prior modification hearing in 2002 that were contained within the court file. Relying upon said records (in conjunction with consulting and citing to the Diagnostic and Statistical Manual of Mental Disorders, the trial court determined that the adult child continues to suffer from a long standing mental disability that adversely affects her ability to become self-supporting, and therefore denied Father's petition for termination of the support order and his obligation to provide continuing medical coverage.

Issue:
Whether ten-year-old medical records admitted into evidence in a separate proceeding may be considered to support a determination of an ongoing obligation to support a child beyond the age of majority based upon continuing disability.

Rationale:
In Pennsylvania, the duty to support a child generally ceases when the child reaches the age of majority; however, parents may be liable for the support of their children past the age of majority, including where such child is too feeble physically or mentally to support themself. Style v. Shaub, 955 A.2d 403, 406-07 (Pa. Super. 2008). The test to determine continuing disability is whether the support beneficiary has become physically and mentally able to engage in profitable employment and whether such employment is available to them at a supporting wage. Hanson v. Hanson, 625 A.2d 1212 (Pa. Super. 1993).

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(**Johnson v. Johnson** cont'd.)

When the disability resulting in the child's inability to become self-sufficient already exists at the time the child reaches the age of majority … the burden is on the adult child to prove that the conditions make it impossible for her to be employed. Hanson at 1214. In this case, the trial court's determination that the adult child continued to suffer from a life-long psychiatric illness that demonstrated her inability to successfully gain or maintain a competitive position of employment, based upon taking judicial notice of ten-year-old medical records not admitted into evidence in the instant matter, necessitated the vacating of the trial court's order denying Father's petition. The case was remanded to the trial court with instruction that they consider only evidence which had been admitted in the instant proceeding.

COMMONWEALTH COURT

Tioga County Department of Human Services (CYS) v. Department of Human Services
Date of Decision: December 28, 2016
Cite: 667 CD 2016

Holding:
The Commonwealth Court vacated an administrative order directing expungement of an indicated report of abuse from the ChildLine Registry. An Order of Remand directing the Bureau to hold a hearing must be clear so as to provide adequate notice to the parties on what issues the hearing is to address and which party is to bear the burden of proof.

Facts and Procedural Posture:
In 2004, L.L. was named in an indicated report as a perpetrator of sexual abuse of a child on the ChildLine Registry under the Child Protective Services Law (CPSL, hereinafter referred to as the "Registry"), 23 Pa.C.S.A. §6301-6386. L.L. appealed the report in a timely manner and requested expungement on the basis that the child recanted her story a few days after the alleged abuse occurred and said that she made everything up. The then-Department of Public Welfare (DPW, hereinafter referred to as the "Department") Office of Children, Youth and Families (OCYF) denied L.L.'s expungement request because it determined that the report was accurate, and notified L.L. that he had the right to request a hearing before the Secretary of DPW or its designee, The Bureau of Hearings and Appeals (BHA, hereinafter referred to as the "Bureau"). L.L. did not request a hearing.

In 2015, more than 11 years later, L.L. wrote a letter to the Department requesting that the matter be expunged because the child had attained the age of 23. The case was dismissed in court upon the child's admission that her story was fabricated, and the judge in that proceeding ordered all records associated with the case to be expunged. The Acting Bureau Director considered L.L.'s correspondence as a request for a hearing, and directed that a hearing be scheduled on his request. The Bureau issued a Rule to Show Cause upon L.L., providing that he had 10 days to correct his improper filing (in that his letter to the Department did not have a signature, which constituted a jurisdictional defect), and notified him that failure to correct this defect within the requisite 10-day time period would result in dismissal. L.L.'s signed response was postmarked one day late, resulting in a recommendation by The administrative law judge (ALJ) that the request for a hearing be dismissed. The Bureau adopted the ALJ's recommendation. L.L. requested reconsideration, renewing his arguments that the child had attained the age of 23, the case was dismissed in court upon the child's admission that her story was fabricated, and the judge in that proceeding ordered all records associated with the case to be expunged—and mentioned he forgot to sign the appeal. The Secretary granted L.L.'s request for reconsideration, and remanded the matter to the Bureau directing that the Bureau "conduct a hearing on the merits of this matter."

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(**Tioga County Department of Human Services (CYS) v. Department of Human Services** cont'd.)

A hearing on the merits of the case was held in which the ALJ considered whether the Department was maintaining an indicated report of child abuse against L.L. in a manner consistent with the applicable regulations concerning an allegation of sexual abuse inflicted upon the subject child; therefore, the burden of proof was on Tioga County Department of Human Services, Children and Youth Services (CYS), (the agency that indicated the report) to establish that the alleged child abuse had occurred. Neither L.L. nor the subject child was present at the hearing. The sole witness was a CYS supervisor, who testified that L.L.'s case had been expunged, including all records related to the case but not the indicated report. As such, because CYS could not present evidence of the alleged sexual abuse that occurred between L.L. and the subject child, the ALJ concluded that CYS did not meet its burden, and the indicated report could not be maintained; therefore, the ALJ recommended that the Department sustain L.L.'s appeal and expunge the indicated report from the Registry. CYS appealed, arguing that the scheduling of a hearing on the merits of an indicated report of child abuse more than 11 years after the statutory deadline placed an impossible burden on it to prove that the alleged abuse occurred, where CYS had complied with the CPSL to destroy records relating to the abuse upon the child's reaching 23 years of age. While they acknowledged that L.L. could have contested an indicated report of abuse upon evidence of good cause shown, they argued that the failure to appear at the hearing constituted a failure to meet this burden of proof, and abandonment of the appeal.

Rationale:

The Commonwealth Court began with a review of the sections of the CPSL under which L.L. was permitted to seek amendment or expunction. Under §6341(a)(1), at *any time*, the Secretary may amend or expunge a record "upon good cause shown," which would place the burden of proof upon the individual seeking the amendment or expungement. Under §6341(a)(2), a request for review or a hearing on the grounds of inaccuracy or that the report is being maintained in a manner inconsistent with applicable regulations would place the burden of proof upon CYS. Under this section, the request for review or request for a hearing must occur within a requisite time period (now 90 days), unless the petitioner can demonstrate the basis for a *nunc pro tunc* appeal, which would shift the burden of proof back to the petitioner. The Commonwealth Court noted that L.L. clearly did not meet the time period prescribed in §6341(a)(2) to expunge the report on the basis of inaccuracy or that the report was being maintained in a manner inconsistent with applicable regulations; as such, under this section, L.L. would have the burden of demonstrating a basis for a *nunc pro tunc* appeal. Because L.L. did not appear at the hearing, there was no evidence to prove or to demonstrate either the basis for relief *nunc pro tunc*, or good cause under §6341(a)(1). As the Order of Remand directed that the Bureau conduct a hearing "on the merits of the matter" without further explanation or citation to the CPSL, the Department's regulations, or any other case law indicating under what authority the Secretary was acting, the Order of Remand was unclear as to the issues to be addressed and which party was to bear the burden of proof.

AS A REMINDER, PLEASE REMEMBER TO CHECK YOUR COUNTY'S LOCAL RULES LEADING INTO THE NEW YEAR!