

SWAN Legal Services Initiative



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PENNSYLVANIA SUPERIOR COURT

In the Interest of C.P., a Minor

Date of Decision: January 31, 2017

Cite: 1537 EDA 2016

Holding:

Superior Court affirmed the trial court's order vacating the appointment of a guardian ad litem (GAL) while continuing to allow him to serve as the child's attorney. When the basis for an adjudication of dependency is status offenses, the Rules of Juvenile Procedure do not mention the need for, nor do they authorize, the appointment of a GAL; therefore, removal of an attorney from the role of GAL absent notice or written motion, and allowing him to continue to serve in the role as the child's attorney was not an abuse of discretion.

Facts and Procedural Posture:

On May 7, 2014, Chester County Department of Children, Youth & Family Services ("the Agency") filed a dependency petition alleging that C.P. was truant and unruly. On the same date, the Chester County Court of Common Pleas appointed Attorney Jeremiah F. Kane, Esq., to be both the C.P.'s attorney and guardian ad litem (GAL). Following an adjudication of dependency on the grounds of truancy, habitual disobedience, and ungovernable acts, C.P. was placed outside of the home for a period of about a year before being reunified with his mother. Approximately one year later, when C.P.'s unruly behavior began to escalate once again, Attorney Kane filed a request for an emergency hearing. On April 7, 2016, C.P.'s mother signed a Voluntary Placement Agreement and the Agency placed C.P. at Glen Mills Shelter. At the emergency hearing, Attorney Kane continued to represent C.P. in a dual role as both the child's attorney and GAL. At that time, C.P. wanted to return home, but Attorney Kane advocated to the court that C.P. should remain in placement. C.P. refused to communicate with Attorney Kane after hearing Attorney Kane advocate for his remaining in placement. After hearing arguments from both the Agency and Attorney Kane on the dual representation issue, the court vacated Attorney Kane's appointment as GAL for C.P., but allowed him to continue in his role as the child's attorney. Attorney Kane appealed.

Issue:

Whether the trial court abused its discretion in removing the guardian ad litem in a dependency matter (where the basis for the adjudication of dependency was for status offenses) while permitting him to remain as a child's attorney, without notice or written motion.

Rationale:

When determining the role of an attorney in a dependency proceeding, the Pennsylvania Rules of Juvenile Procedure focus on the basis for the adjudication of dependency. When the basis is for status offenses, the court must appoint an attorney to advocate for a child's legal interests, which in the context of a dependency proceeding is essentially a child's wishes, even if that child's wishes are in opposition to that child's best interest. Pa.R.J.C.P. 1151 (B) and (C).

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When a dependency petition alleges status offenses, a child's conduct is at issue, and therefore, the child needs to have an attorney representing their legal interests and wishes to the court. By contrast, when the basis for dependency is the allegation that a child is without proper parental care and control, the focus of the proceedings is on the parent's conduct. In these cases, appointment of a GAL to advocate for the child's wishes **and** represent the child's best interests (absent conflict) is typically sufficient (emphasis added). As there is no specific statutory requirement that the court must provide written notice before vacating the appointment of a GAL, vacating the appointment after giving the attorney the opportunity to present argument on the issue in open court was appropriate. The Superior Court clearly stated that when the basis for an adjudication of dependency is status offenses, the importance of a child having an attorney advocating for that child's legal interests and wishes is paramount, and noted that "to have a child's attorney advocate a position contrary to that child's position in such a situation is contrary to our basic notions of fairness in an adversarial system". The court additionally noted confidence in the trial court's ability to determine the best interest of a child without the assistance of a GAL in dependency matters where the adjudication is based on status offenses.

Somerset County Children and Youth Services v. H.B.R. Date of Decision: January 31, 2017
Cite: 823 WDA 2016

Holding:

Superior Court affirmed trial court's order terminating Father's child support obligation to his dependent child. Regardless of a child's status under the dependency statute, where the child is over the age of eighteen and enrolled in post-secondary education, absent a physical or mental disability that would prohibit him from supporting himself, biological parents are no longer legally obligated to continue payments for child support.

Facts and Procedural Posture:

In 2013, H.B.R. (Father's child) was put into placement pursuant to court order. Following placement, Somerset County Children and Youth Services (CYS) filed a Complaint for Support, and a subsequent Order for Support was issued. In 2015, Father filed a petition for modification seeking termination of the support order on the basis that the child had attained the age of eighteen and had graduated from high school. The trial court granted Father's request for modification and terminated the existing support order on the basis that the child had graduated from high school and had reached the age of emancipation for child support purposes. CYS contested the termination, and argued that while the child had attained the age of eighteen and graduated from high school, the child was not emancipated as he continued to be a dependent child under the jurisdiction of the court, and as such, Father was still responsible for support of the child while the child remained outside of Father's care. The trial court conducted a hearing *de novo*, and later issued an order re-affirming the termination of Father's support obligation "without prejudice to the right of CYS to pursue recovery under 62 Pa.C.S.A. §704.1(e)" on the basis that CYS had failed to demonstrate that the child suffered from limitations or infirmities that would prevent him from self-support. This appeal by CYS followed; specifically, CYS disagreed that demonstration of some mental or physical disability was necessary in order for them to recoup costs incurred for the child's care, and they argued that the law provided no other mechanism, other than through the filing of a support action, by which they could obtain reimbursement.

Issue:

Whether a parent may be legally relieved of their child support obligation for a dependent child who has attained the age of eighteen and graduated from high school, but still remains under the jurisdiction of the court by way of their voluntary dependent status.

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(Somerset County CYS v. H.B.R. cont'd.)**Rationale:**

In reaching their decision, the Superior Court noted that the trial court's analysis was an entirely reasonable interpretation and application of well-established case law. Specifically, the trial court reasoned that;

[I]n 1993, the legislature attempted to pass a statute permitting courts to "order either or both parents who are separated, divorced, unmarried or otherwise subject to an existing support obligation to provide...for educational costs of their child whether an application for this support is made before or after the child reaches 18 years of age." Our Supreme Court struck that provision down based on a finding that parents had no duty to provide educational support to children, and that §4327(a) failed to pass constitutional muster under the Equal Protection Clause of the U.S. Constitution, pursuant to the rational basis test, because the law irrationally imposed a duty only on divorced, separated, and unmarried parents as opposed to all parents. Thus, a parent has no duty in Pennsylvania to provide support to a college-age child who has graduated high school and who suffers from no infirmities which would prevent that child from earning income to help support himself. Accordingly, if CYS seeks to recoup from [Father] funds CYS had spent on [Child], the Support Law does not appear to be the vehicle, unless [Child] can demonstrate some mental or physical disability which would make the child unemployable.

The Superior Court noted that this matter was distinguishable from Erie City Office of Juvenile Prob. v. Schroeck, 721 A.2d 799 (Pa. Super. 1998), because in Schroeck, the obligation for continued support for a child over the age of eighteen who had graduated from high school was premised upon the child's **court-ordered** participation in a residential program that hindered his ability to obtain employment. (emphasis added). In the instant matter, the child had voluntarily chosen to remain in the care and custody of CYS until the age of 21, which he was entitled to do; however, under the current support law, absent evidence of a physical or mental disability that would prevent the child from the ability to self-support, CYS' ability to recoup costs associated with a child's care was confined by the statutory limits of the age of majority or the child's graduation from high school (whichever occurred later).

In the Interest of A.N.P., a Minor

Date of Decision: January 30, 2017
Cite: 1188 EDA 2016

Holding:

The Superior Court reversed and remanded this matter to the Family Court in the Court of Common Pleas of Philadelphia County with strict instructions for their future compliance with the law. Refusing a parent the right to participate in a legal proceeding seeking involuntary termination of parental rights and changing the child's permanency goal from reunification to adoption fundamentally deprives them of their right to testify on their own behalf and participate in the proceedings, which results in a clear violation of their constitutional due-process guarantee included in the statutory scheme of the Adoption Act and the Juvenile Act.

Facts and Procedural Posture:

In May 2013, Mother's child was adjudicated dependent and placed in the legal and physical custody of the Philadelphia County Department of Human Services (DHS). On March 16, 2016, following DHS' filing of a petition seeking termination of Mother's parental rights and for a change in the child's permanency goal from reunification to adoption, the court held a hearing. During cross examination of the Community Umbrella Agency (CUA) caseworker by Mother's counsel, Mother left the courtroom, claiming she felt ill, and the trial court excused her. Her counsel requested a brief recess in order to ascertain the health status of his client, which was denied. Mother was later not permitted to reenter the courtroom nor afforded the opportunity to testify, offer evidence on her own behalf, or refute the evidence against her.

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(In the Interest of A.N.P. cont'd.)

The hearing concluded over the objection of Mother's counsel, and the trial court ruled that Mother had waived her right to present her own testimony by leaving the courtroom without leave of court. DHS' petition for involuntary termination of Mother's parental rights and the petition to change the child's permanency goal to adoption were granted.

Issue:

Whether the trial court erred and abused its discretion when it denied Mother an opportunity to testify, present evidence on her own behalf and participate in proceedings seeking involuntarily termination of her parental rights to her child and the change of the child's permanency goal from reunification to adoption.

Rationale:

The Superior Court began by noting that it is well settled that termination of parental rights implicates a parent's Fourteenth Amendment right to due process, and as such, an individual whose parental rights are to be terminated must be given due process of law, as the termination of parental rights is a constitutionally protected action. In the Interest of A.P., 692 A.2d 240, 242 (Pa. Super. 1997); In the Interest of K.B., 763 A.2d 436, 439 (Pa. Super. 2000). In support of this, §2513(b) of the Adoption Act provides the notice requirements which include information regarding the right to representation, as well as the requirement that a parent be warned that failure to appear at the hearing will result in the hearing being conducted in their absence, and that the parent's right to the child in question may be terminated by the court without the parent's presence in court. Additionally, sections 6337 and 6338 of the Juvenile Act provide that the parent is entitled to representation by legal counsel at all stages of any proceeding, and that a party is entitled to the opportunity to introduce evidence and otherwise be heard on his or her own behalf and to cross-examine witnesses. When the trial court indicated that Mother was excused from the proceeding upon her assertion that she was ill, the court did not (and could not properly have) place(d) any constraints upon Mother's return to the proceedings.

The Superior Court recognized that they have previously stated that, "Termination of parental rights is a drastic measure that should not be taken lightly. Not only are [parents'] rights at stake, but the child's right to a relationship with [their parents] is at stake as well". In re: Adoption of K.G.M., 845 A.2d 861, 864 (Pa. Super. 2004) *citing* In re: Adoption of Stickley, 638 A.2d 976, 980 (1994). In K.G.M., the Court cautioned that they "are unwilling to allow the termination of ... parental rights, however, without strict compliance with the procedures set forth by the Legislature ...". K.G.M., 845 A.2d 865. In this case, the trial court's actions (in excusing Mother from the hearing without informing her that she would not be permitted reentry to the court proceeding, and then refusing to allow Mother's counsel to present any evidence, in the form of Mother's testimony, to rebut the evidence that DHS presented against her) were in violation and contravention to the due process requirements contained within both the Adoption Act and the Juvenile Act, as well as those within relevant portions of the Orphans' Court Rules (Rule 15.4) and the Pennsylvania Rules of Juvenile Procedure (1608(1)). The decree terminating Mother's parental rights and order changing the child's permanency goal were vacated and remanded for further proceedings before the trial court, with instruction that said proceedings "shall include Mother's opportunity to have counsel assist her in presenting her case." Additionally, the Superior Court cautioned the trial court to "heed the warning previously given in Commonwealth v. Smith, 69 A.3d 259 (Pa. Super. 2013)," reminding judges of provisions of the Code of Judicial Conduct related to showing patience, dignity and courtesy to litigants and lawyers (among others) while remaining faithful to the law.

PENNSYLVANIA COMMONWEALTH COURT

C.R.-F. v. Department of Human Services

Date of Decision: January 31, 2017
Cite: 1537 EDA 2016

Holding:

An administrative agency's decision based upon a possible error of law does not constitute an abuse of discretion unless said decision is manifestly unreasonable or is based upon bad faith, fraud, capricious action, or an abuse of power.

Facts and Procedural Posture:

On June 25, 2015, Northampton County Department of Human Services, Children, Youth and Families Division (CYS) filed an indicated report of child abuse against C.R.-F on allegations that she had slapped or struck her minor child, causing bodily injury. C.R.-F's spouse filed a Protection from Abuse (PFA) action on behalf of their minor child on June 29, 2015, based in part on the same factual allegations as that of the indicated report. The Northampton County Court of Common Pleas entered a temporary PFA order on the same aforementioned date, and scheduled a hearing for October 5, 2015. Petitioner appealed the indicated report of abuse to The Department of Human Services, Bureau of Hearings and Appeals (BHA), and subsequently filed an unopposed application for continuance of the PFA matter pending a decision on the child abuse expunction appeal. On October 7, 2015, CYS filed (with BHA) a motion to stay the child abuse expunction appeal, arguing that the PFA action involved the same factual circumstances as that of the appeal pending before BHA, and citing §6303 of the Child Protective Services Law (CPSL), which provides that the granting of a final PFA order could serve as the basis of a founded report. (23 Pa.C.S.A. §6303). CYS averred that if the hearing on the child abuse expunction appeal precedes that of the PFA, the possibility exists for inconsistent determinations from BHA and the PFA Court on the same set of facts, and that if BHA were to dispose of the child abuse expunction appeal prior to the resolution of the PFA, C.R.-F. would be circumventing the law allowing for final PFA orders to serve as a basis for a founded report. C.R.-F. countered that the child abuse expunction should proceed first, as the PFA action was filed as a result of and based upon the indicated report. On October 9, 2015, BHA granted CYS's Motion to Stay. C.R.-F.'s Motion for Reconsideration was denied by BHA, and this appeal followed.

Issue:

Whether BHA's denial of reconsideration of an order granting a stay of a child abuse expunction appeal on the basis of a pending and related Protection from Abuse proceeding constituted an abuse of discretion.

Rationale:

At first glance, the order in this case appeared merely to grant a stay of the child abuse expunction appeal filed by C.R.-F.. In practice, however, it effectively denied C.R.-F. the right to a timely hearing under §6341(c.2) of the CPSL. The only exception to the right to a timely hearing is contained within §6341(d) of the CPSL, which provides for an automatic stay of proceedings relating to a request to expunge an indicated report "upon notice to DHS by either of the parties when there is a pending *criminal* proceeding, *dependency* proceeding or *delinquency* proceeding, including the appeal thereof, involving the same factual circumstances as the administrative appeal." 23 Pa.C.S.A. §6341(d) (emphasis added). BHA acknowledged in its order denying reconsideration that PFA actions do not constitute grounds for an automatic stay, but nevertheless concluded that a stay was warranted because,

When considering the CPSL a whole, the furthering of judicial efficiency and not subjecting alleged perpetrators and subject children to the financial and emotional consequences of duplicative evidentiary hearings strongly weigh in favor of treating PFA matters that may form the basis of a founded report like those filed in criminal and dependency matters.

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(C.R.-F. v. Department of Human Services cont'd.)

An abuse of discretion in the denial of reconsideration of an administrative agency decision occurs only where the challenger establishes that the order is manifestly unreasonable or is based upon bad faith, fraud, capricious action, or an abuse of power. Payne v. Workers' Comp. Appeal Bd. (Elwyn, Inc.), 928 A.2d 377, 379 (Pa. Cmwlth. 2007). The Commonwealth Court therefore deduced that the burden was on C.R.-F., as the challenger, to demonstrate that the order was manifestly unreasonable, or that said order was based upon bad faith, fraud, capricious action, or an abuse of power. The court concluded that C.R.-F. failed to meet her burden in establishing that the BHA decision was anything more than a possible error of law and affirmed the BHA order denying reconsideration (without addressing the issue as to whether or not BHA's determination in likening PFA matters to those of criminal, dependency, and delinquency matters for purposes of a founded report under the CPSL).

Dissent:

The Honorable Patricia A. McCullough dissented from the court's opinion on the basis that BHA lacked the authority to grant CYS's motion to stay C.R.-F.'s expunction appeal. The Dissent noted that in reaching their decision, the Majority acknowledged but ignored the statutory mandates in the CPSL which provide clearly delineated exceptions to the right to a timely hearing—none of which include a pending PFA action or appeal thereof. As the CPSL does not provide BHA discretion to grant a stay or extend the time period for a hearing absent agreement from both parties, under these circumstances, BHA lacked the authority to grant the stay in the first place; for these reasons, the Dissent suggested reversal and remand to BHA to conduct a hearing on C.R.-F.'s child abuse expunction appeal.

SPOTLIGHT: INDIAN CHILD WELFARE ACT

On June 8, 2016, the Department of the Interior, Bureau of Indian Affairs (BIA), released regulations to improve implementation of the Indian Child Welfare Act of 1978 (ICWA). These regulations were the first enforceable rules since the original regulations passed in 1979 and serve to promote compliance with the Act by incorporating standard procedures and requirements for state courts and child welfare agencies in all Indian child custody proceedings. The final rule became effective on December 11, 2016. On **January 1, 2017**, Principal Deputy Assistant Secretary of Indian Affairs, Lawrence S. Roberts, announced final, updated BIA guidelines for implementing ICWA that will better protect the rights of Indian children, their parents and their tribes in state child welfare proceedings. The new regulations in their entirety can be found on the BIA's [website \(PDF\)](#).

On January 9, 2017, the United States Supreme Court denied a petition for certiorari and declined to hear a foster family's challenge to the adoption of their former foster daughter under ICWA. A Los Angeles, California Juvenile Court ruled there was "no good cause to depart from the placement preferences in ICWA" in order for a child to remain in the care of her foster family who had cared for her for four years and sought to adopt. In re: Alexandria P., 204 Cal. Rptr. 3d 617 (Ct. App. 2016). The child, who was of Native American heritage (Choctaw, a federally recognized tribe) through her biological father (who never had custody of the child), had paternal extended family who stood ready and willing to adopt; under ICWA, placement preference was given to members of her extended family. In their plea to the United States Supreme Court, the foster family argued that ICWA singles out Native American children for disparate treatment based on race in violation of the Fourteenth Amendment's Equal Protection Clause. In re: Alexandria P., 204 Cal. Rptr. 3d 617 (Ct. App. 2016), *cert. denied*, 16-500 (U.S. Supreme Court Jan. 9, 2017).

SPOTLIGHT: YOUTH AND EDUCATION

Khadijja Issa; Q.M.H., a Minor v. The School District of Lancaster Date of Decision: January 30, 2017
US Court of Appeals, Third Circuit Cite: 2017 WL 393164

United States Court of Appeals, Third Circuit, affirmed District Court's grant of preliminary injunction under the Equal Educational Opportunities Act of 1974 (EEOA), 20 U.S.C. §1703(f), compelling The School District of Lancaster to allow Plaintiffs (school-age refugees facing language barriers) to transfer to a program designed principally to teach language skills to English language learners. Plaintiffs' language barriers impeded their equal participation in instructional programs which resulted in lost educational opportunities. As the language barriers stemmed from their national origins, (an EEOA-protected characteristic), the school district was required to take appropriate action to overcome the barriers; failure to do so supported alleged violations under the EEOA, and therefore, grant of preliminary injunction was not an abuse of discretion.

A.N., a Minor v. Upper Perkiomen School District
US District Court, ED Pennsylvania

Date of Decision: January 10, 2016
Cite: 2017 WL 85387

United States District Court for the Eastern District of Pennsylvania denied Plaintiff's Emergency Motion for Preliminary Injunction requesting (among other things) the court require Defendants to readmit him to school on the basis of allegations of violations of Plaintiff's rights under the First and Fourteenth Amendments, following suspension and pursuit of expulsion by the district for an out-of-school social media post. Under an analysis of the framework for evaluating a student's First Amendment claims (as set forth in Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 US 503, 506 (1969)), the court found that Plaintiff's post reasonably led school officials to "forecast substantial disruption of or a material interference with school activities" and that this fear of disruption was significant and not remote because, at the very least, there was a suggestion of a school threat from an unknown source over the internet in a forum consisting predominately of Upper Perkiomen school district students. As such, Plaintiff's social media post was not immunized by the constitutional guarantee of freedom of speech, and therefore the school district's discipline did not violate Plaintiff's First Amendment rights.

J.N., a Minor v. Penn-Delco School District
US District Court, ED Pennsylvania

Date of Decision: January 30, 2017
Cite: 2017 WL 395481

United States District Court for the Eastern District of Pennsylvania approved a settlement agreement providing reimbursement for Plaintiff J.N.'s tuition, transportation, and other costs of attendance at a private school under action brought under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400-1466, alleging the school district failed to provide a free, appropriate public education for J.N. The settlement agreement was fair, reasonable, and in the best interest of the child, as J.N. had made significant progress in his speech and communication abilities, including developing an increased vocabulary, gaining the ability to engage in reciprocal communication, and increasing his daily living skills.

DID YOU KNOW?

On January 12, 2017, The United States Department of Justice, in conjunction with the Office for Access to Justice and the Office for Civil Rights, issued critical guidance on the use of costs, fines and fees for youth in the justice system. More information can be found [here \(PDF\)](#).

On January 19, 2017, *the Administration for Children and Families, the Substance Abuse and Mental Health Services Administrations, the Administration for Community Living, the Offices of the Assistant Secretary for Health and the Assistant Secretary for Planning and Evaluation at HHS collaborated to develop a [Guide to Trauma-Informed Human Services](#). The guide is intended to provide an introduction to the topic of trauma, a discussion of why understanding and addressing trauma is important for human services programs, and a "road map" to find relevant resources. For more information, please visit the department's [website](#).*