



SWAN Legal Services Initiative

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Pennsylvania Superior Court

In the Interest of K.D.

Date of Decision: July 22, 2016

Cite: 2016 Pa Super 162

Holding:

Vacated trial court’s decree granting grandmother’s adoption petition and remanded back to Orphan’s Court with instructions to grant the adoption petition filed by pre-adoptive parents.

Facts and Procedural Posture:

In March 2012, the 3-month-old child suffered severe chemical burns to her eyes from an alkaline cleaning product, resulting in blindness. She was removed from the home she shared with her mother and grandmother and, following an investigation by Lackawanna County Office of Youth and Family Services (“the Agency”), both individuals were indicated as perpetrators of child abuse. The child was subsequently adjudicated dependent and placed with pre-adoptive parents.

The parental rights of mother and father were terminated in 2014, but the Agency was ordered to provide grandmother with weekly, two-hour, strictly supervised visits. Grandmother appealed her “indicated” status, and the finding was expunged, leading the Agency to provide longer supervised visits with the child.

In 2015, the pre-adoptive parents filed a Petition for Adoption. Shortly thereafter, grandmother filed a response to the adoption petition, as well as a counterclaim Petition for Adoption. An evidentiary hearing was held, and the court granted grandmother’s Petition to Adopt. The court also directed the Agency to facilitate the process of transitioning custody from the pre-adoptive parents to the grandmother. Both the pre-adoptive parents and the Agency filed timely appeals.

Rationale:

The Superior Court found that the trial court made a significant error of law and based its decision solely on the biological connection to grandmother, rather than the child’s best interest. Undisputed evidence presented at the trial indicated that the child was traumatized by her visits with grandmother and displayed behavioral issues both before and after visits occurred. Evidence further showed that grandmother was unable to provide the medical care the child requires, repeatedly used poor judgment in relation to those medical needs, and did not address the child’s other needs at visits.

In contrast, evidence showed that the child was thriving with her pre-adoptive parents, who are specially trained to care for medically fragile children, and provided her with a safe and loving home for most of her life. The Superior Court noted the importance of preserving the family unit, but recognized that it cannot be elevated above all other factors when considering the best interest of the child.

Interagency Information Sharing

Senate Bill 917, amending Title 42 of the Pennsylvania Consolidated Statutes, was signed into law on July 8, 2016. This act is intended to encourage the multiple agencies that are normally involved in child welfare and delinquency cases to share information and work together, pursuant to interagency information sharing approved by the Court. Provided that no child-specific or other confidential information as governed by relevant state or federal law is disclosed, this legislation permits the sharing of information between authorized representatives of county and court agencies in furtherance of efforts to identify and provide services to children who are determined to be at risk of child abuse, parental neglect, or initial or additional delinquent behavior.

According to this act, each county may develop an interagency information-sharing agreement among the county agency, juvenile probation department, local law enforcement agencies, mental health agencies, drug and alcohol agencies, local school districts, and other agencies as deemed appropriate, to enhance the coordination of case management services for all children and families involved with the dependency or delinquency systems.

This act will go into effect in September 2016. For more information, including the act in its entirety, please visit the [Pennsylvania General Assembly's website](#).

Puscavage v. Luzerne County Children & Youth Services – Defendants, Luzerne County Children & Youth Services (CYS), filed a Motion for a Protective Order, seeking to keep their records confidential due to significant privacy concerns of multiple children. The plaintiff argued that CYS did not have standing to request a protective order and did not demonstrate “good cause,” as is necessary for the issuance of one. The court found that statutory obligations imposed on CYS to maintain confidentiality indicate that the defendant had standing to seek a protective order. Moreover, it is the privacy interests of the minor children that are of utmost concern, and the court found that “a specific order that certain information be kept confidential is the best way to protect those interests.” As such, the defendant’s Motion was granted.

The full opinion can be located using citation 2016 WL 3965213.