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Legal Report

SWAN Legal Services Initiative

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COMMONWEALTH COURT OF PENNSYLVANIA

R. L. v. Department of Human Services

This was a previously unreported opinion, dated May 14, 2020. It was reported via court order dated August 7, 2020.

Holding: The Commonwealth Court reversed the Department's denial of R.L.'s request for expunction of an indicated report and ordered it be expunged, where there was no evidence that she acted recklessly or created a reasonable likelihood of bodily injury to the child.

Facts and Procedural Posture:

R.L. was employed at a crisis childcare center in Philadelphia and was responsible for two children during an overnight shift in September 2018. During that shift, despite the center's policy requiring her to remain awake, R.L. fell asleep. In that time, one child, age 4, got up, went downstairs, unlocked the door, and left the facility. The child was spotted wandering the street and was later returned by police unharmed.

In November 2018, Philadelphia OCYF filed an indicated report of child abuse naming R.L. as a perpetrator of physical abuse of the child. R.L. filed an appeal, requesting that the indicated report be expunged. At a hearing in March 2019, the ALJ concluded that by falling asleep, R.L. left the child without adult supervision and thereby created a reasonable likelihood of bodily injury. Further, the ALJ found that R.L. acted recklessly and consciously disregarded a substantial risk of harm when she fell asleep. The Department of Human Services adopted the ALJ's recommendation in its entirety. R.L. appealed.

Issue: Did the Department err in concluding R.L. acted "recklessly" as contemplated by the CPSL, and that she created a reasonable likelihood that the child would suffer bodily injury?

Rationale: A review of the testimony indicated that R.L. made efforts to remain awake during her shift, such as taking a nap beforehand, drinking coffee, and engaging her mind with television and games. Further, the Commonwealth Court noted that the ALJ did not find that she consciously or intentionally fell asleep. As such, the court found that the evidence was insufficient to establish that R.L. acted intentionally, knowingly, or recklessly by falling asleep as required by the CPSL. The court further noted that R.L. could not reasonably foresee that, while she was sleeping, the four-year-old would wake up, sneak past her, find his way to the door, unlock it, and wander outside. Moreover, the child was found unharmed, and the Agency did not present any evidence to support that a reasonable likelihood of bodily injury existed. Based on this, the court found that the Department erred in concluding OCYF met its evidentiary burden in this matter. As such, the court reversed the Department's adjudication and directed the expunction of R.L.'s indicated report.

SUPERIOR COURT OF PENNSYLVANIA

In the Interest of: N.S.

Date of Decision: August 14, 2020

Cite: 2020 PA Super 195

Holding: The trial court erred in removing N.S. from her mother's custody in the absence of clear and convincing evidence that removal was clearly necessary.

Facts and Procedural Posture: The child had a significant mental health history with multiple diagnoses. She began treatment in 2010 when she was only four years old. In March 2015, the court adjudicated the child dependent and ordered that she remain in her mother's custody under court supervision. In the following years, the child was in and out of a residential treatment facility to address her mental health needs. In July 2018, Mother placed the child in a behavioral health hospital on a voluntary admission. In the course of her treatment, it was recommended that she be referred to a residential treatment facility that could better address her needs. Several facilities were contacted but declined to accept her for treatment. In January 2019, because an appropriate RTF remained unavailable, the hospital began discharge planning. Part of that plan required Mother to work with multiple family-based and wraparound services. The hospital reported that both the child and mother were receptive to these services and actively engaged in them.

At a permanency review hearing in July 2019, the court ordered DHS obtain an order of protective custody to place the child in treatment-level foster care upon discharge from the hospital and to further explore the availability of out-of-state RTFs. Both the hospital and mother were in agreement that the child needed the structured setting of residential treatment. Another permanency review hearing was held in September 2019. At that hearing, the court entered an order removing the child from her mother's custody and placing her in the custody of DHS. Mother appealed.

Issue: Did the trial court err as a matter of law and abuse its discretion by removing N.S. from Mother's custody in the absence of clear and convincing evidence that the removal was clearly necessary?

Rationale: The court began its analysis by identifying the standard of removal or separation as "clear necessity." Here, the child had many medical, mental health, and behavioral issues. However, the mother had been supportive, consistently engaged in the child's treatment, and was in agreement with the residential treatment recommendation. There was no evidence presented to indicate that Mother was a barrier to the child's treatment, nor that she was incapable or unwilling to consent to the recommended residential treatment. The record further indicated that she was unopposed to the agency's supervision and to the child's "total immersion in mental health services." As such, the court found that the trial court's findings were not supported by the record and ordered a reversal of the court's removal order.

In the Interest of: K.M.W.

Date of Decision: August 18, 2020
Cite: 2020 PA Super 200

Holding: The trial court did not err in terminating Mother's parental rights where the child was in care for over three years while Mother was in and out of jail due to substance abuse.

Facts and Procedural Posture: In March 2016, the seven-month-old child was placed with family members after Dauphin County Children and Youth received a report that marijuana was found in the crib. At that time, Mother entered a detox facility, and Father was incarcerated for assaulting Mother. The child was later adjudicated dependent and Mother was ordered to complete numerous service objectives. Over the following two years, Mother was minimally compliant with her objectives and was incarcerated multiple times due to continued substance abuse and parole violations. In April 2018, the child's permanency goal was changed to Subsidized Permanent Legal Custody. Following a release from jail in June 2018, Mother began and completed outpatient therapy, domestic violence counseling, couples counseling, and enrolled in school. She also submitted to random drug screens at the request of her parole officer. However, she refused them at the request of the agency and had not submitted to one since October 2016, despite being ordered to participate in tri-weekly screens. In February 2019, the Agency filed a Petition to Involuntarily Terminate Mother's Parental Rights. Following a hearing, the court changed the child's goal to Adoption and granted the Agency's termination petitions. Mother appealed.

Issues:

1. Did petitioner prove statutory grounds for involuntary termination of Mother's parental rights by clear and convincing evidence?
2. Did the Agency prove by clear and convincing evidence that the child's best interests, needs, and welfare are served by the termination of Mother's parental rights?
3. Were adequate reunification services provided by the Agency prior to filing the petition to terminate Mother's parental rights?

Rationale: Prior to considering Mother's issues raised on appeal, the court first reviewed whether the appeal should be quashed pursuant to the bright-line rule set in Commonwealth v. Walker, 185 A.3d 969 (Pa. 2018). In doing so, it was determined that while Mother erred in filing a single notice of appeal from multiple lower dockets, it was done so through misinformation from the trial court, constituting a breakdown in court operations, which is an exception to the rule. Thus, the court declined to quash the appeal.

The court then focused its analysis on 23 Pa.C.S. 2511(a)(2) and (b). A review of the record indicated that the trial court found Mother's repeated incarceration and continued substance abuse rendered her incapable of parenting and caused the child to be without essential parental care, control or subsistence for over three years. Further, Mother was non-compliant with court-ordered drug screens, was non-cooperative with the agency, and had not progressed past supervised visitation. The trial court further relied on expert testimony indicating that weekly supervised visitation upon Mother's release from jail was "hugely insufficient" to form a parent-

child bond. As such, the court declined to reweigh the evidence and found that the record supported the trial court's finding that clear and convincing evidence existed to support Mother's termination of parental rights.

As for Mother's final issue, the court noted that the agency is not required to offer reunification services after the permanency goal is changed from Reunification. Because the child's goal was changed to SPLC, the agency was not required to provide further reunification efforts.

Concurring Opinion: The Concurring Opinion agrees that the case should not be quashed and that the trial court did not abuse its discretion in terminating Mother's parental right. However, Justice Murray disagrees with the court's reasoning for not quashing the appeal.



In the Interest of: K.D.

Date of Decision: August 19, 2020
Cite: 2020 PA Super 202

Holding: The trial court did not err in finding that Mother was a perpetrator of abuse where witness testimony indicated she threatened to kill her child while holding a knife.

Facts and Procedural Posture: In January 2019, the Philadelphia Department of Human Services received a report that Mother threatened to drown and stab her one-year-old child. Upon investigation, the agency learned that Mother ran a knife along the child's body and threatened to drop a plugged-in iron in the bathtub while the child was bathing with his sibling. Mother's sister managed to restrain Mother and take the children from the home. The agency immediately obtained an Order of Protective Custody. Following its investigation, DHS determined the report to be "indicated" and the child was adjudicated dependent. At a permanency review hearing in December 2019, the trial court heard testimony from the child's older sibling and Mother's sister, both of whom "presented very vivid and collaborating details regarding the incidents." Following their testimony, the trial court entered a finding that Mother was the perpetrator of abuse against the child. Mother appealed.

Issues:

1. Did the trial court err in ruling that DHS met its burden of proof to support a finding of child abuse under Section 6303 of the CPSL?

Rationale:

In accordance with Section 6303(b.1)(5) of the CPSL, "[t]he term 'child abuse' shall mean intentionally, knowingly or recklessly ... [c]reating a reasonable likelihood of bodily injury to a child through any recent act or failure to act." 23 Pa.C.S. § 6303(b.1)(5). Mother argued that her

actions were only an attempt to get her paramour's attention and could not constitute child abuse because she had no intention of actually harming the child. Therefore, there was no reasonable likelihood of injury to the child. Upon review, the Superior Court noted that the trial court relied heavily on the testimony of the child's sibling and aunt, finding both witnesses to be credible and consistent. Their accounts of the incident supported the trial court's finding that the child was a victim of abuse. Thus the court affirmed the order finding Mother to be a perpetrator of child abuse.

In the Interest of N.G.

Date of Decision: August 11, 2020
Cite: 2020 PA Super 187

Holding: The trial court did not err in granting the agency's petitions to terminate the parental rights of Mother, where expert testimony indicated termination would best serve the needs and welfare of the children.

Facts and Procedural Posture: Mother had a long history with Allegheny County Office of Children Youth and Families, which dated back to 2016. During that time, the agency received multiple reports regarding Mother's drug use and inability to provide a safe environment for her two children. In September 2017, a shelter care hearing was held and the children were removed from the home. Shortly after, Mother had a third child who was born six weeks premature and tested positive for cocaine at birth. The agency took protective custody of this child as well. All three children were subsequently adjudicated dependent and placed in foster care. Mother's family service plan addressed issues of drug and alcohol treatment, contact with the children, cooperation with OCYF, maintaining stable housing, and mental health. In January 2019, OCYF filed petitions to involuntarily terminate Mother's parental rights. Following a hearing in October 2019, the trial court granted the agency's petitions. Mother appealed.

Issue: Did the trial court abuse its discretion and/or err as a matter of law in concluding termination of Mother's parental rights would serve the needs and welfare of the children?

Rationale: Mother's appeal was limited to the trial court's determination under Section 2511(b). In support of this, Mother argued that the court failed to consider the emotional bonds she had with her children and the effect that terminating those bonds would have on them. A review of the record showed that the trial court relied on the testimony of an expert witness who conducted evaluations of Mother, the children, and the foster parents. This witness testified that the youngest child showed a parental bond to her foster parents, rather than her mother, in that she had been with them since her birth. The oldest child had some parental bond with Mother but acknowledged Mother's inability to care for him and wished to remain with his foster parents. The middle child viewed Mother as someone he visited rather than someone in the role of parent. Based on this testimony, the Superior Court found that the evidence supported the trial court's finding that a limited parent-child bond existed between Mother and the children and that these bonds could be severed without causing a detrimental effect. As such, the court affirmed the trial court's orders terminating Mother's parental rights to each of the children.

In the Interest of A.C.**Date of Decision:** August 19, 2020**Cite:** 2020 PA Super 203

Holding: The trial court did not err in finding Child dependent and Mother a perpetrator of abuse, where Child suffered injuries while in the care of Mother, and Mother failed to offer another reasonable explanation.

Facts and Procedural Posture: In May 2019, Philadelphia Department of Human Services received a report that a child had arrived at the hospital the prior day with hematomas to the right side of her head, indicating non-accidental trauma. An exam also indicated additional injuries. The child's parents stated that the injury occurred when the child fell from the parents' bed while Mother was changing her diaper. They were unable to explain the cause of older injuries but thought the child may have bumped her head on a baby swing and fallen to the floor a few days prior. DHS obtained an Order of Protective Custody and later filed a Petition for Dependency. At the hearing, the court adjudicated the child dependent and entered a finding of child abuse against the mother. Mother appealed.

Issues:

1. Did the trial court err as a matter of law and abuse its discretion by entering a finding of child abuse against Mother when insufficient evidence was introduced to demonstrate that Mother intentionally, knowingly, or recklessly caused bodily injury to the child through a recent act or failure to act?
2. Did the trial court err as a matter of law and abuse its discretion by presuming Mother's responsibility for the child's injury in the absence of clear and convincing evidence that the injury was child abuse?
3. Did the trial court err as a matter of law and abuse its discretion by finding that Mother failed to rebut the *prima facie* presumption of responsibility for the injury?
4. Did the trial court err as a matter of law and abuse its discretion by adjudicating the child dependent in the absence of clear and convincing evidence that the child was "without proper parental care and control ... as required by law?"
5. Did the trial court err as a matter of law and abuse its discretion by committing the child to the legal custody of DHS in the absence of clear and convincing evidence that removal was clearly necessary?

Rationale: In regards to Mother's first issue, the court found that the trial court's findings were supported by the record. They further noted that they must address whether the injuries are "entirely consistent with common types of child abuse and inconsistent with Mother's explanation." Expert testimony indicated that the child's injuries were consistent with a high-velocity injury such as shaking or crushing the child's head and not consistent with a short fall from a bed as described by Mother. Moreover, tests failed to reveal any other explanation for the injuries such as a bleeding disorder or metabolic disease. As such, the court found that the testimony presented met the evidentiary standard required to establish child abuse had occurred.

In regards to Mother's next two issues, she argued that DHS failed to establish *prima facie*¹ evidence that she was the perpetrator of the abuse. However, the record established that the child was in the mother's care at the time the injury occurred and the child would not have been injured but for the acts or omissions of Mother, thus establishing *prima facie* evidence. The court further found the trial court did not abuse its discretion in discrediting Mother's explanation of how the injuries occurred. Additionally, Mother failed to offer any evidence that she did not inflict the child's injuries, that the injuries were accidental, or that she had given responsibility for the child to someone else at the time that the injury occurred, thereby failing to rebut the presumption. Accordingly, the court found that the trial court did not abuse its discretion in finding that Mother perpetrated child abuse.

Finally, Mother challenged the court's dependency adjudication and removal of the child from the home. Mother claimed that the trial court's finding of child abuse was not supported by evidence and, thus, a dependency adjudication could not be sustained. Having already determined the trial court's finding of abuse was supported by clear and convincing evidence, the Superior Court deemed Mother's claim to be meritless. A further review of the record showed that the trial court properly focused on the best interests of the child in entering its disposition. As such, the court affirmed the trial court's order finding Mother to be a perpetrator of abuse, declaring the child dependent, and transferring custody to DHS.

Spotlight

In *B.R.S. v. J.L.*, the Superior court considered whether the trial court erred in finding Appellant lacked standing to file a PFA action against his wife's sister's husband. Upon review, the court found that the trial court erred in its interpretation of "persons related by...affinity" as provided in the definition of "family or household members" in the Protection from Abuse Act. The Court had previously interpreted "affinity" to include a brother or sister-in-law relationship and construed this definition to include all definitions of brothers-in-law and sisters-in-law. As such, the language of the statute covers the relationship of the parties, thereby providing standing. Order reversed and remanded.

More information can be found at *2020 PA Super 180*.

Other legal updates

Amendment of Pa.R.J.C.P. 127 & 1127

On August 3, 2020, the Supreme Court amended the Rules of Juvenile Court Procedure 127 and 1127, concerning transcript requests and the correction or modification of transcripts and records. This amendment becomes effective on October 1, 2020.

More information can be found [here](#).

¹Evidence sufficient to establish a fact or to raise a presumption of fact unless rebutted.