

August 2021

Legal Report

SWAN Legal Services Initiative

A monthly publication from the SWAN Legal Training Team

In This Issue:

In the Interest of: S.K.L.R., A Minor

In Re: Adoption of: K.M.D., A Minor

In the Interest of: N.B., Minor

Kaur v. Singh

Amendment to Pennsylvania Bar Admission Rule 322

Amendment to Rules of Civil Procedure

Legal Training Team

Division Manager
Lauren Peters, Esq.

Training Specialists

Alyssa H. Holstay, Esq.
Shawn Sangster, Esq.
Sara Steeves, Esq.
Rachel Thiessen, Esq.
Pamela Wilson, Esq.

471 JPL Wick Drive
P.O. BOX 4560
Harrisburg, PA 17111
www.diakon-swan.org

lsiwarmline@diakon-swan.org



SUPREME COURT OF PENNSYLVANIA

In the Interest of: S.K.L.R., A Minor**Date of Decision:** August 17, 2021**Citation:** 5 WAP 2021

Holding: The Supreme Court vacated the Superior Court's decision and reinstated the trial court's order, which denied Mother's parental rights being terminated.

Facts and Procedural History: In December 2017, the Agency assumed emergency custody of Mother's three children. The Agency filed for dependency and the petition was granted in January 2018, based on both parents being incarcerated, concerns regarding homelessness and Mother's continuing mental health issues. After regular review hearings, Mother continued to struggle with the goals from the permanency plan, but she did have moderate compliance and made minimal progress overall. In March 2019, the Agency filed petitions to involuntarily terminate Mother's parental rights to two of her children pursuant to 23 Pa. C.S. §2511(a)(5), 2511(a)(8), and 2511(b) of the Adoption Act. At the January 2020 termination hearing testimony, the Agency testified that the children had been out of Mother's care for at least six months, Mother's mental health issues continued to exist, and it was unlikely, due to the services provided to Mother and the amount of time the children had been in care, that Mother would remedy the conditions within a reasonable time. Testimony was presented that termination would best serve the needs and welfare of two of the three children. The Agency testified that severing the parental bond between Mother and the two older children would not be detrimental to their well-being. However, the younger daughter was doing well with Mother and the Agency had no concerns for that child.

The trial court acknowledged that the children had been removed from Mother's custody for over six months but many of the conditions that led to their removal no longer existed. Mother gave birth to her fourth child and the Agency expressed no concerns about Mother's capacity to parent this child, age one and a half. The court further found that the children and Mother clearly had a bond and the Agency failed to show that the children would not be harmed if Mother's rights were terminated.

The trial court concluded that the Agency failed to present sufficient evidence to meet its burden of proving by clear and convincing evidence that termination was appropriate pursuant to 23 Pa. C.S. §2511(a)(5), 2511(a)(8), and 2511(b). The court reasoned that given reasonable time and services, Mother could remedy her need for mental health services. The agency appealed to the Superior Court. The Superior Court found that the trial court erred when it placed the basis to forego termination of parental rights on the fact that Mother maintains custody of her youngest child, thus reversing the trial court's order and terminating the mother's parental rights to two of her children.

Mother appealed the decision to the Supreme Court.

Issues:

1. Whether the Superior Court erred in rejecting the trial court's findings under 2511(a)(8) and 2511(b), thereby conflicting with this Honorable Supreme Court's holding in *In re R.J.T.*, 9 A.3d 1179 (Pa. 2010).

2. Whether the Superior Court in the instant case has substituted its own discretion or that of the trial court, thereby substantially departing from an accepted and usual course of judicial proceedings.

Rationale: The Supreme Court began its analysis with a review of *In re R.J.T.*, 9 A.3d 1179 (Pa. 2010). In *R.J.T.*, the Supreme Court determined that the Superior Court erred in reversing the trial court's goal change determination because it highlighted only the negative information regarding the parents. Further, the Superior Court did not conclude that the trial court's findings of fact were not supported by the record. The Superior Court is not in the position to reweigh the evidence and the credibility determinations of the trial court. The Supreme Court determined that the Superior Court erred in reevaluating the evidence.

In the case at hand, the Supreme Court held that the general principles of appellate review discussed in *R.J.T.* should be employed with equal force to the review of trial court termination decisions. The Supreme Court supported its conclusion by highlighting that the standard of review is exactly the same in goal change and termination proceedings. In both types of cases, an appellate court should: 1) review a trial court's order for abuse of discretion; and 2) accept the findings of fact and credibility determinations of a trial court if they are supported by the record.

Supreme Court concluded that the Superior Court exceeded its standard of review. Rather than examining the record to determine whether it supported the trial court's decision that the various conditions that led to the children's removal from Mother's custody no longer existed, the intermediate court focused exclusively on one condition that led to the children's removal, i.e., Mother's mental health issues and searched the record to support its view that Mother failed to address this condition adequately.

SUPERIOR COURT OF PENNSYLVANIA

In Re: Adoption of: K.M.D., A Minor

Date of Decision: August 19, 2021

Citation: 2021 PA Super 168

Holding:

The Superior Court vacated orders terminating the parental rights of Mother and Father and remanded the matter for further proceedings. The Superior Court held that Lackawanna County Office of Children Youth and Families (the Agency) violated parents' rights to due process by failing to properly serve them with termination petitions in accordance with the Adoption Act and the Pennsylvania Orphans' Court Rules.

Facts and Procedural History:

The Children were adjudicated dependent in April 2018 based on the family having inadequate hygiene and clothing, inappropriate discipline and domestic violence in the home and prior sexual abuse by a family friend that the Parents allowed continued access to the Children.

Cont.'d

The Parents failed to comply with the family service plans for reunification. Mother was arrested twice after she had hostile confrontations with the Agency. In January 2020, the Agency advised the Parents they would be seeking termination. The petitions for involuntary termination on both Parents were filed on September 3, 2020. The hearing was conducted via videoconference on October 13, 2020, due to the Covid-19 pandemic. The Parents did not attend. Counsel for each Parent relayed to the court that their respective clients left a voicemail for them stating that they no longer wanted their representation. Both attorneys for the Parents tried unsuccessfully to reach their clients. The court denied counsel motions to withdraw. The Agency testified that it effectuated service of the termination petitions by emailing them to a “family email address.” However, there was doubt whether the Agency attempted to serve Parents either personally, or at their residence or by certified mail. It was concluded that while the Agency failed to strictly comply with Pa.O.C. Rule 15.6(a), the Parents had actual knowledge of the termination proceedings based on a conversation that took place between father and caseworker. On October 23, 2020, the court issued an order terminating the parental rights of both Parents. The Parents appealed.

Issue:

Whether the trial court erred as a matter of law and/or manifestly abused its discretion in concluding that the Parents had been “served” with the petition for involuntary termination as that term as defined under Pa.O.C.R. 15.6?

Rationale:

In their analysis, the Court first looked at the Agency’s justification that the judicial orders relieved it from its burden to strictly comply with notice procedures. The Court, while sympathetic to the effect of the pandemic, determined that none of the emergency orders issued by Lackawanna County Court of Common Pleas relaxed the notice procedures to allow the Agency to effectuate service via email. The Court stated that the Agency’s use of email was still subject to constitutional constraints. The Court next analyzed the Agency’s argument that the method of service should be overlooked because the Parents had actual knowledge of the hearing. The Court determined that making a parent aware of a hearing is not the same as affording the parent the necessary information, mandated by law, in a manner specified by law, to defend in such a hearing.

The Court reasoned that if the Agency made a good faith effort to serve the Parents at their residence and failed then the Agency could have been armed with alternatives under Rule 15.6 (a)(2), but no such effort was made, thus violating their constitutional right to due process.

In the Interest of: N.B., Minor

Date of Decision: August 3, 2021

Citation: 2021 PA Super 153

Holding:

The trial court discerned no abuse of discretion by the trial court which required Bucks County Children and Youth Social Services (CYS) to acquire and pay the costs of an alcohol monitoring device for father and by striking a provision in the order which required father to pay the cost of the monitoring device once he gained employment.

Facts and Procedural History:

CYS filed a dependency petition in March 2018. After an adjudicatory and dispositional hearing was held, the court, by order, deemed the child dependent because the Parents were abusing drugs and alcohol. In October 2020, at a status review hearing, testimony was presented that father's biggest issue was his abuse of alcohol. In response, the court ordered that CYS acquire and purchase the alcohol monitoring machine for father to get tested four times a day. CYS appealed.

Issues:

1. Did the trial court err and abuse its discretion by directing CYS to obtain and maintain an alcohol monitoring device for father?
2. Did the trial court err and abuse its discretion by failing to include in its written order a provision made in its verbal order in court and on the record?

Rationale:

CYS argued that the record failed to establish father required such a device; and CYS should not be responsible for the costs. Further, CYS argued that it was caught off guard by the court's decision and had no opportunity to pose alternatives to the court. Lastly, CYS argued that the trial court erred when its written order failed to reflect when father would assume payment for the device.

In their analysis, the Court first reviewed the record which supported that CYS failed to object, at the dependency hearing, when the trial court ordered an alcohol monitoring device and that CYS would purchase it for father. The Court determined due to CYS's failure to object it failed to properly preserve its challenge to the provision which required CYS to acquire and pay for the alcohol monitoring device for father. Further, the Superior Court reasoned that CYS being "left flat-footed and dumbfounded" at the dependency hearing was not an excuse under Pennsylvania jurisprudence governing issue preservation and CYS's counsel could have

Cont.'d

objected. The Court deemed that CYS waived this issue and no relief was due. Before the Court could address the second issue, it needed to examine whether CYS preserved this issue for review. The Court determine that CYS could have objected to the trial court's striking of the challenged provision once it received the written order by calling the trial court's attention to the alleged error so the court could have had the chance to correct said alleged error. CYS failed to do so, hence the Superior Court deemed this issue waived for appellate review, as well.

Kaur v. Singh

Date of Decision: August 2, 2021

Citation: 2021 PA 152

Holding:

The Superior Court affirmed the trial court's decision that the Final Protection From Abuse (PFA) Order did not place a substantial burden on Singh's right to freely exercise his religion, and neither implicated nor violated his right to do so.

Facts and Procedural History:

Kaur and Sing were married in 2010 and divorced in 2014. Kaur filed a PFA, pursuant to 23 Pa.C.S.S. §§ 6101-22, against Singh in February 2020 after he appeared at the Nazareth Temple and allegedly threatened her. The court granted the temporary PFA. At the full hearing, Kaur presented many witnesses on her behalf who corroborated her account of the incident and verified that Singh had been abusive to Kaur during their marriage. Singh presented witnesses who detailed that he was physically tossed out of the temple that day and that he was told by the Temple Committee not to return to this temple. After a full hearing in July 2020, Kaur was granted a final PFA against Singh, which included that Singh was excluded from attending the Nazareth Temple on Sundays when Kaur was present. Singh appealed the Final PFA Order.

Issues:

1. Does the final PFA Order violate Singh's constitutional rights and unlawfully impede his free exercise of religion and peaceful assembly?
2. Did the trial court err and abuse its discretion in entering the final PFA to the extent that the written language of the order expressly contradicts the trial court's reasoning and rulings stated on the record during the final PFA hearing held on July 15, 2020 and impartially favors Kaur?

Rationale:

The Superior Court first addressed the constitutional challenge which alleged that the PFA Order unlawfully impeded his free exercise of religion under both the United States and

Cont.'d

Pennsylvania Constitutions by restricting his access to the Nazareth Temple where he had chosen to practice his religion. The Court reasoned that the Final PFA did not ban Singh from practicing his religion, nor compel him to perform actions against his religion; it merely restricted Singh from that temple on a particular day and time to ensure Kaur's safety. The Court found that the Order did not implicate nor violate Singh's First Amendment rights because the Order did not rise to the level of placing a substantial burden on Singh's right to freely exercise his religion. Next, the court addressed what was essentially an issue of the weight of the evidence in this matter. The Court deemed Singh's second issue waived because he failed to provide any legal analysis to support his claim.

Amendment to Pennsylvania Bar Admission Rule 322

On August 17, 2021, the Pennsylvania Board of Law Examiners amended Pennsylvania Bar Admission Rule 322 to allow legal interns who are representing indigent clients to present oral advocacy in court proceedings. The amendment requires that the attorney who is supervising the legal intern assures that the legal intern is prepared, appropriately supervised, and that a licensed attorney employed by the supervising attorney's office is personally present during any appearance the legal intern makes before any court. Provisions to this rule, include oral arguments. For more information on the amendment, please use the links provided here.

<http://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol51/51-35/1374.html&d=reduce>

Amendment to Rules of Civil Procedure

On August 11, 2021, the Pennsylvania Committee on Rules of Evidence received a court order adopting Pennsylvania Rule of Evidence 413, governing the admissibility of evidence of immigration status. In any civil, criminal, or delinquency matter, evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of, or a defense to, the offense, to show motive, or to show bias or prejudice of a witness pursuant to Rule 607. This paragraph shall not be construed to exclude evidence that would result in the violation of a defendant's or a juvenile's constitutional rights. For more information on the amendment, please use the links provided below:

<http://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol51/51-34/1308.html>