

February 2020

Legal Report

SWAN Legal Services Initiative

A monthly publication from the SWAN Legal Training Team

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Legal Training Team

Division Manager

Ilene Dubin, Esq.

Training Specialists

Lauren Peters, Esq.
Alyssa H. Holstay, Esq.
Shawn Sangster, Esq.
Sara Steeves, Esq.
Rachel Thiessen, Esq.

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

lsiwarmline@diakon-swan.org



UNITED STATES SUPREME COURT

Fulton v. City of Philadelphia

Date of Decision: February 24, 2020

Citation: 2020 WL 871694

The petition for a writ of certiorari is granted to allow the United States Supreme Court to review the constitutionality of Philadelphia's decision not to offer a new contract to providers who violated the anti-discrimination law by non-compliance with the all-comers provision with regard to services for married same-sex couples. For more information on *Fulton*, see a summary of the Third Circuit's opinion in the April 2019 Legal Report.



Did you know?

"Writ of Certiorari" means a writ (order) of a higher court, typically used by the U.S. Supreme Court, which translates from the Latin to mean "to be more fully informed."

It technically orders a lower court to deliver its record in a case so that the higher court may review it. The U.S. Supreme Court is highly selective about what cases it will hear, and will only grant the writ when at least three members believe that the case involves a sufficiently significant question in the public interest. If it denies the writ, it allows the lower court's decision to stand.

UNITED STATES DISTRICT COURT, M.D. PENNSYLVANIA

Repella on behalf of A.R. v. Luzerne County C & Y Services

Date of Decision: February 18, 2020

Citation: 2020 WL 815775

Holding: Case dismissed for lack of subject matter jurisdiction.

Facts and Procedural Posture: Father filed a 28 U.S.C. § 2254, habeas corpus Petition alleging that his daughter, A.R., was being illegally detained by Luzerne County Children & Youth Services ("Luzerne CY") and challenged the state court judgment that terminated his parental rights.



Did you know?

"Habeas corpus" is Latin for "that you have the body." In the US system, federal courts can use the writ of habeas corpus to determine if a state's detention of a prisoner is valid. A writ of habeas corpus is used to bring a prisoner or other detainee (e.g. institutionalized mental patient) before the court to determine if the person's imprisonment or detention is lawful. A habeas petition proceeds as a civil action against the State agent (usually a warden) who holds the defendant in custody. It can also be used to examine any extradition processes used, the amount of bail, and the jurisdiction of the court.

Habeas Corpus, [Legal Information Institute](#) (2017)

Issue: Does the federal court have jurisdiction to review the state court decision to terminate Father's parental rights through a habeas corpus Petition?

Rationale: The District Court noted that the US Supreme Court unequivocally held in *Lycoming Cty. Children's Servs. Agency*, 648 F.2d 135, 163, 177 (3d Cir. 1981) that § 2254 does not confer federal-court jurisdiction allowing consideration of collateral challenges to state-court judgments terminating parental rights. Furthermore, to the Petitioner's assertion that the facts of this case warrant an exception, federal courts have previously held that they have "no authority to create equitable exceptions to jurisdictional requirements." (*Bowles v. Russell*, 551 U.S. 205, 214 (2007); citing *Gutierrez v. Gonzales*, 125 Fed. App'x 406, 412 (3d Cir. 2005) Therefore, the Court upheld the Magistrate's recommendation that the case be dismissed for lack of subject matter jurisdiction.

S.R. v. Pennsylvania Dept. of Human Services**Date of Decision:** February 21, 2020**Citation:** 2020 WL 869923

Holding: Rejecting Columbia County Children and Youth Services' (CCCYS) motion to quash the subpoena of A.S.'s records as they pertain the larger class action suit, the District Court held that the youth in question should be notified of the subpoena consistent with 23 Pa. Cons. Stat. § 6340(b), and if there are no objections, CCCYS should comply with the subpoena.

Facts and Procedural History: This case arises from a class action lawsuit brought by youths with mental health disabilities who were adjudicated dependent and found eligible for Medical Assistance (Medicaid) services. The class plaintiffs are suing the Pennsylvania Department of Human Services (DHS) for alleged failure to assure that they and members of the Class have non-discriminatory access to medically necessary mental health services and child welfare services in integrated settings. This action stems from Plaintiffs' subpoena for information about an individual youth from CCCYS. The subpoena sought a broad array of information pertaining to the youth, and after discussion between plaintiffs' counsel and counsel for CCCYS broke down, CCCYS filed the instant motion to quash this subpoena. The motion raised concerns regarding the scope of the subpoena, third-party privacy, and the adequacy of notice to A.S.

Issue: Should Columbia County Children and Youth Services provide otherwise confidential information about a youth in response to a subpoena regarding a class action lawsuit?

Rationale: The District Court reasoned that the stipulated protective order ensured that any information produced would be treated in a confidential and discrete manner. The District Court first discussed the broad enforcement powers of the court to ensure compliance with subpoenas, while avoiding unfair to the subjects of subpoenas. The Court then considered the balancing of standards the court must conduct, looking at the relevance, need, confidentiality, and harm of any subpoena. If information sought is relevant, discovery is still not permitted if it is not necessary, is overburdensome, or the harm outweighs the benefit of information to be gained. Finally, Children and Youth records are by law cloaked in additional confidentiality. In this case, the District Court found that the relevance of the information is significant, and that the concern of confidentiality can be addressed in two ways. First, the District Court ensures that any information produced would be treated in a confidential and discrete manner. Second, the subpoena is issued with the knowledge and consent of the minor subject. Therefore, the District Court held that the youth in question should be notified of the subpoena consistent with 23 Pa. Cons. Stat. § 6340(b), and if there are no objections, CCCYS should comply with the subpoena.

SUPERIOR COURT OF PENNSYLVANIA

Interest of: J.R.R (Huntingdon County)**Date of Decision:** February 11, 2020**Citation:** 2020 PA Super 33

Holding: The record was insufficient for the court to discern the effect on Child of permanently severing the parental bond with Father. Termination decree reversed and remanded.

Facts and Procedural History: Father appealed the termination of his parental rights and asserted that the record was insufficient for the court to determine the effect on Child of permanently severing the bond with father as required by § 2511(b). Father had not had in-person contact with Child since he was three years old. At the termination of parental rights hearing, Child (now 14 years old) did not testify. Foster mother testified to the existence of an important and positive bond between Father and Child established through phone contact. Foster mother testified that Child wished to continue contact with Father post-adoption, and that she was supportive of contact, but she did not wish to establish a Post-Adoption Contact Agreement.

Issue: Was the record sufficient for the court to discern the effect on Child of permanently severing the parental bond with Father?

Rationale: The Superior Court noted that the orphans' court was required to explore what, if any, emotional impact the involuntary termination of Father's rights would have on Child. The Court found the record devoid of evidence that this was taken into consideration. The Court reversed the decree involuntarily terminating Father's parental rights and remanded the case for the parties to present evidence regarding Child's preferred outcome in this termination matter and the effect that termination would have on Child. After that, the orphans' court shall conduct a proper analysis pursuant to 23 Pa.C.S.A. § 2511(a) and (b).



In the Interest of: L.B. (Philadelphia County)

Date of Decision: February 19, 2020
Citation: 2020 PA Super 41

Opinion by Justice Strassburger:

Holdings: The decision suspending visitation is appealable. The trial court erred in allowing Therapist to decide when visitation should resume. The order is vacated and remanded.

Facts and Procedural History: Father appealed a permanency review order that suspended his visitation with his son. Child was in foster care and eventually had overnight visits with Father. After a visit, Child had a visible bruise on his forehead and Father was the alleged perpetrator. Based on this incident, the Juvenile Court suspended Father's visits pending recommendations of Child's Therapist.

Issues: Is the order suspending visitation appealable? Did the trial court err in allowing Therapist to decide when visitation should resume?

Rationale: Father argued that visitation is an issue of law that should be for a judge to determine and should be not left up to a therapist. The major issue in this case is whether this order about visitation is an appealable order. The "collateral order doctrine" permits immediate appeal as of right from an otherwise interlocutory order where an appellant demonstrates that the order meets the following elements: (1) it is separable from and collateral to the main cause of action; (2) the right involved is too important to be denied review; and (3) the question presented is

Cont'd.

such that if review is postponed until final judgment in the case, the claimed right will be irreparably lost. The majority concludes that prong one is met here because the visit issue presented is separate from and collateral to the main cause of action. Additionally, the majority found that the second and third prong are met because the order resulted in a complete denial of visitation.

Dissent by Justice Olson:

Justice Olson writes to share his position that the Court lacks jurisdiction over this appeal because the collateral order doctrine should not apply here. Specifically, he disagrees that the third prong of the collateral order applies because the suspension of visitation would be revisited at the next permanency review and was therefore temporary. Justice Olson also concluded that the court had not ceded decision making regarding visitation to the therapist, but rather was looking for the therapist's recommendation.

Concurring Opinion by Justice Stabile:

Justice Stabile writes to address the Dissent. Justice Stabile distinguishes the present case from other dependency cases with respect to the collateral order doctrine. He points out that the harm here in allowing a third party to supplant decision-making authority may not later be remedied without irreparable harm to Father and to the dependency process.

SPOTLIGHT

PA LEGISLATION:**Act 1 of 2020, “Buyer Beware Act”**

This Act Amends Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes. This act reclassifies felonies and increases penalties for engaging in human trafficking and for individuals who knowingly or recklessly engage in a sex act or performance with a victim of trafficking.

OCYF BULLETIN:**Certification as a Specialized Setting for Children and Youth, #3680-20-02, 3680-20-03**

Release Date: February 14, 2020

Effective Date: February 15, 2020

This Bulletin outlines a voluntary certification process for child residential facilities and Supervised Independent Living programs serving:

- Pregnant, expectant, and parenting youth;
- Youth who are transitioning to adulthood; and
- Youth who are, or are at risk of becoming, sex trafficking victims.

To be certified as a specialized setting, the program must demonstrate enhanced practice standards, including trauma-informed practice. This designation will become important because the Family First Prevention Services Act (Family First Prevention Services Act of 2017, H.R. 253, 115th Congress) limits Title IV-E foster care maintenance payments for youth in placements that are not foster family homes. However, Title IV-E foster care maintenance payments are not limited as long as the child’s residential facility meets the specific requirements in federal statute and policy as described below:

- A setting specializing in providing prenatal, post-partum, or parenting supports for youths;
- In the case of a youth who has attained 18 years of age, a supervised setting in which the youth is living independently; and
- A setting providing high-quality residential care and supportive services to children and youth who have been found to be or are at risk of becoming, sex trafficking victims.