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Legal Report

SWAN Legal Services Initiative

A monthly publication from the SWAN Legal Training Team

In This Issue:

Kayla W., by and through her Parent, Catrina J., v. Chichester School District

In the Interest of: A.J.R.O.

SPOTLIGHT

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US DISTRICT COURT: SPOTLIGHT

Kayla W., by and through her Parent, Catrina J., v. Chichester School District

The District Court for the Eastern District of Pennsylvania granted partial judgment for Parent and Child and partial judgment for the District. Parent claimed the District failed to provide child with a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Act (“IDEA”) and §504 of the Rehabilitation Act (“RA”). The Hearing Officer (“HO”) decided that the District did not violate its “Child Find” obligations in not evaluating the child until months after her numerous behavioral issues and failing grades. Parent appealed the decision. The court addressed the cross-motions for judgment on the administrative record. Child was suspended from school several times and for several days due to behavioral issues. Child was eventually diagnosed with an intellectual disability. District’s procedural errors violated IDEA and Section 504 and the child is entitled to 84 days of compensatory education, (the number of days the child was suspended) reversing the hearing officer’s decision and granting partial judgment.

SUPERIOR COURT OF PENNSYLVANIA

In the Interest of: A.J.R.O.

Date of Decision: February 8, 2022

Citation: 2022 PA Super 23

Holding: The Superior Court vacated the trial court’s decision, which terminated the parental rights of Mother, and remanded to the orphans’ court to fulfill its duty pursuant to 23 Pa. C.S. §2313(a) as stated in In re P.G.F., 247 A.3d 955 (Pa. 2021).

Facts and Procedural History: The family has a lengthy history with Children and Youth Services of Delaware County (“CYS”), from the child testing positive for drugs at birth to injuries to the child from an alleged domestic violence incident between the parents. The child had been adjudicated dependent in August of 2015 and court supervision ended in February of 2016. CYS provided in-home services to monitor substance abuse concerns and the family’s living situation. The latest referral to CYS resulted in the adjudication of the child dependent in April of 2019, where it was reported that the parents were engaging in substance abuse and failing to attend to A.J.R.O.’s needs. The court appointed a Guardian ad Litem (GAL) during the dependency proceedings to represent the child; that same individual acted as legal counsel for A.J.R.O. during the termination proceedings. CYS filed a petition to change the child’s permanency goal from reunification to adoption and a petition to involuntarily terminate Mother’s parental rights. The Orphans’ court held a consolidated hearing on the petitions and entered an order changing the goal to adoption on the dependency docket and entered a decree terminating Mother’s parental rights on the adoption docket. Mother filed a single notice of appeal from both the goal change order and the termination decree. Mother’s notice of appeal listed both the adoption and dependency docket numbers but it was only filed at the adoption docket and she challenged both orders and the decree in her concise statement. The Superior Court issued an order

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directing Mother to show cause why her appeal should not be quashed for failure to comply, specifically with Pa.R.A.P. 341(a) and Commonwealth v. Walker, 185 A.3d 969 (Pa. 2018). Walker mandates that when a single order resolves issues arising on more than one lower court docket, separate notices of appeal must be filed. The failure to do so will result in quashal of the appeal. Mother asked the Court to strike the goal change portion of her appeal. CYS requested quashal of Mother's appeal. The Court dismissed the rule to show cause on Mother but advised that the issue may be revisited in either briefs or at oral argument. Mother's appeal moved forward.

Issues:

1. Did Mother's appeal meet the requirements of Pa.R.A.P. Rule 341 and the holding of Commonwealth v. Walker?
2. Did the trial court err in not addressing if a conflict existed when it appointed the child's GAL to act as his attorney as well for the termination proceedings?

Rationale: The Superior Court first addressed the fact that Mother filed a single notice of appeal from two separate orders (termination order and goal change order) that arose from two different dockets numbers (the Orphans' Court and the Juvenile Court docket). The Court turned to the official note of Pa.R.A.P. Rule 341, which states that where "one or more orders resolves issues arising on more than one docket or relating to more than one judgment, separate notices of appeal must be filed." The Court noted that while it had become common practice to allow appeals to proceed even if they failed to comply with Rule 341, The Pennsylvania Supreme Court held in Walker that this practice violated Rule 341 and that the failure to file separate notices of appeal for separate dockets must result in quashal.

Recently, however, the Pennsylvania Supreme Court in Commonwealth v. Young, 265 A3d 462, 2021 WL 6062566, identified another rule, Pa.R.A.P. 902, that applies as well.

The Superior Court addressed the interplay between Rules 341 and 902, which basically allows the court to have the discretion to accept the appeal if it is timely filed and allow correction of the error. Mother's request for the Court to strike the non-compliant portion of her appeal invokes the equitable measures prescribed in Rule 902 and this argument was considered preserved. The Court found that even though it is clear that Mother intended to appeal both the termination decree and the goal change order based on her concise statement, Mother will be permitted to correct her defective notice of appeal, which was only filed at the adoption docket, by allowing her to abandon her dependency docket claims and proceeding solely on her adoption docket claims.

Did you know?

23 Pa.C.S. §2313(a) Where the orphans' court has appointed a single attorney to serve as GAL and legal counsel to represent both the child's best interests and legal interests, an appellate court should review whether the court made a determination that those interests did not conflict.

Next, before the Court could reach the merits of Mother's appeal, the Court addressed the issue of A.J.R.O.'s (age 6) representation acting in the dual role of his guardian ad litem (GAL) and his attorney for the termination proceedings. The Orphans' Court's record confirmed that during the

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dependency proceedings, the child's GAL was also appointed as his attorney for the termination proceedings. However, there is no evidence in the Orphans' Court record that it made the required determination that A.J.R.O.'s legal and best interest did not conflict.

The Superior Court vacated the termination decree and remanded the matter to the Orphans' Court to fulfill its duty under §2313(a) and determine if the GAL may represent the dual interests of A.J.R.O. Further, the Court decided that if the Orphans' Court decides that no conflict exists, the Court shall reenter its decree terminating Mother's parental rights. If the Orphans' Court determines a conflict between the child's legal and best interests, the Orphans' Court shall appoint separate legal counsel and conduct a new termination hearing as to Mother to provide legal counsel an opportunity to advocate on behalf of the child's legal interests.

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AMENDMENT TO RULES OF CIVIL PROCEDURE

On January 20, 2022, the Supreme Court of Pennsylvania adopted Recommendation 2 of the Domestic Relations Procedural Rules Committee, amending Pa.R.Civ.P. 1915.11. The purpose of this amendment is to strike a balance between the self-represented party's right to present evidence for determining the child's best interest and the child's best interest in addressing the court's questions without intimidation or fear. The amendment will become effective on April 1, 2022. To view this rule in its entirety click on the link provided.

<https://www.pabulletin.com/secure/data/vol52/52-6/191.html>.