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Legal Report

SWAN Legal Services Initiative

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US DISTRICT COURT: SPOTLIGHT

Guest v. Allegheny County, et.al.

Date of Decision: January 21, 2022

Cite: 2022 WL 195825

The District Court for the Western District of Pennsylvania denied Parents' motion for summary judgment and granted Allegheny County's motion for summary judgment where Parents claim that their due process rights were violated when the Children were removed from their custody. An Emergency Custody Authorization ("ECA") was issued after Father failed to complete a court-ordered urine screen. The parents acknowledged Allegheny County Office of Children and Families' (OCYF) policy was that once an ECA was issued, typically the Children would be removed from the home and taken into shelter care pending a hearing before the court. The district court found the record supported the enforcement of the ECA. Thus, the policy of Allegheny County as applied to Plaintiffs did not violate their civil rights.

SUPERIOR COURT OF PENNSYLVANIA

In Re: M.N.K.

Date of Decision: January 6, 2022

Cite: 2022 PA Super 7

Holding: Notice was successfully effectuated by CYS where service on Father was via certified mail pursuant to the Adoption Act and Pennsylvania Orphans' Court Rule 15.6.

Facts and Procedural History: In November 2018, the court adjudicated Child dependent and later approved a permanency plan setting forth the reasons for placement and the objectives the parents had to achieve for Child to be returned to parents' care. In March 2021, Lancaster Children and Youth Social Services Agency (CYS) filed a petition for involuntary termination of Father's parental rights in accordance with 23 Pa.C.S. § 2511(a)(1), (2) and (b). CYS alleged that Father failed to complete the permanency plan, and termination would best serve the needs and welfare of Child. The orphans' court scheduled a TPR hearing for June 14, 2021. In the meantime, a permanency review hearing was held on April 26, 2021, during which Father was present by video conference. The date of the TPR hearing was stated twice during the permanency review video conference. Notice was also sent by certified mail, the receipt for which, indicated that it had been delivered and left with an individual at Father's home address. The court subsequently held the TPR hearing on June 14, 2021. Father was not present, but his counsel at the time did appear at the proceeding. Father's absence was discussed at length, as well as what type of notice was provided to him. Father's counsel also tried to contact him during the proceeding. At the conclusion of the hearing, the court indicated it wanted to review the transcript from the April 26, 2021 permanency review hearing to confirm Father was given proper notice. Two days later, the court entered a decree, terminating Father's parental rights pursuant to 23 Pa.C.S. § 2511(a) (1), (2) and (b). Father appealed the decision.

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Issue: Whether the Orphans' Court erred in its Decree finding that CYS had met its burden in proving that Father's parental rights should be terminated when the Court erred as a matter of law when it concluded that Father had been adequately served with the notice of hearing for involuntary termination under Pa.O.C.R. 15.6 and/or The Adoption Act under Section 2513(a)-(b), thus violating his right to due process.

Rationale: The Court first addressed Father's argument that he did not receive proper notice. Father did not argue that he never received notice of the TPR hearing via certified mail; rather, he asserts that the circumstances surrounding the delivery were insufficient to demonstrate he actually received service because the USPS employee handwrote on the green verification card that the document was delivered, but not to an adult individual residing at the home. Upon review, the Court agreed with the trial court's analysis that notice had been sent by certified mail in accordance with Orphan's Court Rule 15.6¹, and Father received it. CYS had received the green card that indicated that the notice was delivered, which was handwritten by the postal service worker. In addition, CYS presented a tracking history also indicating that it was delivered and left with an individual on May 14th. Father was also informed of the TPR hearing date twice at the April 26, 2021 permanency review hearing. Finally, counsel for Father was present at the hearing and did not ask for a continuance based on a lack of notice or Father's failure to appear, although he could not explain his client's absence, nor could he get in contact with his client. The Court determined, based on the record that, Father had not established that his due process rights to notice were violated.

Father did not raise a claim regarding the court's termination of his parental rights pursuant to Sections 2511(a)(1), (2) and (b), in his concise statement 1925(a)(2) hence the Court determined that any argument concerning the petition would be deemed abandoned, and consequently waived, for purposes of appellate review.

Z.P. v. K.P.

Date of Decision: January 6, 2022

Cite: 2022 PA Super 6

Holding: The Superior Court reversed the trial court's amended order finding the trial court lacked authority to dictate the manner in which the Commonwealth and CYF conducted its child abuse investigation.

Facts and Procedural History: Mother alleged that the Children were in Father's care when he allegedly sexually abused them. York County Office of Children Youth and Families (CYF) became involved and both children underwent forensic medical exams and interviews with a Sexual Assault Forensic Examination ("SAFE") nurse. The Children then underwent separate forensic interviews at the Children's Advocacy Center (CAC) on multiple occasions. CYF initially indicated the report for both children. Father, who was a teacher, was suspended without pay from his job. No criminal charges were ever filed, and Father appealed the CYF determinations.

¹ Orphans' Court Rule 15.6(a) (a) Notice to every person to be notified shall be by personal service, service at his or her residence on an adult member of the household, or by registered or certified mail to his or her last known address.

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In the meantime, Mother filed for a Protection from Abuse (PFA) Order for herself and both children, effectively suspending Father's contact with the Children. Father filed a Complaint for Custody seeking physical and legal custody of the children. After some delay, an Interim Order for Custody was entered granting Mother sole legal and primary physical custody of the children due to the ongoing CYF investigation into the allegations made by Mother. The Order directed that Father would have no rights of partial physical custody or visitation unless and until ordered by the court.

In the following months, CYF declined to pursue the case. The reports were subsequently expunged and the PFA was vacated by agreement of the parties. Additionally, there did not appear to be a pending criminal investigation, and no criminal action had been taken. Therefore, the court modified the interim order to provide some visitation for Father, to be supervised by Paternal Grandmother, until the custody hearing would occur.

In accordance with an agreement of counsel, the court watched the five CAC interviews of the children during the weekend prior to the custody hearing. During the hearing, the court was made aware that another referral was made against Father following his weekend of supervised custody. Counsel for CYF and the assigned caseworker were able to Zoom into court and report the status. The court was informed that another CAC interview was scheduled by the Commonwealth the day before the children were scheduled to testify before the court. The court did not issue a separate Order, however, the court indicated that no one was to talk to the children, including the CAC, prior to the children's scheduled testimony nine days later. The CYF solicitor was present and did not object.

An Emergency Status Hearing was then scheduled, where the court informed the Commonwealth that it would be canceling the CAC interview it had scheduled with the Children as part of the Commonwealth's child abuse investigation. The Commonwealth appealed the order, which placed limitations on the manner in which the Commonwealth was permitted to interview the Children as part of its investigation into child abuse allegations against Father.

Issue: Did the trial court exceed the scope of its authority and violate Title 23, Chapter 63 by prohibiting the Office of the District Attorney and/or law enforcement from conducting its criminal investigation into suspected child abuse?

Rationale: The Superior Court addressed the Commonwealth's argument that the trial court exceeded its authority by unilaterally canceling a forensic interview of the Children that were the subject of sex abuse allegations and by imposing requirements on law enforcement before any interviews with Children. The Court stated that there was no dispute that the trial court had the authority to interview the Children and act to protect the Children's best interests as it pertains to the custody action. Further, the trial court had a duty to consider any allegations of child abuse in rendering its custody decision.

However, the provisions on which the court relies apply only to disputes relating to child

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custody matters and do not mention law enforcement. The court's duties under Section 5329.1 regarding abuse allegations are independent of the duties of CYF and law enforcement. Section 6334.1 of the CPSL makes it clear that if the suspected child abuse is alleged to have been committed by a perpetrator, which includes a parent, and the suspected child abuse might constitute a criminal offense, CYF and law enforcement officials shall jointly investigate the allegation through the investigative team established in the CPSL.

Based on the record, the Court determined that the trial court had no authority to establish the investigatory protocol, or place limits on how the District Attorney and CYF follow that protocol, as nothing in Section 6334.1 or 6365(c) of the CPSL contemplates a custody court's role in the investigatory process.

SPOTLIGHT

NEW LAW PASSED SUPPORTING STUDENTS FACING GRADUATION BARRIERS

On January 27, 2022, Governor Wolf signed Senate Bill 324 into law to provide direct support to Pennsylvania youth experiencing educational instability, ensuring they have a clear pathway to high school graduation. It provides graduation planning and a smoother transfer of academic credits, among other resources, for young people in Pennsylvania who are experiencing homelessness or who are in the foster care or juvenile justice systems. To review the entire Bill please click on the link provided below.

<https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=DOC&sessYr=2021&sessInd=0&billBody=S&billTyp=B&billNbr=0324&pn=0850>.

AMENDMENT TO PA RULE OF ORPHANS' COURT PROCEDURE

On January 6, 2022, the Orphan's Court Procedural Rules Committee issued changes to Rules 1.3, 2.11, 9.1, 9.2, 9.4, 9.5, 9.6, 9.7, and 9.8. The purpose of the amendment is to replace the term "master" and add a new definition of "hearing officer." These amendments become effective on April 1, 2022. For more information on these rule changes, please use the link provided below.

<https://www.pabulletin.com/secure/data/vol52/52-4/112.html>

AMENDMENTS TO PA RULES OF CIVIL PROCEDURE

On January 5, 2022, the Supreme Court adopted Pennsylvania Rule of Civil Procedure Rule 242 to make explicit the assumption that non-precedential appellate court decisions may be cited in the trial courts. Rule 242 includes specific requirements when citing non-precedential appellate court decisions for their persuasive value in the trial courts. A note to

the rule is intended to inform practitioners of the Superior Court and Commonwealth Court operating procedures. This amendment becomes effective on April 1, 2022. For more information on these rule changes, please use the link provided below.

<https://www.pabulletin.com/secure/data/vol52/52-4/111.html>

SPECIAL TRANSMITTAL FROM THE DEPARTMENT OF HUMAN SERVICES

On January 6, 2022, the Department of Human Services issued a special transmittal to the Office of Children, Youth and Families (OCYF) Regional Offices; County Children and Youth Agencies (CCYAs); and Pennsylvania Children and Youth Administrators Association. At the conclusion of child abuse investigations, also known as Child Protective Services (CPS) investigations, Title 23, Pa. C. S., Chapter 63, the Pennsylvania Child Protective Services Law (CPSL) requires investigative agencies to make status determinations. The purpose of this special transmittal is to provide information and support to OCYF Regional Offices and County Children and Youth Agencies (CCYAs), when completing outcome narratives during the process of making and finalizing status determinations.

<https://pccyfs.org/topic/ocyf-special-transmittal/>.