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Legal Report

SWAN Legal Services Initiative

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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



SUPERIOR COURT OF PENNSYLVANIA

In the Interest of: A.M., Appeal of N.M., Mother

Date: July 1, 2021

Citation: 240, 253 MDA 2021

Holding: The Trial Court did not err in changing the minor child's permanency goal to adoption and terminating mother's parental rights.

Facts and Procedural History: In November 2017, the York County Office of Children, Youth & Families (CYF) received a referral alleging that mother was abusing drugs and could not properly care for the minor child. Child was removed from mother's care pursuant to a safety plan and initially placed with maternal grandmother. In December 2017, maternal grandmother told CYF that she could no longer care for child and mother did not have stable housing. In April 2018, child was adjudicated dependent and was placed in foster care where he has remained since. On July 30, 2020, CYF filed petitions to change the court-ordered goal from reunification to adoption and to terminate Mother's parental rights. A hearing on the petitions was held on January 20, 2021, and the prior record and proceedings from the dependency action were incorporated into the record. The trial court granted the petitions to change the permanency goal to adoption and terminate mother's parental rights. Mother subsequently appealed.

Issues:

1. Did the trial court abuse its discretion in changing the goal from reunification to adoption and terminating her parental rights?
2. Did the trial court err in finding clear and convincing evidence in support of termination under 23 Pa.C.S. §2511(a)(1) and (8) and in finding that termination would be in the child's best interest under 23 Pa.C.S. §2511(b)?

Rationale: The Superior Court began its analysis of the trial's court findings under subsection 2511(a)(1); in this case, it was clear that child had been living with his foster parents for 33 months at the time of the termination hearing. Child was adjudicated dependent in April 2018 and CYF filed a petition to terminate mother's parental rights in July of 2020. The Superior Court concluded that the trial court's record supported that Mother failed to perform any parental duties or communicate with CYF in any way in the six months prior to the filing of the petition. The record supported the trial court's finding that termination of mother's parental rights was justified under Section 2511(a).

The Court next focused their inquiry on whether the termination was in the best interest of the child. Their analysis considered several factors under section 2511(b). Child had been in placement with the foster parents for nearly three years, had formed a strong bond with the foster parents and referred to them as "grandma" and "grandpa," and expressed that he wanted to stay with them. The child exhibited behavioral issues after visits with mother. The infrequent nature of the visits and the long periods of time when he did not see mother made it difficult to determine whether child had any bond to mother. Foster parents ensured the child attended therapy and he matured under their care. He thrived at school and at home with their guidance. The Court found that the record supported the trial court finding that the termination of mother's parental rights served the child's best interest under section 2511(b).

E.A., III., v. E.C.**Date of Decision:** July 13, 2021**Citation:** 1439 MDA 2020

Holding: The trial court erred by granting maternal grandmother's petition to intervene and finding that maternal grandmother had standing to pursue partial physical custody in accordance with 23 Pa.C.S. §5325(2)(i) and (ii).

Facts and Procedural Posture: In this private custody action, father filed for partial physical custody of the minor child. A stipulated order was reached by the parties wherein they agreed to share legal custody with primary physical custody being with mother and father exercising partial physical custody of the minor child. Fourteen months after the stipulation order was entered, mother filed to modify the custody order and two months later, father filed for contempt and cross-motivated for modification. The trial court took judicial notice that of the earlier litigation and the joint stipulation that Mother and Father previously disagreed about maternal grandmother's relationship with the child prior to father's death. A custody trial date was scheduled, however, father passed away in the interim. Mother filed to withdraw her custody complaint and cancel the trial due to father's death. The court granted the motion. More than three months after father died and more than two months after the court granted mother's motion to withdraw the custody complaint and agreed to cancel the custody trial, maternal grandmother filed a petition to intervene in the custody litigation asserting standing based on 23 Pa.C.S. §5325(2) of the Child Custody Law. The trial court found that maternal grandmother had standing and granted her petition to intervene in the custody action. Mother subsequently appealed this decision.

Issues:

1. Did the court err when it did not give plain meaning to the clear and unambiguous language of 23 Pa.C.S. § 5325(2)(ii) and characterized the wishes of a deceased parent as a relevant "disagreement" with the living parent when the statute is written in the present tense with no provision concerning past or future agreements?
2. Did the court err by giving consideration to any standing maternal grandmother might have achieved in the event that she had filed an intervenor action prior to the death of father, and, once determining that she "had or would have had standing" had such filing been made, granting standing to her "by logic" in the instant intervenor action?

Rationale: Because both of mother's arguments implicated maternal grandmother's standing to participate in the custody dispute following father's death, the Court addressed the arguments jointly. The Court first determined that the words of the statute (23 Pa.C.S. § 5325(2)), were clear and free from all ambiguity.

That being the case, the Superior Court reasoned the trial court's rationale was flawed; It must examine whether standing is present in light of the circumstances as they currently exist.

Did you know? 

23 Pa.C.S. § 5325(2), provides grandparents and great-grandparents standing to pursue partial physical custody and supervised physical custody in the following specific situation: (2) where the relationship with the child began either with the consent of a parent of the child or under a court order and where the parents of the child: (i) have commenced a proceeding for custody; and (ii) do not agree as to whether the grandparents or great grandparents should have custody under this section[.]

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Hence, regardless of any prior disagreements between parents about grandmother's ability to exercise partial physical custody, the Child Custody Law does not extend standing to grandmother to file for partial physical custody under this section when the predicate disagreement no longer exists. Trial court erred as a matter of law awarding standing to grandmother based upon section 5325(2) when father is no longer able to assent or oppose mother's decisions regarding grandmother's custody.

SPOTLIGHT CASE

Metzger, et. Al. V Allegheny County

The District Court for the Western District of Pennsylvania granted Allegheny County's (ACCYF) motion to dismiss Plaintiffs' amended complaint for failure to state a claim upon which relief can be granted and for lack of subject matter jurisdiction, without prejudice. Mother of two children, brought an action against Defendants (ACCYF) Allegheny County and several of its employees, ostensibly for violations of Ms. Metzger's civil due process rights which stemmed from a state court case in which her parental rights were terminated. The District Court concluded that the record supported that Ms. Metzger's claims were not barred by the Rooker-Feldman doctrine; Defendants' failure to serve Ms. Metzger with notice of the hearing did not require this Court to find that the trial court's decision terminating her parental rights was made in error. The District Court concluded the trial court record supported that the notice of the termination hearing was served upon Ms. Metzger by publication and Ms. Metzger has failed to provide sufficient detail upon which otherwise to explain or support her claim, the Court further decided that Ms. Metzger had failed to state a claim for violation of procedural process upon which relief can be granted. The District Court determined that Count III of the Amended Complaint was dismissed without prejudice for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1).

The District Court for the Western District of Pennsylvania granted Allegheny County's (ACCYF) motion to dismiss Plaintiffs' amended complaint for failure to state a claim upon which relief can be granted and for lack of subject matter jurisdiction, without prejudice. Mother of two children, brought an action against Defendants (ACCYF) Allegheny County and several of its employees, ostensibly for violations of Ms. Metzger's civil due process rights which stemmed from a state court case in which her parental rights were terminated. The District Court concluded that the record supported that Ms. Metzger's claims were not barred by the Rooker-Feldman doctrine; Defendants' failure to serve Ms. Metzger with notice of the hearing did not require this Court to find that the trial court's decision terminating her parental rights was made in error. The District Court concluded the trial court record supported that the notice of the termination hearing was served upon Ms. Metzger by publication and Ms. Metzger has failed to provide sufficient detail upon which otherwise to explain or support her claim, the Court further decided that Ms. Metzger had failed to state a claim for violation of procedural process upon which relief can be granted. The District Court determined that Count III of the Amended Complaint was dismissed without prejudice for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1).

COURT OF COMMON PLEAS

Rahman v. Handberry and Carter

Date of Decision: July 7, 2021

Citation: 2021 WL 2853243

Holding: The District Court for the Western District of Pennsylvania granted Defendants' Motion to Dismiss and denied Plaintiff's Amended Complaint. The court granted Plaintiff leave to amend to allege facts showing that Defendant's actions exceeded negligence and plead the culpability required to assert a constitutional violation in his complaint.

Facts and Procedural History: Plaintiff's rights were terminated while he was incarcerated. On December 2, 2014 an "adjudicatory and dispositional hearing" was held before the Court of Common Pleas of Philadelphia, Family Court Division, wherein the subject minor child was committed to the care and custody of the Philadelphia Department of Human Services ("DHS"). At a May 11, 2016 termination hearing, the court ordered DHS and CUA to "make outreach to Plaintiff, set objectives for Plaintiff, and to hold a single case plan meeting for Plaintiff within twenty days." In his complaint, Father alleged that Defendants failed to make outreach, set objectives, or hold a case plan meeting. He further alleged that the supervisor was aware of the May 11, 2016 Family Court order but failed to ensure that CUA worker complied with it. Father brought claims against Defendants under 42 U.S.C. § 1983, asserting a violation of his Due Process rights under the Fourteenth Amendment.

Father alleged that the court ordered the Community Umbrella Agency ("CUA") to create a "single case plan" and submit a "parent locator" for him. Father further alleged that the Defendant CUA social worker assigned to T.N.R.'s case, did neither, and that her supervisor neglected to ensure that the CUA worker complied with the court order.

Issue:

1. Were Father's substantive due process rights violated because of the actions of state employees regarding his termination of parental rights matter?

Rationale: The Court determined that Father failed to sufficiently plead a violation of a constitutional right.

"To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law."

The Court noted that to show that this right has been violated, Plaintiff needed to do more than allege negligence; Plaintiff must show a degree of culpability that "shocks the conscience." "The Third Circuit has identified three standards that can support a finding that government action "shocks the conscience": (1) deliberate indifference; (2) gross negligence or arbitrariness; or (3) intent to cause harm."

Plaintiff's allegations were insufficient to show the culpability required to plead a

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constitutional violation. Plaintiff has alleged negligence, but Plaintiff's Amended Complaint lacked facts which alleged deliberate indifference, gross negligence or arbitrariness, or intent to cause harm. Plaintiff alleged only that Defendants failed to follow the court's orders. The Court further determined that social workers, like the Defendants, "are placed in a position of trust in seeing to and ensuring the safety and best interests of children. The failure to properly carry out their responsibilities may constitute negligence. It does not constitute a violation of the Constitution."

SPOTLIGHTS

T.R., a minor, individually, by and through her parent, Barbara Galarza, et., al. V. SCHOOL DISTRICT OF PHILADELPHIA, et., al., Appellants

The United States Court of Appeals, Third Circuit affirmed the District Court for the Eastern District of Pennsylvania that [1] IDEA claim did not address systemic legal deficiencies, and thus, was not exempt from IDEA's exhaustion requirement, and [2] gravamen of complaint sought relief for denial of a free appropriate public education (FAPE), and thus, all of the claims were subject to IDEA's exhaustive requirement.

Appellant-Plaintiffs brought a putative class action against the School District of Philadelphia claiming shortcomings in the School District's translation and interpretation services that purportedly amount to a violation of the Individuals with Disabilities Education Act ("IDEA"). The District Court denied Plaintiffs' motion for class certification and their motion for summary judgment wherein the District Court declined to find that Plaintiffs met a systemic exception to IDEA's administrative exhaustion requirement.

Rules and Regulations Department of Education 34 CFR Chapter II

On July 9, 2021, The Department of Education established requirements for the Homeless Children and Youth program (ARP-HCY), under section 2001(b)(1) of the American Rescue Plan (ARP Act). These requirements are intended to clarify program requirements and streamline the process for the State educational agencies (SEAs) to award subgrants to local educational agencies (LEAs). For further information, see [here](#).

On July 30, 2021, OCYF issued a Bulletin to consolidate the previously issued Adoption Act of 2008 Adoption Assistance guidance and effectively replace the following documents regarding Adoption Assistance eligibility:

- Special Transmittal, Fostering Connections to Success and Increasing Adoption Act of 2008- Adoption Program Requirements
- Special Transmittal, Act 80 of 2012 and Act 91 of 2012, only the Act 80 policy concerning Adoption Assistance
- Special Transmittal, Family First Prevention Services Act of 2018 Adoption Assistance Program, Delay of the Aid to Families with Dependent Children (AFDC) Delink for Applicable Child
- Policy Clarification 3140-06-01, Child Eligibility regarding Adoption Assistance (Special Needs)
- Policy Clarification 3140-20-06, Planning and Financial Reimbursement Requirements for County Children and Youth Service Programs (Adoption Assistance Suspension). Effective: Immediately. These updated documents can be viewed in their entirety [here](#).

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SUPREME COURT of Pennsylvania

Effective July 6, 2021, operation of the Unified Judicial System shall return to pre-pandemic status. All courtrooms, adjacent judicial facilities, chambers, and offices within the Unified Judicial System shall be fully opened and staffed by judges and other personnel.

This Court's order of May 27, 2020, terminated the statewide judicial emergency effective June 1, 2020, but authorized president judges to declare local judicial emergencies. Effective immediately, president judges are no longer authorized to declare local judicial emergencies. Notwithstanding, to the extent declarations of local judicial emergencies are in effect suspending the rule-based right of criminal defendants to a prompt trial, they may remain in effect until August 31, 2021.