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pennsylvania STATEWIDE ADOPTION AND

UNITED STATES SUPREME COURT

Fulton v. City of Philadelphia

Date of Decision: June 17, 2021 **Citation:** 593 U.S. _____ (2021)

Date of Decision: June 14, 2021

Citation: 2021 PA Super 121

In March 2018, the city of Philadelphia learned that Catholic Social Services (CSS), one of the agencies it contracted with to provide foster care services, refused to accept same-sex couples as foster parents. CSS was informed that children would no longer be referred to them unless they complied with nondiscrimination requirements as set forth by the city. CSS, along with two foster care parents, filed suit, claiming their First Amendment right to free exercise of religion was being violated.

In a July 2018 ruling, the district court ruled in favor of the city, holding that it had applied its nondiscrimination clause neutrally and that it did not violate the agency's rights. CSS appealed, and in April 2019, the U.S. Court of Appeals for the Third Circuit affirmed the lower court's ruling. The United States Supreme Court heard the case in November 2020. In a unanimous ruling issued on June 17, 2021, the Supreme Court reversed the decision of the lower courts and remanded the case for further proceedings, holding that the City of Philadelphia did in fact violate CSS's right to free exercise under the First Amendment by excluding CSS from the foster care program due to its refusal to certify same-sex couples. In its narrowly tailored opinion, the court also found that a prior case at the center of arguments, *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U. S. 872 (1990), remains precedential because the City's actions in Fulton were not neutral and generally applicable due to an exception to the non-discrimination clause being available.

Concurring opinions were issued by Justice Barrett, Justice Alito, and Justice Gorsuch.

SUPERIOR COURT OF PENNSYLVANIA

In the Interest of G.M.K.,

A Minor Appeal of Clinton County
Children and Youth Services

Holding: Superior Court affirmed juvenile court's decision to place G.M.K. with Maternal Uncle with the agency's continued supervision.

Facts and Procedural Posture: G.M.K. was born in October 2009. His mother was incarcerated in Colorado and had not been involved with the family since 2015. His father is unknown. The child, since he was six months old, has been raised, either jointly or separately by his maternal grandmother and maternal uncle. The child was adjudicated dependent on September 16, 2015, due to his physical aggression, defiance, and lack of coping skills. Thereafter, he was diagnosed with several mental health issues. Physicians rated his disability as moderate to severe, prescribed medications, behavioral health services, and therapeutic support staff. G.M.K. remained in the legal and physical custody of Maternal Uncle while the juvenile court conducted regular permanency review hearings. Maternal Uncle's compliance ranged between

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substantial and full. However, during the summer of 2016 GMK was placed at a mental health/behavioral health facility to treat his mental health issues. On June 26, 2017, the court terminated its supervision of GMK but "directed the Agency to continue to provide and implement services for the family." Six months later, the Agency filed a second dependency petition asserting that GMK had threatened to commit suicide and displayed behavioral problems that required him to transfer from public school to Northwest Human Services School. After a hearing, the court adjudicated GMK dependent, while legal and physical custody remained with Maternal Uncle. G.M.K.'s condition continued to deteriorate and after a brief hospitalization, he was transferred to a therapeutic foster home and later a residential treatment center. The court returned G.M.K. to Uncle's care over strong objections by the Agency. The Agency appealed the decision.

Issues: Whether the juvenile court erred and abused its discretion by placing the dependent child in the legal and physical custody of Maternal Uncle.

Rationale: The Court first determined that the record was supported as to the juvenile court's findings regarding credibility and the weight of the evidence, both of which are not to be disturbed absent an abuse of discretion or lack of support in the record.

The Agency argued that the court disregarded competent testimony regarding the safety of the child, in an effort to accelerate permanency, and its decision, therefore, did not appropriately apply the safety component of a 42 Pa. C.S. § 6351 dispositional analysis. Section 6351. Disposition of dependent child.

General rule. If the child is found to be a dependent child the court may make any of the following orders of disposition best suited to the safety, protection and physical, mental, and moral welfare of the child.

(a.) review of the record showed the psychologist who had worked with G.M.K. since he was four or five years old expressed concerns about the child remaining in placement and believed it best for the child to return to the home of Maternal Uncle. Also noted was that the home was different because Maternal Uncle now had extended family and community support as well as he received restraint training. The Superior Court thus determined the evidence corroborated the trial court's decision to return legal and physical custody to Maternal Uncle as it was best suited to the safety, protection, and physical, mental, and moral welfare of G.M.K.

In the Interest of S.D., A Minor Appeal of J.D. and C.T., Parents

Holding: Superior Court quashed the appeals due to Parent's failure to comply with the Supreme Court's directive in <u>Commonwealth v. Walker</u>, 646 Pa. 456, 185 A.3d 969 (2018).

Facts and Procedural Posture: The children were adjudicated dependent on May 24, 2017, following the arrests of the parents. At the time of the adjudication, the children's permanency goals were reunification with their parents. After three years of regular review hearings, the court changed the children's permanency goal to adoption on the dependency docket. On

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Date of Decision: June 21, 2021

Citation: 2021 PA Super 126

February 11, 2020, CYS filed petitions for the termination of parental rights of both parents. After conducting hearings on this matter, the court entered separate orders terminating the parental rights of each parent to S.D. and L.D. pursuant to subsections 2511 (a)(1), (2), (5), (8), and (b) on the adoption docket. On November 12, 2020, the parents jointly filed separate notices of appeal for each termination order but listed both the adoption and dependency dockets.

Issues:

- 1. Did CYS fail to present clear and convincing evidence that termination of biological parents' parental rights met the statutory requirements under 23 Pa.C.S.A. § 2511(a)(2), (5), and (8)?
- 2. Did the court make an error of law and abuse its discretion when it determined that terminating biological parents' parental rights would serve the needs and welfare of the child pursuant to 23 Pa.C.S.A. § 2511(b) without clear and convincing evidence?
- 3. Did CYS fail to prove by clear and convincing evidence that it made reasonable efforts to assist in reunification of L.D. and S.D. with biological parents prior to seeking termination of biological parents' parental rights?

Rationale: Prior to addressing the issues on appeal, the Court first addressed whether the appeal was proper in that the parents filed a single notice of appeal that listed two separate dockets numbers (dependency and adoption).

In June of 2018, the Supreme Court issued its decision in *Walker*, disapproving of the practice of filing a single notice of appeal from one or more appealable orders on more than docket number. See generally *Walker*, 646 Pa. 456, 185 A,3d 969. The Court clarified that the 2013 amendment to the official comment to Pa.R.A.P. 341(a) provides a "bright line requirement for future cases ...` [w]here ... one or more orders resolves issues arising on more than one docket or relating to more than one judgment, separate notices of appeals must be filed." *Id.* At 468, 185 A.3d at 976 (Quoting Pa.R.A.P. 341, Official Note). Thereafter, in an appeal involving the termination of parental rights, the Court interpreted *Walker* to require quashal when an appellant filed a single notice of appeal from both the dependency docket and the adoption docket as separate notices of appeal are required for discrete challenges to the permanency goal change and termination order. In our case, the parents filed a single notice of appeal to challenge distinct rulings on two separate trial court docket numbers, the Court determined that the parents were required to file separate notices of appeal for each docket. The Court quashed the parents' appeals based on the precedent set in Walker and M.P.

Please see the Monthly Legal Report for February of 2019, to review the analysis of the *Walker* case.

UNITED STATES DISTRICT COURT

Maryann Petri v. Erie County Children and Youth, Tina Trohoske, Amy Daley, and Ralph Ferris Date of Decision: June 4, 2021 Citation: 2021 WL 2291812

Holding: The District Court for the Western District of Pennsylvania granted OCY's motion to dismiss Petri's amended complaint because Petri failed to remedy the deficiencies in her complaint.

Facts and Procedural Posture: Petri filed a complaint alleging violations of federal and state law by OCY and two of its employees and her former husband. OCY and Ferris, Petri's former husband, filed motions to dismiss Petri's complaint. Ferris's motion was granted, as he was not a state actor and not amenable to a federal civil rights suit pursuant to 42 U.S.C.§1983. Thus, Ferris

was terminated from the case. OCY's motion was granted but permitted Petri to file an amended complaint addressing the identified deficiencies. OCY filed a motion to dismiss the amended complaint filed by Petri.

Issue: Whether the amended complaint stated enough facts to state a claim to relief that is plausible on its face (Federal Rule of Civil Procedure 12(b)(6)). DID YOU KNOW-12(b)(6) tests the legal sufficiency of the complaint.

Rationale: The District Court granted OCY's motion dismiss because Petri failed to remedy the identified deficiencies; the amended complaint failed to allege facts that supported a plausible federal claim against OCY. The sole allegation Petri made was that OCY didn't sanction Trohoske and

Did you Know?



In deciding a motion to dismiss, the court is not opining whether the plaintiff will be likely to prevail on the merit; rather, the plaintiff must only present factual allegations sufficient "to raise a right to relief above the speculative level."

Daley for their actions in her case. OCY's failure to sanction its employees after one instance does not evidence that OCY/county had an established policy or custom that led to Petri's injuries; further, it falls short of evidencing a failure or inadequacy amounting to deliberate indifference to constitutional rights on the part of the OCY/county. The District Court reviewed Petri's allegation that Trohoske and Daley violated her Fourteenth Amendment because they failed to conduct a proper investigation into the allegations of abuse. The Court determined that Petri failed to establish actions by Tohoske and Daley that "shock the conscience" and that Petri merely reiterates that the Defendants conducted an improper investigation, no plausible federal claim against the Defendants.

SPOTLIGHT

General Statewide Judicial Emergency

On June 21, 2021, the Supreme Court of Pennsylvania issued an Order whereby the 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. Effective July 6, 2021.

AMENDMENT TO RULES OF ORPHAN COURT PROCEDURE

Rule 1.1. Short Title and Citation.

The Pennsylvania Rules of Orphans' Court shall now be referred to individually as "Rule" and cited as "Pa.R.O.C.P. (Rule number." Rule 1.1 is substantively similar to former Rule 17. If you use the previous "Pa.O.C. Rule" to cite, it may not be used to invalidate a reference or that authority. Please see the link provided below:

https://pabulletin.com/secure/data/vol51/51-26/984.html

AMENDMENT TO PA JUVENILE RULES OF COURT

On June 5, 2021, the Superior Court of Pennsylvania adopted amendments to its Publishing Operating Procedures in Appellate Procedures Pa.Code §65.44 regarding confidentiality issues; regarding the listing of names in an appeal from a divorce, equitable distribution, custody, visitation or child support decision. Effective immediately. Please see the link provided below: https://pabulletin.com/secure/data/vol51/51-23/883.html

NOTICE OF CHILDREN, YOUTH AND FAMILIES

On June 29, 2021, the Department of OCYF issued a bulletin detailing new prevention services required for serving children and families as a result of the Family First Prevention Act (Public Law P.L.) 115-123) (Family First).

These new requirements must be implemented as part of Pennsylvania's election to participate in the federal Title IV-E Program established under Family First. Participating in this provides Pennsylvania the opportunity to strengthen efforts to prevent out-of-home placement of children by expanding the use of evidence-based services and programs to better support families in their own homes and communities.

This Bulletin #3130-21-03 becomes effective October 1, 2021.

For more information, follow the below link:

http://pccyfs.org/pennsylvania-office-of-children-youth-families-release-bulletin-3130-21-03/