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Legal Report

SWAN Legal Services Initiative

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In This Issue:

In RE: T.L.H., Jr.

In RE: C.E.D.H.

In RE: E.J.C.

Updates

OCYF Policy Clarification #3490-25-03

OCYF Policy Clarification #3490-25-04

OCYF Bulletin 3350-25-01

OCYF Bulletin 3490-25-02

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SUPERIOR COURT OF PENNSYLVANIA

In RE: T.L.H., Jr., No. 1474 MDA 2024 (Berks)

The agency became involved after the child was born prematurely and tested positive for amphetamines. Father acknowledged paternity shortly after the child was born, and his parentage was confirmed by genetic testing. The agency offered voluntary services to help support Mother and child after Mother became sober. Months later, Mother was hospitalized, and the agency was notified again. The agency obtained an emergency order on the same date that Father was detained for a parole violation.

At the adjudicatory hearing, Father was ordered to participate in drug and alcohol counseling, mental health counseling, obtain and maintain safe housing and visitation after Father's release, which was anticipated to be in the near future. Father was represented by counsel, but the court dismissed Father's counsel without explanation. During the review hearings, it was noted that Father couldn't make progress on his goals due to his incarceration.

During his incarceration, Father received letters from the agency encouraging him to remain connected to his child. Father sent four letters to the caseworker and advised that he requested a parenting class, but was told he was not eligible as he was not identified as a parent in the prison system. The adoption caseworker testified that since the court orders offered visits only after Father was released, and did not accommodate phone calls, none were set up. Video calls were set up once a week during Mother's supervised visits. Those calls ceased in February 2024 after Mother consented to terminate her parental rights.

Father was unable to receive a drug and alcohol evaluation or psychological evaluation because he was incarcerated on a parole violation, and the waitlist for inmates to participate in these services was lengthy. The trial court issued an order terminating Father's parental rights, and it is from that order that Father appeals.

Father first contests termination under 2511(a)(1), arguing that he attempted to maintain contact with the child until the video calls were arbitrarily cut off. Additionally, he attempted to get connected to services in prison and made the agency aware of his attempts. Further, Father argues that the court order required Father to address his goals after he was released in December 2024.

Superior Court vacated the termination order, opining that the agency failed to meet its burden under 2511(a)(1). Father resided with the child for the first nine months of the child's life. Father wrote six letters to the agency asking for information about working towards reunification upon release and updating the agency on his efforts to obtain services while incarcerated. The orders of the court further confirmed that Father would work on his goals after release, yet the agency proceeded with the termination of parental rights petition. The Superior Court identifies that the record supports, and neither the trial court nor the agency dispute, that Father made efforts to do a drug and alcohol evaluation and parenting and visit the child even though the orders gave him permission to delay addressing the goals until after his release.

In RE: C.E.D.H., 855 MDA 2024 (Clinton)

Superior Court reversed an order denying adoptive parents' petition to involuntarily terminate Father's parental rights.

When Mother was pregnant, it was determined that she was unable to care for the child. Arrangements were made for Mother's niece to adopt the child, and Mother signed a consent to voluntarily terminate her parental rights. The child was placed in the care of adoptive parents at eleven days old and remained in their care. The identity of Father was unknown to the adoptive parents at that time.

When Father learned of the pregnancy, he believed that he was not the father because of his age (56), and Mother had several partners. Father did not take affirmative action to clarify paternity, nor did he make efforts to remain in contact with Mother. Mother located Father while he was in drug and alcohol treatment to advise him of the adoption plans. Father then made efforts to establish paternity, and a complaint was filed on his behalf. Genetic testing was completed, and he was determined to be the father.

Despite his lack of contact in the five months that his parentage was confirmed, Father filed a custody complaint against the adoptive parents. The hearing on the involuntary termination petition occurred nearly one year after the child's birth. The trial court entered an order denying the adoptive parents' petition under 2511(a)(1), stating that six months had not elapsed from confirmation of parentage to the date of the hearing. It is from that order that the child appeals.

The Court first addressed the issue of standing because the child does not have standing to file a petition to terminate rights unless the child is adjudicated dependent. However, the Court disposed of this issue when it acknowledged that the child does have a right to fully participate in the proceedings and the child has a statutory right to counsel separate from adoptive parents.

The parties made arguments regarding the relevant six-month period in which the trial court should have assessed father's behavior. The Superior Court reiterates the precedent stating that if a father knows or should have known about the child's existence, confirmation via genetic testing is not required. Since Father was informed that Mother was pregnant and there was a possibility of his parentage, 2511(a)(1) can be utilized. During the relevant six-month period, the only action Father took was to file a paternity complaint. The statutory requirements were met, and since the child never met Father, the Superior Court did not engage in a §2511(b) analysis.

In RE: E.J.C., 3004 EDA 2024 (Northampton)

The Superior Court affirmed orders involuntarily terminating Father's parental rights to two of his children. Mother and Father had thirteen children, of which their parental rights were terminated to the six youngest children in February of 2024. The Superior Court upheld those termination orders in a prior unpublished opinion.

Two of the older daughters reported to Father that another sibling, D.G., was sexually abusing them. D.G. is Mother's child from another relationship. In response, Father installed cameras and sent the other six female children to live with paternal grandmother while he and Mother investigated the allegations. Father did not contact law enforcement. Parents did not see any evidence on the cameras, and Mother did not believe the children's allegations. They returned to the family home.

Subsequent to their return, the agency received a report of alleged sexual abuse and deplorable housing conditions in October 2021. Despite the home conditions, the agency offered a safety plan wherein Mother and the three youngest daughters would leave the home, D.G. would go to paternal grandmother's home, and Father would remain in the family home with the ten youngest children. The two daughters who alleged sexual abuse by D.G. were taken for a forensic interview. They provided details of multiple instances of abuse, as well as text messages sent to the parents detailing the abuse. The agency then obtained emergency custody orders for all thirteen children.

D.G. was interviewed by the police and admitted to sexually abusing nine of his siblings. Some of the siblings confirmed the abuse or that they observed him abusing a sibling. D.G. was charged and pled guilty to several counts of indecent assault, resulting in a lengthy prison sentence. Consequently, Father was charged with several criminal charges, including endangering the welfare of a child (EWOC) and was imprisoned. Father was identified as an indicated perpetrator of abuse by omission as to seven of the children.

When Father was released on bail four months later, a no-contact order prevented him from having contact with the children. After he pled guilty to endangering the welfare of a child, the no-contact order continued with a provision that the agency could approve contact. Supervised visitation began in early 2023. He resided with paternal grandmother upon his release.

E.J.C. resided in nine foster homes due to behavioral difficulties, including sexually acting out, and ultimately, she was placed in a residential facility. The sibling who is also subject to this appeal has remained in the same foster home since his removal in October of 2021.

The agency filed petitions to involuntarily terminate Father's parental rights in July 2023. After several hearings, the Court issued orders terminating Father's parental rights under 2511(a)(1), (2), (5), (8) and 2511(b). As to E.J.C., Father's rights were also terminated under 2511(a)(10). It is from these orders that Father appeals.

Father contests the findings under 2511(b) and that the children, ages twelve and thirteen, did not express a willingness to be adopted.

Even though Father did not contest the trial court's findings as to 2511(a), the Superior Court determined that the record supported the order terminating Father's rights as to 2511(a)(8). The children were in out-of-home placement for twenty-eight months when the petitions were filed. Additionally, Father's protective capacity did not improve during the life of the case. Supervised visitation began a year after removal. The children began having behavioral problems after

contact with Father.

Father argued that the agency did not meet its burden as to 2511(b) because his love for his children outweighs the finding that termination meets the needs and welfare of the children. The Superior Court opined that Father's argument had no legal merit. The Court is to assess the needs of the children and not what is best for a parent. Further, the evidence supports that the bonds between the children and Father were unhealthy.

With respect to the children's wishes, E.J.C. did not report specific wishes as to termination, but wanted to be reunified with her sisters. Z.K.-E.C. opposed adoption throughout the proceeding because he did not want to change his last name. He also stated that he didn't want Father to "have a say" in things or to return home. The Superior Court opined that the record demonstrated that, despite the children's expressed wishes, they were not opposed to termination based on a bond with Father; termination served their needs and welfare. Finally, the Superior Court points out that the children's consent to adoption is not a consideration under 2511(a) or (b).

Updates

OCYF Policy Clarification #3490-25-03

The Office of Children, Youth and Families (OCYF) has released Policy Clarification #3490-25-03. This Policy Clarification provides guidance on how to address concerns involving privately run camps that do not allege "child abuse" committed by a "perpetrator," as defined by the Child Protective Services Law (23, PA C.S., Chapter 63). Specifically, whether or not non-CPS concerns pertaining to privately run camps meet the definition of General Protective Services, thus requiring the county agencies to assess these concerns instead of the concerns being brought to the attention of law enforcement. The policy clarification may be found in its entirety at the link below.

https://paproviders.org/wp-content/uploads/2025/05/PC_3490-25-03_Privately-Run-Camps.pdf

OCYF Policy Clarification #3490-25-04

The Office of Children, Youth and Families (OCYF) has released Policy Clarification #3490-25-04. This Policy Clarification provides guidance relating to the child abuse recognition and reporting training requirements for administrative staff (clerk/typist, program specialists, fiscal, etc.) and other support staff.

OCYF Bulletin 3350-25-01

The Office of Children, Youth and Families (OCYF) issued Bulletin 3350-25-01, titled “Statewide Adoption and Permanency Network Unit of Service Payment Rates and Programmatic Changes.” This bulletin rescinds and replaces the payment chart on page three of OCYF Bulletin 3350-24-01, “Statewide Adoption and Permanency Network Unit of Service Payment Rates and Programmatic Changes.”

The programmatic changes outlined in previous SWAN Unit of Service Payment Rates and Programmatic Changes bulletins remain in effect.

The new SWAN payment rates established in this bulletin were developed as a result of actual cost and time data submitted by SWAN affiliate agencies from January – December 2024. The new rates apply to all services referred on or after July 1, 2025. Payment for any services referred prior to July 1, 2025, will be paid at the rate established for the year in which the referral was made.

The Bulletin can be found through the link below.

<https://swantoolkit.org/wp-content/uploads/OCYFBulletin33502501SWANUnitServicePaymentRatesProgrammaticChanges.pdf>

OCYF Bulletin 3490-25-02

The purpose of this bulletin is to transmit requirements and guidance regarding legislative changes to Pennsylvania’s Child Custody Act as a result of Act 8 of 2024. This legislation, introduced as Senate Bill 55 (also known as Kayden’s Law), amended 23 Pa. C.S. (Domestic Relations), Chapter 53 (Child Custody) (otherwise known as the Child Custody Act). The Act adds to the current list of factors judges must consider when making custody and visitation decisions, allows for court orders to impose safety conditions and restrictions, including but not limited to nonprofessional or professional supervised physical custody, and encourages a child abuse and domestic abuse education and training program for judges and court personnel.

The Bulletin can be found through the link below.

<https://www.pa.gov/content/dam/copapwp-pagov/en/dhs/documents/docs/documents/ocyf/2025-03-17-ocyf-bulletin-3490-25-02-information-sharing-in-custody-filings-act-8-of-2024.pdf>