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Legal Report

SWAN Legal Services Initiative

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SUPREME COURT OF PENNSYLVANIA

In re: J.W.B. and R.D.B., Minors**Date of Order:** November 26, 2019**Cite:** 566 MAL 2019

Petition for Allowance of Appeal GRANTED. The issue to be considered is whether the Lycoming County Trial Court and Superior Court erred in denying Father's revocation of consent for adoption due to lack of timeliness under Pennsylvania law when Colorado law, where Father resides, does not have a similar restriction.

SUPERIOR COURT OF PENNSYLVANIA

In the Interest of A.M.**Date of Decision:** November 19, 2019**Cite:** 987 WDA 2018*Allegheny County***Holding:**

The Superior Court held that the existence of marital troubles does not mean that the marriage is not intact for purpose of applying the presumption of paternity to dependency proceedings. Furthermore, the presumption of paternity is applicable in same sex marriages.

Facts and Procedural Posture:

Mother and P.M.-T. (who was born female but uses male pronouns) were legally married in 2015. In July of 2017, Mother gave birth to A.M. ("the child"); P.M.-T. was named as the Father on the Birth Certificate. Following the child's birth, Allegheny County Office of Children Youth and Families ("OCYF") obtained an Order of Emergency Protective Custody for the child and placed her with her maternal grandmother. At the adjudication hearing, Mother raised the issue of P.M.-T.'s parental status and informed the court that he was her same-sex spouse, his name appeared on the Birth certificate, and he therefore should be treated as the child's legal parent. The adjudication was continued and the parties were directed to address the issue. At the continued hearing, P.M.-T. requested standing to participate as the child's legal Father on the basis of application of the presumption of paternity. After taking the matter under advisement; the trial court determined that while Mother and P.M.-T. were married, intended to remain married, and intended to reestablish a household together; P.M.-T.'s request for standing would be denied not on the basis of the same sex relationship, but rather because the marriage between Mother and P.M.-T. was not intact. P.M.-T. appealed.

Issue(s):

1. Whether a marriage remains “intact” for the purpose of applying the presumption of paternity in a dependency proceeding where the marriage is fraught with domestic violence and “fluctuated” between estrangement and reconciliation; and
2. Whether the presumption of paternity applies to a non-biological spouse whose same-sex spouse gave birth to a child during their marriage.

Rationale:

The Superior Court began its analysis with the core question of standing; specifically, parents of a child whose dependency status is at issue are considered “parties” and therefore have standing at dependency proceedings. The Court then considered the presumption of paternity, which presumes that if a woman gives birth during her marriage, her spouse is the other parent to that child so long as the marriage was intact sometime within the year before the child’s birth. In this case, Mother and P.M.-T. were legally married both when the child was conceived and when the child was born. They remained married, albeit in a marriage “riddled with challenges and difficulties” at the time that P.M.-T.’s standing was being challenged. The Court noted that the existence of troubles in marriage do not mean that such marriage is not intact for the purposes of applicability of this doctrine; as such, the presumption of paternity should have been applied to provide P.M.-T. with standing.

The Court then explored the broader question as to whether the presumption of paternity applies in cases involving same-sex marriages. As same-sex marriages are legal in Pennsylvania the same rights and protections as opposite-sex marriages must be afforded, including the presumption of paternity. As such, the Trial Court’s order denying P.M.-T. standing was reversed.

COMMONWEALTH COURT OF PENNSYLVANIA

J.S. v. Department of Human Services

Date of Decision: November 15, 2019

Cite: 1772 CD 2017

Holding(s):

The Commonwealth Court held that a hearing on the decision to “found” a report of child abuse is not barred by res judicata when it was based on a prior determination that did not consider evidence, facts, or issues related to child abuse allegations in indicated report; and that the appropriate consideration when determining if a parent used “reasonable force” when administering corporal punishment is the parent or guardian’s conduct, not the nature of the injury to the child.

Facts and Procedural Posture:

J.S. is the Father of the child. Father and the child's Mother are divorced. The child, who was born in 2011, began exhibiting behavioral problems in 2015 that resulted in the child's discharge from his daycare program. Father indicated he had "tried everything" to correct the child's behavior, but despite Father's efforts and the child's subsequent enrollment at a new daycare program, the child's behavioral problems persisted. Following communication from the program that the child had been misbehaving and that Father needed to pick him up Father spanked Child on the buttocks 4 times with an open palm. Father noted later that evening the child had a red mark on his buttocks, which he treated with ice, but did not complain of any pain or discomfort. Prior to this incident, he had never spanked the child. When the child returned to Mother's care, Mother saw big bruises on the child's buttocks and photographed them. A referral was received on that same day by York County Office of Children Youth and Families (CYF). Following an investigation, Father was indicated as a perpetrator of abuse. A summary citation for harassment was also filed against Father by the local police for which Father entered a plea of guilty. Father appealed the indicated finding; two days later, CYF changed the status to founded on the basis of Father's plea to summary harassment. A hearing was held to determine whether CYF had properly amended to the report to a founded status; the ALJ recommended that Father's appeal be sustained and the founded report of abuse be expunged. CYF filed a Motion for Reconsideration requesting a hearing on the previously filed indicated report. Following the hearing, the ALJ concluded that the child had suffered substantial pain as indicated by bruising and discoloration of the child's buttocks five days after the incident, and that despite Father's testimony, while credible, the conduct constituted a gross deviation from the standard of care that a reasonable person would observe in the same situation and amounted to recklessness or criminal negligence that exceeded the bounds of reasonable force. The ALJ ultimately concluded that the Department had presented substantial evidence to support the indicated report and issued a recommendation that Father's appeal be denied. Father appealed.

Issue(s):

1. Whether *res judicata* barred a second hearing on the same issue;
2. Whether the ALJ erred and CYF failed to meet its burden to support the indicated report by substantial evidence wherein no medical evidence was offered to establish injury or pain; and
3. Whether the Department failed to consider Father's right as a parent to use corporal punishment to discipline his child.

Did you know? 

Res judicata, Latin for "judged matter," refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive and may not be relitigated in a later action.

The elements of *res judicata* are as follows: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (4) there must be, between the first and the second action, the same parties, subject matter, and cause of action.

For *res judicata* to apply, all the above requisites must exist.

Rationale:

The Commonwealth Court first dispensed with the issue of res judicata and the associate issue of collateral estoppel, finding that once CYF amended the status of the report to founded, the only issue that could be considered on appeal was whether Father's guilty plea to the harassment charge supported a founded report of child abuse. As the harassment charge was not based on the elements of the allegations of abuse or the facts contained therein, consideration of Father's plea was not barred.

The Commonwealth Court then looked to the statutory language of §6303 to determine whether substantial evidence supported the indicated report of abuse. It states that an indicated report of abuse is made "if substantial evidence of the alleged abuse by a perpetrator exists based on (i) Available medical evidence, (ii) the child protective services investigation, (iii) An admission of the acts of abuse by the perpetrator." 23 Pa.C.S.A. §6303. The Court noted that in this case, while there was photographic evidence depicting bruising over much of the child's body that may support a finding of severe pain, there was no testimony or evidence presented by a medical expert to support this. The Court held that a factfinder who is not a medical expert exceeds her authority by making what are essentially medical determinations to support necessary findings of fact.

With respect to the issue of corporal punishment, the legislature expressly excludes a parent's use of reasonable force as a form of discipline from the definition of child abuse in §6304. The analysis as to whether or not a parent utilized reasonable force requires consideration of whether the parent disregarded a substantial and unjustifiable risk or deviated from a standard of care that a reasonable person would observe in his situation. Neither the occurrence of physical impairment nor an experience of substantial pain is dispositive; the focus of this inquiry is on the conduct of the parent. The Court concluded that the ALJ's determinations that Father disregarded a substantial and unjustifiable risk and caused the child substantial pain were both inconsistent with existing law and unsupported by the record. Therefore, the order denying Father's appeal to expunge the indicated report of abuse was reversed.

LEGISLATION SPOTLIGHT

PA: Act 88 of 2019/HB 1051: Increased Penalties for Mandated Reporters

On November 26, 2019, Governor Wolf signed Act 88 of 2019 into law. This law amends §6319 of the Pennsylvania Child Protective Services Law (CPSL) to increase penalties for mandated reporters related to their duty and responsibility for reporting suspected child abuse.

Order Amending Rules of Evidence

On November 4th, 2019, the Pennsylvania Supreme Court issued an Order amending Pennsylvania Rules of Evidence 901(a), 902(4), 902(6), and 902(12). Specifically, Rule 901(a) was amended to include the phrase, “unless stipulated,” to signal readers that authentication of evidence can be stipulated by the parties. Rule 902(4) and 902(6) are the result of recognition that progressive technology has antiquated the previous requirement for a “wet signature” (902(4)) and the requirement for self-authentication that newspapers and/or periodicals be “printed.”. The amendments and their full text can be found [here](#).