

# November 2021

# Legal Report

## SWAN Legal Services Initiative

*A monthly publication from the SWAN Legal Training Team*

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### **In This Issue:**

K.D. v. E.D.

In the Interest of: K.B., A Minor

C.G. a minor, by and through her Parents, et. al v. Saucon Valley School District

SPOTLIGHT

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## SPOTLIGHT CASE

**K.D. v. E.D.****Date of Decision:** November 16, 2021**Citation:** 2021 PA Super 224

The Superior Court determined that the trial court did not abuse its discretion in concluding that Mother was principally responsible for the extreme conflict between the parties and that her preoccupation with the abuse allegation against Father impeded any ability to cooperate with Father for the benefit of the three children". The parties separated in April of 2015 and Father has not seen the children since that time. The couple had been operating under an order entered in July 2015 which gave Mother sole legal and primary custody of the children. Mother had made many allegations of physical, mental, and sexual abuse by Father against the children. These allegations were all deemed unfounded. Pursuant to an October 5, 2020 order that modified the custody arrangement, Father was granted supervised therapeutic visitation with the minor children. The court found that the trial court engaged in a comprehensive best interest analysis pursuant to 23 Pa.C.S. § 5338(a)(1)-(a)(16), before granting Father's modification petition and fashioning a custody arrangement that permitted supervised therapeutic visitation.

## SUPERIOR COURT OF PENNSYLVANIA

**In the Interest of: K.B., A Minor****Date of Decision:** November 9, 2021**Citation:** 2021 PA Super 221

**Holding:** The trial court did not abuse its discretion in concluding that the child victim was incompetent to testify in the delinquency proceedings against K.B.

**Facts and Procedural Posture:** In March 2020, Child Victim, age six, disclosed to her father that K.B., who was a family friend, had touched her genitalia on two occasions. A few days later, Child Victim participated in a forensic interview where she made the additional disclosure that K.B. penetrated Child Victim. Based on Child Victim's disclosures, the Commonwealth charged juvenile with one count of Rape and three counts of Aggravated Indecent Assault. On October 21, 2020, the trial court held a hearing to determine if Child Victim was competent to testify. After hearing direct and cross-examination of Child Victim, the trial court found that Child Victim was incompetent to testify. The Commonwealth filed a Motion for Reconsideration and a Motion to Reopen Testimony, requesting that the trial court allow an expert witness to testify regarding Child Victim's competency. On November 10, 2020, the trial court denied the Motion for Reconsideration but granted the Motion to Reopen Testimony. On January 11, 2021, the trial court heard testimony from Child Victim's therapist, who was qualified as an expert in child development and behavior and child therapy. At the conclusion of the hearing, the trial court reaffirmed its finding that Child Victim is incompetent to testify. The Commonwealth appealed the decision.

**Issue:** Whether the trial court abused its discretion in finding Child Victim incompetent to testify where K.B. failed to meet its burden of proving that Child Victim was incompetent, the court's finding was unsupported by the record, and the court misapplied the law and conflated distinct principles of law.

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**Rationale:** In regard to the Commonwealth’s first issue, the court noted that the law is clear that if a child under the age of 14 is called to testify as a witness, the trial court must make an independent determination of competency, which requires a finding that the witness possess (1) a capacity to communicate, including both an ability to understand questions and to frame and express intelligent answers; (2) the mental capacity to observe the actual occurrence and the capacity of remembering what it is that he or she is called to testify about; and (3) a consciousness of the duty to speak the truth.” Commonwealth v. Walter, 93 A.3d 442, 451 (Pa. 2014).

A review of the record supported the trial court’s findings that the six-year-old Child Victim did not understand the duty and importance of telling the truth. For example, when on cross-examination, she stated that she wasn’t in tenth grade and then said she was in the tenth grade, which was clearly false.

The Court next addressed the Commonwealth’s argument that the trial court improperly considered the expert’s testimony that Child Victim does not understand the nature of the allegations against Juvenile to support the court’s finding that Child Victim is unable to perceive accurately. The Commonwealth further argued that the court misapplied the law when the court combined the standards for competency of a witness to testify with competency of a defendant to stand trial. The competency of a defendant to stand trial involves consideration of whether a defendant understands the proceedings against him. The Court found the trial court’s record supported the conclusion that Child Victim was incompetent to testify because she is unable to understand the serious nature of the allegations against K.B.

Finally, the Court addressed the Commonwealth’s contention that the trial court improperly focused on the Child Victim’s obviously incorrect answer to a leading question and based its conclusion that Child Victim was incompetent to testify on that fact. The Court found this argument to be purely speculative and lacked merit.

## U.S. DISTRICT COURT HIGHLIGHT

**C.G. a minor, by and through her Parents, et. al  
v. Saucon Valley School District**

**Date of Decision:** November 18, 2021  
**Citation:** 2021 WL 5399920

C.G., who has been diagnosed with multiple disabilities and has a history of seizures, asked the Saucon Valley School District for permission to attend school with her service animal, a dog named George. The dog had been trained to perform several special tasks, including the ability to detect rising cortisol levels, which can be a precursor to seizures. The District denied the request.

The District Court for the Eastern District of Pennsylvania granted C.G.’s motion for preliminary injunction against Saucon Valley School District, which would allow C.G. to attend school with George until this matter can be litigated. The Court determined that C.G. had shown a

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substantial likelihood that the dog is defined as a service dog and bringing her service dog to school, the District would not suffer any harm by allowing C.G. to attend school with George. The Court found that C.G. has a right to an equal education to that of her peers and will suffer irreparable harm if she is denied in-person attendance with George because attending without George puts her health at risk and because other alternatives deny her the chance of making “meaningful progress” in her education.

## SPOTLIGHT

### **AMENDMENTS TO RULES OF JUVENILE COURT PROCEDURE:**

On November 30, 2021, the Supreme Court of Pennsylvania issued an Order amending Rules 148 and 407 of the Rules of Juvenile Court Procedure, prohibiting a juvenile adjudicated delinquent of sexual assault from attending the same public school as the victim. These amendments will become effective on April 1, 2022. These amendments can be viewed at the link provided below.

<https://www.pabulletin.com/secure/data/vol51/51-50/2051.html>

### **AMENDMENTS TO RULES OF JUVENILE COURT PROCEDURE:**

On November 30, 2021, the Supreme Court of Pennsylvania issued an order amending Rules 1120, 1149, 1330, 1409, 1512, 1514, 1515, and 1608-1611 of the Pennsylvania Rules of Juvenile Court Procedure to update the statutory citations within the rules to correspond with those now located in Title 67 of the Pennsylvania Consolidated Statutes to add Chapter 31 governing, in part, family finding requirements resulting from the Act of June 29, 2019. These amendments consolidate and codify matters involving family finding, kinship care, and subsidization of custody. These amendments shall become effective on January 1, 2022 and describe the rule-making process. To view the amendments see the link below.

<https://www.pabulletin.com/secure/data/vol51/51-50/2053.html>

### **AMENDMENTS TO RULES OF JUVENILE COURT PROCEDURE:**

On November 30, 2021, the Supreme Court of Pennsylvania issued an order amending Rules 240, 391, and 404 of the Pennsylvania Rules of Juvenile Court Procedure to clarify procedures to permit the extended detention of a juvenile when procedural requirements are not met. These amendments shall be effective on April 1, 2022. These rules can be viewed in their entirety at the link provided below.

<https://www.pabulletin.com/secure/data/vol51/51-50/2052.html>

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**AMENDMENTS TO RULES OF JUVENILE COURT PROCEDURE:**

On November 6, 2021, the Supreme Court of Pennsylvania issued an order amending Rules 515, 610, 612, and 632 of the Pennsylvania Rules of Juvenile Court Procedure to assist in applying the principles of the Juvenile Act when imposing financial obligations at the time of disposition in a delinquency proceeding. These amendments will become effective on April 1, 2022. These changes to the rules can be viewed in their entirety at the link provided below.

<https://www.pabulletin.com/secure/data/vol51/51-45/1833.html>

**AMENDMENTS TO RULES OF APPELLATE COURT PROCEDURE:**

On November 10 2021, the Supreme Court of Pennsylvania issued an order amending Rule 1702 of the Pennsylvania Rules of Appellate Procedure to clarify the necessity of a pending appeal prior to the filing of an application for stay. This amendment shall be effective January 1, 2022. This rule can be viewed in its entirety at the link provided below.

<https://www.pabulletin.com/secure/data/vol51/51-48/1953.html>

**AMENDMENTS TO RULES OF APPELLATE COURT PROCEDURE:**

On November 13, 2021, the Supreme Court of Pennsylvania issued an order amending Rules 124, 551, 905, 909, 1111, 1301, 1613, 1732, 2171, 2187, 2189, and 2541 of the Pennsylvania Rules of Appellate Court to update administrative procedures and filing of documents with the appellate courts. These amendments shall be effective April 1, 2022. These changes to the Rules of Appellate Court Procedure can be viewed at the link provided below.

<https://www.pabulletin.com/secure/data/vol51/51-46/1885.html>

**NOTICE OF SPECIAL TRANSMITTAL FROM DEPARTMENT OF HUMAN SERVICES**

On November 19, 2021, 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. The purpose of this Transmittal is to establish a standard and provide guidance for investigating agencies to adhere to when the specific start and end date of an incident(s) of child abuse is unknown. Please see the link provided below to view the entire transmittal.

<https://www.pccyfs.org/release-office-of-children-youth-and-families-special-transmittal-on-unknown-specific-start-and-end-dates-for-incidents-of-child-abuse/>

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**POLICY CLARIFICATION FORM: CENTRAL OFFICE OF CHILDREN & YOUTH PROGRAMS ONLY**

On November 19, 2021, a policy clarification was issued by the Central Office of Children & Youth Programs to address what original forms must be maintained in a paper format when an electronic system is used to maintain forms. Please see the link provided below to view the entire document.

<https://www.pccyfs.org/release-office-of-children-youth-and-families-policy-clarification-on-electronic-records/>.