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Legal Report

SWAN Legal Services Initiative

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In the Interest of T.M.

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SUPERIOR COURT OF PENNSYLVANIA

In the Interest of T.M.

Date of Decision: September 18, 2020

Citation: 235 EDA 2020

Holding: The Superior Court affirmed the Juvenile Court's termination of jurisdiction and case closure; removal of the children from the custody of the parents (who absconded from the state) was deemed not to be in the children's best interest.

Facts and Procedural Posture: The six (6) subject minor children were adjudicated dependent in April of 2019 following Chester County Children Youth and Family's (CYF) provision of in-home services to address ongoing concerns. Physical and legal custody of the children remained with Mother and/or Father.

At a subsequent permanency review hearing, Father informed the Juvenile Court that the family planned to relocate to Florida and was currently residing in a recreational vehicle (RV) with the intention of making the RV their permanent residence; additionally, the family had purchased a campground membership that would allow the family to stay at campgrounds all over the United States in order to effectuate their relocation. The RV was subsequently inspected by CYF and determined to be safe and appropriate. The Court ordered that Mother and Father submit a plan for relocation for review and approval and further ordered that the children were not to be removed from Chester County without further order of the court.

In October of 2019, the Guardian *ad litem* (GAL) filed a petition requesting an emergency hearing on the basis that Mother and Father had violated the Court's order and absconded with the children¹; Mother and Father failed to appear at the Emergency hearing. The GAL, the Court Appointed Special Advocate (CASA), and the Legal Liaison for CYF testified with respect to serving Mother and Father with notice of the emergency hearing *via* telephone, text message, and/or e-mail. Additionally, both Father's counsel and Mother's counsel stated on the record, in open court, that they notified their respective clients of the emergency hearing *via* e-mail, but the parents did not respond, and neither counsel knew where Mother and Father currently were located. At the conclusion of the hearing, the Juvenile Court issued bench warrants pursuant to Pa.R.J.C.P. 1140 for both Mother and Father.

A third and final permanency review hearing was held in December of 2019. During this hearing, CYF offered extensive testimony supporting their inability to locate and/or make contact with Mother, Father, and/or the children despite exhaustive efforts, including but not limited to unanswered phone calls, text messages and emails, tracking of the family's RV/ Campground membership, and tracing the family through the use of their Netflix account. At the conclusion of the hearing, CYF requested that the Juvenile Court terminate supervision of the family and close the dependency cases. The CASA supported this request and noted continued

¹ The GAL additionally requested the hearing be held before a Judge as opposed to a Juvenile Court Hearing Officer (JCHO), as relief by way of bench warrants were available to the Juvenile Court should Mother and Father fail to appear.

pursuit of the family would result in further instability for the children. The GAL, however, requested the Court take custody of the children. The Juvenile Court granted the request of CYF and the CASA, noting that exhaustive efforts had been made to locate the family to no avail and that the family had no apparent intention to return to Chester County, PA. The GAL appealed.

Issues:

The GAL raised the following issues on appeal:

1. Did the Juvenile Court err in closing this matter without resolution of the dependency issues or transfer to any other jurisdiction?
2. Did the Juvenile Court err in declining to remove custody of the children from the parents?

Rationale: The GAL initially argued that the juvenile court closed the Children's dependency matters in contravention of Pa.R.J.C.P. 1631 because the Children's educational and mental health needs were not met by Mother and Father and no court in another county of this Commonwealth or in another state had accepted jurisdiction. The Superior Court determined that the GAL failed to assert a challenge to this issue in the lower court. Therefore, pursuant to Pa.R.A.P. 302(a), the issue was deemed to be waived and therefore unable to be asserted and/or addressed on appeal.

With respect to the GAL's second issue, the Superior Court concluded the Juvenile Court did not err in the decision declining to remove custody of the children from the parents. The record supported the Juvenile Court's analysis and conclusion that "...[t]he intended result of the GAL's request for transfer of the children's custody to the agency, the arrest of Mother and Father, the forced removal of their six children, the [C]hildren's transportation, likely across a continent, and mandated residence with strangers in an unfamiliar setting, would create unwarranted stress on the [C]hildren. Placing such foreseeable trauma on these [C]hildren is antithetical to dependency court's purpose to create a disposition in a child's best interests, "best suited to the . . . mental and moral welfare of the child." 23 Pa.C.S.A. §6351(a).

The Juvenile Court further reasoned and noted that "...[t]rauma to these [C]hildren must be avoided if possible....In the present case, the transference of custody from Mother and Father to CYF may appear to vindicate the authority of the court in the face of a blatant disregard of its underlying dependency order, but it would be unlawful, unwise and unjust."

Based upon the aforesaid analysis, the Superior Court affirmed the Juvenile Court's termination of jurisdiction and case closure.