

# September 2021

# Legal Report

## SWAN Legal Services Initiative

*A monthly publication from the SWAN Legal Training Team*

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## SUPERIOR COURT OF PENNSYLVANIA

**In the Interest of: A.D.-G., A Minor****Date of Decision:** September 3, 2021**Citation:** 2021 Pa Super 177

**Holding:** Superior Court found no error of law or abuse of discretion of the juvenile court; Superior Court affirmed the trial court's order which kept his daughter dependent, denied Father's motion to terminate the dependency and found aggravated circumstances on Father, directing no further reunification efforts be made.

**Facts and Procedural History:** The child was adjudicated dependent on March 28, 2019. At the time of the adjudication, Franklin County Children and Youth Services ("CYS") did not know Father was the Child's natural Father; Mother had identified another man as the Child's father. A paternity test in November 2019 confirmed Father as the natural father to the child. Soon thereafter, CYS discovered that Father was a registered sexual offender. On December 13, 2019, CYS filed a motion for aggravated circumstances on Father due to his conviction for indecent assault which gave him status as a sexually violate predator ("SVP"). After a hearing, the hearing officer recommended a finding of aggravated circumstances, and that no further efforts be made for reunification. The court adopted the recommendation on October 8, 2020. Father filed a motion challenging the hearing officer's recommendation and a motion to dismiss/terminate the child's dependency. The court scheduled a *de novo* hearing. The hearing occurred and based on the testimony presented, the juvenile court denied Father's motion to end the Child's dependency. The court deemed aggravated circumstances existed due to Father's indecent assault conviction and status as an SVP and directed no further efforts be made to reunify Father and Child. Father appealed.

***Did you know?*** 

*De novo* comes from Latin, meaning "from the new." When a court hears a case *de novo*, it is deciding the issues without reference to any legal conclusions made by the previous court to hear the case. An appellate court hearing a case *de novo* may refer to the lower court's record to determine the facts, but will rule on the evidence and matters of law without deferring to that court's findings.

**Issues:**

1. Whether it was an abuse of discretion for the juvenile court to find aggravated circumstances against Father before there was any adjudication of dependency against Father.
2. Whether the juvenile court properly adjudicated dependency when Child was adjudicated dependent prior to Father being notified of a dependency proceeding.
3. Whether Father's status as an SVP was a proper basis to deny Father custody of Child and terminate dependency when Father's SVP status came from conduct beginning while Father was a juvenile, and was committed prior to the birth of any of his children.
4. Whether Father's due process rights were violated when Father requested a rehearing of shelter care when the juvenile court held an aggravated circumstances hearing before there was a finding of dependency as to Father and, when no petition alleging dependency was ever filed against Father.

**Rationale:** The Court divided Father's claims into two categories; that the juvenile court violated Father's rights to due process and that the evidence does not support the court's finding that the Child is a dependent child pursuant to the Juvenile Act. The Court addressed Father's argument that he was not notified of the initial dependency proceedings and did not receive an opportunity to defend against CYS's dependency allegations. He further argued that the juvenile court failed to require that CYS file a dependency petition against him, specifically. He maintained that CYS never alleged that the Child was dependent while in his care and that failure to file a petition deprived the court to make a dependency finding against him. Lastly, Father contended that the court erroneously held an aggravated circumstances hearing prior to making the necessary dependency finding. The Court reviewed the record which clearly supported that CYS didn't initially know Father was the Child's natural father. Mother has misidentified another man as father. CYS didn't learn the truth until seven months after the Child's adjudication of dependency. Hence, no notification could have been provided to Father.

The Court next reasoned that Father had the opportunity to challenge the Child's status as dependent. Father filed a petition on the matter and a hearing was conducted. Further, several permanency hearings occurred, which included determinations of whether Child remained dependent, providing Father with opportunities to present evidence and challenge the Child's dependent status. The Court addressed that CYS filed its petition pursuant to Section 6302(1) which alleged that Child lacked proper parental care or control. The Court found that the Child clearly met this definition during the initial dependency because Mother was engaging in substance abuse and violated CYS' safety plan. CYS didn't know of Father's existence so he could not provide Child with proper care or control at that time. Accordingly, the court had jurisdiction over CYS's petition for dependency and once Father was identified as a party, he was provided with notice and opportunity to be heard by the court. The Court reasoned that Father's claim that his due process rights were violated is meritless because once Father was identified as an interested party, he was entitled to notice of the proceedings and an opportunity to be heard and he was afforded such.

The Court next addressed Father's challenges to the juvenile court's finding that the Child remains dependent because he can provide Child with the proper care and control. The Court's review of the record supports the court's decision, in which Father has no significant relationship with the Child; Father didn't know the child existed until she was eight months old. Once he knew of her existence, he visited with her for less than a year. The Court agreed with Father that Section 6302(1) does not mention SVP status as a relevant factor in determining whether a child is dependent, but it is apparent that the General Assembly drafted this section to be flexible and to encompass the myriad of circumstances that may cause a child to be without proper care and control. The Court noted that Father committed approximately ten years of sexual abuse against his sister starting when she was one year of age. The Child was two years of age at the time of this hearing. The Court found that it was reasonable for the juvenile court to conclude that placing Child in Father's care would pose a safety threat to the Child. Lastly, the Court reviewed the record which supported the recent discharge from sexual offender treatment provider, including that his discharge was due to several reasons, including his dishonesty on regular polygraphs as part of the program. In totality, the Court affirmed the juvenile's court decision and deemed Father's claims as meritless.

**In the Interest of C.B., A Minor****Date of Decision:** September 23, 2021**Citation:** 2021 PA Super 189

**Holding:** The Superior Court affirmed the orders of the lower court finding that the three minor Children were dependent children and that K.B. suffered child abuse while Parents were responsible for that Child's care.

**Facts and Procedural History:** Mother and Father are the biological parents of C.B., K.B. and A.B. Mother also has a child, Y.C., whose biological father passed away. Since both parents work outside the home, they hired two babysitters (Babysitter #1 & Babysitter #2) to take care of Children when they are at work. Y.C.'s paternal grandmother (Paternal Grandmother) also helps care for Children. On October 14, 2019, K.B.'s injury was discovered by Parents when he screamed in pain. Parents took K.B. to their local Hospital, about an hour's drive, to be evaluated. A series of radiographs showed that K.B. had a broken bone in his upper right arm and a right shoulder fracture; because there were no signs of healing, an examining doctor determined that the injuries had been sustained no later than seven to ten days prior to the imaging. Mother and Father indicated that they had no idea how K.B. sustained these injuries. In the twenty-four hours preceding the discovery of the injuries, K.B. had been in the care of three individuals in addition to Mother and Father. On October 14, 2019, the Philadelphia Department of Human Services (DHS) received a Child Protective Services (CPS) report alleging that five-month-old K.B. had arrived at CHOP with unexplained injuries of a broken upper right arm and fractures to his right shoulder. Social workers from DHS spoke to the family at CHOP. Mother and Father were both questioned by police about K.B.'s injuries; neither parent knew how K.B. sustained his injuries. Parents also did not report anything negative about K.B.'s caregivers to DHS or authorities.

Children were taken into protective custody on October 16, 2019. A shelter care hearing took place on October 17, 2019, after which Children were ordered to remain in DHS's custody. At the time of the hearing, Y.C., C.B. and A.B. had been placed in kinship care with Father's mother, where the court permitted Parents to have supervised visits. When K.B. was released from CHOP, he also was placed in Grandmother's care. DHS filed dependency petitions. On November 6, 2019, the Child Advocate filed a motion for a finding of child abuse as to the Parents with regard to K.B. On November 8, 2019 and December 16, 2019, the court held a consolidated, two-day hearing on the dependency petitions and motion for finding of child abuse.

On December 16, 2019, the trial court entered orders of adjudication and disposition for each child, and entered a finding of abuse against both parents. Father filed three timely notices of appeal from the dependency orders and abuse order. Mother filed four timely notices of appeal from the dependency orders and abuse order.

**Issues:**

1. Whether the trial court erred as a matter of law and abused its discretion where it determined that Parents were perpetrators of child abuse against K.B.

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2. Whether the trial court erred as a matter of law where it determined that Children met the definition of dependent children.
3. Whether the trial court erred as a matter of law and abused its discretion when it ordered that it was clearly necessary to remove K.B. and A.B. from Parents' care.

**Rationale:** The Court first addressed Parent's allegation that the trial court committed error when it determined that they were perpetrators of abuse with regard to K.B. Specifically, they contend that their conduct did not meet the legal standard for a perpetrator by omission, that there is no evidence of record to support the conclusion that their conduct was reckless, and that applying the presumption under section 6381(d) of the CPSL was in error.

The Court agreed with the trial court that Father and Mother were the perpetrators of child abuse, concluding that the record established prima facie evidence that Parents were two of the perpetrators of child abuse as to K.B. under 23 Pa.C.S. § 6381(d), since Parents were two of the primary caregivers for K.B. during the period when K.B. could have been injured. Further, Mother and Father failed to rebut the presumption by presenting evidence or testimony at the abuse hearing establishing that K.B. was not in their care when he suffered his injuries but rather in the care of one of the other caregivers.

Next, the Court addressed the Parents' argument that, because they are not responsible for K.B.'s injuries, the trial court's dependency determination is erroneous. The Court, having already determined that Father and Mother were both properly found to be perpetrators of abuse to K.B., regard this issue as moot.

Finally, the Court addressed the Parents' argument that the trial court erred in determining that it was clearly necessary to remove K.B. and A.B. from their care where that determination "was made based on the abuse to K.B." and where Mother nor Father are responsible for this injury. Once again, the Court affirmed the court's finding of abuse perpetrated by Father and Mother with regard to K.B., hence this final issue is moot. The orders of the trial court were affirmed.

## UNITED STATES DISTRICT COURT— HIGHLIGHT

### **Pickel v. Lancaster County Children and Youth Services Agency, et. al.**

The Pickels brought claims against Lancaster County Children and Youth Social Services Agency ("LCCYS"), its agents and employees, and two of its contracted workers based on alleged interference with their rights as grandparents in relation to two minors. The Pickels also alleged that LCCYS should be held liable as a municipality. The district magistrate granted summary judgment in favor of LCCYS. The Pickels challenged the district magistrate's grant of summary judgment against their fourteenth amendment substantive and procedural due process claims. The District Court for the Eastern District of Pennsylvania affirmed the district magistrate's decision.

The Court determined that the record supported the finding that there is no controlling

*Cont.'d*

precedent in our Circuit that defines the scope of grandparents' substantive due process rights with respect to their care of their noncustodial grandchildren, and there is a lack of consensus among other Circuits to the same. Given the dearth of precedential caselaw concerning the scope of grandparents' constitutional liberty interests in caring for their grandchildren, LCCYS and its individuals in this action are entitled to qualified immunity with respect to both Fourteenth Amendment claims, as the right that is implicated here has not yet been "clearly established."