

SWAN Legal Services Initiative



November Legal Report

VOLUME 2, ISSUE 5

2015

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U.S. Court of Appeals, Third Circuit

Ray v. Owens, et al.

Date of Decision: November 12, 2015
Cite: 2015 WL 6997449

Holding:

Affirmed order dismissing Father's claims against a police detective and three employees of Cambria County Children & Youth Services (CYS), where father had no fundamental right to the protection he sought for his daughter.

Facts and Procedural Posture:

Beginning in 2009, Father, who is a state prisoner in Arizona, wrote several letters to appellees complaining that his minor daughter was being sexually assaulted by an individual. CYS acknowledged a formal report of child abuse but allegedly closed the matter after "little to no investigation." In 2015, the individual was arrested and charged with 168 counts of sexual abuse of the daughter. Father claims appellees' failure to take his daughter into protective custody caused her to suffer "unspeakable injuries" and violated his constitutional rights as a parent. The District Court dismissed the complaint for failure to state a claim, determining that a state agency's failure to protect a child from harm against another private citizen is not a constitutional violation unless the state has a special custodial relationship with the child, or the child suffers harm as a result of state-created danger. Father appealed.

Rationale:

Although sympathetic to Father's claims, the court found that he failed to state a claim, as determined by the District Court. Father's allegations failed under the special relationship theory, because the daughter was under the care of her mother at the time the abuse occurred and the appellees had no legal duty to her. Father further failed to allege the child suffered harm as a result of a state-created danger in that the CYS staff did not use their authority to create a danger for the child which, without their involvement, would not be present.

Spotlight

In **Hallman v. Department of Human Services, et al.**, 2015 WL 685117, Father filed a civil action in the United States District Court against the Department of Human Services and related individuals, seeking rescission of an order involuntarily terminating his parental rights in a Pennsylvania court. He also sought damages for procedural due process violations. The District Court dismissed Father's request to rescind the termination order due to lack of jurisdiction. At the close of discovery on the due process claim, the District Court awarded summary judgment to the defendants. The record established that Father attended and/or was represented by counsel at all hearings, was given an opportunity to be heard, and received a reasoned explanation for the state court's decision. Father appealed to the U.S. Court of Appeals, Third Circuit, where all orders were affirmed.

In the Interest of: L.V.

Date of Decision: November 12, 2015
Cite: 2015 Pa Super 234

Holding:

Affirmed trial court's orders granting adjudication of dependency, where mother knew or should have known the abuse was occurring and failed to prevent it or seek appropriate medical treatment; suspending Mother's visits with the child; finding that aggravated circumstances existed and indicating that the Philadelphia Department of Human Services (DHS) need not make efforts for reunification.

Facts and Procedural Posture:

In October 2014, Mother and Father brought the child to the emergency room, where it was discovered the child had suffered numerous injuries, some of which were life-threatening. Mother reported that the child had been in the care of Father that day. DHS took emergency protective custody of the child and filed a dependency petition. An adjudication hearing was held in March 2015, at which testimony showed that some of the child's injuries occurred days prior to the hospitalization and would have caused the child noticeable pain. The child also had been brought to the emergency room a month before with second degree burns from a bath. At that time, the child was treated and discharged with a plan to follow up with the burn clinic. The parents failed to bring the child back for any follow-up treatment. At the time of the hearing, the parents remained together. The trial court found the child to be dependent, providing that Mother had committed "child abuse" pursuant to the Child Protective Services Law (CPSL) and ordered that Mother's visits with the child be suspended despite a permanency goal of reunification. The trial court also entered an order finding aggravated circumstances and indicated that DHS need not provide reunification services. Mother appealed.

Issues:

Mother claims the trial court erred and abused its discretion in adjudicating the child as dependent, finding Mother responsible for child abuse pursuant to the CPSL, suspending her visits with the child, finding that aggravated circumstances existed and indicating that the Philadelphia Department of Human Services (DHS) need not make efforts for reunification.

Rationale:

The court reasoned that the record supports the trial court's findings and conclusions of all issues. First, the child was without proper parental care or control, in that the child suffered severe abuse at the hands of Father. Even if Mother did not participate in the abuse, due to its severity she should have known it was occurring and did nothing to stop the abuse from continuing or to ensure the child was receiving proper medical care. Further, there was no evidence presented to demonstrate that the child was not in the care of the mother at the time of the abuse. Thus, her actions, or failure to act, resulted in the child's injuries, and her further failure to seek treatment endangered the child's life and impaired the child's functioning. The court additionally found that Mother's failure to protect her child supports a finding of aggravated physical neglect, while the "totality of the circumstances" supports the trial court's decision to thwart reunification efforts. Finally, in dependency cases with a goal of reunification, visitation should not be denied or reduced unless it poses a grave threat. The court found that Mother, by failing to protect the child from life-threatening abuse and continuing her relationship with Father despite his admissions, demonstrated a severe mental or moral deficiency that constitutes a grave threat to the child. All orders were thus affirmed.

R.W. v. Department of Human Services

Date of Decision: November 17, 2015
Cite: 26 C.D. 2015

Holding:

Reversed order denying Mother's request to expunge an indicated report naming her as a perpetrator of child abuse by omission under the Child Protective Services Law (CPSL). Where one parent suffers from mental illness, knowledge of that illness cannot be the sole basis for placing the other parent on notice that a child is at substantial risk of child abuse.

Facts and Procedural Posture:

In February 2013, a 26-month-old child was drowned in the bathtub in his parents' home while in Father's care. The County District Attorney's Office deemed the death a homicide. The County Office of Children & Youth Services (CYS) reviewed the child's medical records, reports of law enforcement and some of Father's medical records and learned that Father had a history of mental health issues, including paranoid schizophrenia and psychosis, of which Mother was aware. Mother, herself a doctor, knew that Father had seen a psychiatrist and was prescribed medication but was not following through with either. He had become increasingly paranoid in the month prior to the incident. Mother also revealed that both parents would periodically leave the child unattended in the bathtub. Based on its investigation, CYS filed an indicated report naming Mother as "the perpetrator, for physical neglect, by omission," specifically in the form of lack of supervision. Mother appealed, and a hearing was held before an administrative law judge (ALJ). The ALJ set forth the following applicable law: In reviewing an allegation of child abuse by omission, the standard is "whether a reasonable person in the position of the parent knew or should have known that acts of abuse were occurring and whether the parent failed to take steps to remove child from harm's way." (citing Bucks County, Children and Youth Social Services Agency v. Department of Public Welfare, 616 A.2d 170, 174 (Pa. Cmwlth. 1992)). The ALJ concluded that Mother totally disregarded the complete danger to the child's life when leaving him alone with Father. The ALJ recommended that Mother's appeal be denied. The Bureau of Hearings and Appeals adopted the ALJ's recommendation in its entirety, and Mother petitioned the Court for review.

Issue:

Did CYS meet its burden of proof in determining that Mother was a perpetrator by omission?

Rationale:

At the time this matter arose, "child abuse" was defined in the CPSL as any "recent act or failure to act by a perpetrator which causes nonaccidental serious injury to a child under 18 years of age." (23 Pa.C.S. § 6303(b)(i).)* "Nonaccidental" was further defined as an "injury that is the result of an intentional act that is committed with disregard of a substantial and unjustifiable risk." (23 Pa.C.S. § 6303(a).) In order for Mother to be a perpetrator by omission, she must have disregarded the substantial and unjustifiable risk that Father would abuse the child if the child was left in his care. There was no evidence that Father had abused the child, physically harmed the child, threatened to harm the child, or harmed another person prior to the child's death. Mother's report of abuse by omission was based solely on her knowledge of Father's mental illness and the fact that she knew he would periodically leave the child unattended in the bathtub. To place a parent on notice that a child is at a substantial risk of child abuse solely on a parent's existence of mental health issues would "conflate the diagnosis and treatment of a mental illness with being a danger to one's child."

Did You Know?

The Protecting Our Infants Act of 2015, created to address problems related to prenatal opioid use, was signed by President Obama on November 25, 2015. It requires the Secretary of Health and Human Services to research this issue, develop strategies to address gaps in information and recommend ways to prevent and treat prenatal opioid-use disorders. States may be asked to assist in collecting information in accordance with this Act. The complete Act can be found [here \(PDF\)](#).

*The Child Protective Services Law was amended, effective December 31, 2014, changing the definition of child abuse.