

SWAN Legal Services Initiative



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Pennsylvania Superior Court

In Re: A.R.

Date of Decision: September 29, 2015

Cite: 2015 Pa Super 207

Holding:

Affirmed involuntary termination of parental rights. The trial court did not err by denying father's continuance request, where he received proper notice of the hearing and his right to counsel and failed to take any action to obtain counsel prior to the hearing, including petitioning the court for appointed counsel under 23Pa.C.S. § 2313(a.1).

Facts and Procedural Posture:

Allegheny County Office of Children, Youth and Families (CYF) filed an involuntary termination petition. Because father's whereabouts were unknown, CYF served father with a notice of hearing through publication. Such notice expressly stated, in part: "You have a right to be represented at the hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below..."

A hearing was held on June 2, 2014. Father failed to appear at that hearing but mother appeared and announced her intention to contest the termination. A new hearing was then scheduled for November 12, 2014. Father appeared at that termination hearing and requested a continuance to allow him time to obtain counsel. His request was denied and he proceeded with the hearing *pro se*. The trial court terminated the parental rights to the children and father appealed, arguing the trial court erred in not granting his request to obtain counsel.

Rationale:

The court reviewed the language included in the agency's published notice for the termination hearing and found it met the requirements set forth in accordance with Pa.O.C. Rule 15.6. While father was previously deemed indigent by the court at prior hearings, the court reiterated that appointment of counsel is not an automatic right. To be afforded counsel in a termination hearing, an indigent parent must petition the court pursuant to 23 Pa.C.S. §2313(a.1).

In Re: Adoption of G.L.L.

Date of Decision: September 21, 2015

Cite: 2015 Pa Super 200

Holding:

Affirmed trial court's order denying petition to terminate parental rights, where the negative impact of keeping the child in foster care was outweighed by the permanent damage he would suffer if mother's rights were terminated.

Facts and Procedural Posture:

Allegheny County Office of Children, Youth and Families (CYF) first became involved with the child in June 2011 when mother was admitted to a psychiatric hospital and could not take care of him. The child was adjudicated dependent on March 27, 2012, and was removed from the home in April 2012 after CYF received a report of physical abuse perpetrated by mother. According to her family service plan, mother was to obtain appropriate housing, stabilize her mental health, participate in drug and alcohol assessments, and attend parenting classes. Despite not completing her goals, mother visited with the child regularly. In April 2014, CYF filed a petition to involuntarily terminate her parental rights. At trial, CYF acknowledged a bond between the mother and child. Expert psychologist testimony described the bond as both "meaningful" and "constant." During visits the mother was observed interacting appropriately. She was patient, attentive and nurturing, and the child wanted to stay longer with mother. The court denied the petition, finding that CYF did not meet its burden in proving termination would serve the needs and welfare of the child under section 2511(b). CYF appealed.

Rationale:

Termination matters require a bifurcated analysis. Only after determining that statutory grounds for termination under section 2511(a) are met can the court engage in the analysis under 2511(b). Here, the court's analysis of 2511(b) was based on two factors. First, the court focused on the positive bonds that existed with the child. The court acknowledged the child had a positive bond with his foster parents but noted the 2511(b) analysis is to be focused on the parent-child bond and the effect that bond has on the child. Next, the court considered the possibility of an open adoption. Given its voluntary nature, contact that will continue post-termination is not guaranteed. Accordingly, the court found the possibility of an open adoption was "not appropriate or relevant in a termination analysis under section 2511(b)." The court further found the trial court appropriately weighed the needs and welfare of the child.

In the Interest of D.C.D.

Date of Decision: September 11, 2015

Cite: 2015 Pa Super 192

Holding:

Affirmed order granting early termination of delinquency supervision, where the minor's need for immediate and specialized treatment was determined to be a compelling reason and outweighed the need for supervision by juvenile probation.

Facts and Procedural Posture:

On October 15, 2012, a delinquency petition was filed against D.C.D. alleging he committed the crime of indecent assault against his minor sister and younger cousin. The charges were disposed of under a consent decree and his parents voluntarily placed him in foster care through a private agency. In April 2013 he was detained on new charges, including stalking and harassment of an adult neighbor. York County Office of Children, Youth, and Families (CYF) subsequently became involved and filed a dependency petition. D.C.D. was adjudicated dependent on August 7, 2013. At that time, the court specifically stated that he would be subject to "concurrent supervision" by both Juvenile Probation and CYF but that CYF would be the lead agency.

In the following months, D.C.D. continued to act out sexually and was transferred to a Residential Treatment Facility (RTF). Soon thereafter, he was charged with indecent assault and harassment by communication and adjudicated delinquent as well. In March 2014, CYF filed a motion for change in placement, asserting that D.C.D. "was in need of a more specialized program that would focus on the sexual offending issues." Southwood Psychiatric Hospital Choices Program was recommended and the placement was granted. However, before the transfer was finalized, it was learned that Southwood would not accept children with an active adjudication of delinquency for a sexual offense. On May 5, 2014, D.C.D. filed a motion for early termination of his delinquency court supervision. The motion was granted and the Commonwealth appealed.

Rationale:

At the time of the hearing, all of the services D.C.D. was receiving were as a result of his involvement with CYF as a dependent child. The court noted that ceasing to monitor through the delinquency court would have no effect on the judicial oversight of the child at all. Further, a review of the record showed that other placement options without a delinquency factor were in fact considered by CYF, but ruled out due to contract barriers, a lack of immediate availability, or an inability to address both his low functioning and sexual abuse offending issues. The court further considered testimony from one of the victims in opposition of the placement change, but found that the placement was consistent with the victim's request to get the child the help he needs. The court found that Southwood was the most appropriate treatment facility for D.C.D.'s specialized needs and the decision to terminate supervision was within the trial court's discretion pursuant to Pa.R.J.C.P.632.

In Re: S.S.W.

Date of Decision: September 24, 2015

Cite: 2015 PA Super 204

Holding:

Trial court's denial of involuntary termination of parental rights petition under 23 Pa. C.S. §2511 (a)(1) and (b) affirmed, where father turned his life around, obtained job training and secured a new job, received counseling, psychiatric treatment and consistently paid his child support obligations.

Facts and Procedural Posture:

On January 10, 2013, mother obtained a Protection from Abuse order against father granting her sole legal and physical custody of the children and preventing father from contacting them. In the months that followed, father participated in two months of counseling, underwent faith-based pastoral counseling, and obtained employment. Due to his employment schedule, father failed to appear at a PFA extension hearing on December 12, 2013. As a result, the PFA Order was extended through 2016. Father attempted to obtain counsel through Legal Aid but was denied due to pending criminal charges and could not afford counsel on his own. On July 31, 2014, mother and stepfather filed a petition to terminate the parental rights of father. The trial court found that the Appellants failed to prove by clear and convincing evidence that termination was appropriate under 2511(a)(1). Appellants appealed.

Rationale:

The Appellants argued that father's repeated failure to participate in custody hearings or procure counsel to pursue custody evidenced a settled purpose to relinquish his rights. Based on the evidence offered, the trial court determined that father's failure to participate in custody hearings was due to a lack of counsel advising him of his custodial rights rather than a settled purpose to relinquish. The trial court acknowledged the obstacles father faced in contacting his children but found that he demonstrated a desire to turn his life around. The court found that there was no abuse of discretion or legal error by the trial court in that all findings were supported by the record.

Dissent:

The trial court abused its discretion by denying the petition to terminate parental rights. Although sympathetic to father who was going through a difficult time, the Adoption Act does not contain an "extremely difficult time" exception. Any obstacles father faced stemmed from his own actions. He did nothing to rectify the situation and failed to exercise reasonable firmness in resisting the obstacles to maintaining his relationship with his children.