



SWAN Legal Services Initiative

April Legal Report

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In Re: P.Z. 2

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Pennsylvania Superior Court

Adoption of C.J.P.

Date of Decision: April 15, 2015

Cite: 2015 Pa Super 80

Holding:

Affirmed involuntary termination of parental rights (TPR) under 23 Pa. C.S. §2511 (a)(8) and (b), where mother failed to remedy her mental health issues, lacked stable housing and was unwilling to work with the agency.

Facts and Procedural Posture:

Delaware County Children and Youth Services obtained custody of the child due to mother's homelessness and mental instability in July 2011. Mother regularly attended visitation with the child but was not cooperative with service referrals made by the agency and refused to contact the caseworker. Mother was diagnosed with depressive and personality disorders and was initially in therapy, but she was discharged unsuccessfully and refused to return to treatment. Mother was later incarcerated and lost her housing. The agency filed a petition to terminate parental rights in April 2013. After the petition was filed, mother initiated steps to comply with reunification services, including attending counseling and obtaining psychiatric medication. Mother's rights were terminated following a hearing in July 2014. Her Mother's trial counsel was granted leave to withdraw; she was appointed new counsel and filed an appeal.

Rationale:

Assessing the sufficiency of evidence to support termination, the court found the child was removed from the mother's care for longer than 12 months and that her mental health continued to be a barrier to reunification. The evidence demonstrated that mother's personality disorder was pervasive, and given the lack of motivation to change her pattern of behavior, she was unlikely to achieve recovery in the near future. Additionally, while there was evidence she and her child were bonded, mother had not provided care for the child since he was two months old, and any bond was outweighed by the child's need for stability and mother's inability to remedy the causes for placement.

Further, mother's claim that she was not provided reasonable efforts was meritless as the trial court found the agency made reasonable efforts and that determination was supported by the record. Notably, the court found that even if the agency had not provided reasonable efforts, termination was still proper. In doing so, the court extended the analysis of the Pennsylvania Supreme Court in *In the Interest of D.C.D.*, 105 A.3d 662 (Pa. 2014) to Section 2511(a)(8), finding reasonable efforts are not required to support termination under that subsection.

Finally, the court addressed mother's claim that Section 2511(b) of the Adoption Act violated due process and equal protection principles. The court found the statutory provision precluding courts from considering parents' remedial actions taken after the TPR was filed does not violate mother's constitutional rights. The court relied on prior precedent that addressed the issue and explained the state had a compelling interest to provide permanency for dependent children, and the Adoption Act provides sufficient statutory protections that are narrowly tailored to protect the fundamental rights of the parent.

In Re: P.Z.

Date of Decision: April 10, 2015

Cite: 2015 PA Super 70

Holding:

Affirmed involuntary termination of parental rights under 23 Pa. C.S. §2511 (a)(8) and (b), where father remained incapable of providing a stable environment for the child, did not demonstrate sufficient parenting abilities and lacked any attachment with the child.

Facts and Procedural Posture:

The child tested positive for methadone when he was born, and Allegheny County Children, Youth and Family (CYF) obtained custody after the child was discharged from the hospital. Father lived in Arizona when the child was born but requested custody and visitation after he was contacted by CYF. Father did not attend the adjudication hearing nor did he make arrangements in Arizona to allow for visitation. CYF provided father with bus and air fares as well as hotel accommodations for visitation in Pennsylvania and made arrangements to establish online contact. Father's contact with the child was inconsistent and he was minimally compliant with his family service plan goals. CYF made a referral to the child service agency in Arizona under the Interstate Compact for the Placement of Children (ICPC), but father did not follow through with all of the requirements of the ICPC.

After a permanency review hearing in August 2013, the court directed CYF to file a petition to terminate father's parental rights based on his lack of progress toward reunification and the child being in care for 16 months with no compelling reason identified. In lieu of filing petitions, CYF determined they should increase reunification efforts after an internal assessment of the case. Six months later the court again directed CYF to file a termination petition. The agency filed a petition, but the day before the hearing asked to have it withdrawn. Father joined the agency's motion to withdraw, which was ultimately denied. After CYF's case in chief, father moved to dismiss the petition, arguing CYF failed to establish grounds for termination. Father's motion to dismiss was denied. The court terminated father's parental rights following additional evidence from the guardian ad litem and father. Father appealed.

Rationale:

The court first addressed that father had standing on appeal to challenge the trial court's denial of CYF's motion to withdraw the petition. As an aggrieved party appealing the final termination order, father had the ability to challenge all previous interlocutory orders. Additionally, the court concluded that denying the motion to withdraw was proper given that sufficient evidence supported the claim that CYF made reasonable efforts towards reunification, no other compelling reason was identified, and the decision to deny the motion did not equate with termination of father's rights.

Further, there was sufficient evidence to support CYF established statutory grounds for termination under section 2511(a)(8) and (b). The child was removed from the mother's care for longer than 12 months, the father continued to demonstrate his inability to provide a stable or secure life for the child, and while the child was familiar with father, there was no attachment. The child did not identify father in a caregiving role, and his needs were taken care of by the pre-adoptive foster mother who provides a nurturing, supportive and secure environment.