



SWAN Legal Services Initiative

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INSIDE THIS ISSUE:

PA Superior Court Cases:

- In Re: Adoption of M.R.D. 2
- In the Interest of C.R. 3

Guidelines for State Courts and Agencies in Indian Child Custody Proceedings 3

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Pennsylvania Superior Court

In the Interest of T.A.C.

Date of Decision: February 11, 2015

Cite: 2015 PA Super 31

Holding:

Affirmed involuntary termination of parental rights under 23 Pa. C.S. § 2511 (a)(8) and (b), where mother made progress with mental health treatment, but her best efforts did not meet the minimum level of care required to parent her children.

Facts and Procedural Posture:

At the time the children were adjudicated dependent, mother lived in Florida with maternal grandmother, and the agency had significant concern about her mental health and stability. Mother was diagnosed with bipolar disorder with schizophrenic tendencies. Mother repeatedly denied she had mental health issues and had to be court ordered to authorize release of her medical records and cooperate with the agency. Mother's permanency plan goals included continuing with treatment, living an independent life and being able to make decisions in the best interests of the children. The agency filed petitions after the children were in care for two and a half years, and mother did not made sufficient progress with her plan objectives. The trial court granted the termination petition and mother appealed.

Rationale:

While mother made progress with her mental health treatment, the court found she remained incapable of stabilizing, treating and managing her mental health to a degree that would allow her to take on direct caregiver responsibilities and parent the children independently. The court focused on the facts that mother was incapable of demonstrating consistent recovery behavior, never progressed to unsupervised visitation, was not cooperative with providing treatment or progress updates and did not routinely take her medication.

Despite maintaining weekly contact with the children through Skype and the existence of a parent-child bond, the record supported that mother cannot meet the children's needs. Severing the existing bond would have a positive impact on the children as they have developed a bond with their foster parents, look to them to meet their needs and are eager to be adopted.

In Re: Adoption of M.R.D.

Date of Decision: February 13, 2015

Cite: 2015 PA Super 32

Holding:

Reversed termination of father's parental rights. The trial court erred by concluding mother and maternal grandfather demonstrated sufficient cause to permit adoption of the children by maternal grandfather.

Facts and Procedural Posture:

Mother and father were unmarried, but lived together for a period of time in South Dakota. Mother relocated to Pennsylvania and later learned of her pregnancy. Mother lived with maternal grandfather during her pregnancy and two years thereafter. Maternal grandfather provided financial support, including separate housing, and shared all parenting duties with mother since the children were born. Father filed for custody of the children when they were eight years old. and at the time of his petition he had not had contact with them for six years. Shortly after the custody petition was filed, mother and maternal grandfather filed a petition to terminate father's parental rights under Section 2511(a)(1) and (b) of the Adoption Act. The trial court granted the petition and father appealed.

Rationale:

A parent can only petition to terminate the parental rights of the other parent when adoption is contemplated and that adoption will establish both a new parent-child relationship and a new family unit for the child. In granting the termination petition, the trial court failed to determine if an adoption by maternal grandfather would create a new family unit. Here, mother and the children live separate and apart from maternal grandfather who is married and living as an intact family unit with maternal grandmother. Further, maternal grandfather and the children are already members of the same family and share a legal relationship, and an adoption under these circumstances would only serve to create confusion for the children.

Additionally, the trial court failed to consider that mother initiated the termination petition in response to father pursuing custody, which does not support the underlying purpose of the statute for termination or adoption.

Dissent:

The Adoption Act provides that any individual may become an adoptive parent and suggests that a non-spouse adoptive parent can be the child's maternal grandfather and further that cohabitation is not a necessary component for finding a new family unit.

In the Interest of C.R.

Date of Decision: February 19, 2015

Cite: 2015 PA Super 39

Holding:

Appeal quashed. Former foster mother lacked standing to intervene in the dependency proceedings.

Facts and Procedural Posture:

Two years after the children were placed with the foster family, the foster father was charged with indecent assault, and the agency filed a motion to modify the children's placement. The trial court denied the agency's motion, and the children remained in the foster parent's home with a safety plan. The foster father later pled guilty, the guardian ad litem filed a motion to immediately modify the children's placement, and the children were removed from the home. The foster parents were not served with a copy of the guardian ad litem's motion or the trial court's order scheduling a conference on the matter.

Six months after the children were removed, the foster mother filed a motion for a permanency review hearing to determine placement. The trial court dismissed her motion ruling she lacked standing to request a hearing. The foster mother appealed and the agency filed a motion to quash the appeal.

Rationale:

In dependency proceedings, party status is limited to the parents, legal custodian and any person whose care and control of the child is at issue. Here, it was irrelevant that former foster mother previously had physical custody of the children because she does not fall within one of the enumerated categories.

While foster parents lack standing, they are still afforded notice of the hearing and an opportunity to be heard. However, former foster mother lost her ability to challenge the notice error because she had actual notice of the children's removal and did not seek to be heard until six months after the decision was made.

Did you know?

On February 24, 2015, the Bureau of Indian Affairs published its revised [*Guidelines for State Courts and Agencies in Indian Child Custody Proceedings*](#). The guidelines provide procedures and best practice for cases that involve the Indian Child Welfare Act.