



SWAN Legal Services Initiative

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Pennsylvania Superior Court

In Re: J.A.

Date of Decision: January 6, 2015

Cite: 2015 PA Super 3

Holding:

Order appointing medical guardian vacated and motion to dismiss for mootness denied, as medical guardian was not supported, as the appointment was not supported by the Juvenile Act or Rules of Juvenile Court Procedure.

Facts and Procedural Posture:

The child was adjudicated dependent partly because mother required assistance to provide proper medical care to the child. Mother retained physical custody of the child and was ordered to comply with treatment recommendations. Mother and child were later involved in a car accident where the child sustained significant injuries, including a severe brain injury. Mother provided consent to treat several of the child's injuries, but continually withheld consent for procedures to place a shunt in the child's head and treat her inflamed gallbladder. The guardian ad litem filed an emergency motion to appoint a medical guardian. Mother objected that neither the statute nor the rules provide for appointing a medical guardian. Despite the objection, the trial court granted the motion, appointed KidsVoice as the child's medical guardian, and mother appealed.

At a later hearing, the trial court denied a request by mother to submit testimony about appointing a medical guardian because her appeal was still pending. Mother appealed that decision as well, and both appeals were heard by the same Pennsylvania Superior Court panel. KidsVoice later filed a motion to dismiss both appeals as moot after the trial court terminated the appointment of KidsVoice as the medical guardian.

Rationale:

The court determined that due to the nature of the questions involved, the appeals fell within the exception to the mootness doctrine. The court first addressed whether the trial court had jurisdiction to reverse its decision to appoint a medical guardian while the issue was pending on appeal. In doing so, the court determined a juvenile court retains jurisdiction to enter orders pursuant to Section 6351 of the Juvenile Act when a decision on that matter is in the child's best interest. Here, it was in the child's best interest to terminate the appointment of the medical guardian because mother was regularly learning about and participating in the child's care, and the goal was to return the child to mother's care.

Addressing the appointment of the medical guardian, the court explained that medical decisions fall with the rights of a parent, legal guardian or legal custodian. If a parent refuses treatment, a juvenile court has the authority to order examination or treatment pursuant to Section 6339(b) of the Juvenile Act or appoint a medical decision maker under Pa. R.J.C.P. 1145. However, neither the statute nor the rules provide authority to appoint a third party who is not the legal guardian or legal custodian to make medical decisions on behalf of a dependent child. Here, the trial court had an alternative as it could have ordered treatment or appointed the county agency, the child's legal custodian, to make both routine and non-routine medical decisions on the child's behalf.

Americans with Disabilities Act / Rehabilitation Act

The Departments of Justice and Health and Human Services recently found the Massachusetts Department of Children and Families violated both acts when they engaged in discriminatory practices based on a mother's developmental disability.

A letter issued on January 29 2015 found the child's removal and lack of reunification services were based on "discriminatory assumptions and stereotypes about her disability without consideration of implementing appropriate family-based supportive services . . . and failed to reasonably modify its policies, practices, and procedures to accommodate mother's disability."

The letter set forth several immediate remedial measures that include:

- Withdrawing the agency's termination of parental rights petition;
- Implementing individualized services and supports to provide mother with a full and equal opportunity at reunification;
- Paying compensatory damages; and
- Developing and implementing procedures and training staff how the law applies to practice.

Pennsylvania Rules of Appellate Procedure

Pa. R.A.P. 1115 and 1116 - Petitions for Allowance of Appeal and Answers

- Both rules were amended to add a maximum length of 9,000 words.
- A petition or answer of 20 typewritten pages or less is considered to meet the requirement. If the petition exceeds 20 pages, a certification must be included that it complies with the length requirement.
- Cover pages that contain a table of citations, proof of service or signature block and any required supplemental material are not included in the word count.
- Both rules are effective February 28, 2015 and apply to petitions for allowance of appeal and answers filed after that date.

U.S. District Court, E.D. Pennsylvania

Weston v. City of Philadelphia

Date of Decision: January 5, 2015

Cite: 2015 WL 70914

Holding:

Motion for summary judgment granted. The failure of the county caseworker to complete a thorough investigation of child's caregiver did not constitute an affirmative act to support a violation a child's substantive due process rights under the 14th Amendment.

Facts and Procedural Posture:

The child was adjudicated dependent and placed in the temporary custody of maternal aunt. Mother did not object to the custody arrangement. The caseworker did not investigate maternal aunt's home before placing child, nor did she complete a thorough investigation into maternal aunt's background. The caseworker visited maternal aunt's home after the adjudication hearing and found it was a safe environment, and Services to Children in their Own Home (SCOH) were implemented. Throughout the life of the case, notes from the SCOH worker indicated the child was safe and doing well. Services were decreased over time and after eight months, court supervision was terminated and the child remained in the custody of maternal aunt.

Mother later alleged maternal aunt had a criminal history. The caseworker was ordered to investigate but failed to do so. An investigation would have revealed that maternal aunt was convicted of murder, had prior contact with the county agency, and her paramour also had a prior conviction for child abuse. The child brought suit against the caseworker, solicitor and city after suffering abuse while in the care of maternal aunt. The defendants removed the suit to federal court and filed a motion for summary judgment.

Rationale:

Four elements must be established by a plaintiff proceeding under a state-created danger theory of liability:

- The harm ultimately caused was foreseeable and fairly direct;
- A state actor acted with a degree of culpability that shocks the conscience;
- A relationship between the state and the plaintiff existed such that the plaintiff was a foreseeable victim of the defendant's acts, or a member of a discrete class of persons subjected to the potential harm brought about by the state's actions, as opposed to a member of the public in general; and
- A state actor affirmatively used his or her authority in a way that created a danger to the citizen or that rendered the citizen more vulnerable to danger than had the state not acted at all.

Finding the last element conclusive, the court focused its analysis on whether the caseworker acted "affirmatively." The court reasoned that the caseworker's failure to complete a thorough investigation of maternal aunt, while negligent, only amounted to a failure to act and was not enough to support that she affirmatively misused her authority or that her conduct alone placed the child in danger. Additionally, the court noted that even if a constitutional violation existed, the caseworker was entitled to immunity for any actions taken in preparing and prosecuting a dependency proceeding.