SWAN Legal Services Initiative

January Legal Report

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PENNSYLVANIA SUPERIOR COURT

In re: Adoption of J.N.M   Date of Decision: January 8, 2018
                                                Cite: 1130 WDA 2017

Holding:
Superior Court affirmed the trial court's termination of Mother's parental rights and affirmed that a formal bonding evaluation was not required.

Facts and Procedural Posture:
Children, ages eight and six, were removed from Mother's care on October 2, 2014 and subsequently adjudicated dependent due to Mother's drug use, deplorable conditions in Mother's home, a history of domestic violence in the presence of the children and outstanding warrants for Mother's arrest on three separate criminal charges. During the almost three years that followed, Mother made little to no progress to remedy the conditions, and her criminal troubles intensified. Mother failed to consistently take advantage of visitation, appeared under the influence at some visits, and spoke inappropriately in front of the children. The visitation supervisor testified that the "parent-child roles between [mother and the children] were perversely reversed." A petition to terminate parental rights was filed by the agency in February 2017 due to Mother's lack of progress on her goals. At the time of the filing of the petition and the hearing on the same, Mother was incarcerated. Orphans' Court entered an order on June 30, 2017 terminating Mother's rights pursuant to 23 Pa.C.S. §2511 (a)(2), (5), (8), and (b). Mother appealed.

Rationale:
The Court held that Mother waived her right to challenge the order as to 2511 (a). Mother admitted that her incarceration prevented her from parenting and offered no argument to support her challenge. Even if Mother did not waive, the Court found ample evidence in the record below to support termination under 2511 (8) insofar as children had been out of Mother's care for almost three years and Mother failed to remedy the conditions that lead to dependency. As to 2511(b), the Court acknowledged that the record supported a bond between Mother and children, but characterized the bond as unhealthy and inappropriate. The Court noted that "the orphans' court is not required by statute or precedent to order a formal bonding evaluation be performed by an expert," and that in some cases "direct observation of the interaction between the parent and the child is not necessary and may even be detrimental to the child." Therefore, a formal bonding evaluation was not required and the trial court was free to accept testimony of a psychology expert who interviewed the children and a supervisor of the visits as evidence in support of the unhealthy nature of the bond.

Pennsylvania Appellate Rules*
Pa.R.A.P. 127 amended to include language that comports with Public Access Policy.

Pennsylvania Orphans' Court Rules*
Rule 1.99 requiring any party who files a document to comply with the Public Access Policy, including a certification of compliance and, if necessary, a Confidential Information Form, unless otherwise specified by local rule or Order of Court.
The Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts (Policy) can be found on the website of the Supreme Court of Pennsylvania at http://www.pacourts.us/public-records.

* As previously reported, due to the highly confidential nature of Juvenile Dependency and Adoption proceedings, proceedings related to child welfare will not typically require compliance with the Public Access Policy.