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Legal Report

SWAN Legal Services Initiative

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SUPREME COURT OF PENNSYLVANIA

IN THE INTEREST OF: D.R., A MINOR

Date of Decision: June 16, 2020

Citation: 45 WAP 2019

Holding:

1. The Supreme Court affirmed the order of the Superior Court and held that the Agency's authority to investigate does not include the authority to obtain an involuntary urine sample from the subject of a child abuse investigation.

Facts and Procedural Posture: This case began with Greene County Children and Youth Services and Fayette County Children and Youth Services (CYS) receiving three separate reports of Father being under the influence of an unknown substance, in addition to allegations that Father had abused Mother, however, the criminal allegations (regarding the abuse of Mother) were never substantiated. Father is an attorney who, as a part of his private practice, has represented parents who are under investigation by Greene County CYS. As a result of Father's ties to the County, Greene County CYS determined that there was a conflict of interest and transferred the investigation to Fayette County CYS. As a part of their investigation, Fayette County CYS requested that the parents submit to a home inspection and that Father submit to a drug test. The parents refused and, in December of 2018, Fayette County CYS filed a motion to compel cooperation in the Greene County Court of Common Pleas. On January 28, 2019, a hearing was conducted on the motion to compel cooperation, after which the court ordered the parents to comply with the home inspection and ordered Father to submit to a drug test via an observable urine screen. The court further ordered the parents to "cooperate" with Fayette County CYS and threatened sanctions if they did not. The parents appealed to the Superior Court, and, in a published opinion, a panel of the Superior Court reversed the trial court's decision and held that there is no statutory authority that authorizes courts to order the drug testing of a parent within the context of a CYS investigation. Both parties filed petitions for allowance of appeal and the Supreme Court granted CYS's petition.

Issue:

1. Did the Superior Court err by vacating and remanding the trial court's order requiring Father to provide a urine sample for drug testing in an investigation relating to allegations of drug use?

Rationale: In their analysis, the Supreme Court noted that while §6368(c) and (d) of Pennsylvania's Child Protective Services Law (CPSL), sets forth actions to be taken during an investigation (including interviewing all suspects and conducting a home inspection), nothing in the CPSL either expressly or implicitly authorizes the collection of bodily fluids without consent. The Court then noted that while 55 Pa. Code §3490.321(e)(2) includes an assessment of the parents' drug and alcohol abuse history in the risk assessment process, this requirement does not authorize or compel drug testing as part of an investigation. The Court also noted that while CYS argues that the ruling from Luminella v. Marcocci, 814 A.2d 711 (Pa. Super. 2002) and the application of Pa.R.C.P. Rule 1915, authorize courts to compel parties' cooperation through the provision of urine samples, both of these laws apply to child custody cases and not to juvenile

court proceedings. The Court then expressed that there is a difference between a child custody proceeding (in which the parties initiate an action) and a juvenile court proceeding (where the state is intruding on a family's privacy based on a third party report). The Court further opined that the Superior Court was correct in not looking to derive from another area of law (child custody law) the authority to conduct drug tests during an investigation, and in assessing that the authority to compel drug testing is lacking from the CPSL. As such, the Supreme Court held that based on the unambiguous language of the CPSL, CYS's authority to investigate does not include obtaining involuntary urine samples from subjects of the investigation.

IN RE: J.W.B. & R.D.B., MINORS

Date of Decision: June 16, 2020

Cite: 93 MAP 2019

Holding:

1. The Supreme Court held that the Superior Court did not err in affirming the order terminating Father's parental rights, as 23 Pa.C.S. § 2711(c) of the Adoption Act allows for a consent to adoption executed outside of Pennsylvania to be deemed valid in a Pennsylvania adoption proceeding if it complies with the consent requirements set forth in the Adoption Act or with the laws of the state in which the consenting parent resides at the time of the execution of the consent.
2. The expiration of the statutory time limits for revoking consent to adoption or challenging the validity of consent on the grounds of fraud or duress did not preclude Father from being able to challenge the validity of his consent.

Facts and Procedural Posture: This is an orphans' court case that involves children who were not adjudicated dependent. On September 24, 2017, Father, who is a resident of Colorado, had a conversation with Mother, in which he stated that he wanted to relinquish his parental rights and that he wanted her to see if Mother's Husband would adopt the children. Upon Father's request, Mother then contacted an attorney who prepared and mailed Father consent to adoption documents for both of his children. In November of 2017, the consents were signed by Father and returned to the attorney. In the following months, Father contacted the attorney to check on the status of the proceedings. In May of 2018, Mother contacted Father to let him know that they were preparing to file the consents to adoption. Father then contacted the attorney and orally stated that he no longer wished to consent to the adoption. At this point, the attorney advised the parties to seek separate counsel, and in June 2018, Mother filed a petition to confirm Father's consent or to involuntarily terminate Father's parental rights. Father never submitted a written revocation of his consent and, on November 28, 2018, the trial court issued an order confirming Father's consent and terminating his parental rights. Father appealed to the Superior Court, claiming that §2711(c) of the Adoption Act requires that consents signed in another state must comport with the laws of the state in which it is signed. Father argued that his consent was invalid under Colorado law, as it did not comport with Colorado's pre-consent counseling requirement. The Superior Court rejected Father's argument and held that Pennsylvania law applied to the determination of whether the consent to adoption was valid, and, thus, it was immaterial whether Father's consent complied with Colorado law. The Superior Court also determined that the trial court was precluded from considering the merits of Father's revocation because Father did not revoke his consent within the statutorily-prescribed time period. Father then appealed to the Supreme Court.

Issues:

1. Did the Superior Court err by holding that the trial court was precluded from addressing the validity of Father's consents, as his consents were not revoked within the statutory time frame?
2. Did the trial court and Superior Court err in applying 23 Pa.C.S. § 2711(c) by failing to consider the invalidity of the consent under Colorado law?

Rationale: The Majority began their analysis by addressing whether a court is precluded from exploring the validity of a consent to adoption (consents) that has not been revoked within the statutory time frame. The Majority noted that parents have a liberty interest in the care, custody, and control of their children and that before those rights can be terminated, a parent must be given due process of law. The Majority further expressed that due process requires that parents are provided with an opportunity to raise a challenge to the consent and that the hearing to confirm consent under §2504 of the Adoption Act provides a forum for raising these challenges. The Majority opined that §2504(a) requires courts to confirm the validity of consents at a hearing and that while §2711 provides that a hearing may not take place until after the statutorily prescribed time frames (30 days for revocation and 60 days for fraud or duress), it does not limit the court's function at the hearing to merely verify that those time limits have expired, as the trial court is required to review the consents and consider any and all arguments raised by the parties challenging their conformity with the Adoption Act. As such, the Majority held that the expiration of the statutory time limits for revoking consent to adoption or challenging validity of consent on the grounds of fraud or duress did not preclude Father from being able to challenge the validity of the consent to adoption.

The Majority then moved on to address Father's argument that 23 Pa.C.S. §2711(c) required the trial court to determine the validity of the consents based upon Colorado law. In addressing this argument, the Majority noted that while §2711(c) does state that "[a]ny consent given outside this Commonwealth shall be valid for purposes of this section if it was given in accordance with the laws of the jurisdiction where it was executed," that this statutory provision does not state or imply that only the laws from the state in which the consenting parent resides will apply. The Majority noted that the aforementioned language from §2711(c) provides full faith and credit to the laws of other states and accepts as valid what they have deemed to be valid, but that this does not mean that the laws of another state should exclusively govern the validity of consents for children being adopted in Pennsylvania. As such, the Majority held that a consent to adoption executed outside of Pennsylvania is deemed valid in a Pennsylvania adoption proceeding if it complies with the consent requirements set forth in either §2711(c) and (d) of the Adoption Act or the laws of the state in which the consenting parent resides at the time of the execution of the consent. With this being the case, the Majority affirmed the Superior Court's order, as they determined that it is immaterial if Father's consents to adoption comported with Colorado law because they are valid under Pennsylvania law.

Justice Todd filed a concurring opinion and Justices Wecht and Saylor filed concurring and dissenting opinions.

SUPERIOR COURT OF PENNSYLVANIA

IN THE INTEREST OF: H.Y., A MINOR**Date of Decision:** June 9, 2020**Citation:** 1754 WDA 2019**Holding:**

1. The trial court did not abuse its discretion in determining that the child is dependent and that he was the victim of abuse where Beaver County Children and Youth Services' (CYS) medical experts presented credible testimony that the child's injuries were the result of child abuse.

Facts and Procedural Posture: This case began on June 20, 2019, when Parents took their five-week-old child to his pediatrician for an examination of bruising on the child's body. The pediatrician sent the child by way of ambulance to the Children's Hospital of Pittsburgh (CHP) where the child was diagnosed with "bruising in multiple aspects of the body." CHP also conducted x-rays which revealed that the child had fractures to both legs and suspected fractures to the child's ribs. The CHP physicians who examined the child determined that the child's injuries were indicative of child abuse and that they caused the child substantial pain at the time they were inflicted. On June 21, 2019, CYS sought and was granted emergency protective custody of the child, and the child was placed in kinship care with his paternal grandmother. On June 25, 2019, CYS filed a dependency petition alleging that the child was the victim of child abuse. In July of 2019, CYS also filed a motion for aggravated circumstances against the parents. In July and August 2019, the parents took the child to a pediatric orthopedic surgeon at the Cleveland Clinic who examined the child and determined that the child's injuries may have been caused by a "subtle metabolic issue" and recommended that the child be tested for a genetic disease that causes bone fragility. In August of 2019, the parents were criminally charged with aggravated assault, endangering the welfare of a child, and simple assault, for the injuries sustained by the child while in their care. On September 30, 2019, an adjudication hearing was held, in which both CYS and the parents presented the testimony of numerous medical experts. After hearing all of the evidence, the trial court issued a finding of abuse against the parents, adjudicated the child dependent, and denied CYS's motion for aggravated circumstances. In their decision, the trial court noted that they found the medical experts presented by CYS to be credible and determined that the child's injuries were caused by child abuse as the injuries were sustained while the child was in the exclusive care of the parents. Both parents appealed and the Superior Court consolidated their appeals.

Issue:

1. Did the trial court err in finding that sufficient evidence was presented to adjudicate the child dependent and find that the child is a victim of abuse?

Rationale: In their appeal, the parents did not dispute that the child sustained injuries at the time that he was in their sole custody, but rather that the injuries were not caused by child abuse. Upon reviewing the record, the Superior Court could not discern an abuse of discretion by the trial court, as CYS presented testimony of medical experts that asserted that the child's injuries

were the result of child abuse (as the type of fractures the child suffered correlate with abuse), that the injuries were unexplained by the parents, and that the lab testing for a bleeding disorder and metabolic bone disease came back negative. The record also demonstrated that the child did not sustain further injury once removed from the parents' care. The Court also found no abuse in discretion in regards to the trial court's assessment that Parents' medical expert was unpersuasive, as he had not reviewed all of the photographs of the bruising, had no explanation for some of the child's bruising, and the genetic and lab testing that he ordered for a bone or genetic disorder were negative. As such, the Court affirmed the trial court's order as there was sufficient evidence presented to demonstrate that the child was dependent and that he had been the victim of abuse.



SPOTLIGHT

*Supreme Court of the United States***Department of Homeland Security v. Regents of the University of California**

In June of 2017, the Department of Homeland Security (DHS) issued a rescission of the Deferred Action for Childhood Arrivals (DACA) program. The DACA program had been in effect since 2012, and it allows certain unauthorized aliens who arrived in the United States as children to apply for a two-year forbearance of removal, eligibility for work authorization, and various federal benefits. Upon issuance of the rescission by DHS, several groups of plaintiffs successfully challenged the rescission in district courts in California, New York, and the District of Columbia (D.C.). DHS then filed appeals in the Second, Ninth, and D.C. Circuits. Upon issuance of the Ninth Circuit decision affirming the California District Court's order upholding DACA, and while the other two decisions were pending (in the D.C. Circuit & Second Circuit), DHS was granted certiorari. In a five-four decision, the Supreme Court held that the rescission of DACA was in violation of the Administrative Procedure Act, as the rescission was determined to be arbitrary and capricious. As such, the Supreme Court upheld DACA, remanded all three cases to the lower courts, and vacated or reversed parts of the lower courts' orders that were not consistent with their ruling.

*Pennsylvania Superior Court***IN THE INTEREST OF: G.E.W.**

On March 12, 2019, a Luzerne County detective received a report that an eight-year-old child was being sexually abused. In the course of his investigation, the detective was able to trace two IP addresses to the appellant, a 17-year-old female, and her 26-year-old co-defendant. The appellant admitted to the detective that she had sexually abused her eight-year-old niece during a livestream and had been communicating through Facebook Messenger with the co-defendant, who was directing her actions during the abuse. Appellant later sought to suppress her confession alleging that her statement to police was unlawfully obtained because she did not knowingly or voluntarily waive her Miranda rights. The trial court, following a hearing, denied the suppression motion and adjudicated Appellant delinquent at a subsequent hearing. Appellant appealed to the Superior Court, who affirmed the trial court's ruling as they determined that the appellant waived her challenge to the trial court's denial of the motion to suppress appellant's testimony, where the appellant failed to provide a transcript of the suppression hearing. The Court also held that sufficient evidence was presented to the trial court to establish *corpus delicti*. Finally, the Court held that sufficient evidence was presented to demonstrate that the child committed a delinquent act beyond a reasonable doubt, as the record contained the Facebook Messenger chat transcript between Appellant and the co-defendant describing the abuse and Appellant's confessional statement to police.

Did you know? 

Corpus delicti is a rule of evidence that requires the prosecution to establish that a crime has actually occurred before a confession connecting the accused to the crime is admissible.

Federal Legislation

Executive Order on Strengthening the Child Welfare System for America's Children

On June 24, 2020, President Trump issued an executive order aimed at improving the child welfare system by preventing placements and providing safe and expedient permanency for children who enter care. Among the provisions included in the executive order are provisions related to encouraging partnerships between state agencies and nongovernmental organizations (including public, private, faith-based, and community groups), improving access to resources for caregivers and youth, requiring that the Secretary conduct studies and issue guidance regarding the implementation of the Multiethnic Placement Act (MEPA), and to publish guidance regarding the rights of parents, prospective parents, and children with disabilities. The executive order may be viewed in its entirety at the link provided [here](#).

Pennsylvania Legislation

Act 30 of 2020

On June 5, 2020, Act 30 of 2020 was enacted to amend the Public School Code of 1949 to include provisions that provide a COVID-19 disaster emergency school health and safety grant for the 2020-2021 school year. This grant will be utilized to modify schools to effectuate social distancing; purchase equipment, such as personal protective equipment, thermometers, and sanitation products; provide training to school staff on sanitation and minimizing the spread of COVID-19; and purchase educational technology for distance learning. Act 30 also provides state aid to public libraries. For more information, please view Act 30 in its entirety at the link provided [here](#).

Act 32 of 2020

On June 5, 2020, Act 32 of 2020 was enacted to amend certain provisions of the Criminal Code, Domestic Relations Code, and the Judicial Code, to include 18 Pa. C.S.A. §2718 (relating to strangulation). Act 32 amends these laws to include §2718 within the definition of crimes of violence under our Criminal and Judicial Code, and it amends our Domestic Relations Code to require judges to consider convictions under §2718 as a part of making custody determinations. These provisions will take effect in 60 days. For more information, please view Act 32 in its entirety at the link provided [here](#).

Amendment to PA Rules of Professional Conduct 8.4

On June 8, 2020, the Pennsylvania Supreme Court issued an order amending the provisions related to professional misconduct from Pennsylvania Professional Rules of Conduct Rule 8.4 to prohibit in the practice of law, the usage of words or conduct that demonstrates bias, prejudice, harassment, or discrimination. The order takes effect in six months. For more information on the rule change, please use the links provided [here](#) and [here](#).