



SWAN Legal Services Initiative

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of L.Z.

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Pennsylvania Superior Court

In Re: Adoption of: C.D.R.

Date of Decision: March 17, 2015

Cite: 2015 PA Super 54

Holding:

Affirmed involuntary termination of parental rights under 23 Pa. C.S. § 2511 (a)(2) and (b), where mother's lifestyle led to repeated incarcerations that rendered her incapable of providing consistent parental care.

Facts and Procedural Posture:

The child was adjudicated dependent and placed while mother was incarcerated. The child was returned to mother's care upon her release, but subsequently re-entered care three months later when mother was incarcerated for a probation violation. Throughout the time the child was in care, mother was incarcerated on multiple occasions stemming from criminal issues related to retail theft. Mother periodically cooperated with the agency and made progress towards reunification when she was not incarcerated, but was never able to regularly comply with services. The child's goal was changed to adoption and the agency filed a petition to involuntarily terminate mother's rights. The trial court granted the agency's petition and mother appealed.

Rationale:

While mother made progress toward reunification, she failed to demonstrate consistent improvement and remains incapable of parenting the child. The court reasoned that mother's incapacity could not be remedied because she abandoned reunification efforts by ending her visits, revoking releases that allowed the agency to obtain information from service providers, and indicating she no longer wanted contact with the agency. Additionally, the court stated it was reasonable to determine that severing the bond between mother and child would not serve as a detriment to the child, where the child required stability, verbalized he wanted a new mom and dad and did not feel loved by mother due to her absence at visits.

Pennsylvania Supreme Court

In the Interest of L.Z.

Date of Decision: March 25, 2015

Cite: 2015 WL 1332597

Holding:

Reversed the finding of the Pennsylvania Superior Court that mother was not the perpetrator of abuse. The court erred when limiting the application of the evidentiary presumption in Section 6381(d) of the Child Protective Services Law (CPSL) to cases where the abused child was in the parent's physical presence at the time of the injury.

Facts and Procedural Posture:

Mother and maternal aunt brought the child, then twenty-one months old, to Abington Memorial Hospital for treatment of a deep cut around the base of the child's penis which was determined to be less than twenty-four hours old. The treating physicians observed other areas of concern, including dark bruises on the child's left and right cheek, severe diaper rash, a yeast infection and noted the child presented with dirty legs and feet. Mother and maternal aunt were both identified as the child's primary caregivers, but mother claimed she was staying with a paramour two days prior to the hospital visit. The explanations provided by mother and maternal aunt were ruled out by the treating physicians who found the injuries consistent with a pattern of suspected abuse. The child was placed in protective custody with maternal grandfather and the agency filed petitions for dependency and aggravated circumstances.

The trial court found the child was dependent, that aggravated circumstances existed and that the child was a victim of abuse and mother was the perpetrator of that abuse. Mother appealed. A three-judge panel of the Pennsylvania Superior Court affirmed the adjudication of dependency, but vacated the determination that mother was a perpetrator of the abuse. The Guardian ad litem petitioned for and was granted re-argument before the entire court which ultimately came to the same conclusion, finding a parent could not be presumed as a perpetrator under Section 6381 of the CPSL where the record does not establish they had responsibility for the child at the time of the injury. The Guardian ad litem filed a petition for allowance of appeal and his request was granted by the Pennsylvania Supreme Court.

Rationale¹:

The Court stated that the intent of section 6381(d) was to provide an exception to the stricter evidentiary standards in the Juvenile Act and the CPSL to allow the identity of a perpetrator to be determined based on a rebuttable presumption that the abuse would not ordinarily occur absent the acts or omissions of the parent or other person responsible for the welfare of the child. The Court reasoned that the inclusion of the term omission was to account for the very circumstances where a parent is not physically present at the time of the injury, but ultimately responsible due to their failure to protect the child. Within its analysis, the Court rejected a long line of cases from the Pennsylvania Superior and Commonwealth Courts that departed from the proper application of the presumption.

Further, the court emphasized that the presumption applies even in a situation where there are multiple caregivers as was presented in this case. Here, the mother and maternal aunt were found to be the child's primary caregivers and mother failed to rebut the presumption by presenting evidence that the child was not in her care at the time of the injuries or that she had reason to question her decision to leave the child in the care of the aunt.

¹ The Court also addressed the issue of whether the child suffered abuse under the then applicable definition in 23 Pa. C.S. § 6303. The definition of abuse was amended, effective December 31, 2014, and to avoid confusion the issue is not discussed herein. If you would like the Court's full analysis please request a copy of the opinion from the LSI Warmline at lsiwarmline@diakon-swan.org.