



# SWAN Legal Services Initiative

## May Legal Report

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### Pennsylvania Superior Court

**In the Interest of: N.A.**

Date of Decision: May 13, 2015  
Cite: 2015 Pa Super 118

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#### **Holding:**

Affirmed the trial court's order denying adjudication of dependency, where mother was willing and able to provide proper parental care and control immediately and attempted to remedy any prior lapses in care.

#### **Facts and Procedural Posture:**

Philadelphia Department of Human Services (DHS) filed dependency petitions for two children and held an adjudication hearing in April 2014. The trial court determined the allegations in the petition were not proven by clear and convincing evidence. The court did not find the children dependent, dismissed the petition, and ordered the children be returned to mother at the end of the school year. A few days after the hearing, DHS received a general protective services (GPS) report that one of the children was sexually abused by a caregiver's son at a time when mother had legal custody. DHS did not file an emergency petition based on the allegations. After the school year ended, the children continued to live with maternal grandmother because mother could not identify who would supervise the children while she was working. Two months after the initial dependency petition was dismissed, DHS filed a second dependency petition, alleging virtually the same facts and the additional information from the GPS report. At the adjudication hearing, the trial court limited the facts considered to those issues about the current circumstances and did not consider any facts prior to April 2014. The trial court found the children were not dependent and DHS appealed.

#### **Rationale:**

The court reasoned that the trial court mistakenly applied the doctrine of *res judicata*; however, the trial court was correct in denying dependency. To adjudicate a child dependent, a trial court must consider the current circumstances and whether proper parental care and control is immediately available. The court stated it was appropriate in this case to consider only those facts that arose after the first adjudication hearing and stated that evidence that mother lacked proper parental care in the past is not sufficient to serve as a basis for dependency.