



SWAN Legal Services Initiative

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Pennsylvania Superior Court

In the Interest of: C.L.P.

Date of Decision: October 2, 2015

Cite: 2015 Pa Super 210

Holding:

Reversed and remanded trial court's order denying appellants' motion to schedule a custody hearing regarding their two grandsons, pursuant to Section 5324 of the Custody Act, where both children were adjudicated dependent with a permanency goal of reunification with their parents.

Facts and Procedural Posture:

Philadelphia Department of Human Services, Children and Youth Division (DHS) took custody of the two children in November 2013, after the older sibling suffered a non-accidental trauma. They both were adjudicated dependent in March 2014, and aggravated circumstances were found against the mother and father. The children were placed in foster care, but DHS was ordered to continue reasonable efforts for reunification. In June 2014, the grandparents filed a complaint for custody against the parents and DHS and later filed a motion to schedule a custody trial pursuant to Pa.R.C.P. 1915.4. At oral argument, the trial court stated they would not entertain a custody complaint or the motion to schedule a custody hearing because the grandparents do not have standing under 23 Pa.C.S. § 5324. The court cited the children's permanency goal of reunification and the parents' compliance with the family service plan as controlling factors. The grandparents appealed the court's decision.

Rationale:

At trial, the court improperly relied on case law citing to the Pennsylvania Adoption Act, 23 Pa.C.S. § 2101 et seq., rather than the governing section of the Custody Act.

Section 5324 of the Custody Act states as follows:

The following individuals may file an action under this chapter for any form of physical custody or legal custody:

(3) A grandparent of the child who is not in loco parentis to the child:

- (i) whose relationship with the child began either with the consent of a parent or under a court order;
- (ii) who assumes or is willing to assume responsibility for the child; and
- (iii) when one of the following conditions is met:

(A) The child has been determined to be a dependent child under 42 Pa.C.S. Ch.63

The court looked to the plain language of the statute and determined that the trial court improperly construed limitations on the rule. The Custody Act grants standing to grandparents to file for any form of physical or legal custody when their grandchild has been adjudicated dependent, notwithstanding a permanency goal of reunification.

State Legislation

Act 40 of 2015 – Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes

Effective November 30, 2015, sections 4321 and 5329 are amended as follows:

4321. Liability for support.

Makes a parent liable for support even after their parental rights have been terminated due to a conviction of one of the enumerated sexual offenses, where the other parent is the victim, and a child was conceived as a result of the offense.

5329. Consideration of criminal conviction.

Allows the court to award custody to a parent who has been convicted of one of the enumerated sexual offenses only when:

The parent who is a victim had an opportunity to address the court, the child is of suitable age and consents to the custody order; **and** the court determines the award is in the best interest of the child.

If a parent who is a victim of one of these offenses objects, the court cannot award any type of custody to the other parent of a child conceived as a result of any of those offenses for which the other parent has been convicted

Find the complete amended language and enumerated offenses on the [Pennsylvania General Assembly website](#).

Family Finding Reminder

Rules 1120, 1149, 1210, 1240, 1242, 1330, 1408, 1409, 1512, 1514, 1515, 1608, 1609, 1610, 1611, and 1635

- Rule modifications and additions reflect requirements of Act 55 of 2013, and ensure the court inquires about family-finding efforts at each proceeding and makes necessary orders to enforce compliance.
- These rules became effective October 1, 2015. A copy of the new rules is on the [Pennsylvania Court's website](#).

Spotlight

Child Protective Services Law: confidentiality provisions and discovery rules

L.W. v. Lackawanna County, et al. – In accordance with Rule 26 of the Federal Rules of Civil Procedure, plaintiffs requested that the Department of Public Welfare (DPW)¹ provide any and all records pertaining to child abuse in foster homes for investigative purposes in a pending litigation. The DPW contested such a request, citing the confidentiality provisions of the Child Protective Services Law. The court found that the confidentiality provisions do not shield such a discovery request, in that the plaintiffs were able to show the relevancy of such records at this stage in the litigation; however, such discovery is subject to a protective order in order to protect the sensitive information and individuals contained within.

The full memorandum is available using cite 2015 WL 6406809.

¹ The Department of Public Welfare became the Department of Human Services effective November 24, 2014.