

NOVEMBER 2020 – Case Law Summaries

IN RE: ADOPTION OF B.G.S., A/K/A

S.S.S., A MINOR

Superior Court of Pennsylvania

No. 829 EDA 2020

2020 PA Super 243

Filed OCTOBER 07, 2020

Before: BOWES, J., STABILE, J., and COLINS, J.

Opinion by: Stabile

In this matter, a Father appealed from the involuntary termination of his parental rights. Here, the child was born in January, 2019 and Father was not made aware of the child until May, 2019. During that time, Mother contacted an adoption agency and the child was placed with prospective adoptive parents. In April or May of 2019, when Father found out that he may be the Father of the child, he spoke with family members for assistance and reached out to an attorney, who was unable to assist. In August, he spoke to the director of the adoption agency. When the agency filed to involuntarily terminate his rights in September, 2019, Father contested it, and Hearings were held in November, 2019 and in January, 2020. The Orphans' Court terminated his parental rights. Counsel for Father filed an appeal, along with an Anders brief (a brief which requests to be permitted to withdraw from a case because of an attorney's belief that any appeal is frivolous). On appeal, the Superior Court addressed the related issues together. After reviewing the Orphans' Court's record and findings, the Superior Court found that Father's appeal was not frivolous. They remanded the matter and ordered Father's counsel to file an Advocate's Brief.

The Orphans' Court found that because Father had not taken enough action during the time of May, 2019 through November 2019, when the first Court Hearing took place, that he failed to assert his interests or perform any duties for the child. The Orphans' Court noted that he had reason to know of the child's birth and should have done more during that time. The Superior Court found in Father's favor, and referenced case law which stated that "a parent need not perform the impossible." They also note that even if a parent does not have contact with a child for a period in excess of six months per the termination statute, the law does not require that his or her rights be terminated where the parent faced obstacles which may have prevented contact with the child, so long as the parent has made reasonable, good faith efforts to resist those obstacles. The Superior Court also said that because Father did not know about the child until May, 2019, and the termination was filed in September 2019, it may have been improper for the Orphans' Court to hold father responsible for failing to perform parental duties when he did not know and/or may not have had any reason to know that the child existed at all. This was especially so as this period was only four or five months, not the minimum of six months as is required by the statute. Lastly, the Superior Court took issue with the Orphans' Court's statement that Father could have taken more action if he had had the resources in order to assert his rights. The court rules that this fact, if anything, may have made Father's failure to perform any parental duties excusable. Thus, the Superior Court found that Father's appeal was not lacking in merit, was not frivolous, and as a result they deny his counsel's Petition to Withdraw and remanded the case.

In the Interest of: Y.W.-B., A Minor
Appeal of: J.B., Mother & G.W.-B., Father
Superior Court of Pennsylvania
No. 1642 EDA 2019

In the Interest of: N.W.-B., A Minor
Appeal of: J.B., Mother & G.W.-B., Father
Superior Court of Pennsylvania
No. 1643 EDA 2019

Filed OCTOBER 08, 2020
*Before: NICHOLS, J., MURRAY, J., and COLINS, J.**
Opinion by: Nichols

Mother and Father appealed an Order compelling their cooperation with a home investigation ordered by Philadelphia DHS. They claimed that DHS failed to establish probable cause for a home visit, and that the Order violated their first amendment free speech rights by prohibiting them from photographing or recording the DHS workers conducting the home visit. The Superior Court affirmed in part and reversed in part. In this matter, a DHS report was made alleging that Mother was sleeping outside of a PHA office with a child. Mother had told a Project Home outreach worker that her previous residence had burned down. When DHS attempted to investigate, they were refused entry into the home. At the Petition to Compel Hearing, the Trial Court granted DHS's request to compel the home visit, and while attempting to arrange a time for said visit, the Court became aware that the involved DHS investigator was upset, because Mother and Father had been recording the DHS Investigator at her last attempted home visit, and had posted the recording on social media. The DHS Investigator felt threatened. The Trial Court ordered Mother and Father not to record and to take down any social media posts. On appeal, Mother claimed that DHS failed to establish probable cause for a home visit, and that the Order violated her First Amendment rights by prohibiting her from photographing or recording the DHS worker conducting the home visit. DHS argued that the issue of the home visit was moot as there were no further visits being conducted, and that they did have probable cause for the visit. DHS did not provide extensive discussion of the claim regarding Mother's First Amendment rights, but did note in their brief that they agreed the Trial Court had erred in prohibiting Mother from photographing or recording the home assessment. The Superior Court ruled that the issue is not moot because it is capable of repetition, and raises questions of public importance.

Parents' probable cause argument:

Mother and Father argued that the Trial Court erred because they based their ruling on an anonymous report and that none of the testimony taken at the hearing confirmed the reliability or veracity of the report. They also argued that the Petition to Compel lacked sufficient particularity as it did not describe anything within the family's home that was relevant to DHS' investigation. Mother argued that DHS failed to assert any reliable information to find probable cause. DHS argued that unlike the scope of review in a criminal case, a trial court may consider matters outside the four corners of a petition to compel and that there was sufficient particularity pleaded in the Petition to Compel. They also argued that probable cause was established, as the Trial Court found that probable cause

existed based on both the anonymous report and the DHS investigation. In referencing case law, The Superior Court noted that the standard is different in child protective cases than in criminal cases. The Court noted that DHS should have to provide sufficient reasons, but not be hampered from performing their duties because they have not satisfied criminal law jurisprudence, and that neither the CPSL nor any rule of civil or family procedure limits a trial court's consideration of a petition to compel to the "four corners" of the petition itself. The Trial Court here considered the evidence presented at the Petition to Compel hearing, as well as the court's and agency's prior history with the family, to the extent it is relevant, and thus made a determination. In reviewing the history and facts, and noting such, the Superior Court affirms the Trial Court's ruling. Specifically, they note that the Trial Court reviewed DHS' petitions to compel, the evidence presented at the hearing and Mother's demeanor at the hearing, and concluded that there was probable cause. They noted it was reasonable to need to ascertain whether Mother and Father had suitable housing as Mother was sleeping outside of PHA with a child. Lastly, they also considered their previous experiences with the family. The Superior Court agrees with the Trial Court's determination for probable cause and affirms.

Parents' First Amendment argument:

Mother argued that she should have been permitted to record the DHS home visit as the First Amendment right to free speech necessarily incorporates the act of recording, and that the Trial Court's Order prohibiting her from recording constituted a proper time, place and manner restriction. She also argued that there was no evidence of her recordings being a threat. Mother relied on the case Fields v. City of Philadelphia. The Superior Court, in reviewing Fields and other case law, finds that intermediate scrutiny applies, as First Amendment protections extend to restrictions on "the stock of information from which members of the public may draw" when discussing public issues." The DHS worker said she felt intimidated but did not provide much other information. The Superior Court ruled that DHS failed to establish that its request for a no-recording provision was reasonable. They note that their holding does not make the right to record absolute, but that consistent with established case law, it is subject to reasonable time, place and manner restrictions. Thus, they reverse the provision regarding recording in the Trial Court's order that stated mother may not film DHS workers in their official capacity in mother's home. They hold that the Trial Court may establish reasonable time, place and manner restrictions concerning mother's request to film, take pictures of, or record government employees acting in their official capacity, but that the record did not support the limitation that had been imposed by the Trial Court in this case previously.

D.Q. v. K.K., J.M. and Schuylkill County Children and Youth Services
Superior Court of Pennsylvania
No. 124 MDA 2020
2020 PA Super 249
Filed OCTOBER 15, 2020
Before: PANELLA, P.J., STABILE, J., and MUSMANNO, J.
Opinion by: Musmanno

Maternal Grandmother appealed from an order that stated she had standing, but denied her legal and physical custody of her grandchildren, and directed that she complete an ICPC (Interstate Compact Placement of Children Request) in her state of residence, New Hampshire. The order was entered

without prejudice. In this matter, Maternal Grandmother had an extensive history herself with Schuylkill County CYS, including drug activity in her home, truancy with her own children (including the Mother of the children in issue) and an unstable housing situation. Maternal Grandmother had been uncooperative in these investigations in the past. All the parties, including the parents of the children and Maternal Grandmother, had moved to New Hampshire at some point while the CYS case was pending. They had been driving to visit the children who have been placed by the agency in Pottsville, PA together bi-weekly. CYS had been unable to perform an assessment of Maternal Grandmother's home as she was living in New Hampshire.

Maternal Grandmother argued in her appeal that because the court found she had standing, the trial court improperly dismissed her complaint. She also argued that the court erred in weighing the custody factors, and improperly directed her to participate in the dependency matter through the ICPC as a placement option. The Superior Court reviewed the Trial Court's analysis of the factors. They found that the Trial Court appropriately gave weighted consideration to those factors which impact the children's safety. In doing so, the Trial Court noted that Maternal Grandmother's history with CYS, including her history with drug use and lack of cooperation, was of great concern. They also stressed that they took issue with the fact that Maternal Grandmother had traveled to and from Pennsylvania from New Hampshire with the Mother and Father of the children, though allegedly was never aware of their continued drug use. Maternal Grandmother also did not have a firm childcare plan in place for the three young children and worked nights. The Superior Court also found that MGM's failure to complete the ICPC request was appropriate for the Trial Court to consider as per the ICPC, it is a requirement that a request be completed in order to assess a home as a placement option for any child, and Pennsylvania is required to obtain state approval from the receiving state, in this case New Hampshire, prior to placing the children there. The Superior Court thus affirmed the Order.