

In Re: Adoption of: K.C., a Minor
Superior Court of Pennsylvania
No.: 733 MDA 2018
2018 Pa.Super. 308
November 20, 2018
Before: Bender, McLaughlin, Strassburger
Opinion by: McLaughlin

The Mother filed an appeal from a decree of involuntary termination of her parental rights over her daughter. The Court affirmed the lower court's decision. Mother has substance abuse issues which caused Paternal Grandparents to file for, and obtain, physical and legal custody of the child. Testimony and evidence was provided by the parties as to the contact Mother had with the child, particularly over the six months preceeding the the petition to terminate her parental rights. The Court found Paternal Grandparents' evidence more credible and better corroborated than Mother's and found that Mother had virtually no contact with the child and had no reasonable explanation for the same for some time. To that end, the Court consistently deferred to the credibility determinations of the lower court. Responding to Mother's arguments on appeal, the Court found that Mother's alleged lack of knowledge regarding the potentiality of losing her rights due a lack of contact with the child for six months prior to the petition was irrelevant as lack of knowledge does not somehow vitiate her obligation to maintain contact with her daughter. Mother finally argued that terminating her rights is not in the best interests of the child as the Paternal Grandparents could expose the child to a paternal uncle who has a criminal record and to paternal grandfather who has used marijuana in the past. The Court rejected this argument from Mother on the basis that CYS had investigated Paternal Grandparents' home and found it acceptable, and that paternal grandfather's marijuana use was from far enough in the past that it was no longer an issue.

In the Interest of: Q.R., a Minor
In the Interest of: L.R., a Minor
Superior Court of Pennsylvania
No.: 230 EDA 2018, 232 EDA 2018
2018 Pa.Super. 309
November 20, 2018
Before: Bender, Nichols, Stevens
Opinion by: Stevens

A mother filed an appeal after being held in contempt and incarcerated for allegedly failing to produce her adult daughter's child (Mother's granddaughter) to the Court. DHS investigated Mother due to reports of physical, sexual, and mental abuse against two minors (i.e.: "Q.R." and "L.R."). After much litigation, the trial court discerned that "N.R." (Mother's adult daughter) and "N.M." (Mother's adult daughter's child) reside in Mother's home. The trial court demanded Mother produce N.M. to the Court, but Mother insisted that she did not know where she was and, even if she did, she did not have the power or authority to do it as N.M. has an adult parent who is not subject to the instant litigation. As a result, the trial court held Mother in contempt and incarcerated her. Mother appealed and raised thirty-one (31) questions for appeal. Although Mother had been purged from incarceration by the time of her appeal, potentially rendering it moot, her appeal went forward as an exception to the mootness doctrine on the basis that there is great public importance, this issue could be repeated, and Mother could still suffer some detriment. The trial court claimed it did not hold Mother in contempt (despite explicitly saying it did so), but

had the authority to temporarily incarcerate her under the auspices of the Juvenile Act for the benefit of N.M. (see 42 Pa.C.S.A. Sections 6301, 6351, and 6352). Superior Court rejected the trial court's arguments. First, Superior Court noted the absurdity of the trial court claiming it did not hold Mother in contempt despite the fact that it explicitly did so. Second, Superior Court further pointed out that the Juvenile Act does not empower the Court to incarcerate a non-custodial grandparent to compel a grandchild's surrender, and that N.M. is not a subject of the instant matter regardless. Based on the above, Superior Court found that the trial court had no authority to have incarcerated Mother or hold her in contempt for the reasons cited above as an initial matter and, therefore, it had no need to address the over two dozen other questions presented for appeal.

Commonwealth of Pennsylvania v. Ortiz

Supreme Court of Pennsylvania

No.: 45 WAP 2017

November 21, 2018

Opinion by: Saylor

The question before the Court is whether the crime of interference with the custody of children ("ICC"), committed by a biological parent, can serve as a predicate felony giving rise to the crime of kidnapping a minor. Maternal Grandmother secured interim primary physical and legal custody of the child as the Father failed to appear at the hearing for the same. Grandmother tried to exercise her custody, but could not locate the child. After investigation by law enforcement, the child was found with his Father. As a result, Father was charged with interference with the custody of children and kidnapping. Father was convicted of these offenses which prompted him to appeal. Father argued that ICC cannot serve as a predicate felony for kidnapping. Per the kidnapping-of-a-minor statute (18 Pa.C.S. Section 2901(a.1)), in order to be guilty of breaking it, there first must be an unlawful removal of a child over a substantial distance and, second, a particular intentionality. The language of Section 2901 tracks fairly closely with the interference with the custody of children statute (Section 2904). Specifically, the kidnapping statute requires the removal of the child to be done with the intention to "facilitate commission of any felony or flight thereafter." The Court observed that it is logically problematic to make the felony intended by the removal of the child (per Section 2901) to be the removal itself (per Section 2904) ("...it is logically problematic to assert that [Father] unlawfully removed [the child] pursuant to the kidnapping statute with the intent to make it easier to unlawfully remove the child as contemplated by the ICC statute...Stated otherwise, the act of taking does not, sensibly, facilitate the act of taking, since they are one and the same.") In addition, the Court also explored the derivation of the statute from the Model Penal Code and concluded that the ICC statute, committed by a biological parent, is not intended to serve as a predicate kidnapping felony. The Court observed that the kidnapping statute is to protect against physical danger, extortion, and terrorization by abduction whilst ICC is merely designed to maintain parental custody of children and the crime committed is by a person who, though misguided, is favorably disposed to the child (as distinct from kidnapping, which has malevolent intent as described above). Based on the above, the Court concluded that a conviction for ICC is not a predicate felony for kidnapping, and that kidnapping requires more than just a parent interfering with a custody order.