

May 2020

Legal Report

SWAN Legal Services Initiative

A monthly publication from the SWAN Legal Training Team

In This Issue:

In the Interest of T.M.W.

Spotlight:

In re: J.C.

Commonwealth of Pennsylvania v. Taylor

Act 18 of 2020

YF Bulletin #00-20-01, 3130-20-03, 3350-20-02, 3490-20-03, 3680-20-01, 3700-20-02, 3800-20-02: Notification Protocol for Formal Licensing Actions and Incidents

OCYF Bulletin #3490-20-01: Pennsylvania Safe Haven Act 201 of 2002 "The Newborn Protection Act" as amended by Act 91 of 2014 and Act 68 of 2017

Legal Training Team

Division Manager

Ilene Dubin, Esq.

Training Specialists

Lauren Peters, Esq.
Alyssa H. Holstay, Esq.
Shawn Sangster, Esq.
Sara Steeves, Esq.
Rachel Thiessen, Esq.

471 JPL Wick Drive
P.O. BOX 4560
Harrisburg, PA 17111
www.diakon-swan.org

lsiwarmline@diakon-swan.org



SUPERIOR COURT OF PENNSYLVANIA

In the Interest of T.M.W.

Date of Decision: May 20, 2020

Citation: 2291 EDA 2019 (Philadelphia)

Holding: The Superior Court vacated an order involuntarily terminating Mother's parental rights and changing the goal to adoption after finding that the Agency failed to meet its evidentiary burden and that the trial court's findings were not supported by competent evidence of record.

Facts and Procedural Posture: DHS received a GPS report in 2016 alleging deplorable housing and possible medical neglect of the child who was diagnosed with sickle cell disease. Child, age four and a half, reported to hospital staff that she handled her own medications. Further, Mother reported that the home was infested with bed bugs and that the bugs were coming out of the child's skin and orifices. Neither hospital staff nor DHS observed any bugs on the child or in the family home raising concerns about Mother's mental health.

Child was adjudicated dependent in January 2017 and placed with a maternal aunt. Mother's goals included signing consents for medical and mental health treatment, follow treatment recommendations, therapy with a psychiatrist, cooperation with the agency and services, and visitation.

Mother completed a parenting capacity evaluation and several psychiatric evaluations and was diagnosed with delusional disorder. At the January 2019 goal change hearing, Mother's provider testified that Mother attended weekly sessions, Mother suffered from adjustment disorder and not delusional disorder and recommended that the child could be returned to Mother.

In February 2019, DHS filed a petition to involuntarily terminate Mother's parental rights alleging that Mother failed to substantially comply with her single case plan goal of mental health. Specifically, it was alleged that reunification was not a viable option based on Mother's inability to adequately care for the child because of her unresolved mental health issues. Mother's appeal raised the issues of whether the trial court abused its discretion in finding that Mother's parental rights should be terminated and in changing the goal to adoption, and whether the trial court violated Mother's right to due process and abused its discretion when preventing Mother's counsel from entering evidence regarding her mental health diagnosis and treatment.

Rationale: In regards to the goal change to adoption, the Superior Court reviewed the evidence of record which revealed that Mother attended every supervised visit, was cooperative with the agencies involved, and believed that she was receiving appropriate mental health treatment. Further, the evidence revealed that neither DHS nor CUA made reasonable efforts to return the child to Mother. The caseworkers were not timely when they informed Mother of their position that she was not receiving appropriate mental health treatment. The Superior Court found that the county rushed to change the goal "where Mother was making progress toward reunification and/or where it was uncertain whether reunification would be futile and/or contrary to Child's best interest[.]"

For the same reasons, The Superior Court found that “DHS did not prove “by clear and convincing evidence” that the grounds to terminate Mother’s parental rights exist under sections 2511(a).” They opined that it was unreasonable for the burden to be on Mother to convey the type of psychiatric treatment the agency expected when the agency failed to convey the same to Mother for over four months. Specifically, the agency’s plan required Mother to obtain mental health treatment related to her delusional thinking regarding the bed bugs. Mother was unable to afford the providers on the list CUA provided and instead identified her own provider. Mother attended treatment with that provider weekly. That provider diagnosed Mother with adjustment disorder and not delusional disorder. The orders were vacated and the matter was remanded with instruction to enter a new permanency order maintaining the Child’s placement and goal of reunification.



SPOTLIGHT

In re: J.C., (1391 WDA 2017)

In December 2018, The Superior Court of Pennsylvania found that Act 21, known as The Court-Ordered Involuntary Treatment of Certain Sexually Violent Persons Statute (42 Pa.C.S. § 6403) found that the allowance of involuntary commitment and confinement of a juvenile into a treatment program is unconstitutionally punitive. The Commonwealth filed a motion for reargument *en banc* and the December 2018 opinion was withdrawn. Since the 2018 opinion, the Supreme Court issued two decisions that held Act 21 is neither punitive nor unconstitutional. As a result, the Superior Court held that J.C.’s claims are meritless, and his additional claims that Act 21 violates the right to equal protection (as placing a potentially greater sentence on youth than adults convicted of the same crimes) and lack of sufficient evidence were also without merit. The order of involuntary commitment was therefore affirmed.

Pennsylvania Supreme Court

Commonwealth of Pennsylvania v. Taylor (29 MAP 2019)

The Supreme Court held that a minor’s Fifth Amendment privilege against compulsory self-incrimination was violated when the juvenile court transferred a delinquency matter to adult criminal court upon request of the Commonwealth based in part on the minor’s decision to invoke his Fifth Amendment privilege.

Act 18 of 2020

Governor Wolf signed HB 360 into law on May 8, making PA the third state to fully outlaw marriage for people under the age of 18. Before the final passage of HB 360, a key COVID-19 provision was added by the Senate for those needing background check recertification or certification for their work with children. As a result of office closures around the state, individuals requiring an FBI background check have encountered issues in finding a location to take their fingerprints.

<https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2020&sessInd=0&act=18>

OCYF Bulletin #00-20-01, 3130-20-03, 3350-20-02, 3490-20-03, 3680-20-01, 3700-20-02, 3800-20-02: Notification Protocol for Formal Licensing Actions and Incidents

The purpose of this bulletin is to revise the procedures of the Department of Human Services (Department), Office of Children, Youth and Families (OCYF) for sending notification of critical events that have occurred in a child residential or day treatment facility, an approved foster and pre-adoptive home, a Youth Development Center (YDC) or a Youth Forestry Camp (YFC) that may represent a risk of harm to the children and youth placed in those settings. This bulletin rescinds and replaces OCYF Bulletin #00-19-02, titled Notification Protocol for Formal Licensing Actions and Incidents, which was issued in August 2019.

<http://swantoolkit.org/wp-content/uploads/OCYF-Bulletin-00-20-01-3130-20-03-3350-20-02-3490-20-03-3680-20-01-3700-20-02-3800-20-02-Notification-Protocol-for-Formal-Licensing-Actions-and-Incident.pdf>

OCYF Bulletin #3490-20-01: Pennsylvania Safe Haven Act 201 of 2002 “The Newborn Protection Act” as amended by Act 91 of 2014 and Act 68 of 2017

The purpose of this bulletin is to transmit requirements and guidance related to legislative changes to the Newborn Protection Act as amended by Act 91 of 2014 and Act 68 of 2017. These changes include allowing police officers at police stations and emergency services providers on the grounds of an entity employing emergency services providers to accept newborns, as well as, an optional provision for Safe Haven locations to provide an incubator for the acceptance of a newborn. This bulletin rescinds and replaces OCYF Bulletin 3490-11-01, Implementation of Act 201 of 2002, previously released in July 2011.

<http://swantoolkit.org/wp-content/uploads/OCYF-Bulletin-3490-20-01-The-Newborn-Protection-Act-as-amended-by-Act-91-of-2014-and-Act-68-of-2017.pdf>