

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: MA.W., C.W.,	:	IN THE SUPERIOR COURT OF
AND M.W.	:	PENNSYLVANIA
	:	
	:	
APPEAL OF: J.K., MOTHER	:	
	:	No. 840 EDA 2015

Appeal from the Orders Entered March 5, 2015
In the Court of Common Pleas of Carbon County
Criminal Division No(s): CP-13-DP-0000025-2014
CP-13-DP-0000027-2014
CP-13-DP-0000028-2014

BEFORE: ALLEN, MUNDY, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.:

FILED AUGUST 14, 2015

Appellant, J.K. ("Mother"), appeals from the orders entered March 5, 2015,¹ denying the petitions for dependency as to Ma.W., C.W., and M.W. ("Children") and directing that the Carbon County Office of Children and Youth Services ("CYS") be permitted to enter Children's home to complete

* Former Justice specially assigned to the Superior Court.

¹ We note Mother filed one notice of appeal from three orders. The Pennsylvania Rules of Appellate Procedure address the requisites for an appealable order and provide: "Every order shall be set forth on a separate document." Pa.R.A.P. 301(b). This Court in **Dong Yuan Chen v. Saidi**, 100 A.3d 587 (Pa. Super. 2014), noted that "[t]aking one appeal from separate judgments is not acceptable practice and is discouraged." **Id.** at 589 n.1 (citation omitted). The **Saidi** Court declined to find the procedural error fatal to the appeal because the trial court addressed the issues. **Id.** Similarly, we find the procedural error is not fatal in the case *sub judice* because the trial court addressed the issue. We have amended the caption accordingly.

the assessment required by 55 Pa. Code § 3490.232.² Mother argues there was no probable cause to allow a government agency access to Children's home.³ We affirm.

² The code provides, *inter alia*, as follows when the agency receives a report alleging a need for general protective services ("GPS"):

(a) The county agency shall be the sole civil agency responsible for receiving and assessing all reports alleging a need for general protective services. . . .

* * *

(f) The county agency **shall** see the child and **visit the child's home during the assessment period**. The home visits shall occur as often as necessary to complete the assessment and insure the safety of the child. There shall be a least one home visit.

* * *

(h) The county agency may make unannounced home visits.

* * *

(j) The county agency shall initiate the appropriate court proceedings and assist the court during all stages of the court proceedings if the county agency determines that general protective services are in the best interest of a child and if an offer of an assessment, **a home visit or services is refused by the parent**.

55 Pa. Code § 3490.232(a), (f), (h), (j) (emphases added). GPS in Section 6303 of the Child Protective Services Law ("CPSL") includes "[t]hose services and activities provided by each county agency for cases requiring protective services, as defined by the department in regulations." 23 Pa.C.S. § 6303.

³ We note the issue is not moot based upon the denial of the dependency petitions.

We adopt the facts and procedural history of this case as set forth in the trial court's opinion. Trial Ct. Op., 4/13/15, at 2-15. On March 5, 2015, the court denied the petitions for dependency and ordered that CYS be permitted to enter Children's home. This timely appeal followed. Appellant filed a court-ordered⁴ statement of errors complained of on appeal in each case. Mother raises the following issue⁵ for our review:

It is well settled that the proper inquiry in a dependency adjudication follows a bifurcated analysis: "Is the child at this moment without proper parental care or control?; and if so, is such care or control immediately available?" Because the element of time is integral to the dependency adjudication, each petition in this instance necessarily implicates a different cause of action. Thus, technical res judicata cannot apply.

In re N.A., 116 A.3d 1144, 1149 (Pa. Super. 2015) (footnote and citations omitted), *appeal denied*, ___ A.3d ___ Pa. 2015).

⁴ Appellant did not comply with Pa.R.A.P. 1925(b), which provides, *inter alia*, in a children's fast track appeal, the concise statement of errors complained of on appeal shall be filed with the notice of appeal. Pa.R.A.P. 1925(b)(2)(i). We do not find this defect fatal to the appeal. ***See In re K.T.E.L.***, 983 A.2d 745, 747 (Pa. Super. 2009) (holding failure to file 1925(b) statement concomitantly with a children's fast track appeal is considered defective notice of appeal, the disposition of which is decided on a case by case basis).

⁵ We note Mother raised an additional issue on appeal.

When a government agency files multiple dependency petitions, involving three siblings residing in the same home with the same mother and father, all of the allegations in the petition and all of the evidence presented at the single hearing is identical as to each minor, no allegation or piece of evidence is peculiar to one child, and the Trial Court enters three identical Orders, disposing of

When a government Agency presents evidence that the yard of a minor's house is cluttered with mostly unidentified material, that an unnamed informant reported that the house was messy, had a boarded-up window and **might** have had a hole in the wall, but presented no evidence that the house was unsafe or that [C]hildren were in danger and, in fact, testified that [CYS] had no concern for the safety of [C]hildren, does the [t]rial [c]ourt err in concluding that probable cause exists to believe that evidence of child abuse or endangerment may be found in the home?

Mother's Brief at 5.

Mother argues that probable cause is required to permit CYS to access her home pursuant to Article 1, Section 8 of the Pennsylvania Constitution. **Id.** at 18. She avers there was no probable cause for a home inspection. **Id.** Mother contends CYS can only inspect the home pursuant to 55 Pa. Code § 3490.55(i)⁶ when investigating a report of suspected child abuse.

three identical petitions, should an appeal from those three decisions be quashed for failing to file individual appeals?

Mother's Brief at 5. We have resolved this issue. **See** note 1.

⁶ Section 3490.55 requires a home visit when the agency is investigating reports of suspected child abuse. Section 3490.55(i) provides:

(i) When conducting its investigation, the county agency shall visit the child's home, at least once during the investigation period. The home visits shall occur as often as necessary to complete the investigation and to assure the safety of the child.

55 Pa. Code § 3490.55(i). The trial court found a home visit was required by 55 Pa. Code § 3490.232. Order, 3/5/15. In the case *sub judice* there were no allegations of child abuse in the petitions filed by CYS. Mother's reliance on Section 3490.55(i) is of no moment. The Code provides for a

Id. Mother claims that CYS “must allege and prove facts, ‘amounting to probable cause to believe that an act of child **abuse or neglect** has occurred and evidence relating to such abuse will be found in the home.’”

Id. at 19 (emphasis added) (citing ***In re Pet. to Compel Cooperation with Child Abuse Investigation***, 875 A.2d 365, 377 (Pa. Super. 2005)).

Our review is governed by the following principles:

[T]he standard of review in dependency cases requires an appellate court to accept the findings of fact and credibility determinations of the trial court if they are supported by the record, but does not require the appellate court to accept the lower court’s inferences or conclusions of law. Accordingly, we review for an abuse of discretion.

In re E.B., 83 A.3d 426, 430 (Pa. Super. 2013) (citation omitted).

In ***In re Petition to Compel***, the parents appealed an “order compelling their cooperation with Susquehanna County Services for Children and Youth (“C & Y”) for the scheduling and completion of a ‘home visit’ of their residence.” **Id.** 875 A.2d at 368. The trial court granted C & Y’s petition notwithstanding the fact that there was no dependency petition before the court.⁷ **Id.** at 369. This Court opined:

home inspection when CYS receives a report of abuse and/or neglect. The issue of whether probable cause exists for the home inspection pertains in either case. **See *In re Pet. to Compel***, 875 A.2d at 377, 379.

⁷ In ***In re Petition to Compel***, the home inspection had taken place. However, this Court declined to find the issues moot because “the issues before us are clearly capable of repetition, yet evading appellate review.” **Id.** at 370-71.

[The a]ppellants' first substantive argument is that the court lacked jurisdiction to enter its order because C & Y had not filed a dependency petition. [The a]ppellants' position is that administrative regulations alone are insufficient to confer jurisdiction; and that in the absence of a petition filed pursuant to the Juvenile Act, 42 Pa.C.S.A. §§ 6301 *et seq.*, C & Y could not legally invoke the court's jurisdiction. We disagree.

The legislature's purpose in enacting the CPSL is stated in Section 6302(b):

It is the purpose of this chapter to encourage more complete reporting of suspected child abuse; to the extent permitted by this chapter, to involve law enforcement agencies in responding to child abuse; and to establish in each county protective services for the purpose of investigating the reports swiftly and competently, providing protection for children from further abuse and providing rehabilitative services for children and parents involved so as to ensure the child's well-being and to preserve, stabilize and protect the integrity of family life wherever appropriate or to provide another alternative permanent family when the unity of the family cannot be maintained. It is also the purpose of this chapter to ensure that each county children and youth agency establish a program of protective services with procedures to assess risk of harm to a child and with the capabilities to respond adequately to meet the needs of the family and child who may be at risk and to prioritize the response and services to children most at risk.

23 Pa.C.S.A. § 6302(b).

The CPSL charges the county agencies with investigating each report of suspected child abuse:

Upon receipt of each report of suspected child abuse, the county agency shall immediately commence an appropriate investigation and see the child immediately if emergency protective custody is required or has been or shall be taken or if it cannot

be determined from the report whether emergency protective custody is needed. Otherwise, the county agency shall commence an appropriate investigation and see the child within 24 hours of receipt of the report. The investigation shall include a determination of the risk of harm to the child or children if they continue to remain in the existing home environment, as well as a determination of the nature, extent and cause of any condition enumerated in the report and any action necessary to provide for the safety of the child or children.

23 Pa.C.S.A. § 6368(a). Our legislature has expressly authorized the Department of Public Welfare ("DPW") to adopt whatever regulations are necessary to implement the CPSL. 23 Pa.C.S.A. § 6348.

Title 55 of the Pennsylvania Administrative Code, Section 3490.55, states in relevant part: "When conducting its investigation, **the county agency shall visit the child's home**, at least once during the investigation period. The home visits shall occur as often as necessary to complete the investigation and to assure the safety of the child." 55 Pa.Code § 3490.55(i).

* * *

As we interpret the statute and agency regulations, C & Y must file a verified petition alleging facts amounting to probable cause to believe that **an act of child abuse or neglect** has occurred and evidence relating to such abuse will be found in the home.

* * *

However, C & Y's responsibilities under the DPW regulations and the CPSL to investigate each and every allegation of **child abuse/neglect**, including visiting the child's home at least once during its investigation, do not trump an individual's constitutional rights under the Fourth Amendment and Article I, Section 8 of the Pennsylvania Constitution.

Id. at 371-72, 377, 379 (emphases added).

In *In re Petition to Compel*, Judge Beck filed a concurring opinion which was joined by Judge Ford-Elliott and Judge Joyce. Both Judge Beck and Judge Joyce also joined the majority opinion. Judge Beck opined:

I join the soundly reasoned majority opinion because it finds that the Fourth Amendment right to be free from unreasonable searches and seizures applies to actions of a social services agency seeking to investigate an anonymous complaint of child abuse. I write separately, however, to add two observations in this case.

First, I caution future parties and courts faced with this issue to consider that the purposes and goals underlying the activities of child protective agencies differ significantly from those of law enforcement generally. As a result, it would be unwise to apply the standard notion of probable cause in criminal law to cases such as these. While the Fourth Amendment certainly is applicable to these matters, we must not forget the very purpose for the Child Protective Services Law. Child Line and other services like it exist to encourage people to report incidents of potential danger to children. Likewise, we impose upon certain professionals an affirmative duty to report conduct they believe may be harmful to a child. For these reasons, simply requiring an agency to show “probable cause” as it is defined in the criminal law is not enough. Instead, the nature and context of each scenario must be considered.

What an agency knows and how it acquired its knowledge should not be subject to the same restrictions facing police seeking to secure a search warrant. For instance, an agency’s awareness of previous conduct on the part of parents would be relevant, indeed vital, information to include in a request for a court-ordered home visit. **What constitutes probable cause in the child protective arena is far different from what constitutes probable cause in the criminal law.** Social services agencies should be held accountable for presenting sufficient reasons to warrant a home visit, **but those same agencies should not be hampered from performing their duties because they have not satisfied search and seizure jurisprudence developed**

in the context of purely criminal law. I urge the courts deciding these issues to accord careful consideration to the unique circumstances they present.

Id. at 380 (emphases added).

In the instant case, CYS filed dependency petitions, indicating its efforts to visit Children's home and requesting the court to allow CYS to visit the home as part of its investigation.⁸

Instantly, the trial court opined:

At the hearing on this petition, the caseworker, Alyssa Denardo, presented additional testimony regarding the condition of the home and her initial in-school visits with [C]hildren that are the subject of these petitions. She also identified a number of photographs that she took during her first visit to the home. The photos showed the yard of the home with garbage strewn around, several rolls of used carpeting, and a general state of "clutteredness." These photos were admitted as an exhibit, without objection. The caseworker also testified that [C]hildren have all been withdrawn from the Palmerton School District,¹⁷ meaning there is no way for CYS to follow-up with speaking to [C]hildren regarding the interior of the home.

* * *

The report to [CYS] was regarding the condition and cleanliness of the home. The petitions detailed the condition of the exterior of the home, which included a boarded up window inside of the home, which was clearly visible from outside. The petitions included information from the caseworker's interviews with [C]hildren. The petitions also identified the unwillingness of the natural parents to allow [CYS] into the home. This [c]ourt finds that this information, in and of itself, would be sufficient to justify the probable cause necessary for an order

⁸ We note that CYS did not seek the removal of Children from the home.

permitting [CYS] to enter [Children's home] to conduct their investigation as required by the CPSL.

¹⁷ In this [c]ourt's opinion, the fact that [C]hildren were removed from the Palmerton School District at a time when [CYS] wanted to question them about the home suggests "something to hide" relating to the condition of the home.

Trial Ct. Op. at 10-11, 12.

At the hearing, Marianne Grabarits, a caseworker supervisor with CYS testified that when CYS receives a GPS report, the case-worker is required, *inter alia*, "to complete a home assessment." N.T., 1/30/15, at 9, 11. She assigned the report to the caseworker, Ms. Denardo. **Id.** at 18.

Ms. Denardo testified regarding the report CYS received on November 13, 2014, indicating concern with the cleanliness of the home, "holes in the home and boarded up windows." **Id.** at 25, 26. She interviewed Children at school on November 20, 2014. **Id.** at 26, 27. C.W. "told me that it is a little dirty at the home, that dad does projects and doesn't always finish them and that's why it is dirty at the home." **Id.** at 26. Ma.W. told her that the house was "sort of dirty, that dad boarded up a window in front to have privacy from the road." **Id.** at 27. She also stated "that they had 13 cats^[9] and

⁹ We note that Mother's counsel asked whether Ms. Denardo was "aware that the 19 cats were outside cats from the farm up the road[.]" **Id.** at 55. She responded that she was not "aware of that." **Id.**

three dogs.” **Id.** M.W. stated “it’s a little dirty in the house. She did say there are no holes and the house is not boarded up.” **Id.**

Ms. Denardo went to the home on December 5, 2014,¹⁰ and “saw that the outside was cluttered and boarded up where it looked like it could have been a window.” **Id.** at 28. She took six photographs and described them to the court. **Id.** at 30. “There is a bunch of garbage, about three or four garbage [sic] and it looks like maybe carpet rolled up.” **Id.** It was located “towards the end of the driveway.” **Id.** The second photograph depicted what looked to be “a barn of some kind.” **Id.** at 31. She stated she “took the photo because of the materials that are out there, with it being dirty and all the materials.” **Id.** The third photograph was of the home and it depicted a trailer. **Id.** The fourth photograph showed “the trailer, the home. And as you can see, here it’s boarded up.” **Id.** at 32. The fifth photograph of the trailer “is the close up of the front entrance of the home.” **Id.** at 32-33. She took the photograph “[b]ecause of all the clutteredness and the materials that are right outside of the home.” **Id.** at 33. The last photograph shows “right here is where you step into the house, the porch, and that is all the clutteredness.” **Id.**

She went to the home again and Father told her “I am not letting anyone in or under the government or bureaucracy of the government into

¹⁰ She attempted to go to the home on November 20, 2014, but could not find it. **Id.** at 27-28. She tried to go to the home on November 26th but was unable “to make it out there” due to inclement weather. **Id.** at 28.

my house and that is why I have that sign.” **Id.** at 35. The sign said “no federal, state or agency [sic] allowed on this property without documentation.” **Id.** at 36.

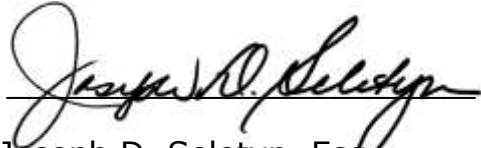
Ms. Denardo testified she called the Palmerton School District on January 6, 2015. **Id.** at 37. C.W. had not been in school on January 2nd, January 5th and January 6th. **Id.** She called Palmerton Junior High and was told Ma.W and M.W.’s were withdrawn from the school district. **Id.** CYS was not asking for Children to be removed from the home. **Id.** at 43. CYS is requesting that Children be adjudicated dependent so that the agency could complete its evaluation. **Id.** “There was a report that came in that children come to school not clean.” **Id.** at 51.

The trial court denied the petition for dependency but found “in light of the testimony and evidence presented at the hearing, probable cause was shown to warrant an order directing that [CYS] shall be permitted to enter [Children’s] home” Order, 3/5/15. We discern no abuse of discretion. **See In re E.B.**, 83 A.3d at 430. Instantly, there was probable cause to warrant an order for a home visit. **See** 55 Pa. Code § 3490.232; **In re Pet. to Compel**, 875 A.2d at 374, 380. Accordingly, we affirm.

Orders affirmed.

J.A21007/15

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 8/14/2015