

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
JUVENILE

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| IN THE INTEREST OF | : | |
| Ma.W. | : | No. 25 DP 14 |
| | : | |
| IN THE INTEREST OF | : | |
| C.W. | : | No. 27 DP 14 |
| | : | |
| IN THE INTEREST OF | : | |
| M.W. | : | No. 28 DP 14 |

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|--------------------------|--|
| Kim M. Christie, Esquire | Counsel for Carbon County Children & Youth |
| Mark E. Combi, Esquire | Guardian ad Litem for Ma.W., C.W., & M.W. |
| Robert J. Magee, Esquire | Counsel for J.K., mother of Ma.W., C.W., & M.W. |

MEMORANDUM OPINION

Matika, J. - April 13, 2015

On March 5, 2015, this Court issued an Order denying the Carbon County Office of Children and Youth Services' Petitions for Dependency after conducting a hearing¹ thereon. However, this Court also stated in the order that there was sufficient evidence presented for an order directing that the Carbon County Office of Children and Youth Services be permitted to enter the home of the subject children. It is this part of the Order that

¹ Separate petitions were filed involving four (4) of the W. children. However, the oldest child (B.W.) has turned 18 and was no longer subject to a

J.K., the natural mother of the minors, appeals. This memorandum opinion is offered to the Superior Court, in accordance with Pennsylvania Rule of Appellate Procedure 1925(a), to expand upon the brief ruling and rationale set forth in the March 5, 2015 order. Respectively, this Court recommends to the Honorable Superior Court to dismiss Defendant's appeal accordingly.

FACTUAL AND PRODECURAL BACKGROUND

The Carbon County Office of Children and Youth Services received a report on November 13, 2014 which expressed concerns about the conditions of the home where the children were living. A caseworker for Children and Youth spoke to each of the children at their respective schools, who gave varying accounts of the state of the house, ranging from the home being "a little dirty"² to "dirty"³ to "sort of dirty" with a "boarded up window in the front"⁴ of the home. On December 5, 2014, the caseworker went to the family's home to investigate, where she reported that the outside area of the home was "cluttered with random

Children and Youth action. The hearings on the other three (3) children were consolidated.

² Dependency Petition of M.W.

³ Dependency Petition of C.W.

⁴ Dependency Petition of Ma.W.

[FM-18-15]

objects" and there was a boarded up hole where a window used to be. The caseworker approached J.W., the natural father of the children, informed him of the allegations regarding the cleanliness of the home and requested permission to check the inside of the house. J.W. refused and asked the caseworker to leave.

On December 8, 2014, the caseworker called the home phone, which was answered by J.K. The caseworker explained that she had visited the home and was denied entry. The caseworker explained the allegations to J.K., to which J.K. responded that Children and Youth had no business being involved in the matter. The caseworker asked for permission to check the home, which J.K. denied before hanging up on the caseworker. On December 22, 2014, the caseworker went to the home again to attempt to investigate the inside of the residence. J.W. once again refused to allow the caseworker into the home, at which time he was informed that the agency would be filing petitions for dependency if the family continued to refuse to cooperate. The petitions were filed on December 24, 2014.⁵

⁵ The caseworker also testified that in early January, she contacted the Palmerton School District to speak to the children again, as she had previously spoken to all three (3) of them in a school setting. The

After a continuance for the natural parents to obtain counsel, a hearing was held on January 30, 2015. After taking the matter under advisement and allowing all parties to file briefs⁶ regarding the case, this Court issued an order on March 5, 2015 denying the Petition for Dependency, but finding there was probable cause to issue an order that Children and Youth "shall be permitted"⁷ to enter the home of the subject children to conduct the necessary investigation.

On March 13, 2015, J.K. filed an appeal to Superior Court. Thereafter, this Court directed that she, pursuant to Pennsylvania Rule of Appellate Procedure 1925(b) file a Concise Statement of Matters Complained of on Appeal, which was also timely filed. In this statement, Appellant J.K. raised two issues:

- 1) The Trial Court erred in determining that probable cause was shown so as to justify the intrusion into the home of J.K. by members of the Carbon County Office of Children and Youth to complete an assessment, when the only evidence presented was some pictures of a cluttered, non-dangerous yard, and a statement from some unidentified informant whose reliability is completely unknown that the house was

caseworker was informed that the children had all been withdrawn from the Palmerton School District in late December or early January.

⁶ All counsel submitted "letter briefs" to chambers of the undersigned, none of which were lodged in this matter, and therefore, do not appear in the record.

⁷ Order of Court, March 5, 2015.

[FM-18-15]

"messy", that there was a boarded up window, and that there "might have been a hole[]" in some unidentified wall, and that the children when interviewed, appeared healthy, unharmed and clean; and

- 2) The Trial Court further erred, when, in the aftermath of dismissing the Petition for Dependency (the only matter then before the Court), the Court went on *sua sponte*, to Order J.K. to allow the Agency to enter her house and conduct an inspection, even though there was no surviving petition before the Court requesting any such relief.

The Court will address these issues accordingly.

DISCUSSION

Once a county agency receives a report for General Protective Services ("GPS"), the Child Protective Services Law ("CPSL")⁸ and Pennsylvania Administrative Code⁹ have several requirements that must be fulfilled. For example, the county agency has sixty (60) days within which to complete an assessment.¹⁰ In the course of such an assessment, "[t]he county agency shall see the child and visit the child's home during the assessment period."¹¹ Another section mandates that "[w]hen conducting its investigation, the county agency shall visit the child's home, at least once during the investigation period.

⁸ 23 Pa. C.S.A. §§ 6301 et seq.

⁹ 55 Pa. Code § 3490.232.

¹⁰ *Id.* at § 3490.232(e).

¹¹ *Id.* at § 3490.232(f).

The home visits shall occur as often as necessary to complete the investigation and to assure the safety of the child."¹² The law also permits the county agency to make unannounced home visits.¹³ Finally:

[t]he 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 the 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 parents.¹⁴

However, the statute does not elaborate on what "appropriate court proceedings" are when an assessment, a home visit, or services are refused by the parents. Further, another portion of the PA Administrative Code requires the county agency to petition the court if the "subject of the report of suspected child abuse refuses to cooperate with the county agency in an investigation, and the county is unable to determine whether the child is at risk."¹⁵ Accordingly, it would appear to be the responsibility of the county agency, such as the Carbon County Office of Children and Youth Services, to determine what the

¹² 55 Pa. Code § 3490.55(g).

¹³ *Id.* at § 3490.233(h).

¹⁴ *Id.* at § 3490.232(j).

¹⁵ 55 Pa. Code § 3490.73.

proper petitions are and file them before the court hearing the matter.

Pennsylvania case law is surprisingly light in matters where a county children and youth agency has been denied entry into a home. The one case this Court found to be guiding on this issue was *In re: Petition to Compel Cooperation with Child Abuse Investigation*. 875 A.2d 365 (Pa. Super. Ct. 2005). In that case, the Susquehanna County Court of Common Pleas was presented with a "petition to compel cooperation with child abuse" based upon the refusal of alleged abusers to allow the Susquehanna County Services for Children and Youth to investigate their home based on a referral from Child Line. *Id.* at 368. The Superior Court found that the only issue before the trial court in that matter was "whether appellants were required to submit to a home visit as part of C&Y's investigation into the child abuse allegations." *Id.* at 369.

The Superior Court rejected the argument of Susquehanna County Services for Children and Youth that because the applicable language of the pertinent Pennsylvania laws required a home visit, the rights of the alleged abusers under the Fourth Amendment and/or Article I, Section 8 of Pennsylvania's

constitution do not apply. *Id.* at 374. In reaching this determination, the Superior Court reviewed federal cases from both the Third Circuit Court of Appeals and the U.S. District Court for the Northern District of Ohio. *See Good vs. Dauphin Cty. County Soc. Servs. for Children and Youth*, 891 F.2d 1087 (3d Cir. 1989); *See also Walsh v. Erie County Dept. of Job and Family Servs.*, 240 F.Supp.2d 731 (N.D. Ohio 2003). The Superior Court wrote that although these were not binding authority, "we agree with the federal courts' analysis . . . and hold that the Fourth Amendment and Article I, Section 8 apply to the CPSL and the regulations written to implement it." *Petition to Compel*, *supra*, at 376-77.

Therefore, "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.*" *Id.* at 377 (emphasis added). In that case before the Superior Court, the Petition alleged, *inter alia*, that the referral was made for medical neglect, the parents had refused to allow the caseworker into the home, and the caseworker was required to complete a home visit. *Id.* at 378. The Superior Court found that the petition

did not acknowledge sufficient facts to merit the issuance of a search warrant. *Id.* The court went on to say that after filing that petition, the county agency had several options "including further investigation to collect additional facts to support the issuance of a search warrant for appellants' home, and/or filing a formal petition for dependency." *Id.* at 379.

I. Probable Cause

When an appellant challenges the trial court's determination in a General Protective Services matter such as this, the Superior Court has stated:

[t]he standard of review which this Court employs in dependency cases is broad. However, the scope of our review is limited in a fundamental manner by our inability to nullify the fact-finding of the lower court. We accord great weight to this function of the hearing judge because he is in the position to observe and rule upon the credibility of the witnesses and the parties who appear before him. Relying on this unique posture, we will not overrule his findings if they are supported by competent evidence."

In re M.K., 636 A.2d 198, 201 (Pa. Super. Ct. 1994). See also *In Interest of J.M.*, 652 A.2d 877, 880-81 (Pa. Super. Ct. 1995).

In the instant matter, the dependency petitions were filed based upon the Carbon County Office of Children and Youth Services receiving an anonymous report regarding the cleanliness and conditions of the house in which the children were residing,

[FM-18-15]

along with corroborating statements from the children. As stated above, the Superior Court has held that the petition must aver that evidence of the issue the report was based on will be found in the home. Here, the issue is the condition of the home itself.

As stated above, the petitions filed by the Carbon County Office of Children and Youth Services contain statements from each of the children regarding the home being "dirty" or some comparable language. As part of the investigation, a caseworker went to inspect the home and found the outside to be "cluttered", and that the home did in fact have a boarded up window as previously indicated. After being denied entry to the home by the father in person on that occasion and by the mother via telephone, the caseworker went back to the home to again attempt to conduct the in-home assessment, and was again refused by the father.

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 the children 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".¹⁶ These photos were admitted as an exhibit, without objection. The caseworker also testified that the children have all been withdrawn from the Palmerton School District¹⁷, meaning there is now no way for the Carbon County Office of Children and Youth Services to follow-up with speaking to the children regarding the interior of the home.

This Court notes that in the *Petition to Compel* case, the Superior Court rejected the argument made by Susquehanna County Services for Children and Youth that there was additional information provided to the Superior Court in a brief that was sufficient for a search warrant, saying that the petition itself must allege those facts. *Petition to Compel, supra*, at 378. Here, any additional information was provided by way of testimony and evidence at the time of the hearing on the matter when this Court was making its determinations on the matter. Thus, this information is distinguishable from the information

¹⁶ N.T. 1/30/15 P. 29-34.

¹⁷ In this Court's opinion, the fact that the children were removed from the Palmerton School District at a time when the Carbon County Office of Children and Youth Services wanted to question them about the home suggests "something to hide" relating to the condition of the home.

provided in the brief submitted to the Superior Court in the *Petition to Compel* case.

In the alternative, if the probable cause can *only* be found based on the facts averred in the petitions, this Court still finds that there was sufficient information for probable cause to exist. The report to the Carbon County Office of Children and Youth Services 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 the children. The petitions also identified the unwillingness of the natural parents to allow the Carbon County Office of Children and Youth Services into the home. This Court finds that this information, in and of itself, would be sufficient to justify the probable cause necessary for an order permitting the Carbon County Office of Children and Youth Services to enter the home of the W's to conduct their investigation as required by the CPSL.

II. Appellant's Claim of a "Sua Sponte" Act by this Court

Again, while there does not appear to be case law directly on point relating to this matter, there are similar cases this Court can draw from in this matter. In *Brooks-Gall v. Gall*, the Superior Court, when dealing with a trial court *sua sponte* removing children from their parents' custody following a Protection from Abuse hearing, stated "we are instructed by our decisions in cases where we have reversed trial court orders in which a court has *sua sponte* adjudicated children dependent or altered custody orders without providing the necessary hearings or following the required procedures." 840 A.2d 993, 996 (Pa. Super. Ct. 2003) (emphasis added).

In *Brooks-Gall* and in each of the three (3) cases cited by the Superior Court in support of their decisions, the issue the court found troubling was that the parties "were not presented with notice or an opportunity to present testimony or argue against the children's placement into state custody." *Id.* at 997. This resulted, in the Superior Court's opinion, in a violation of the parents' due process rights. *Id.*

Turning to the matter *sub judice*, this Court finds that it can draw from the Superior Court's opinions in supporting the

ruling that is now up for appeal. Just as in *Petition to Compel*, the Carbon County Office of Children and Youth Services received a report of potential abuse or neglect, attempted to conduct a home visit, and were refused. Similarly, petitions were brought before this Court to compel the homeowners to permit Children and Youth into the home.¹⁸

Further, this Court feels this instant matter can be differentiated from cases like *Brooks-Gall*. In *Brooks-Gall*, for example, the parents went before the trial court for a PFA, and the judge determined the children were being used as pawns in a custody matter. Here, Appellant was presented with notice and

¹⁸ As stated above, the ambiguity in the statutory language as to what constitutes an "appropriate court proceeding" is part of the issue this Court had to decide. Although the petitions filed were formally called "Petitions for Dependency", the testimony at the hearing on these petitions show that the intended goal of the Carbon County Office of Children and Youth Services was merely for this Court to order Appellant to cooperate with the agency. At one point, counsel for Children and Youth stated "We are just asking for cooperation from the parents. We are not asking to remove these kids from the home. We wouldn't have even filed the dependency petition if the parents were cooperative in the first place. . . ." (N.T. 1/30/15 P. 63). Counsel later reiterated their intent in filing the petition, saying "[s]o the agency is just looking for cooperation from the parents. I believe in other cases like this, Your Honor has continued the matter, ordered the parents to cooperate, and then we can dismiss the dependency at the end of it. Again, we are just looking for cooperation so we can close this out." *Id.* at 64. When further questioned by this Court as to whether a formal petition for dependency was the proper vehicle for this request, counsel for Children and Youth stated "the way the regulations are set up, I believe this is our avenue or means of relief to complete our investigation. If we are unable to get into the home to complete the investigation, that would mean we would have safety concerns, meaning that we would need to file a dependency

opportunity to present testimony, with regards to both dependency and the Carbon County Office of Children and Youth Services' attempts to enter the home. The box checked on the Petitions for Dependency reads in part "a determination that there is a lack of proper parental care may be based upon evidence of conduct by the parent, guardian, or custodian *that places the health, safety, or welfare at risk. . . .*"¹⁹ The reasons for the petitions being filed, as listed above, specifically put Appellant on notice that the Carbon County Office of Children and Youth Services' main concern was with the condition of the home, along with the caseworkers two (2) attempts to visit the home and her phone call where she spoke with the mother and informed the parents of both the Office's need to conduct such an investigation, and their reason for filing these Petitions for Dependency.

This was not, in this Court's opinion, a matter so separate from the dependency that Appellant did not have notice or opportunity to argue against such an order. The Petitions for Dependency, along with the testimony of the caseworker, show

petition in order to remedy those concerns. That is my understanding of the way that this works and that is why we filed the petitions." *Id.* at 67.

¹⁹ Petitions for Dependency (P. 3) (emphasis added).

that Appellant was clearly aware of what the Carbon County Office of Children and Youth Services was attempting to do when they filed these actions. The Carbon County Office of Children and Youth Services not being able to investigate the conditions of the home, when the alleged conditions of the home may form the basis for a possible Adjudication of Dependency, is contrary to the intent and language of the CPSL. Therefore, in looking at the substance of the Petitions for Dependency, this Court feels that while there may not have been sufficient evidence to adjudicate the children dependent, ordering that the Carbon County Office of Children and Youth Services be permitted to enter the home to complete their investigation, based on sufficient probable cause, is not an erroneous, *sua sponte*, action. The ultimate goal sought by the Carbon County Office of Children and Youth Services was the same as that issued by this Court, the goal of which was properly noticed to Appellant, who had the opportunity to defend it.

CONCLUSION

Based upon the foregoing, this Court respectfully recommends that the March 5, 2015 Orders directing that the Carbon County Office of Children and Youth Services be permitted to enter Appellant's home be affirmed.

BY THE COURT:


Joseph J. Matika, J.

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