

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

J. C.,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1581 C.D. 2009
	:	
Slippery Rock Area School District,	:	Submitted: December 4, 2009
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: March 25, 2010

In this second appeal involving the same family,¹ J.C. (Mother), the natural mother of A.C. (Daughter), asks this Court to review an order of a Special Education Hearing Officer dismissing her due process complaint for lack of standing. Mother filed the complaint seeking an order requiring the Slippery Rock Area School District (District) to convene a Gifted Individualized Education Plan (GIEP) meeting for Daughter. Mother challenges the Hearing Officer’s determination that she lacked standing to file the due process complaint where the Butler County Court of Common Pleas (trial court) temporarily transferred legal and physical custody of Daughter to the Butler County Children and Youth Services (CYS). Upon review, we reverse the Hearing Officer’s dismissal of Mother’s due process complaint for lack of standing and remand for further proceedings consistent with this opinion.

¹ See J.C. v. Dep’t of Pub. Welfare, 980 A.2d 743 (Pa. Cmwlth. 2009) (denying appeal from refusal to expunge “founded” report of child abuse).

In March, 2006, a juvenile court master determined Daughter to be a dependent child and awarded temporary legal and physical custody to CYS. Shortly thereafter, the trial court adopted the findings and recommendations of the juvenile court master. Accordingly, CYS placed Daughter with foster parents. Daughter resides with her foster parents within the boundaries of the District.

In April, 2007, the District informed Mother's counsel that Mother behaved inappropriately towards the District's personnel and that if Mother "wishes to have a GIEP meeting to review her daughter's educational program, she can put her request in writing and the [District] will timely schedule the meeting." Certified Record (C.R.) at Item 3, Ex. C.

Shortly thereafter, the trial court conducted a permanency review hearing under the Juvenile Act, 42 Pa. C.S. §6351(e). The trial court concluded:

[This court] is understanding of [CYS's] concerns regarding the child's well-being and [J.C's] pressure on the [District] to involve herself in the educational process; however, [the court] feels it is not authorized to intervene when a separate legal process is available to the [District] should they feel [MOTHER] is improperly involved in the educational process. Therefore, the [court] declines to order [J.C] to cease and desist her involvement in the educational process.

C.R. at Item 3, Ex. B. Significantly, neither the District nor Daughter's guardian ad litem took further action regarding Mother's participation in the GIEP, nor did they appeal the trial court's order.

Three months later, in July, 2007, Mother pled no contest to the aggravated assault of Daughter. Mother was sentenced to 15 to 30 months' incarceration.

A year later, the District asked imprisoned Mother to agree to an educational surrogate to approve the GIEP for the 2008-2009 school year. C.R. at Item 3, Ex. D. Mother, however, refused to agree, and the District did not petition the trial court to appoint a surrogate.

In September, 2008, Mother filed a Motion for Access with the trial court seeking to have a private school psychologist evaluate and observe Daughter. The District answered the Motion and raised a new matter concerning Mother's involvement in the GIEP.² At the hearing on the Motion for Access, another judge reasoned that since the court awarded temporary legal custody to CYS, the agency has the right and duty to provide for Daughter's education pursuant to 42 Pa. C.S. §6357 (relating to rights and duties of legal custodians). Thus, the trial court denied the motion. C.R. at Item 4, App. 6. Mother appealed the trial court order denying her motion to the Superior Court, and the appeal remains pending.

In April, 2009, Mother, through counsel, requested the District schedule a GIEP meeting. The District, however, refused to schedule the meeting. As a result, Mother filed a due process complaint with the Department of

² The certified record does not include J.C.'s motion or the District's answer. The parties referenced these filings before the Hearing Officer. Therefore, we cannot discern whether the District raised the issue of standing in its answer to J.C.'s Motion for Access.

Education's Office of Dispute Resolution requesting a hearing officer to decide the matter. An issue arose regarding Mother's standing to file the due process complaint. Thus, the Hearing Officer directed both parties to file briefs in support of their positions. Subsequently, the Hearing Officer dismissed Mother's due process complaint for lack of standing. This appeal followed.³

On appeal, Mother argues the Hearing Officer erred in concluding that she lacked standing to file the due process complaint. In particular, Mother submits she has standing to proceed where: (1) she has a direct, immediate, and substantial interest in her child's education; (2) the Family Educational Rights and Privacy Act⁴ specifically confers standing upon her; (3) Chapter 16 of Title 22 of the Pennsylvania Code, 22 Pa. Code §§16.1-16.65, also confers standing on parents to participate in their child's GIEP; and, (4) the award of temporary legal custody pursuant to the Juvenile Act, 42 Pa. C.S. §§6301-6365, is subject to the remaining rights and duties of the natural parents of the child and, thus, she is permitted to participate in Daughter's educational program.

³ Our review of an order of a special education hearing officer is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether the necessary findings of fact are supported by substantial evidence. Bethlehem Area Sch. Dist. v. Zhou, 976 A.2d 1284 (Pa. Cmwlth. 2009).

Prior to October, 2008, the Department of Education's regulations provided that appeals from a hearing officer proceed to "a panel of three appellate hearing officers." See former 22 Pa. Code §16.63(l). The Department's regulations now provide appeals from orders of a hearing officer proceed to "a court of competent jurisdiction." See 22 Pa. Code §16.63(l).

⁴ 20 U.S.C. §1232g. The Family Educational Rights and Privacy Act permits parents to protect the privacy of their child's educational records.

The District's main contention is that CYS, as Daughter's temporary legal custodian, has the exclusive authority to make educational decisions for Daughter. Section 6357 of the Juvenile Act provides "[a] custodian to whom legal custody has been given by the court ... has the right to determine the nature of the care and treatment of the child, including ... education" 42 Pa. C.S. §6357. As a result of this statutory language, the District contends Mother lacked standing to file the due process complaint.

At the outset, we note that the certified record contains references to a decision by the juvenile court section of the trial court to change the goal for the family from reunification to termination of parental rights and adoption. In addition, there are references to a pending petition for termination of parental rights. The current status of these matters is not disclosed in the record before us, and we therefore presume the current status was not known to Hearing Officer. Nevertheless, we are constrained to decide this case based on the record before us.

In establishing standing, a party must either show standing is conferred by statute or that she has somehow been aggrieved by the matter she seeks to challenge. In re Hickson, 573 Pa. 127, 821 A.2d 1238 (2003) (citations and footnotes omitted).

A litigant can establish that [she] has been "aggrieved" if [she] can show that [she] has a substantial, direct and immediate interest in the outcome of the litigation in order to be deemed to have standing. A 'substantial' interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. A 'direct' interest

requires a showing that the matter complained of caused harm to the party's interest. An 'immediate' interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it." Yet, if that person "is not adversely affected in any way by the matter [she] seeks to challenge, [she] is not 'aggrieved thereby and has no standing to obtain a judicial resolution of his challenge. In particular, it is not sufficient for the person claiming to be 'aggrieved' to assert the common interest of all citizens in procuring obedience to the law."

Id. at 136, 821 A.2d at 1243 (citations omitted).

We conclude that, based on the current record, the Hearing Officer erred in determining Mother lacks standing to file a due process complaint for three reasons.

First, a parent always has sufficient interest and therefore standing to litigate issues concerning her child's education despite the temporary transfer of her child's legal custody. See O'Grady v. Centennial Sch. Dist., 401 A.2d 1388 (Pa. Cmwlth. 1979). The trial court temporarily transferred Daughter's legal custody to CYS. We note a temporary transfer of legal custody is different from a permanent transfer of legal custody and wholly different from the involuntary termination of parental rights. Compare 42 Pa. C.S. §6351(a)(2.1) (relating to a permanent transfer of legal custody), and 42 Pa. C.S. §6351(a)(2) (relating to a temporary transfer of legal custody), with 23 Pa. C.S. §2511 (relating to grounds for involuntary termination of parental rights).

Indeed, unlike the temporary transfer of legal custody, the severance of parental rights is final and, thus, courts will not terminate such rights unless the record clearly and convincingly warrants it. See In re LSG, 767 A.2d 587, 590 (Pa. Super. 2001) (in a proceeding to involuntarily terminate parental rights, the burden of proof is upon the party seeking termination to establish by clear and convincing evidence the existence of grounds for doing so); 23 Pa. C.S. §2521(a) (a decree terminating all rights of a parent or a decree terminating all rights and duties of a parent entered by a court of competent jurisdiction shall extinguish the power or right of the parent to object to or receive notice of adoption proceedings).

However, the final objective of a temporary transfer of legal custody is to eventually reunify the family unit. As our Superior Court explained:

[T]he loss of custody does not eradicate [a natural parent's] legislatively protected interest in [her child]. Consistent with its declared purpose to maintain the family, the Juvenile Act permits legal custody of a dependent child to be transferred only temporarily from the child's natural parents to a state agency and thereby safeguards continued parental interest in the child as a [prelude] to the eventual reunification of the family.

In the Interest of Rhine, 456 A.2d 608, 612 (Pa. Super. 1983) (emphasis added). Thus, when the transfer of a child's legal custody is temporary, the transfer does not entirely sever the natural parent's rights and duties. Id. Accordingly, the Juvenile Act protects the interest of the natural parent because the Act assumes the child will eventually return to the natural parent's custody. Id.

Furthermore, Chapter 16 of Title 22 of the Pennsylvania Code, 22 Pa. Code §§16.1-16.65, specifically preserves a parent's interest in her child's GIEP. In particular, Section 16.63(a) of the Department of Education's regulations provides:

Parents may request in writing an impartial due process hearing concerning the identification, evaluation or educational placement of, or the provision of a gifted education to, a student who is gifted or who is thought to be gifted if the parents disagree with the school district's identification, evaluation or placement of, or the provision of a gifted education to the student.

22 Pa. Code §16.63(a) (emphasis added).

Moreover, this Court's holding in O'Grady, provides further support for Mother's standing to file the due process complaint. In O'Grady, a school district and the parents of a special educational student disagreed over the education program. The parties' delay in litigating the issue resulted in a denial of the child's education. As a result, the parents petitioned the juvenile court to declare their child dependent and to temporarily transfer legal custody to an educational facility. The court granted the parents' petition. Thereafter, the Secretary of Education concluded the child's parents no longer had standing to contest the school district's recommended educational assignment.

On appeal, this Court reversed. We held the parents had "sufficient interest and therefore standing to litigate the subject of the proper discharge by his [s]chool [d]istrict of its statutory duty to provide him with education despite the fact that the child [was] temporarily ... committed to the custody of an institution."

Id. at 1390. Thus, O’Grady stands for the proposition that natural parents have standing to file a complaint regarding their child’s education despite the temporary transfer of legal custody.

Here, similar to O’Grady, the trial court temporarily transferred legal custody of Daughter to CYS. As a result, Mother retained her parental interests. In the Interest of Rhine. Mother had sufficient interest and therefore standing to file the due process complaint. O’Grady.

In light of the above, the District’s argument that the temporary legal custodian has the exclusive right and duty to provide for Daughter’s education is unpersuasive. Thus, we conclude the Hearing Officer erred in dismissing Mother’s due process complaint for lack of standing.

Accordingly, we reverse the Hearing Officer’s order and remand this matter with instructions that the Hearing Officer proceed in accordance with this opinion.⁵

ROBERT SIMPSON, Judge

⁵ Since we reverse the Hearing Officer’s order, we need not consider J.C.’s remaining arguments.

matter pending in such other court involving the same or related questions of fact, law or discretion.” Pa.R.A.P. 752(a). I believe that, in this case, the circumstances surrounding A.C.’s dependency adjudication should be taken into consideration in determining whether J.C. has standing to bring an IEP due process complaint. I also believe that the potential termination of J.C.’s parental rights is of great importance to this case.

The appeal pending before the Superior Court, In re A.C., deals with a Permanency Review Order in which the Court of Common Pleas of Butler County ordered that adoption is a concurrent placement goal for A.C. and that preservation of the relationship between A.C. and J.C. is no longer a goal. In addition, this order states that J.C. has misused the litigative process to inappropriately attempt to gain access to and information about A.C. I believe both of these cases involve common questions of fact and law involving J.C.’s conduct towards and interest in A.C.

Transferring the current case to the Superior Court for consideration, and possibly consolidation, with the appeal of the Permanency Review Order would allow that court to consider these factual and legal issues in a fuller context in determining whether J.C. should be allowed standing to bring her IEP due process complaint.

RENÉE COHN JUBELIRER, Judge