

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lori J. Barr, :
Petitioner :
v. :
Department of Public Welfare, : No. 531 C.D. 2010
Respondent : Submitted: October 29, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: December 10, 2010

Lori Barr (Barr) petitions for review of the order of the Department of Public Welfare (DPW) that denied her request for reconsideration of the order of the Department of Public Welfare, Bureau of Hearings and Appeals (BHA).

By letter dated April 15, 2009, the Berks County Children & Youth Services (CYS) informed Randy Barr and Barr:

Berks County Children and Youth Services has completed an assessment of the referral regarding Dream and Matthew [Barr's children] dated 3/6/09. The agency has determined that there is a need for continued agency services, due to Mental Health, Parenting Education, and Domestic Violence. Your case WILL be open on General Protective Services.^[1]

¹ "General Protective Services" are defined in Section 6303 of the Child Protective Services Law (Law), 23 Pa.C.S. §6303(a), as "Those services and activities provided by each county agency for nonabuse cases requiring protective services, as defined by the Department of Public Welfare in regulations." The purpose of general protective services is to protect the rights
(Footnote continued on next page...)

If you are the custodial parent/person primarily responsible for the care of the child, you have a right to appeal the agency's decision to **accept** your family for services. . . . (Emphasis in original).

Letter from Berks County Children & Youth Services, April 15, 2009, at 1.²

By letter dated May 29, 2009, Barr appealed the CYS determination. She asserted that her children were not at risk for abuse and neglect. Barr asserted that she was not mentally ill, that she was a good parent, and that she had only been a victim of domestic violence twice: once ten years before and then again in January 2008.

By letter dated June 10, 2009, Wendy K. Myers, Director of In-Home Services for CYS informed Barr that her appeal was denied. By letter dated July 19, 2009, Barr requested a hearing with BHA because she believed there was no need for continued agency services.

BHA scheduled a pre-hearing telephone conference for August 27, 2009. Barr had a second conference hearing on a Family Service Plan scheduled for the same date.³ On August 28, 2009, BHA scheduled the hearing for September 29, 2009. CYS moved to continue the hearing. On September 28,

(continued...)

and welfare of children, and to assist parents in recognizing and remedying harmful conditions and in fulfilling parental duties more adequately. Section 6374 of the Law, 23 Pa.C.S. §6374.

² Barr submitted a reproduced record, but the reproduced record does not contain page numbers.

³ BHA dismissed this appeal, and this matter is not before this Court.

2009, BHA granted the motion for continuance and cancelled the scheduled hearing.

On October 9, 2009, CYS moved to dismiss because it had closed the case and rendered Barr's appeal moot. Barr opposed the motion. On October 16, 2009, Barr moved to dismiss on the basis that BHA erred when it granted the continuance because BHA incorrectly listed the Family Service Plan with the docket number for the General Protective Services and because Barr did not have an opportunity to contest the continuance.

The Administrative Law Judge for BHA (ALJ) reasoned:

Appellant [Barr] filed the instant appeal in an effort to close the general protective services case on her family. Subsequent to the filing of the appeal, C&Y did close the general protective services case. Therefore, the appeal is moot.

On October 19, 2009, Appellant [Barr] also filed a motion to dismiss. Apparently, Appellant [Barr] wants an order granting her appeal because of alleged procedural errors. In light of C&Y's motion to dismiss as moot, I decline to make a recommendation on Appellant's [Barr] motion because it is unnecessary.

Pursuant to 1 Pa.Code §35.187, I recommend that the appeal of Appellant [Barr] be dismissed as moot.

Adjudication, November 19, 2009, at 2.

On November 23, 2009, BHA accepted and adopted the ALJ's recommendation in its entirety. On December 9, 2009, Barr sought reconsideration of the BHA order because she believed that her family was

erroneously accepted into general protective services in the first place. By order dated February 2, 2010, the Secretary of DPW denied the request for reconsideration.

Barr contends that BHA erred when it granted a continuance for the scheduled hearing because it misnamed it the Family Service Plan, rather than the General Protective Services case, that BHA did not reschedule the hearing in a timely manner, that the ALJ erred when it declined to make a recommendation on her motion to dismiss, that the ALJ erred when he recommended that the appeal be dismissed as moot, and that BHA violated Barr's right to due process and a fair hearing pursuant to 55 Pa. Code §3490.241.⁴

With respect to whether BHA continued the hearing under the wrong name, this Court finds any error was harmless. The appeal was continued at the correct docket number, and Barr has not contended she was prejudiced in any way. With respect to whether the BHA erred when it did not reschedule the hearing in a timely manner, CYS moved to dismiss twelve days after the scheduled hearing. The ALJ recommended that the motion to dismiss be granted forty-one days after that. Once again, Barr does not indicate what prejudice, if any, she suffered because of BHA's actions.

⁴ This Court's review of a denial of a request for reconsideration is limited to a determination of whether there has been an abuse of discretion. Modzelewski v. Department of Public Welfare, 531 A.2d 585 (Pa. Cmwlth. 1987).

With respect to whether Barr's motion to dismiss should have been granted, Barr lists her reasons why she believes her motion should have been granted. However, Barr does not appear to comprehend the effect of the grant of CYS's motion to dismiss which resulted in the same outcome that Barr desired. By granting CYS's motion, BHA ended the controversy. The result was the same as if it had granted Barr's motion.

Similarly, this Court finds no error with the determination that Barr's appeal was moot. The law is well settled that a case will be dismissed as moot "unless an actual case or controversy exists at all stages of the judicial or administrative process." Musheno v. Department of Pub. Welfare, 829 A.2d 1228, 1231 (Pa. Cmwlth. 2003) (citing Faust v. Cairns, 242 Pa. 15, 88 A. 786 (1913)). In In re D.A., 801 A.2d 614, 616 (Pa. Super. 2002), our Pennsylvania Superior Court stated:

An issue can become moot during the pendency of an appeal due to an intervening change in the facts of the case or due to an intervening change in the applicable law. In that case, an opinion of this Court is rendered advisory in nature. An issue before a court is moot if in ruling upon the issue the court cannot enter an order that has any legal force or effect. (Quotations and citations omitted).

A case becomes moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." U.S. Parole Commission v. Geraghty, 445 U.S. 388, 396 (1980) (citation omitted). Cases presenting mootness problems are those that involve litigants who clearly had standing to sue at the outset of the litigation. Then during the course of litigation,

changes in the facts or in the law allegedly deprive the litigant of the necessary stake in the outcome. Pap's A.M. v. City of Erie, 571 Pa. 375, 812 A.2d 591 (2002).

On rare occasions exceptions to this principle are made where the case involves issues important to the public interest, the conduct complained of is capable of repetition yet likely to evade review or a party will suffer some detriment without the court's decision. Strax v. Department of Transportation, Bureau of Driver Licensing, 588 A.2d 87 (Pa. Cmwlth. 1991), aff'd per curiam, 530 Pa. 203, 607 A.2d 1075 (1992).

Here, there is no question that once the general protective services case was closed, Barr's appeal was moot.

Barr also asserts that BHA failed to provide her with a fair hearing. Barr appealed on the basis that her children did not need general protective services. During the course of the litigation, CYS closed the general protective services case. Barr could gain no better result. Barr has failed to prove that the Secretary of DPW committed an abuse of discretion in any way.

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

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ORDER

AND NOW, this 10th day of December, 2010, the order of the Secretary of the Department of Public Welfare in the above-captioned matter is affirmed.

BERNARD L. McGINLEY, Judge