

[J-16-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

CAPPY, C.J., CASTILLE, NEWMAN, SAYLOR, EAKIN, BAER, BALDWIN, JJ.

IN RE: ADOPTION OF S.E.G.	: No. 41 WAP 2005
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	: Appeal from the Order of the Superior
	: Court entered May 2, 2005 at No. 1679
	: WDA 2004, affirming the Order of the
	: Court of Common Pleas of Fayette County
	: entered August 12, 2004 at No. 826 of
APPEAL OF: L.S.G.	: 2003.
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	:
	: ARGUED: March 2, 2006

CONCURRING OPINION

MR. CHIEF JUSTICE CAPPY

DECIDED: JULY 18, 2006

I agree with the majority opinion’s conclusion that 42 Pa.C.S. §6351 does not require that a child protective agency change its goal for a dependent child from reunification to adoption prior to seeking termination of parental rights. I write separately to set forth the analysis I would apply to reach this conclusion.

In that this case presents a question of statutory construction, the Statutory Construction Act of 1972 (“Act”), 1 Pa.C.S §1501 *et seq.*, is controlling. The Act directs that “[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly.” 1 Pa.C.S. §1921(1). In this regard, the Act sets forth two instructions. First, in 1 Pa.C.S. §1921(b), the Act directs that “[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” Second, in 1 Pa.C.S. 1921(c), the Act directs that “[w]hen

the words of the statute are not explicit,” the General Assembly’s intent may be ascertained by considering specified matters, which include the occasion and necessity for statute; circumstances of its enactment; mischief it remedies; object it seeks to attain; former law; consequences of particular interpretation; contemporaneous legislative history; and legislative and administrative interpretations of statute.

In the instant case, I could not discern from the majority opinion which one of 1 Pa.C.S. §1921’s subsections is being applied to determine 23 Pa.C.S. §6351’s meaning. I conclude that the Fayette County Children and Youth Services correctly argues that the words used in subsection (f)(9), as to the matters the court is to determine at a permanency hearing, and in subsection (f.1), as to the additional determinations that are to follow, clearly state that a petition to terminate parental rights may be filed prior to a goal change to adoption. 23 Pa.C.S. §6315(f)(9),(f.1). (See Majority Opinion at 15-16). Therefore, I believe that this Court’s interpretation of 42 Pa.C.S. §6351 should focus on the statute’s language according to the rule set out in 1 Pa.C.S. §1921(b) for the construction of statutes that are clear and unambiguous. In my view, the majority opinion should not include a consideration of the statutory factors in 1 Pa.C.S. §1921(c) for the construction of statutes whose words are not explicit. See Commonwealth v. Packer, 798 A.2d 192, 196 (Pa. 2002) (observing that only when the language of the statute is ambiguous does statutory construction under 1 Pa.C.S. §1921(c) become necessary).

For this reason, I concur.