[J-92-1997]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

IN THE MATTER OF: T.R., J.M., C.R., and C.R.	:	No. 89 E.D. Appeal Docket 1996
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	:	Appeal from the Order of the Superior Court entered October 5, 1995 at No. 3682PHL94 affirming the Order of the Court of Common Pleas, Philadelphia County, Family Division, entered September 29, 1994 at Nos. 9204-6912,9405-2358, 2359 & 2360
APPEAL OF A. W.	:	
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	:	ARGUED: April 30. 1997
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OPINION ANNOUNCING THE JUDGMENT OF THE COURT

MR. CHIEF JUSTICE FLAHERTY DECIDED: June 23, 1999

May a court which is adjudicating a juvenile dependency matter order a parent to undergo psychological evaluation and disclose the results of the evaluation to interested parties?

On April 16, 1992 the Philadelphia Department of Human Services (DHS), acting on behalf of T.R., who was ten months old at the time, sought a restraining order, alleging that the child had been admitted to the hospital on two occasions in April of 1992 for eye injuries. The parents were unable to explain the injuries. Another child in the home had previous suffered similar eye injuries, resulting in his being blinded in one eye. The court

issued a restraining order and continued the temporary commitment for the child, who remained in foster care. The parents then separated.

On May 17, 1993, the court adjudicated T.R. dependent, discharged the temporary commitment, and placed the child in his mother's custody with DHS supervision. Social workers were assigned to work with the mother in an attempt to improve her ability to be a parent. At a dependency review hearing on April 19, 1994, evidence was introduced that in March of 1994 T.R. suffered a fractured rib. An examination also revealed three previously fractured ribs. Additionally, the child required hospital treatment in 1994 for back bruises. Four children were in the home, and the mother claimed that the two older boys had broken T.R.'s ribs and inflicted his back injuries. As a result of information received at this hearing the trial court ordered the mother to undergo a psychological evaluation to determine whether she was able to care for the children. The mother objected to this examination, but submitted to the evaluation in spite of her objection.

At a hearing on May 12, 1994, DHS requested a restraining order for all four children, alleging that they were at risk of harm while in the mother's care. Prior to adjudicating the request for the restraining order, the court ordered that the psychologist's report be sealed pending the receipt of memoranda of law on the question of whether the court had the power to order the psychological examination. As the hearing continued, a social worker testified that he was concerned for all four of the children in the mother's care, one of whom besides T.R. had suffered a fracture and another of whom suffered an eye injury resulting in blindness in one eye. Another social worker testified that the mother told

her that she suffered from migraine headaches. The mother had black eyes from when she blacked out and hit her head. The mother also indicated to the social worker that she was under a lot of stress. At the close of the hearing, the court issued a restraining order temporarily placing all four children in the custody of DHS pending a detention hearing.

On May 13, 1994 a detention hearing was conducted. At this hearing, a social worker testified that two children told him that the mother beat the nine year old and the five year old boys with belts, hair combs, brushes and a plunger, but that T.R., the youngest, was not beaten. Another social worker testified that she had seen black and blue marks on T.R.'s back. The mother told her T.R. had fallen. The social worker also testified that the mother would at times use "time out" as discipline for whole days. In summarizing the evidence, the court stated that the older children had beaten T.R., who had four fractures; that two of the children indicated that the mother beat them with various implements; that the mother had blackouts; that T.R. had eye injuries and that one of his siblings was blind in one eye from injuries; that T.R. had bruises to the lower back; and that the mother did not attend parenting classes. Accordingly, the court temporarily committed the children to DHS pending an adjudicatory hearing.

On July 22, 1994, the court discharged the temporary commitment on T.R. and fully recommitted him to DHS. On July 27, 1994, the court adjudicated the other three children dependent, discharged the temporary commitment, and committed them to the custody of

DHS.

On September 29, 1994, the trial court ruled that it had the power to compel a psychological examination of the mother and to release the results of the examination to the parties in order to effect the proper placement of the child and to keep families together. However, at the request of counsel, the court stayed its order for thirty days to allow the mother to appeal the order of a psychological examination.

The mother appealed to Superior Court, which affirmed. Superior Court held that courts must interpret the Juvenile Act broadly to provide for the care, protection, and wholesome mental and physical development of children, and to preserve the family unit where possible. It then determined that the lower court properly exercised its broad discretionary powers in ordering the psychological examination of the mother. Further, Superior Court held that "the psychological evaluation was the least restrictive means to obtain information about appellant's care-taking ability because the other methods of obtaining such information were either limited or failed to provide the necessary information." Slip Op. at 17. It also held that "there was no alternative reasonable method of lesser intrusion than the release of appellant's evaluation to the parties because the information obtained from the parenting and disciplinary strategy sessions was inadequate." Slip Op. at 19. The Superior Court concluded that there was no violation of Article 1 § 1 of the Pennsylvania Constitution "because the state's compelling interest of

protecting T.R.'s future well-being and familial reunification outweighed appellant's privacy intrusion." Slip Op. at 20. Thus, Superior Court concluded that the results of the psychological examination were to be released to the parties and that this did not violate the mother's constitutional right to privacy because the information was necessary to carry out the purposes of the act.

The purposes of the Juvenile Act are set out in 42 Pa. C.S. §6301(b), which provides in pertinent part:

> (1) To preserve the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of the chapter.
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> * * *
>
> (3) To achieve the foregoing purposes in a family environment whenever possible, separating the child from parents only when necessary for his welfare or in the interest of public safety.

The Juvenile Act concerns proceedings in which a child is alleged to be delinquent or dependent. 42 Pa.C.S. §6303(a)(1). A dependent child, for purposes of this appeal, is defined by the act as a child who "is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals." 42 Pa. C.S. §6302.

All four children in this case were adjudicated dependent and this appeal arises only from the trial court's collateral orders as to disposition. Section 6351 of the act concerns disposition:

> (a) General rule.--If the child is found to be a dependent child the court may make any of the following orders of disposition best suited to the protection and physical, mental, and moral welfare of the child:
>
> > (1) Permit the child to remain with his parents, guardian, or other custodian, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child.
> >
> > (2) Subject to conditions and limitations as the court prescribes transfer temporary legal custody to any of the following:
> >
> > > (i) Any individual resident within or without this Commonwealth who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child.
> > >
> > > (ii) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child.
> > >
> > > (iii) A public agency authorized by law to receive and provide care for the child.

Section 6339(a) permits the court to require social studies and reports to be made of the child, his family, environment and all matters relevant to disposition of the case. Section

6339(b) provides for physical and mental examinations:

> (b) Physical and mental examination and treatment.--During the pendency of any proceeding the court may order the child to be examined at a suitable place by a physician or psychologist and may also order medical or surgical treatment of a child who is suffering from a serious physical condition or illness which in the opinion of a licensed physician requires prompt treatment, even if the parent, guardian, or other custodian has not been given notice of a hearing, is not available, or without good cause informs the court of his refusal to consent to the treatment.

The mother argues that because Section 6339(b) does not provide for the mental examination of the parent, only the child, the legislative intent was not to require mental examinations of parents. Superior Court disagreed, reasoning that the purposes of the act--to provide for the care, protection, and wholesome mental and physical development of children and to preserve the family unit where possible--require that mental examinations of parents be allowed in appropriate cases, for otherwise, the trial court would be without necessary information in making its disposition determination.

In Stenger v. Lehigh Valley Hospital Center, 609 A.2d 796, 800 (Pa. 1992), this court stated that there is no longer any question that both the United States Constitution and the Pennsylvania Constitution provide protections for an individual's right of privacy. In Denoncourt v. Commonwealth State Ethics Commission, 470 A.2d 945, 948 (Pa. 1983), we quoted Mr. Justice Brandeis:

> The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure, and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the government, the right to be let alone--the most comprehensive of rights and the right most valued by civilized men.

The privacy interests which have been recognized are "the individual interest in avoiding disclosure of personal matters, and . . . the interest in independence in making certain kinds of important decisions." Stenger, 609 A.2d at 800. Related to these interests is the right to be let alone. Id. at 801. This case implicates both the mother's interest in avoiding disclosure of personal matters and her right to be let alone.

In In Re June 1979 Allegheny County Investigating Grand Jury, 415 A.2d 73,77 (Pa. 1980) we identified the source of the privacy interest in avoiding disclosure of personal matters as Article 1, Section 1 of the Pennsylvania Constitution:

> All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

We decide this case pursuant to Article 1 Section 1 of the Pennsylvania Constitution.

Although the right to privacy is of constitutional dimension, it is not unqualified. Privacy claims must be balanced against state interests. Our test of whether an individual may be compelled to disclose private matters, as we stated it in Denoncourt, is that "government's intrusion into a person's private affairs is constitutionally justified when the government interest is significant and there is no alternate reasonable method of lesser intrusiveness to accomplish the governmental purpose." 470 A.2d at 949. More recently, we have stated the test in terms of whether there is a compelling state interest. Stenger, 609 A.2d at 802. In reality, the two tests are not distinct. There must be both a compelling, i.e., "significant" state interest and no alternate reasonable method of lesser intrusiveness.

In In Re B, 394 A.2d 419 (Pa. 1978) this court addressed a problem similar to that posed by this case. The issue there was whether the trial court in the context of a disposition hearing in a juvenile delinquency proceeding could compel the release of the mother's psychiatric records in order to determine the proper placement of the juvenile. The mother's psychiatrist refused to release the mother's medical records in the absence of her consent and the lower court held the psychiatrist in contempt. We reversed, holding that the mother's right of privacy precluded the release of psychiatric records in this context. This court specifically recognized "that our holding may, in some cases, make it more difficult for the court to obtain all the information it might desire regarding members of the juvenile's family, or about the juvenile's friends, neighbors, and associates. The individual's right of privacy, however, must prevail in this situation." 394 A.2d at 426.

In In Re B and in the present case, what is at stake is access to psychiatric records. One's interest in not being forced to disclose such records is significant. The right to protect one's beliefs and thoughts from intrusion by others is, to paraphrase Mr. Justice Brandeis, one of the most comprehensive rights known to civilized men. The Supreme court of California has stated: "If there is a quintessential zone of human privacy, it is the mind. Our ability to exclude others from our mental process is intrinsic to the human personality. "Long Beach Employees Assoc. v. City of Long Beach, 41 Cal. 3d 937, 719 P.2d 660, 663 (Cal 1986)(striking as unconstitutional legislation requiring certain public employees to undergo polygraph examinations).

Set against this interest of the mother is the interest of the state in discovering enough information about the children and their parents to make intelligent decisions about the placement of the children. Superior Court's view is that "the psychological evaluation was the least restrictive means to obtain information about appellant's caretaking ability because the other methods of obtaining such information were either limited or failed to provide the necessary information." Slip Op. at 17.

The Department of Human Services, echoing the view of the Superior Court that existing information was insufficient, states:

> Both the professionals assigned to appellant's household were to learn about the family's problems and help appellant provide appropriate care to her children. Despite their insistence, appellant had not learned appropriate parenting skills or disciplinary techniques. Additionally, T.R.

> continued to be injured although services were provided to appellant's home; T.R.'s siblings also stated that they were beaten by appellant although appellant denied beating them; and, appellant said she was under stress and had no one to care for her children.
>
> Thus, means less intrusive had failed. Accordingly, there was no other means less intrusive to accomplish the governmental objectives of keeping the family together and of separating them only when necessary to protect the children than to request appellant to submit to a psychological evaluation.

Appellees' brief at 13

We disagree that means less intrusive were not available. The Department of Human Services argues -- correctly -- that there was something terribly wrong with the mother's ability to parent. The children continued to be injured even though the department had attempted to assist the mother in caring for her children. Further, the department also points out that its attempts to assist the mother "had failed." In short, even the department agrees that there is an abundance of information in the case about whether the children are being cared for properly and whether the mother is a fit parent.

The real issue in the case, then, is not so much whether the children should be removed, as whether the mother should be protected from her own assertion of a constitutional right because the assertion of that right may impede the efforts of the courts to return the children to her care. Citing the legislative goal of keeping the family together, the department would require the psychological examination.

We regard such a concern as well intentioned, but misplaced. Compelling a psychological examination in this context is nothing more or less than social engineering in derogation of constitutional rights, and where, as here, there is an abundance of information about the ability of the parent to be a parent, there is no state interest, much less a compelling state interest, in the ordering of parental psychological examinations. In fact, we find such state intervention frightening in its Orwellian aspect. It is one thing for the mother to agree to psychological evaluation and to voluntarily undergo instruction in self-improvement, but it is quite another for the state, in the exercise of paternalistic might, to order a psychological evaluation in violation of the mother's constitutional rights, presumably upon pain of imprisonment for contempt of court. The constitution is not a mere policy statement to be overridden by a sociological scheme for the improvement of society. The mother, alas, may be her own worst enemy and her shortcomings as a parent may result in the permanent removal of her children; nonetheless, the mother remains a free person, and her power to assert her constitutional right to privacy is not diminished merely because the representatives of the state think it is ill advised.

In holding that the mother should be compelled to undergo a psychiatric examination the results of which are to be released to the parties, Superior Court not only ignored the holding in In Re B,[1] which we find indistinguishable from the present case, but

[1] Inexplicably, Superior Court's only reference to In Re B was to cite it as part of a quotation from another case. The trial court and the appellee attempt to distinguish In Re B by observing that in that case, the mother's medical records were already extant, whereas in this case, there were no records. We regard this as a distinction without a difference. In either case, the mother's innermost thoughts and feelings were sought to be discovered against her will.

also elevated the interests of the state beyond all reasonable limits.[2] We conclude, as we did in In Re B, that there is no governmental interest sufficient to negate the mother's assertion of her right of privacy.

The order of Superior Court is reversed.

Mr. Justice Nigro files a concurring opinion.
Mr. Justice Zappala concurs in the result.
Madame Justice Newman files a dissenting opinion joined by Mr. Justice Castille.

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[2] In addition to elevating the interests of the state beyond reasonable limits, the lower courts also ignored the requirement of Denoncourt and Stenger that in order to be valid, a state intrusion on a privacy interest must, at the very least, effect the state's purpose. Stenger, 609 A.2d at 802, quoting Denoncourt. We are not convinced that there is more than speculation that the psychological evaluation ordered by the trial court would meaningfully advance the court's ability to place the children appropriately, for the value and the accuracy of a coerced psychological examination is inherently suspect. In the usual case,, more information is better than less, but not when there is the assertion of a constitutional privilege against the gathering and release of such information and when its usefulness is, at best, uncertain.