2019 PA Super 224

IN THE INTEREST OF: J.L., A MINOR	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: J.L., A MINOR	:	No. 240 EDA 2019

Appeal from the Order Entered December 11, 2018
In the Court of Common Pleas of Montgomery County
Domestic Relations at No(s): CP-46-DP-0000278-2018

BEFORE: BENDER, P.J.E., GANTMAN, P.J.E., and COLINS*, J.

OPINION BY GANTMAN, P.J.E.: **FILED JULY 23, 2019**

Appellant, J.L. (born June 2002), appeals from the order entered in the Montgomery County Court of Common Pleas, which adjudicated him dependent and temporarily placed J.L. in a youth residential facility, due to his habitual truancy. We affirm.

In its opinion, the trial court accurately set forth the relevant facts and procedural history of this case as follows:

> Turning to the facts of record, J.L. has a long history of truancy, with attendance issues beginning three years ago, when he was in the seventh grade. Now, in the 2018-2019 academic year, he is sixteen years old but is only in the ninth grade, and is currently enrolled in that grade for the second year in a row. In three years, J.L. lost one and one-half years of education due to his truancy while the school district and [the Montgomery County Office of Children and Youth ("OCY")] attempted to treat it outside of dependency proceedings. This was the single most important fact regarding the decision facing the undersigned on December 11th: whether to briefly remove J.L. from his home while

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* Retired Senior Judge assigned to the Superior Court.

developing a diagnosis and treatment for his truancy, or continue with the less-restrictive options that had proved unsuccessful for three years.

The facts of record begin with J.L.'s 2017-2018 academic year, when his school notified OCY that he was habitually truant. He had accumulated twenty-two unexcused absences by April of 2018. The OCY case worker did not file a dependency petition at that time, but instead exercised her judgment as to the "least restrictive option"…and chose to employ "alternative services"…of the Academy Truancy Diversion Program. Even with the deployment of that alternative service in April of 2018, J.L. accumulated a total of 44 unexcused absences for the 2017-2018 academic year.

J.L's 2018-2019 academic year began on September 4, 2018, yet by the reckoning of the undersigned he accumulated 31 unexcused absences by the end of October. Nonetheless, after J.L.'s school notified OCY about his ongoing truancy in October 2018, the OCY case worker again chose to divert his case to the Academy Truancy Diversion [Program]. The OCY case worker did not formally open a case until November 5, 2018, after the Academy case worker reported that J.L. would not respond, except to lock his bedroom door and refuse to open it, when the case worker would arrive at his home in the morning to personally support him getting to school.

On November 14, 2018, the OCY case worker met with J.L. and his parents at their home. The case worker gave J.L. goals that she expected him to meet, and although he appeared cooperative, he failed to explain why he refused to attend school. The school attendance record shows that J.L. was absent every day from November 14th through November 28th, …when the OCY case worker and a Multi-Systemic Therapist met with J.L. and his parents at his home[.] At that time, the case worker notified J.L. and his parents that she had filed a dependency petition and that a hearing on the petition would be held on December 11th. Once again, J.L. agreed to attend school. Once again, however, he was unable to stand by his intention, even knowing that he would be appearing [in] court shortly.

Exhibit OCY-2 shows an unbroken record of 48 unexcused absences from November 29th through December 5, 2018.

On December 6, 2018, the OCY case worker again met with J.L. and his parents in their home to discuss his ongoing truancy, and he proffered the excuse that he overslept and missed the school bus because he is tired in the morning. His case worker encouraged him to attend school in the few days remaining before the hearing on the dependency petition, but he could not bring himself [to] attend a single day, even as his date in court loomed less than a week away.

The undersigned received all of the foregoing facts at the hearing on December 11, 2018 and found them to be clear and convincing. Years of truancy indicated that J.L.'s parents did not know what to do to support his attendance at school. Their palpable anxiety, as witnessed by the undersigned, evidenced by their furrowed brows, reinforced that conclusion. J.L. needed immediate intervention because of the amount of schooling he had lost, and intervention by placement was preferable because none of the interventions in the home had worked. J.L.'s parents agreed with placement. Although the need for removal from home was obvious to the undersigned and J.L.'s parents, the undersigned believed a short-term program to alleviate J.L.'s well-entrenched truancy would be sufficient. The recommended Multi-Systemic Therapy, which had just begun, …could be continued while he was in placement[.] The undersigned found the foregoing facts to be clear and convincing evidence that reasonable efforts were made to prevent the need for removing J.L. from his home, and that it would be contrary to J.L.'s welfare to permit him to remain at home.

On December 19, 2018, J.L.'s lawyer filed a motion for reconsideration of the order of December 11th. While that motion was pending, the staff at Bethany Children's Home gave J.L. a furlough from December 24th through 26th, and J.L. celebrated Christmas at home with his family. On January 4, 2019, the undersigned filed an order scheduling a hearing on the motion for reconsideration simultaneously with the dispositional hearing on January 8th. At the hearing, OCY, J.L.'s parents and J.L. agreed to an order

> returning him to the custody of his parents. The undersigned filed a written order to that effect at the conclusion of the hearing. Prior to that, J.L. spoke in court, and said, "I just want to say, Your Honor, that I definitely learned my lesson from going to Bethany for the thirty days, and I will make an effort going to school and doing what I need to do to make it right."
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> In view of the agreed order returning J.L. home, the undersigned asked counsel for J.L. if she would withdraw her motion for reconsideration of the order of December 11th. She responded, "It's our position that it's moot." Notwithstanding that she understood her motion for reconsideration to be moot, she stated that she would take the unusual step of filing an appeal from the December 11th order. [On January 10, 2019,] counsel for J.L. filed the notice of appeal [and a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i)].

(Trial Court Opinion, filed January 31, 2019 at 6-11) (internal citations omitted).[1]

J.L. raises the following issues for our review:

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[1] OCY claims this appeal is interlocutory because at the time the court adjudicated J.L. dependent and removed him from the home, the court had contemplated further proceedings. Nevertheless, the order on appeal constituted a change of status for J.L., which was deemed final, when entered, for purposes of appeal. ***See In re E.B.***, 898 A.2d 1108 (Pa.Super. 2006) (holding adjudication of child as dependent is change of status deemed final when entered for appeal purposes); ***In re Interest of M.B.***, 565 A.2d 804 (Pa.Super. 1989), *appeal denied*, 527 Pa. 601, 589 A.2d 692 (1990) (explaining that determination of finality is not to be made merely by deciding whether order in question has technically ended litigation; we must examine practical consequences of order in context of statutory and regulatory scheme governing disposition of dependent children; recognizing there are certain crucial points of finality in dependency proceedings when appellate review is appropriate despite fact that court might later modify earlier decisions after conducting further review hearings).

> DID THE JUVENILE COURT COMMIT A LEGAL ERROR BY UTILIZING THE "BEST INTERESTS" STANDARD WHEN REMOVING A CHILD FROM HIS SAFE AND LOVING PARENTAL HOME, AS OPPOSED TO APPLYING THE MORE STRINGENT "CLEAR NECESSITY" STANDARD?
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> DID THE JUVENILE COURT ABUSE ITS DISCRETION IN REMOVING A CHILD FROM A SAFE AND LOVING HOME TO PLACE HIM IN A CONGREGATE CARE YOUTH SHELTER FOR TRUANCY WHERE, AMONG OTHER THINGS, THE AGENCY DID NOT IMPLEMENT IN-HOME OR COMMUNITY-BASED SERVICES AFTER OPENING A FORMAL CASE AND THE JUVENILE COURT WAS NOT PRESENTED WITH ANY EVIDENCE REGARDING CHILD'S EDUCATIONAL NEEDS, PSYCHOLOGICAL AND EMOTIONAL NEEDS, OR DISABILITIES?

(J.L.'s Brief at ix).[2]

Preliminarily, we observe:

> As a general rule, an actual case or controversy must exist at all stages of the judicial process, or a case will be dismissed as moot. 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. …
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> * * *
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> [T]his Court will decide questions that otherwise have been rendered moot when one or more of the following exceptions to the mootness doctrine apply: 1) the case involves a question of great public importance, 2) the question presented is capable of repetition and apt to elude appellate review, or 3) a party to the controversy will suffer some detriment due to the decision of the trial court.

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[2] J.L. does not challenge the court's adjudication of dependency. Instead, J.L. complains solely about his removal from the home.

In re D.A., 801 A.2d 614, 616 (Pa.Super. 2002) (*en banc*) (internal citations and quotation marks omitted). "The concept of mootness focuses on a change that has occurred during the length of the legal proceedings." ***In re Cain***, 527 Pa. 260, 263, 590 A.2d 291, 292 (1991). "If an event occurs that renders impossible the grant of the requested relief, the issue is moot and the appeal is subject to dismissal." ***Delaware River Preservation Co., Inc. v. Miskin***, 923 A.2d 1177, 1183 n.3 (Pa.Super. 2007). ***See also In re J.A***., 107 A.3d 799 (Pa.Super. 2015) (holding order that had temporarily appointed KidsVoice as medical guardian for child, but later reappointed mother as child's medical guardian, was capable of repetition and apt to evade appellate review; nothing prevented juvenile court from again appointing KidsVoice as child's medical guardian; juvenile court's statements on record suggested its decision to appoint mother as child's medical guardian was on trial basis; child's best interest persists throughout dependency case; change in status can happen quickly in dependency cases).

Further, at all times relevant to these proceedings, the Public School Code of 1949 defined "compulsory school age" as follows:

> **§ 13-1326. Definitions**
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> **"Compulsory school age"** shall mean the period of a child's life from the time the child's parents elect to have the child enter school and which shall be no later than eight (8) years of age until the child reaches seventeen (17) years of age. The term does not include a child who holds a certificate of graduation from a regularly accredited, licensed, registered or approved high school.

24 P.S. § 13-1326 (effective July 1, 2018). On June 28, 2019, the legislature recently amended the definition of "compulsory school age" to between six and eighteen years of age. The amendment takes effect on September 26, 2019. ***See*** H.B. 1615, 203 Gen. Assem., Reg. Sess. (Pa. 2019) (amending definition of compulsory school age; stating Section 13-1326 will be effective in 90 days). The amendment shall apply to academic years commencing after the effective date. ***See id.***, *Note*.

Instantly, the court adjudicated J.L. as dependent and temporarily removed him from the home on December 11, 2018. On January 8, 2019, the court held a dispositional hearing and returned J.L. to the care of his parents. Thus, the issue is technically moot because the court has already granted J.L. his requested relief to be returned home. ***See In re Cain, supra***; ***In re D.A., supra***; ***Delaware River Preservation Co., supra***. Also, as of June 2019, J.L. is 17 years old. Consequently, under the statute **currently** in effect, J.L. is no longer subject to compulsory education. ***See*** 24 P.S. § 13-1326 (effective July 1, 2018). In other words, J.L. has essentially "aged out" under the current statute, so the issue concerning J.L.'s removal from the home would not be capable of repetition, and the juvenile court no longer has authority to take any action over J.L. regarding his truancy. Under the new statute taking effect on September 26, 2019, however, J.L. might be subject to compulsory education until he is 18 years old. If so, then the issue on appeal could be capable of repetition, in the event the juvenile court again

removes J.L. from his home if his truancy problems persist in the next academic school year. The issue could similarly evade appellate review due to the changeability of J.L.'s needs during dependency proceedings. ***See In re J.A., supra***. Under these circumstances, an exception to the mootness doctrine might exist, so we elect to review the merits of his appeal. ***See generally First Valley Bank v. Steinmann***, 384 A.2d 949 (Pa.Super. 1978) (explaining general principle that motions to dismiss must be considered in light of Pennsylvania's preference to conduct merits review).

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Wendy Demchick-Alloy we conclude J.L.'s issues merit no relief. The trial court opinion comprehensively discusses and properly disposes of the questions presented. (***See*** Trial Court Opinion at 11-19) (finding: removal of J.L. from home was "clear necessity" because he was unable to participate in and benefit from less-restrictive alternative services already tried, and J.L. had missed one and one-half years of school in three year period; when caseworker sought to meet with J.L. in past to discuss truancy issues, J.L. locked his door and refused to communicate with caseworker and stated only that he constantly overslept and missed school bus; reasonable efforts were made to avoid J.L.'s removal from home but those efforts were unsuccessful, so it would have been contrary to his welfare to permit him to remain at home; removal was intended to be temporary, not long-term placement and

reunification of J.L. and his parents was unquestionable goal; J.L.'s parents agreed J.L. should be removed from home; under these circumstances, short-term removal of J.L. from home was consistent with preference for preserving family unity; guardian *ad litem* ("GAL") did not produce or seek continuance to offer more evidence concerning J.L.'s individualized education program ("IEP") and education records; notably, GAL declined to speak with school official after adjudication hearing even though school official had copy of J.L.'s IEP and was prepared to discuss it; J.L. did not demonstrate any unique education needs which would militate against J.L.'s temporary removal from home; under circumstances of case, immediate short-term removal of J.L. from his home was clearly necessary to promote J.L.'s welfare and preserve long-term family unity). The record supports the court's decision.

Additionally, the record confirms the court applied the appropriate "clear necessity" standard at the time it ordered removal. At the December 11, 2018 adjudication hearing, counsel for OCY recounted how numerous prior efforts to alleviate J.L.'s truancy had failed. Significantly, J.L. met with an OCY caseworker and Multi-Systemic Therapist, during the two weeks before the adjudication hearing, who stressed the importance of attending school until the adjudication hearing. J.L. agreed he would attend school, but he did not follow through. The court explained how J.L. was "digging [himself] a hole that's way deep—not too deep to get out of it, but way deep" and "academically capable, but digging [his] heels in." (N.T. Adjudication Hearing,

12/11/18, at 10, 12). The court further stated: "[W]e need to do something quickly, because if we keep doing the same thing again and again, when we just keep sending you home, it's not working. It's not working." (***Id.*** at 13).

The record demonstrates that J.L.'s overall intransigence forced the court to break J.L.'s pattern of evading in-home services by temporarily removing him from the home. Although the court did not formally recite the words "clear necessity" at the hearing, the court applied the proper standard. Likewise, the court's occasional use of terms like "best interests" or "welfare" is not dispositive of whether the court used an incorrect standard, where those terms are undoubtedly part of the overall analysis under the Juvenile Act. ***See*** 42 Pa.C.S.A. § 6301. Nothing in this record diminishes the court's primary focus on the clear necessity for the temporary removal of J.L., as reconciled with the purpose of preserving family unity, or calls the court's decision into question. Accordingly, we affirm on the basis of the trial court's opinion.

Order affirmed.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/23/19