

IN THE
Supreme Court of Pennsylvania

No. 14 WAP 2024

CHILDREN'S FAST TRACK APPEAL

In the Interest of S.W., a minor

BRIEF FOR APPELLANT, S.W., a minor

Appeal from the March 13, 2024, Opinion and Order of the Superior Court at 22 WDA 2023, vacating the November 8, 2022, Order of the Court of Common Pleas of Allegheny County, Family Division – Juvenile Section at No. CP-02-DP-0000729-2020

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I. Statement of Jurisdiction

This case is an appeal from a final order of the Superior Court issued on March 13, 2024. Appellant and Allegheny County Office of Children, Youth and Families jointly petitioned this Court for allowance of appeal on April 12, 2024. On May 22, 2024, this Court granted the Joint Petition for Allowance of Appeal and docketed the appeal at 14 WAP 2024. Accordingly, this Court has jurisdiction to review the order in question pursuant to 42 Pa.C.S. § 724(a).

II. Order in Question

Child seeks review of the decision from a divided panel of the Superior Court, entered March 13, 2024, which vacated the order of the Allegheny County Court of Common Pleas, Juvenile Division, denying a request from former foster parents to intervene in the dependency case to challenge removal of Child from their home.¹ The majority's opinion is attached as Appendix A. Judge Lazarus' concurring opinion is attached as Appendix B. Judge Bender's dissenting opinion is attached as Appendix C.

¹ The Trial Court's November 8, 2022 order is attached as Appendix D. Its February 17, 2023 opinion is attached as Appendix E.

III. Statement of Scope and Standard of Review

As the proper interpretation of a statute is a pure question of law, the Supreme Court's standard of review is *de novo* and its scope of review is plenary. *Dechert LLP v. Commonwealth*, 998 A.2d 575 (Pa. 2010).

IV. Statement of the Questions Involved

Whether the judicially created “prospective adoptive parent” exception to the general prohibition against foster parents participating in dependency cases was abrogated by the Legislature's subsequent enactment of Section 6336.1(a) of the Juvenile Act, which provides that preadoptive foster parents shall not have standing in the matter absent an award of legal custody of the child?

Answer below: No

Suggested answer: Yes

V. Introduction

Foster parents serve an important role for children who are removed from their parents by a dependency court. Because of that important role, the Legislature has provided foster parents with the right to timely notice of every hearing in dependency court for the child and with the opportunity to be heard at every hearing. But when the Legislature enacted this section of the Juvenile Act, Section 6336.1(a), it unambiguously stated that, unless they had been awarded legal custody of the child, nothing in that section granted foster parents or preadoptive parents with legal standing in the dependency case. Section 6336.1(a) was enacted in 1998, and its plain language abrogates an earlier line of Superior Court cases that permitted some foster parents to intervene in dependency proceedings to challenge the removal of the child from their home. The Superior Court itself in this case recognized that its caselaw likely could not withstand a closer examination by this Court because the plain language of Section 6336.1(a) disallows standing to any foster parent in dependency cases. Yet it felt constrained to apply its precedent and granted former foster parents standing in this case.

Child urges this Court to reverse the decision of the Superior Court and confirm that unless they have been awarded legal custody of the child, foster parents do not have standing in dependency cases.

VI. Statement of the Case

S.W. (“Child”) was born on September 15, 2020, and came to the attention of Allegheny County Office of Children, Youth and Families (“OCYF”) on October 15, 2020. OCYF obtained an Emergency Custody Authorization and placed Child with foster parents, A.E. and Ann.E.² A hearing occurred on October 21, 2020, and the Court ordered Child to remain with foster parents A.E. and Ann.E. pending the adjudication hearing and awarded legal custody of Child to OCYF.³ On November 25, 2020, Child was adjudicated dependent and remained with A.E. and Ann.E.⁴

Thereafter, the Court conducted regular permanency review hearings. During this time, OCYF, the foster care agency, and Child’s Guardian *ad litem* (GAL) grew concerned about A.E. and Ann.E.’s conduct.⁵ Specifically, Ann.E. made remarks regarding Child’s biological mother’s disability to the foster care caseworker.⁶ Additionally, there was an anonymous report alleging that Ann.E. made racist and ableist comments regarding Child’s biological mother.⁷ Finally, throughout the dependency case, there were concerns that A.E. and Ann.E. were not supportive of

² November 25, 2020 Order of Adjudication and Disposition.

³ October 22, 2020 Shelter Care Order.

⁴ November 25, 2020 Order of Adjudication and Disposition.

⁵ August 12, 2020, OCYF’s Motion for Permission to Place.

⁶ Tr. August 26, 2022 at 64.

⁷ Tr. August 26, 2022 at 21, 48. *See* August 12, 2020, OCYF’s Motion for Permission to Place.

Child's permanency goal of reunification and actively tried to hinder biological mother's visitation with Child.⁸

On August 12, 2022, OCYF filed a Motion for Permission to Place Child following the growing concerns regarding A.E. and Ann.E.'s conduct. The Trial Court conducted a hearing on OCYF's Motion on August 26, 2022 and heard from several OCYF witnesses, A.E., and Ann.E. before ultimately concluding that it was in Child's best interests to be removed from A.E. and Ann.E.'s care.⁹ During the August 26, 2022 hearing, A.E. and Ann.E. were accompanied by counsel, but did not attempt to intervene in the dependency proceeding.¹⁰ Child was placed in a new foster home on September 6, 2022.

On October 5, 2022, an attorney representing A.E. and Ann.E. filed a Motion to Intervene in the dependency proceeding on the grounds that they had achieved the "prospective adoptive parent exception" to challenge OCYF's request to remove Child from their care.¹¹ After an oral argument on A.E. and Ann.E.'s Motion to Intervene, the Trial Court denied their motion.¹² On December 8, 2022, A.E. and Ann.E. filed a petition for permission to appeal with the Superior Court.

⁸ Tr. August 26, 2022 at 17.

⁹ August 26, 2022 Order Granting Motion.

¹⁰ Tr. August 26, 2022 at 8-9.

¹¹ October 7, 2022 Motion to Intervene.

¹² November 8, 2022 Order Denying Motion.

On March 13, 2024, the Superior Court vacated the Trial Court’s order denying A.E. and Ann.E.’s Motion to Intervene and remanded the case for further proceedings. The Superior Court held that the “prospective adoptive parent exception” remains good law despite having “significant misgivings about the prospective adoptive parent exception in dependency proceedings” and “doubt[ing] the holding in *M.R.F., III* could withstand a closer examination by higher authorities.”¹³ The Superior Court went on to question whether the plain language of Section 6336.1(a) could permit the prospective foster parent exception.¹⁴

¹³ Majority Opinion at 18.

¹⁴ *Id.*

VII. Summary of Argument

In 1989, the Superior Court first recognized an exception to the general prohibition against foster parents having standing in dependency cases. This “prospective adoptive parent” exception allows some foster parents to intervene in a dependency case in order to challenge the removal of the foster child from their care. In 1998, the Legislature enacted Section 6336.1(a) of the Juvenile Act, which clearly and unambiguously states that foster parents, including preadoptive foster parents, shall not have standing in a dependency case unless they have been awarded legal custody of the child. As a matter of statutory construction, Section 6336.1(a) abrogated the Superior Court’s earlier “prospective adoptive parent” exception.

The former foster parents in this case were never awarded legal custody of Child, and therefore should not have been permitted to intervene to challenge Child’s removal. A result to the contrary will undoubtedly lead to delays in permanency for many foster children much like it has for Child in the present case.

VIII. Argument for Appellant

Dependency proceedings in Pennsylvania are most often initiated by county child welfare agencies when children are without proper parental care or control. These proceedings are governed by the Juvenile Act, 42 Pa. C.S. § 6301, *et. seq.* It is well established that only parties have standing in a dependency case, and although the Juvenile Act does not define “party,” courts have defined parties as (1) the parents of the child, (2) the legal custodian of the child, and (3) the person whose care and control of the child is in question. See, e.g., *In re L.C., II*, 900 A.2d 378, 381 (Pa. Super. 2006). In 1989, the Superior Court first recognized an exception to that rule that permitted foster parents to intervene in dependency proceedings in a limited capacity. In *Mitch v. Bucks County Children and Youth Social Service Agency*, 556 A.2d 419, 423 (Pa. Super. 1989), the Superior Court concluded that “prospective adoptive parents” had standing to challenge the removal of a child from their home. *Mitch* was followed by *In re Griffin*, 690 A.2d 1192 (Pa. Super. 1997), where the Superior Court again ruled that prospective adoptive parents had standing to challenge removal of the child from their home.

Subsequent to those cases, in 1998, the Legislature enacted Section 6336.1(a) of the Juvenile Act. 42 Pa. C.S. § 6336.1(a), which clearly and unambiguously states that foster parents, including preadoptive foster parents, shall not have standing in a dependency case unless awarded legal custody of the child. This case requires the

Supreme Court to interpret Section 6336.1(a) to determine whether the Legislature abrogated the Superior Court’s prospective adoptive parent exception and eliminated standing in dependency cases for preadoptive/prospective adoptive foster parents who had not been awarded legal custody of the child.

A. As a matter of statutory construction, the Legislature's enactment in 1998 of Section 6336.1(a) of the Juvenile Act, which provides that preadoptive foster parents shall not have standing in dependency cases absent an award of legal custody of the child, abrogated the earlier judicially created “prospective adoptive parent” exception to the prohibition against foster parents participating in these cases.

Because this case requires this Court to interpret Section 6336.1(a) of the Juvenile Act, the Court should be guided by the Statutory Construction Act of 1972, which provides that the object of all statutory interpretation “is to ascertain and effectuate the intention of the General Assembly.” 1 Pa. C.S. § 1921(a). Generally, the plain language of the statute “provides the best indication of legislative intent.” *Miller v. Cnty. of Centre*, 173 A.3d 1162, 1168 (Pa. 2017). If the statutory language is clear and unambiguous in setting forth the intent of the General Assembly, then “we cannot disregard the letter of the statute under the pretext of pursuing its spirit.” *Fletcher v. Pa. Prop. & Cas. Ins. Guar. Ass’n*, 985 A.2d 678, 684 (Pa. 2009).

The plain language of Section 6336.1(a) of the Juvenile Act, which was enacted subsequent to *Mitch* and *Griffin*, while recognizing the importance of foster parents by providing them with timely notice of a hearing and the right to be heard

at the hearing, clearly and unambiguously states that foster parents, including preadoptive foster parents, shall not have standing in a dependency case unless they have been awarded legal custody of the child. In its entirety, Section 6336.1(a) provides:

The court shall direct the county agency or juvenile probation department to provide the child's foster parent, preadoptive parent, relative providing care for the child or a potential kinship care resource under 67 Pa.C.S. § 7507(c) (relating to Kinship Care Program) with timely notice of the hearing. The court shall provide the child's foster parent, preadoptive parent or relative providing care for the child the right to be heard at any hearing under this chapter. The court shall provide a potential kinship care resource with the right to be heard during a scheduled hearing or at a separate dispositional hearing, but only as to the individual's qualifications to provide kinship care. Once a potential kinship care resource has had an opportunity to address the court, the court shall render a decision as to whether the potential kinship care resource may receive notice or participate in future hearings under this chapter. **Unless a foster parent, preadoptive parent, relative providing care or a kinship care resource for a child has been awarded legal custody pursuant to section 6357 (relating to rights and duties of legal custodian), nothing in this section shall give the foster parent, preadoptive parent, relative providing care or a potential kinship care resource for the child legal standing in the matter being heard by the court.**

Emphasis added.

The object of statutory interpretation is to ascertain and effectuate the intention of the General Assembly. The plain language of Section 6336.1(a), which is the best indication of the General Assembly's intent in enacting the statute, affords foster parents with notice of every hearing in dependency cases and with the right to be heard at those hearings, while at the same time foreclosing any possibility of

standing for foster parents unless they have been awarded legal custody of the child. Thus, the General Assembly's intention was to abrogate the judicially created prospective adoptive parent exception to the prohibition against foster parents having standing in dependency cases absent an award of legal custody of the child.¹⁵

The Superior Court panel in this case seemed to agree that the prospective adoptive parent exception had been abrogated by Section 6336.1(a). "As a matter of statutory construction, Section 6336.1(a) appears fairly unambiguous insofar as it simply does not grant foster parents – or pre-adoptive parents – any standing in any juvenile matter unless they have been awarded legal custody." Majority Opinion at 18. Nonetheless, after a thorough review of its "fractured jurisprudence," the panel felt constrained to apply *In the Interest of M.R.F., III*, 182 A.3d 1050 (Pa. Super. 2018) and permit the former foster parents to intervene in the dependency case. Majority Opinion at 15, 23. In *M.R.F., III*, although the Superior Court affirmed the denial of standing to foster parents based on the facts of the case and the reason the

¹⁵ Because the plain language of Section 6336.1(a) is clear and unambiguous, there is no need to further examine the Legislature's intent in enacting the statute. However, Child notes that the Legislature may have recognized that every other party to the case had the ability to challenge removal of a child from foster parents, which protected the child from unjust and unreasonable removal and eliminated the need for foster parent standing. In this case, all parties supported removal of Child from the foster parents. Tr. August 26, 2022 at 135-137. Moreover, as discussed in Section C below, the Legislature may have understood that granting foster parents standing in dependency cases, even for limited purposes, could lead to delays in permanency as foster parents sought appellate review of adverse decisions. This Court has emphasized the need for timely permanency. *See, e.g., In re T.S.M.*, 71 A.3d 251, 269 (Pa. 2013) ("Children are young for a scant number of years, and we have an obligation to see to their healthy development quickly. When courts fail ... the result, all too often, is catastrophically maladjusted children.")

foster parents were seeking to intervene, the Court held that as preadoptive foster parents, the foster parents would have standing to challenge the removal of a child from their home pursuant to *Griffin. M.R.F., III*, 182 A.3d 1050 at 1056.¹⁶ The Superior Court panel additionally stated that “[w]hether there is a conflict between *M.R.F., III* and Section 6336.1(a), or whether *M.R.F., III* was wrongly decided are questions that can only be answered by an *en banc* panel of this Court or our Supreme Court. At this point, we are bound by *M.R.F., III*.” Majority Opinion at 23.

As discussed above, Section 6336.1(a) of the Juvenile Act is clear and unambiguous, and by its plain language it abrogated the prospective adoptive parent exception to the prohibition against foster parents having standing in dependency cases absent an award of legal custody of the child.

¹⁶ The Superior Court panel in the present case stated that “*M.R.F., III* held that the foster parents in that case met the prospective adoptive parent exception, full stop. That determination meant the (prospective adoptive parent) exception survived the enactment of Section 6336.1(a) and that foster parents have standing in dependency proceedings for a limited purpose.” The panel discussed that a more recent case, *In the Interest of K.R.*, 239 A.3d 70 (Table) 2020 WL 3989162 (Pa. Super. 2020), had held, after examining *M.R.F., III*, that the prospective adoptive parent exception was abrogated by the plain language of Section 6336.1(a), but concluded that the decision was non-precedential and therefore, the panel was bound by *M.R.F., III* and could not overrule it. Thus, *M.R.F., III* was the controlling precedent. Majority Opinion at 16.

B. Proper application of Section 6336.1(a) of the Juvenile Act requires a reversal of the Superior Court's decision as the former foster parents in this case were never awarded legal custody of the child.

Legal custody of Child in this case remained with OCYF throughout the case. Former foster parents were never awarded legal custody. As such, pursuant to Section 6336.1(a) of the Juvenile Act, former foster parents did not have standing in the dependency case to challenge removal of Child from their home. Former foster parents did have the right to notice of every hearing and the right to be heard at every hearing, and they were afforded the opportunity to testify in the proceeding. But they do not have the right to intervene as parties in the case. Child therefore asks this Court to reverse the decision of the Superior Court.

C. Affirming the decision of the Superior Court would lead to delays in permanency for foster children.

Pursuant to the statutory construction analysis above, Child urges this Court to find that Section 6336.1(a) of the Juvenile Act abrogated the prospective adoptive parent exception to the prohibition against foster parents having standing in dependency cases absent an award of legal custody of the child. Should the Court reach a different result, the likely outcome will include delays in permanency for foster children.

As acknowledged by the Superior Court, application of the prospective adoptive parent exception necessarily involves a highly fact-specific, case-by-case

analysis to determine whether the foster parent has a legitimate expectation of adoption. Following the Superior Court's decision in this case, if a trial court denies the foster parent's request to intervene because the trial court determines that the foster parent does not have a legitimate expectation of adoption, the foster parent will have the opportunity to appeal that decision to Superior Court. That appellate process typically takes 6-9 months in dependency cases until a decision is rendered by the Superior Court.

If the Superior Court finds, as it did in this case, that the trial court erred by denying the request to intervene, the case will be remanded to the trial court, which will schedule a hearing for the foster parents to challenge the removal of the child. Given the likelihood that the child has already been removed from the foster parent for many months, it is also likely that the trial court will not at that point rule in favor of the foster parent and return the child to the foster parent. The foster parent then has the opportunity to seek appellate review of that decision. It may very well be that the child has been placed in a new foster home and is thriving with foster parents who are prepared to move forward with adoption, but the adoption is delayed for another 6-9 months pending the outcome of the appellate process -- in total, a delay of 12-18 months or longer for a child who has potentially already been in care for a

substantial amount of time.¹⁷ That delay would not occur if the plain language of the General Assembly's enactment of Section 6336.1(a) prohibiting standing for foster parents lacking legal custody of the child was followed.

Moreover, as noted by the Superior Court in this case, the request for intervention may occur at any time, even well after the actual removal. "The Rules of Juvenile Court Procedure do not require intervention at the earliest opportunity." Majority Opinion at 27. Trial courts may be faced with intervention requests from former foster parents many months after the child was removed, and when they deny those requests, the former foster parents will have the above-discussed opportunities to seek appellate review.

This Court can eliminate all of that uncertainty and prevent unnecessary delays in permanency by holding that Section 6336.1(a) of the Juvenile Act abrogated the Superior Court's prospective adoptive parent exception and requires

¹⁷ In fact, in this case, the trial court order was entered in November 2022, the notice of appeal was filed in December 2022 and the Superior Court's decision in the case was filed in March 2024 – a delay of approximately 16 months just for the initial appellate issue of whether the trial court erred in denying the former foster parents standing. That delay does not include a potential second appeal after the hearing on whether the child should have been removed from the former foster parents.

Also, if the former foster parents in this case are granted standing, then the current foster parents in this case likely would also be entitled to standing as prospective adoptive parents after 21 months of caring for the child. Accordingly, under the Superior Court's ruling, they would be entitled to party status and the right to appeal should the trial court return the child to the original foster parents.

foster parents to have been awarded legal custody in order to have standing to challenge the removal of a child in their care.

IX. Conclusion

For the foregoing reasons, Child urges this Court to reverse the decision of the Superior Court.

Date: June 21, 2024

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PA. R.A.P. 2135 CERTIFICATION

I hereby certify that the foregoing Brief for Appellant complies with the word count limit of Pa. R.A.P. 2135. This brief contains 3,031 words, based on the word count feature of Microsoft Word.

PA. R.A.P. 127 CERTIFICATION

I hereby certify that the foregoing Brief for Appellant complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*, pursuant to Pa. R.A.P. 127 that require filing confidential information and documents differently than nonconfidential information and documents.

Date: June 21, 2024

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 21st day of June, 2024, a true and correct copy of the foregoing Brief for Appellant S.W., a minor, has been served via United States first-class mail, postage prepaid, and/or Electronic Transmission upon the following party:

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