

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN THE INTEREST OF:

EH

JH

MINOR CHILDREN

: ORPHAN'S COURT NO. 5979

: ADOPTION

: REQUEST FOR RECONSIDERATION

Date: December 12, 2006

OPINION and ORDER

This order is entered in response to the motion filed by the father, William H, by his counsel, John Gummo, Esquire, asking this court to reconsider its order entered October 13, 2006 at the time of the pretrial conference. The Father asks us to vacate this court's determination set forth in that order which established the factual matters at issue, made evidentiary rulings and set procedures to be followed at the termination hearing.

The Motion for Reconsideration will be DENIED except as discussed and ordered to be modified and clarified in this opinion and following order. A brief background statement of this case is necessary for discussion. The background from both procedural and factual perspectives is appropriately referenced in the Petition for Involuntary Termination of Parental Rights filed by the Children and Youth Service of Lycoming County (hereafter "AGENCY") on June 15, 2006. The petition seeks termination of the parental rights of the Father, William H, and the Mother, Shantel H, to EH, now 4 years old, date of birth October 30, 2002, and JH, now 2 years old, date of birth February 14, 2004.

The Agency had filed a dependency petition relating to these two children on June 23, 2005, under the juvenile action No. 00-30,416. At a hearing before this judge on July 14, 2005

the children were found to be dependent. The order of that date references that reasons for the court's finding were noted on the record. They were not, however dictated as part of the court order that was issued that date and filed on July 22, 2005. The court directed services to be provided and approved the Family Service Plan for the time period of July 6, 2005 through January 6, 2006.

On October 21, 2005, the children were placed in Agency custody through an emergency order entered in the juvenile case by this judge. The Agency has had care and custody of these children from October 21, 2005 through the present. Thereafter, the emergency custody order was continued in effect following a 72 hour hearing held on October 24, 2005. A 10-day placement hearing was held on November 3, 2005 in front of Judge Dudley N. Anderson who made various factual findings, as set forth in the order of that date, which was filed November 8, 2005.

It is important to note at this juncture that the welfare of E and J has been a concern since proceedings in the juvenile action which had been held on August 4, 2004 in connection with the parents' older child, E. On January 12, 2005, a permanency hearing was held before Judge Richard A. Gray, pertaining to ED, however, the concern of the Agency for the well being of E and J was raised again. Judge Gray's findings are evidenced in his order that date filed January 14, 2005. The parents were ordered to continue anger management therapy and to complete parenting classes.

Subsequently, Judge Gray held a termination of parental rights hearing in which the Agency sought to terminate the parental rights of William and Shantel H to their child ED. Judge Gray issued an order on February 15, 2005 with findings of fact terminating those

parental rights. That order was appealed by the parents and has now been affirmed by the Pennsylvania Superior Court and become final.

The Agency filed a permanency petition as to E and J on February 22, 2006. Judge Gray affirmed the dependency of E and J and continued them in the care of the Agency in an approved resource home, by order of March 10, 2006, filed March 17, 2006. The Family Service Plan for March 10, 2006 through September 10, 2006 was approved. That plan permitted the parents to have visitation with the children.

On April 21, 2006, the Agency filed an emergency request for suspension of the visitation by the parents. That request was granted by Honorable Kenneth D. Brown, President Judge, by order of April 24, 2006, filed June 5, 2006.

The Agency then filed a petition for another permanency hearing on May 26, 2006. A Petition for Permanency Hearing and Change of Goal to adoption rather than to return home was filed by the Agency on June 15, 2006. The hearing was again held before President Judge Brown on June 13, 2006 as evidenced by his order that date filed June 27, 2006¹. Judge Brown noted that the reasons for the entry of this order were stated of record. Judge Brown confirmed the dependency of the two children and directed that they remain in custody of the Agency in an approved resource home and approved the Family Service Plan on June 13, 2006 through December 13, 2006 and continued suspension of the parents' visitation, again for reasons stated on the record. Judge Brown also approved suspension of the goal of reunification.

¹ The court notes that Judge Brown's order of June 13, 2006 is duplicated in the court file and indicates one order being filed June 16 and the other one June 27 with this court understanding that the June 27th filed order corrected some slight omissions from the earlier filed order.

The parents filed exceptions to Judge Brown's June 13, 2006 order. Judge Brown by order of July 27, 2006, filed August 9, 2006, modified the June 13, 2006 order by vacating the portion of the order that suspended the goal of reunification of the children with the parents. Judge Brown specifically refused to amend the order concerning denial of suspension of visitation between the parents and the children and according the parents were not permitted visitation with the children under the current and governing service plan.

At the pretrial conference for termination of parental rights, which was held October 13, 2006, this court determined that the termination case would be tried before Judge Gray on the dates of January 16, 17, and 19, 2007. The factual basis for termination of parental rights is set forth in the allegations of the petition in paragraph 8, represented by subparagraphs A through HH. These allegations cover a time frame from August 1999, when the Agency first became involved with the parents and their oldest child, ED, through the date of June 13, 2006, the date of Judge Brown's last permanency hearing concerning E and J. We determined and stated in our order that the factual allegations relevant to the termination proceedings were for the most part based upon matters occurring from the finding of dependency as to E and J made by this court on July 14, 2005 (referenced in sub-paragraph S of paragraph 8) through the end of the factual allegations of June 13, 2006 (paragraph HH). The Agency at pretrial however, maintained that the prior background of work and contacts by the Agency with the parents and the parents' actions and inactions which resulted in termination of the rights to their child, ED, were also relevant. The Agency's argument was that these prior events put the events occurring on and after July 14, 2005 in proper perspective. In that regard, this court included a

ruling in our October 13, 2006 order that to the extent deemed relevant by the Agency, the Agency could establish those prior events through the introduction of prior court orders and records made in the juvenile proceedings and termination proceedings concerning ED, under the juvenile case and Orphan's Court action No. 4966. (The court notes that E was incorrectly spelled A in this court's October 13, 2006 order). The parents objected to this portion of the court's order.

The parents argued at pretrial and now argue in their present reconsideration motion that they could and would contest any factual findings evidenced by the prior orders in the juvenile proceedings made prior to July 14, 2005 as well as after that date. This court indicated at pretrial that if they wished to contest any of the factual allegations prior to July 14, 2005 they would have to give notice to the Agency of the facts that they wished to contest in subparagraphs A through R, of paragraph 8 of the termination petition. The notice was to be given in writing 30 days from October 13, 2006. In their request for reconsideration, the parents also object to this procedure. The parents argument in support of their objections is that due to differences in the burden of proof in the juvenile proceeding from the termination proceedings, they should be entitled to relitigate any and all factual allegations now made against them, including those occurring prior to July 14, 2005. They also object to the admission against them of any finding made in the ED termination proceedings stating that, if relevant, those facts must be reproven.

This court disagrees with the parents' position, and now makes a determination that our order of October 13, 2006 did not go far enough in limiting the factual issues to be determined at the time of the termination hearing as to E and J before Judge Gray. We now rule that under

the doctrine of collateral estoppel, the parents may not relitigate issues which were factually determined either in the prior juvenile proceedings as would relate to E and J and E, nor may they relitigate issues that were factually determined in the termination proceedings concerning E.

The phrase “collateral estoppel,” also known as “issue preclusion,” simply means that when an issue of law, evidentiary fact, or ultimate fact has been determined by a valid and final judgment, that issue cannot be litigated again between the same parties in any future lawsuit. Collateral estoppel does not automatically bar a subsequent prosecution, but rather, it bars redetermination in a second prosecution of those issues necessarily determined between the parties in a first proceeding that has become a final judgment. *Commonwealth v. Holder*, 805 A.2d 499 at 502 (Pa. 2002).

In *Holder* the Pennsylvania Supreme Court recognized the test for application of collateral estoppel to be the following:

Traditionally, Pennsylvania courts have applied the collateral estoppel doctrine only if the following threshold requirements are met: 1) the issues in the two actions are sufficiently similar and sufficiently material to justify invoking the doctrine; 2) the issue was actually litigated in the first action; and 3) a final judgment on the specific issue in question was issued in the first action. An issue is actually litigated when it is properly raised, submitted for determination, and then actually determined. For collateral estoppel purposes, a final judgment includes any prior adjudication of an issue in another action that is sufficiently firm to be accorded conclusive effect.

Id. at 502, 503.

In *Holder* the court also recognized that distinctions in the burden of proof, specifically between a Gagnon parole violation hearing and a criminal trial, do not preclude the application of the doctrine of collateral estoppel. So to in this case, the distinctions in burden of proof

between the juvenile proceedings and the termination proceedings do not preclude the application of the doctrine of collateral estoppel.

Based upon the foregoing, it is this court's determination that any and all factual determinations made in the prior juvenile proceedings under case 00-30,416 as well as factual determinations made under the prior Orphan's Court, case # 4966, relating to ED's termination shall not be relitigated at the scheduled termination hearing in this case. More specifically, this court believes that the findings of fact entered by Judge Gray at the time of termination of the parental rights of the parents to their child, ED, may be admitted into evidence upon motion of the Agency on the request that the court take judicial notice of those findings. Further that the Agency may similarly by motion request the court to take judicial notice of all factual findings made in the juvenile case #00-30,416 particularly as would relate to those findings made in the hearings held on January 12, 2005, July 14, 2005, November 3, 2005, March 10, 2006, April 24, 2006, and June 13, 2006.

Accordingly, the following order is entered.

ORDER

It is hereby ORDERED and DIRECTED that all factual determinations made in the prior juvenile proceedings under case 00-30,416 as well as factual determinations made under the prior Orphan's Court, case # 4966, relating to ED's termination shall not be relitigated at the scheduled termination hearing in this case. The findings of fact entered by Judge Gray at the time of termination of the parental rights of the parents to their child, ED, may be admitted into evidence upon motion of the Agency on the request that the court take judicial notice of those findings. At the termination proceedings the court may take judicial notice of all factual findings made in the juvenile case #00-30,416 particularly as would relate to those findings made in the hearings held on January 12, 2005, July 14, 2005, November 3, 2005, March 10, 2006, April 24, 2006, and June 13, 2006.

It is hereby further ORDERED and DIRECTED to facilitate the foregoing that the Lycoming County Children and Youth Services Agency shall prepare a proposed statement of facts to be taken by judicial notice, and file and serve the same upon all parties not later than January 4, 2007. The statement should consist of a statement of fact, referring to the factual allegation of the petition by the appropriate subparagraph under paragraph 8 of the petition that it relates to and shall also contain a reference to the prior finding of fact or place in the record where such factual determination was made.

In order to further the purposes of this order, it is hereby ORDERED and DIRECTED that the court reporters of the following designated hearings shall transcribe that portion of the

records in which the court stated its findings and reasons for the entry of the particular order on the record juvenile proceedings held under case 00-30,416, specifically being:

DATE OF HEARING	DATE OF ORDER	JUDGE
July 14, 2005	July 14, 2005	William S. Kieser
March 10, 2006	March 10, 2006 (signed 3/17/06)	Richard A. Gray
April 24, 2006	April 24, 2006	Kenneth D. Brown
June 13, 2006	June 13, 2006	Kenneth D. Brown

BY THE COURT,

William S. Kieser, Judge

cc: Children and Youth (2)
Prothonotary Docket No. 00-30,416
C. Greevy, Esquire
E. Linhardt, Esquire
John Gummo, Esquire
Joel McDermott, Esquire
Laura Bruner, Court Reporter
Erica Bird, Court Reporter
Ann Diggan, Court Reporter
Gary L. Weber, Esquire (Lycoming Reporter)
Christian J. Kalas, Esquire
Judges
Honorable Richard A. Gray

WSK/amm