

P E N N S Y L V A N I A LAW WEEKLY

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HELPING THE HELPERS

Recent legislation provides new tools to aid resource families

By Dorothy K. Phillips
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Last summer an uproar erupted after a Philadelphia grand jury handed down indictments of Danieal Kelly's parents and two Department of Human Services social workers in connection with the 14-year-old's death in August 2006.

Danieal, a child suffering from cerebral palsy, was permitted to starve to death, weighing only 42 pounds when she died. The indictments focused on DHS's brutal indifference to the needs of this particular child.

The indictments also brought focus to the lack of transparency and openness by DHS with regard to its procedures, its records and its failure to care for the most vulnerable citizens, children in need.

While Danieal Kelly's case did not involve foster parents, many of the matters where children are ruled dependent under the Juvenile Act, 42 Pa. C.S. § 6301 et seq., do involve foster parents. Until the beginning of 2006, with the passage of the Resource Family and Adoption Process Act (Act 68), these foster parents, also known as resource family parents, were granted standing to seek permanency and adoption of their foster children under certain terms and conditions. Standing attached if said children had resided with the foster parents for at least six months and the child welfare agency changed its goal from foster care or reunification to adoption. Prior to the passage of Act 68 in 2006, foster parents had absolutely no rights.

The Legislature recently took further steps to enhance the resource family's rights with the recently passed amendments to Section 6336.1 of the Juvenile Act, whereby foster parents are now permitted to participate in a child's permanency hearing by providing for the resource family to submit a report for the court to review. The child welfare agency at the county level, Children and Youth Services, is obliged to notify the resource family of their right to submit a report and must inform the family of the name of the judge to whom the report should be sent.

The foster family's report may contain information about the child's adjustment to his foster home; the child's emotional and physical condition; descriptions of the case worker's interaction

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with the child and foster parents as well as their own observations and comments and recommendations for the child.

As opposed to past custom, the recent amendments compel the child welfare agency to take advantage of the knowledge and experience of the foster parents, who are probably the people closest to the child and those with the best knowledge and understanding of what is in the child's best interest. See Act 109, Section 6336.1(b)(3).

The amendments also contain a specific provision which protects foster parents against retaliatory action from the child welfare agency for any information that they may provide in the report.

Such a provision is based on the knowledge by the drafters of the amendments that such retaliation has taken place in the past and continues to take place. The CYS agencies often operate as mini fiefdoms where decisions are made behind closed doors without foster parents having any knowledge of what is happening and often, when they seek information, the resource family is dismissed by being told that the information is confidential. The anti-retaliation provision serves to encourage foster families to be open and honest without fearing that their chances of becoming adoptive parents will be halted or interfered with by CYS.

It is very clear that the most needy children whose biological parents have either deserted, abused, neglected, or intentionally harmed them are the children who need to be protected by DHS. The foster families who care for and love these children are to be celebrated and applauded. Instead, many case workers for DHS are severely underpaid, overworked, and unappreciated. As a result, many of these children slip through the cracks.

The legislative and judicial history concerning foster parents is long and arduous. Pennsylvania courts had interpreted the legislation governing foster care to mean that "the Legislature has provided that the relationship between the foster parents and the child is by its very nature subordinate both to the relationship between the agency and the child and to the relationship between the child and the child's biological parents." *In Re Adoption of Crystal D.R.*, 480 A.2d 1146 (Pa. Super 1984).

Prior to Act 68, Pennsylvania courts held that foster parents did not have standing to seek or contest an award of custody regarding their foster children under the Juvenile Act. *In the interest of G.C.*, 735 A.2d 1226 (Pa. 1999). The Supreme Court of Pennsylvania further held that the foster parents' rights were limited because of their "uniquely limited and subordinate, state-created, agency-maintained" status which was developed by the legislature. In *G.C.*, the Pennsylvania Supreme Court adopted the reasoning of *D.R.*, whereby an award of custody was granted to a maternal grandfather who was one of the possible perpetrators of the original child abuse which resulted in the placement of the child in foster care, rather than awarding adoption to the foster parents.

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In *G.C.*, former Justice Sandra Newman dissented:

"Foster parents who have cared for and nurtured a child for almost two years, since the child was two months old, in essence acting as de facto parents, have a direct, substantial and immediate interest in the foster child. Particularly here, where the underlying issue involved whether a grandparent, who has been suspected of abusing the child, may petition the court to remove the child from their care, [t]hese foster parents have a real interest in the child's welfare and in fact may have a limited liberty interest in that foster care relationship."

Newman's dissent was penned in 1999 and Act 68 became law in early 2006, finally granting foster parents standing to adopt foster children once the agency had changed its permanency plan from reunification and/or foster care to adoption. The recent amendments to the Juvenile Act further gave foster parents the opportunity to contribute a report for judicial consideration regarding a permanency hearing and also permitted the foster parents to be present and participate in those hearings, without the fear of retaliatory tyranny.

There has been a giant step forward with these recent amendments in reigning in the tyranny of county welfare agencies and of some case workers, social workers and other employees who have until recently ignored with impunity the important contributions made by the people who open their homes and hearts to care for these children in need. It is impossible for a resource family to raise a child from almost birth and not come to love that child. But attitudes die hard. Until 2006, the law showed contempt for the rights of foster parents. DHS Workers must now conform their thinking to the law.

Notwithstanding the recent legislation for the benefit of children who come under the aegis of DHS, the road for these children and their resource families is still rocky. The political process from Washington to the local level poses tremendous roadblocks to having enough sitting judges in our various counties to hear these matters in a timely fashion, and as previously stated, the county agencies have limited budgets and serious turnover in their personnel. Meanwhile, children who should be awarded permanency by having foster parents adopt them suffer. The legislation giving resource families standing to adopt foster children and to participate fully in the permanency process is a huge step in the right direction. The standard for permanency placement for dependant children under the Juvenile Act is the best interest and welfare of the child. We are making progress toward timely meeting that goal. Notwithstanding, there is no room for complacency when it comes to the lives, safety, and welfare of children.

We must pick up the ball and run with it since the legislature has afforded resource families standing and participation rights with regard to the permanent placement hearings of their foster children. Secrecy behind which some child welfare agencies have operated must be pierced in favor of continuing and open dialogue between resource families and agencies so that the needs and welfare and best interests of children are primary.

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Section 6336.1 specifically sets forth several types of information that foster parents can provide in their report to the court, specifically targeting issues that would be very helpful for the court in evaluating the child's situation and overseeing the child welfare agency's involvement with the child and the foster family. The report may contain information about the child's adjustment to the foster home, the child's emotional and physical condition, as well as descriptions of the caseworker's interaction with the child and the foster parents. Foster parents are also permitted to include their own comments and recommendations for the child. The amendments are geared to compel child welfare agencies to take full advantage of the knowledge and the experience of the foster parents, who probably are the people closest to the child and those with the best understanding of the best interests of the child.

It is very easy for county child welfare agencies to become kingdoms unto themselves, where decisions are made behind closed doors and where privacy laws are used as a ruse to keep information confidential from the foster parents for reasons other than the best interests of the children. Without the recent anti-retaliation provision, foster parents would be inhibited from being open and honest, based on fears of hurting their chances of being able to adopt their foster children.

I awoke to the radio this morning to hear that a Philadelphia mother had been arrested for giving PCP to her 7-year-old child. So begins this child becoming another "case" for DHS. Let us hope that CYS workers will welcome the recent legislation in favor of resource families and move quickly to get these children out of the "system" and into loving homes. •

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