

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN THE INTEREST OF : NO. DP-14-2024
H. E., :
A MINOR. : Motion for Reconsideration

OPINION & ORDER

The matter captioned above came to this Court on October 11, 2024, for hearing on the Motion for Reconsideration—filed by Petitioner D.E. (hereinafter “Petitioner”) on September 5, 2024. Based upon the following reasons, that Motion is **DENIED**.

I. BACKGROUND

This Court, on August 12, 2024, entered an Aggravated Circumstances Order (filed August 14, 2024), finding—by clear and convincing evidence—that 1) the alleged aggravated circumstances existed as to the Petitioner; 2) Lycoming County Children and Youth Services (hereinafter “Agency”) had supported the allegations of dependency based upon facts stipulated by the Petitioner and Agency counsel; 3) the facts stipulated on the record by Petitioner are accurate; and 4) H.E. (hereinafter “Minor Child”) is a dependent child. Based on the above findings, the Court ordered that “No efforts are to be made to preserve the family and reunify the [Minor Child] with the [Petitioner].”

On September 5, 2024, Petitioner filed a Motion for Reconsideration, requesting that the Court modify the Order of August 12, 2024, to the extent that the Order allows the Agency to prevent reunification efforts between the Petitioner and the Minor Child, or, alternatively, to permit further hearing on the above-captioned matter. The Honorable Ryan M. Tira scheduled a hearing on October 2, 2024, for the above-filed Motion in Courtroom Number Three (3) of the Lycoming County Courthouse; Judge Tira—by Order filed October 4, 2024—subsequently rescheduled the above-noted hearing to October 11, 2024, in Courtroom Number Four (4) of the Lycoming County Courthouse. At the October 11, 2024, hearing, this Court raised, *sua sponte*, the issue of whether this Court retains jurisdiction over the August 12th Order, because more than thirty (30) days have passed and no Order was entered within that timeframe

granting the Motion for Reconsideration. The Court invited counsel for the Agency and counsel for the Petitioner to submit briefs on, e.g., whether this Court retains jurisdiction to reconsider the August 12th Order and—if so—whether the Court should modify the August 12th Order insofar that the Court determined that no reunification efforts are required.

In the briefs submitted in the above-captioned matter, the Agency argues that 1) this Court does not have the authority to modify the August 12th Order, because the August 12th Order is a collateral order, and the proper vehicle to challenge a collateral order is by appeal to the Superior Court; and 2) even if this Court has the authority to modify the August 12th Order, that Order should not be modified because of, e.g., the findings of facts from the August 12th hearing, as well as the exhibits introduced thus far.

In opposition, the Petitioner argues that 1) this Court does have the authority to modify the August 12th Order, because although that Order is a collateral order, legal precedent permit trial courts to open or vacate orders under exceptional circumstances; and 2) in the event the August 12th Order is opened, the Court should modify its conclusions regarding reunification efforts.

II. QUESTIONS PRESENTED

- A. WHETHER THIS COURT RETAINS JURISDICTION OVER THE AUGUST 12, 2024, ORDER.
- B. IF THIS COURT RETAINED JURISDICTION TO OPEN THE AUGUST 12TH ORDER, WHETHER THIS COURT SHOULD MODIFY THAT ORDER'S PROVISIONS REGARDING REUNIFICATION EFFORTS.

III. BRIEF ANSWERS

- A. THIS COURT DOES NOT RETAIN JURISDICTION OVER THE AUGUST 12TH ORDER, BECAUSE NO COURT ORDER GRANTED THE MOTION FOR RECONSIDERATION WITHIN THIRTY (30) DAYS OF THE AUGUST 12, 2024, ORDER.
- B. EVEN IF THIS COURT RETAINED JURISDICTION OF THE ORDER OF AUGUST 12, 2024, THE COURT WOULD NOT BE INCLINED TO MODIFY THE AUGUST 12TH ORDER'S PROVISIONS REGARDING REUNIFICATION EFFORTS.

IV. DISCUSSION

A. *THIS COURT DOES NOT RETAIN JURISDICTION OVER THE AUGUST 12TH ORDER, BECAUSE NO COURT ORDER GRANTED THE MOTION FOR RECONSIDERATION WITHIN THIRTY (30) DAYS OF THE AUGUST 12, 2024, ORDER.*

Rule 313 of the Pennsylvania Rules of Appellate Procedure—Collateral Orders—provides that “(a) General Rule. An appeal may be taken as of right from a collateral order of a trial court or other government unit. (b) Definition. A collateral order is an order separable from and collateral to the main cause of action where the right involved is too important to be denied review and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost.” Pa. R.A.P. 313 (“Comment: If an order meets the definition of a collateral order, it is appealed by filing a notice of appeal or petition for review.”).

42 Pa.C.S. §5505—Modification of orders—provides that “Except as otherwise provided or prescribed by law, a court upon notice to the parties may modify or rescind any order within 30 days after its entry, notwithstanding the prior termination of any term of court, if no appeal from such order has been taken or allowed.” 42 PA. STAT. AND CONS. STAT. § 5505.

It is settled Pennsylvania law that “a trial court lacks authority to award additional relief sought more than 30 days after its final order in a case” and “[a] tribunal loses jurisdiction to change an order once it becomes final; otherwise, nothing would ever be settled.... Absent a specific rule or statute, the only exception is to correct obvious technical mistakes (e.g., wrong dates) but no substantive changes can be made[.]” and this Court’s Order of August 12, 2024, is a collateral order and not a final order. *Ness v. York Township Board of Commissioners*, 123 A.3d 1166, 1169 (Pa. Commw. Ct. 2015) (citations omitted); *Ettelman v. Commonwealth Department of Transportation, Bureau of Driver Licensing*, 92 A.3d 1259, 1262 (Pa. Commw. Ct. 2014) (quoting *City of Philadelphia Police Department v. Civil Service Commission*, 702 A.2d 878, 880 (Pa. Commw. Ct. 1997)).

A collateral order entered by “[a] trial court or other government unit[]” in Pennsylvania can either be “[a]ppealed by filing a notice of appeal or petition for review.” Pa. R.A.P. 313. Per then-Judge Brobson’s opinion in *C.R.-F. v. Department of Human Services*, the thirty (30) day period for a petitioner to file a petition for review of a collateral order starts to run on the date on which that collateral order was entered. *C.R.-F. v. Department of Human Services*, 153 A.3d 438, 439 n.1 (Pa. Commw. Ct. 2017). A petitioner may also file a motion for reconsideration to invite a trial court to revisit determinations made in a prior order. See *In re R.C.*, 945 A.2d 182, 183 (Pa. Super. Ct. 2008) (noting that after the trial court found aggravated circumstances existed as to the father and denied any further efforts to reunify the child with the father, father filed a motion for reconsideration—which was subsequently denied by the trial court). While labeled differently, a “petition for review” and a “motion for reconsideration” appear to be functionally similar—if not identical—to each other based on the aforementioned cases; one aspect seems particularly clear: both a “petition for review” and a “motion for reconsideration” contain a thirty (30) day clock that begins to tick upon the entering of a collateral order—i.e., a party who seeks to file either a “petition for review” or a “motion for reconsideration” must do so within thirty (30) days. See 42 PA. STAT. AND CONS. STAT. § 5505 (“[a] court upon notice to the parties *may* modify or rescind any order within 30 days after its entry....”) (emphasis added); 153 A.3d at 439 n.1; see 945 A.2d at 183 (noting that the father filed a motion for reconsideration on June 20, 2007, after the trial court entered its order on May 30, 2007).

Our Superior Court, in *Stockton v. Stockton*, observed the following:

Although 42 Pa.C.S.A. § 5505 gives the trial court broad discretion, the trial court may consider a motion for reconsideration only if the motion is filed within thirty days of the entry of the disputed order. *Burrell Constr. & Supply Co. v. Straub*, 440 Pa.Super. 596, 656 A.2d 529 (1995); *Ratarsky v. Ratarsky*, 383 Pa.Super. 445, 557 A.2d 23 (1989). After the expiration of thirty days, the trial court loses its broad discretion to modify, and the order can be opened or vacated only upon a showing of extrinsic fraud, lack of jurisdiction over the subject matter, a fatal defect apparent on the face of the record or some other evidence of “extraordinary cause justifying intervention by the court.” *Simpson v. Allstate Ins. Co.*, 350 Pa.Super. 239, 504

A.2d 335 (1986); *Orie v. Stone*, 411 Pa.Super. 481, 601 A.2d 1268 (1992).

Stockton v. Stockton, 698 A.2d 1334, 1337 (Pa. Super. Ct. 1997) (footnote omitted).

While Petitioner filed a Motion for Reconsideration within thirty (30) days of August 12, 2024, Petitioner made no effort to either get interim relief from the Order, or to file a timely appeal. In the view of the Court, the Court has thus lost jurisdiction to reconsider the Order. That fact notwithstanding, the Court will analyze the proper course, if the Court retained jurisdiction for reconsideration.

B. EVEN IF THIS COURT RETAINED JURISDICTION OF THE ORDER OF AUGUST 12, 2024, THE COURT WOULD NOT BE INCLINED TO MODIFY THE AUGUST 12TH ORDER'S PROVISIONS REGARDING REUNIFICATION EFFORTS.

42 Pa.C.S. § 6341, while recently amended by the legislature, provides the following regarding aggravated circumstances:

If the county agency or the child's attorney alleges the existence of aggravated circumstances and the court determines that the child is dependent, the court shall also determine if aggravated circumstances exist. If the court finds from ***clear and convincing evidence*** that aggravated circumstances exist, the court shall determine whether or not reasonable efforts to prevent or eliminate the need for removing the child from the home or to preserve and reunify the family shall be made or continue to be made and schedule a hearing as required in section 6351(e)(3) (relating to disposition of dependent child).

42 PA. STAT. AND CONS. STAT. § 6341 (emphasis added); *see* 237 PA. CODE RULE 1705 (“If the court finds aggravated circumstances exist, the court shall determine whether reasonable efforts to prevent or eliminate the need for removing the child from the home or to preserve and reunify the family shall be made or continue to be made and the court shall proceed to a dispositional hearing under Rule 1512.”).

42 Pa.C.S. § 6302 defines aggravated circumstances as any of the following:

- (1) The child is in the custody of a county agency and either:
 - (i) the identity or whereabouts of the parents is unknown and cannot be ascertained and the parent does not claim the child

within three months of the date the child was taken into custody;
or

(ii) the identity or whereabouts of the parents is known and the parents have failed to maintain substantial and continuing contact with the child for a period of six months.

(2) The child or another child of the parent has been the victim of physical abuse resulting in serious bodily injury, sexual violence or aggravated physical neglect by the parent.

(3) The parent of the child has been convicted of any of the following offenses where the victim was a child:

(i) criminal homicide under 18 Pa.C.S. Ch. 25 (relating to criminal homicide);

(ii) a felony under 18 Pa.C.S. § 2702 (relating to aggravated assault), 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault) or 3125 (relating to aggravated indecent assault).

(iii) A misdemeanor under 18 Pa.C.S. § 3126 (relating to indecent assault).

(iv) An equivalent crime in another jurisdiction.

(4) The attempt, solicitation or conspiracy to commit any of the offenses set forth in paragraph (3).

(5) The parental rights of the parent have been involuntarily terminated with respect to a child of the parent.

(6) The parent of the child is required to register as a sexual offender under Subchapter H of Chapter 97 (relating to registration of sexual offenders)[n.1] or to register with a sexual offender registry in another jurisdiction or foreign country.

42 PA. STAT. AND CONS. STAT. § 6302.

Further, as opined by our Superior Court in *Interest of L.V.* on the matter of reunification efforts upon the finding of aggravated circumstances:

With respect to Mother's claim that that trial court failed to show she exhibited a lack of parental care towards the Children, this Court has recognized that a trial court “need not find the existence of aggravated circumstances as to a particular party; rather, *it merely must determine whether they are present in the case. This is ... because the focus is not on the rights of the [p]arents; instead, the children's safety, permanence, and well-being take precedence.*” *In re R.P.*, 957 A.2d 1205, 1219 (Pa.Super. 2008) (citation omitted).

Accordingly, after a thorough review of the record, including the notes of testimony, the exhibits presented, the trial court opinion, and the parties' briefs, we discern no abuse of discretion in the trial court's decision to adjudicate the Children dependent and finding abuse, aggravated circumstances, and that no reasonable efforts at reunification are required.

Interest of L.V., 209 A.3d 399, 418 (Pa. Super. Ct. 2019) (emphasis added).

By Order entered August 12, 2024, this Court found by clear and convincing evidence that 1) the alleged aggravated circumstances existed as to the Petitioner; 2) the Agency had supported the allegations of dependency based upon facts stipulated by the Petitioner and Agency counsel; 3) the facts stipulated on the record by Petitioner are accurate; and 4) the Minor Child is a dependent child. Based on the above findings, the Court ordered that “No efforts are to be made to preserve the family and reunify the [Minor Child] with the [Petitioner].” Nothing set forth in Petitioner’s Motion for Reconsideration or introduced at the hearing conducted on October 11, 2024, provides the Court with any basis upon which to reconsider its findings and conclusions.

ORDER

AND NOW, this 5th day of November 2024, upon consideration of the Motion for Reconsideration (filed by Petitioner on September 5, 2024), it is hereby **ORDERED** and **DIRECTED** that the Motion is **DENIED**.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

cc: John Pietrovito, Esquire
Johanna Berta, Esquire
Angela Lovecchio, Esquire
Lycoming County Children & Youth
Court Administrator