

DECEMBER 2008 LEGISLATIVE AND CASE LAW UPDATE

ADOPTION

Pennsylvania

Kathy and Michael Kravas, potential adoptive parents from Pittsburgh, are suing the Private Adoption Services, Inc., adoption agency claiming fraud, negligent infliction of emotional distress and breach of fiduciary duty. The couple claims the agency lied to the birth mother regarding Kathy's criminal history and Michael's desire for a dog and not a baby, which caused the birth parents to change their minds regarding making an adoption plan for their baby with the Kravas's. The couple is seeking monetary damages from the agency, which could not be reached for comment.

Source: The Associated Press, WLWT 5 News, November 29, 2008

CHILD CARE

For working parents, having grandparents as caregivers can cut the risk of childhood injury roughly in half, according to a new study from the **Johns Hopkins Bloomberg School of Public Health**. Compared to organized daycare or care by the mother or relatives, having a grandmother watch a child was associated with a decreased risk of injury for the child. The results are published in the November 2008 issue of **Pediatrics**. In addition to the source of caregiving, researchers examined the connections between family structure and the likelihood of

injury. According to the researchers, the odds of injury were significantly greater among children whose parents never married compared with the children whose mothers stayed married throughout the child's life. Similarly, odds of injury were greater for children living in homes in which the father did not co-reside. These associations were independent of family income.

As injuries are the number one cause of death for children in the United States, it's critical that determining risk and protective factors continue to be researched. How households choose relatives to watch their children and the actual caregiving style of grandparents is crucial.

Source: ABA Child Law Practice, December 2008

CHILDREN OF INCARCERATED PARENTS

According to a recent report from the Bureau of Justice Statistics, over half of prison inmates in the U.S. are the parents of minor children. As of mid-2007, an estimated 809,000 prisoners were the parents of 1,706,000 children. Stated differently, an estimated 2.3% of all minor children in this country have a parent in prison. Almost 7% of black children and 2.4% of Hispanic children have a parent in prison, compared to about 1% of white children. Because of the rapid growth in the nation's prison population, the number of minor children with a mother in prison more than doubled between 1991 and

2007, while the number of children with a father in prison rose by 77%.

Among both male and female state inmates, violent offenders were the least likely to report having minor children, while drug and public order offenders were the most likely to have children. In general, prisoners with a prior criminal history were more likely to be parents than prisoners with no prior history. Among state prison inmates who were the parents of minor children, fewer than half lived with their children either in the month before arrest or just prior to incarceration. However, almost two-thirds of female inmate parents lived with their children during this time. Mothers who lived with their children were much more likely than fathers to have lived in a single-parent household prior to arrest/incarceration.

More than three-quarters of all state prison inmates who were parents reported having some contact with their children since they were incarcerated. Females were slightly more likely than males to report any contact, and much more likely than males to report having weekly or more frequent contact (95.7% compared to 38.5%). Half of all parents in state prison (49% of fathers and 58% of mothers) reported having a family member who had been incarcerated. More than one-third of parents in state prison (33% of fathers and 43% of mothers) reported that their parents or guardians had abused alcohol or drugs while growing up. Mothers in state prison also reported much higher exposure to other risk factors, including: homelessness, physical or

sexual abuse, a current medical problem, a mental health problem, or substance dependence/abuse.

Source: Parents in Prison and Their Minor Children, Juvenile Justice Update, December/January 2009

CHILDREN'S HEALTH

The vast majority of children who die while hospitalized are newborns, according to a new nationwide study. Additionally, death rates are higher for hospitalized children without insurance compared to those with insurance, researchers found. Children who were transferred between hospitals also had significantly higher mortality rates, according to a study that appeared recently in the *Journal of Hospital Medicine*. As health care providers and institutions expand their efforts to meet the needs of severely ill children and their families, they need to be aware of the higher mortality rates among the youngest children, those without insurance coverage and those who are transferred from one hospital to another.

The researchers studied data between the years 1992 and 2002, representing more than 35 million patient discharges. Nationally, more than 40 percent of deaths among children occur while they are hospitalized. The study is the first to examine end-of-life hospitalization patterns for children in a national sample.

Specific findings include:

- A majority of the deaths were among newborns; in 2002, for

- example, nearly 69 percent were newborns. This reflects the fact that a majority of child hospitalizations are for newborns, the authors note.
- While the highest number of deaths was among newborns, the highest *rate* of mortality was among infants who were not newborns but were younger than 1 year old. In 2002, the death rate in that age group was 0.52 percent of hospitalized children, compared with an overall rate of 0.4 percent among all children.
 - Among children without insurance, the mortality rate was 0.58 percent in 2002, compared with 0.45 percent of children on Medicaid, and 0.33 percent of children with private insurance.
 - Children in all age groups had a higher mortality rate when they were transferred from another hospital, than if they died in the hospital that originally admitted them. For instance, in 2002, the rate among 1-5-year-olds was 1.33 percent for transferred children, compared with 0.27 percent of children who weren't transferred. The gap was much greater among newborns: 4.75 percent compared with 0.36 percent.
 - Insured children who died had significantly longer hospital stays compared with uninsured children who died. It was not clear from the data if this reflected differences in how long insurers allow

patients to remain hospitalized, or the severity of the patients' illnesses.

Source: University of Michigan Press, December 10, 2008

CHILDREN'S HEATH

Imagine seeing a very wealthy family blessed with 6 children. Five of them have enough to eat and comfortable warm rooms in which to sleep. One does not. She is often hungry and cold. On some nights, she has to sleep on the streets or in a shelter and even be taken away from her neglectful family and placed in foster care or a group home with strangers. Imagine this rich family giving 5 of its children nourishing meals three times a day, snacks to fuel boundless energy, but sending the 6th child from the table to school hungry, with only one or two meals and never the dessert the other children enjoy. Imagine this very wealthy family making sure 5 of its children get all of their checkups before they get sick and immediate access to health care when illness strikes but ignoring the 6th child, who is plagued by chronic respiratory infections and painful toothaches, which sometime abscess and kill for lack of a doctor or dentist. Imagine this family sending 5 of its 6 children to good stimulating preschools and making sure they have music and swimming lessons after school but sending the 5th child to unsafe day care with untrained caregivers responsible for too many children or leaving her occasionally with an accommodating relative or older sibling or alone.

Imagine 5 of the children living with books in a family that is able to read to most of its children every night, but leaving the other child unread to, un-talked to and unsung to, un-hugged, or propped before a television screen or video game that feeds him violence and sex and racially-and gender-charged messages, intellectual pabulum, interrupted only by ceaseless ads for material things beyond the child's grasp. Imagine this family sending some of their children to high-quality schools in safe neighborhoods with enough books and computers and laboratories and science equipment and well-prepared teachers but sending the 6th child to a crumbling school building with peeling ceilings and leaks and lead in the paint and asbestos and old, old books--and not enough of them--and teachers untrained in the subjects they teach and with low expectations that all children can learn, especially the 6th child. Imagine most of the family's children being excited about learning, and looking forward to finishing high school, going to college and getting a job, but the 6th child falling further and further behind grade level, not being able to read, wanting to drop out of school, and being suspended and expelled at younger and younger ages, because no one has taught him to read and compute. And no one has diagnosed his attention deficit disorder or treated his health and mental health problems or helped him keep up with his peers.

Imagine 5 of the children engaged in sports and music and arts, in after-school activities and summer camps, and in enrichment

programs, but the 6th child hanging out with dubious peers or going home alone because mom and dad are working, in prison, or have run away from their parenting responsibilities and escaped by using drugs and alcohol, leaving him alone or on the streets during idle nonschool hours and weeks and months, at risk of being sucked into illegal activities and the prison pipeline or killed in our gun-saturated nation.

This is our American family today, where one in six---13 million of our children---lives in poverty in the richest nation on earth, more than 40% in extreme poverty. It is not a stable, healthy, economically sensible or just family. Our failure to invest in all our children before they get sick, or drop out of school, get pregnant, or get into trouble is extremely costly. Every year that we let 13 million children live in poverty costs \$500 billion in lost productivity, crime and health costs. As our political leaders ponder our nation's choices over the next 60 days, let them remember the millions of children living in poverty and extreme poverty and without health coverage and put their needs first and not last. Our economic futures depend on it and so does our nation's soul.

Source: Marion Wright Edelman,
Children's Defense Fund

EDUCATION

Pittsburgh Public Schools

Many high school history courses take a survey approach, giving students the highlights about many important events during a particular period. There is a different plan for the Pittsburgh Public Schools' new course on African-American history. Mr. Smith. Students will study multiple perspectives on black history, gather information from primary sources and write their own interpretations of history. The course is one of the school district's efforts to improve culturally responsive education. The term means making curriculum and instruction more diverse, so minority students can better understand their academic heritage, feel comfortable in the classroom and be motivated to learn. District officials and policy advocates said culturally responsive education is a break with European-centered education and an incorporation of the various racial, ethnic and social perspectives that shape a discipline. As in many urban districts, Pittsburgh's minority students, overall, perform at lower levels on state math and reading tests and graduate in fewer numbers than white students. District officials hope increased use of culturally responsive education will help to turn the tide. The effort here is playing out in various ways, from the new history course that debuts next semester at Pittsburgh Oliver High School to the selection of a diverse group of authors for students to study in English courses district-wide

to making sure students get equal treatment in the classroom.

Another upcoming initiative, funded by The Heinz Endowments, will involve the use of African art to teach such subjects as math and social studies. The pilot project will begin at selected schools next fall. It's a critical factor in African-American children's development when they see their culture reflected in the curriculum and valued in the classroom and valued by teachers or administrators who may not be from the same culture. The Heinz Endowments commissioned a report on culturally responsive education in other districts. The report, not yet publicly available, shows the effects on student achievement to be "potent." The emphasis on culturally responsive education is one component of city school Superintendent Mark Roosevelt's academic-improvement efforts. There's also an external push -- a settlement with an advocacy group. Advocates for African-American students in the Pittsburgh Public Schools filed a complaint with the Pennsylvania Human Relations Commission in 1992, alleging the district had discriminated against minority students with unfair grading, with a disproportionate number of disciplinary referrals and in other ways. In a 2006 settlement, the district agreed to take about 100 steps -- including improvements in instruction and employee training -- to better serve black students.

The new African-American history course will be more rigorous than the current one. It's designed to

move students to a greater awareness of their cultural identity and make them stronger thinkers. It also promotes culturally responsive education by exposing students to the role of women in civil rights, interracial relations and conflicts within the black community. The district also established an equity advisory panel to ensure all children are treated fairly and a task force to work on the district's racial achievement gap. The groups include educators and community members. To foster a culturally responsive mind-set, the district last fall sent a group of school administrators to the "Summit for Courageous Conversation."

Source: Joe Smydo, Pittsburgh Post-Gazette, December 1, 2008

FOSTER CARE

Missouri

On Monday, December 1st, the 8th U.S. Circuit Court of Appeals in St. Louis dismissed the Missouri Department of Social Services (DSS) and two social workers from a lawsuit filed on behalf of a biological mother, Brandie McLean, whose son was fatally wounded while in foster care and remanded the case back to the U.S. District Court in Springfield with instructions to grant summary judgment to DSS and the social workers. The lawsuit alleged that DSS and the social workers acted negligently and recklessly by failing to supervise and evaluate the foster parents, including ensuring no weapons were present in the home. McLean's son was fatally shot by

another child in the foster home outside of the foster parents' supervision. The suit also alleged gross negligence and indifference by DSS and the social workers for failing to follow policies and practices in place to protect foster children. The Circuit Court determined that the actions of DSS and the social workers did not rise to the standard of "conscience-shocking conduct" that would defeat a qualified immunity defense. The foster parents were also named as co-defendants in the case but previously settled with the biological mother.

Source: Jeff Lehr, The Joplin Globe, December 1, 2008

Kentucky

Inspire U, a new store opening in Kentucky at the Kyova Mall, will directly benefit foster teens in West Virginia, Kentucky and Ohio. The store allows foster children in 6th through 12th grades to pick six free clothing items per month at the gently used clothes store. Leanne Gollihue of Inspire U stated she wanted foster teens to have something that was completely theirs and a place that is special to them.

Source: WSAZ 3 News, November 28, 2008

COURT CASE AFFECTING CHILDREN AND FAMILIES

PENNSYLVANIA CASES

Corporal Punishment

S.T. v. Department of Public Welfare, No. 91 C.D. 2008
(Pennsylvania Commonwealth Court, December 4, 2008)

In this Pennsylvania case, the Commonwealth Court has stated: "**Corporal punishment is only permitted where it is not designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement, extreme pain, or mental distress or degradation.**" Bruising over much of this child's body, from his abdomen to his groin depict the result of a savage beating with a belt. The child clearly suffered serious pain and therefore, a serious physical injury. This savage beating was far removed from any acceptable corporal punishment. The finding of an indicated child abuse report was affirmed.

Child Support While Incarcerated

Plunkard v. McConnell, No. 538 WDA 2008, 2008 PA Super 282
(Pennsylvania Superior Court, December 12, 2008)

In this case, the Pennsylvania Superior Court has set forth the law where an individual, who is required to pay child support, is incarcerated.

Until recently, the mere fact of a parent's incarceration was not considered by the Courts Pennsylvania to be a "material and substantial change in circumstances" that would provide for termination of a child support order. The basis for this principle was that incarceration results from intentional criminal conduct that results in a conviction and, therefore, was analogous to an obligor who voluntarily diminishes their income in an attempt to avoid a support obligation.

Since May 2006, the law of Pennsylvania now affords an incarcerated parent the ability to petition to terminate their support obligation where they are able to prove that the order is no longer able to be enforced under state law or that the incarcerated obligor parent is without the ability to pay their child support obligation and there is no reasonable prospect that they will be able to do so for the foreseeable future. Therefore, in this case, the support order was terminated and arrears accruing while the father was incarcerated were dismissed.

OTHER STATES' CASES

ADOPTION

Sexual Orientation

Florida: **In Re Adoption of Doe**

The Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County granted the

petitioner's sworn petition to adopt his foster children over the Florida Department of Children and Families' motion to dismiss, which was based on petitioner's sexual orientation. The court held that Florida Law which bans homosexuals from adopting, violated both the petitioner's and the adoptive children's equal protection rights under the Florida constitution and the children's right to permanency under both Florida and federal law. The court found **that the state has no rational basis for excluding homosexuals from adopting**, and that the state cannot demonstrate a morality interest in preventing homosexuals from adopting when it allows homosexuals to foster parent. In support of its findings, the court cited research indicating that homosexuals are no more likely to have mental health issues, substance or alcohol abuse problems, or relationship instability than non-homosexual couples and noted the current lack of consensus that any particular gender combination of parents is better than another. The court also found that **the statute violated the rights of the dependent children under Florida law and the federal Adoption and Safe Families Act "to permanency and stability in adoptive placements."** The court granted the adoption petition, finding adoption by the petitioner to be in the children's best interests.

Cite: (Fla. Cir. Ct. Nov. 25, 2008)

ADOPTION

Nebraska: Brett M. v. Vesely

The Supreme Court of Nebraska reversed a district court's issuance of a writ of habeas corpus ordering appellants, prospective adoptive parents, to return their adoptive child to the adoption agency, holding that the appellants did not illegally detain the child. The agency revoked the adoptive placement due to appellants' **failure to disclose the wife's pregnancy**. In its ruling, the court noted that in an agency adoption, while the adoption agency maintains legal custody of the child from the time the biological parents relinquish custody until the adoption is completed, **the agency "cannot arbitrarily or unreasonably terminate a placement merely by asserting that it is still the legal guardian" during this time.** The court held that appellants did not illegally detain the child after the agency revoked the placement because the agency arbitrarily and unreasonably terminated the placement due to appellants' failure to disclose the pregnancy, a fact that they were not obligated to disclose under their agreement with the agency. In addition, the court found that it would be in the child's best interest to return the child to the appellants' custody until the adoption proceedings were completed, as they had provided a suitable home for the child.

Cite: No. S-08-178; 276 Neb. 765;

2008 Neb. LEXIS 165 (Neb. Nov. 21, 2008)

TERMINATION OF PARENTAL RIGHTS

Americans with Disabilities Act

Ohio: In re Cunningham Children

The Ohio Court of Appeals, Third Appellate District, Seneca County, affirmed the trial court's order terminating the parental rights to her four children of mother, holding that clear and convincing evidence supported the lower court's findings. Mother alleged that the Seneca County Department of Job & Family Services ("Agency") failed to implement a reunification plan that took her limited cognitive abilities into consideration, that the trial court failed to accommodate this disability as required by the Americans with Disabilities Act, and that the trial court erred in granting the motion for permanent custody since an adoption plan had not been entered at the time the motion was filed. The appeals court held that although limited cognitive ability alone is not a sufficient ground to warrant termination, it is one factor that can be considered in a termination of parental rights action. In addition, the appeals court found no mention in the record of a specific disability or a request for accommodations by mother. In relation to the failure to file an adoption plan, the appeals court noted Supreme Court of Ohio precedent holding that the applicable statute does not require the case plan to be filed before a permanent

custody motion is granted. In this case, the Agency complied with the statute by filing its case plan, including an adoption plan, after the hearing but before the case was closed. The appeals court overruled all assignments of error and affirmed the trial courts' order terminating mother's parental rights.

Cite: No. 13-08-27, 13-08-28, 13-08-29, 13-08-30; 2008 Ohio 5938; 2008 Ohio App. LEXIS 4979 (Ohio Ct. App. November 17, 2008)