

PINS Case Law
April 2017

Family Court Erred in Granting Respondent's Motion and Finding Petitioner in Contempt of Court Without Conducting Hearing

Family Court found petitioner in contempt for failing to comply with an order extending the placement of respondent through June 2014. The Appellate Division reversed and remitted the matter to the court for a hearing. The order extending the placement provided that respondent, who was adjudicated a person in need of supervision in June 2010, was not to be discharged from foster care without the permission of the court. Respondent threatened his foster mother in early January 2014 and, when the police arrived, he threatened them as well, resulting in his arrest and incarceration. When respondent was released from incarceration, petitioner placed him in an emergency homeless shelter for teens and filed a petition seeking to terminate his placement in foster care pursuant to Family Court Act Section 756 (a) (ii) (1). Respondent, who was 18 years old at the time, moved to hold petitioner in contempt. The court erred in granting the motion and finding petitioner in contempt of court without conducting a hearing. To sustain a civil contempt, a lawful judicial order expressing an unequivocal mandate must have been in effect and disobeyed; the party to be held in contempt must have had knowledge of the order; and prejudice to the rights of a party to the litigation must be demonstrated. Respondent established those elements. However, petitioner raised a valid defense, i.e. its inability to comply with the order. Petitioner submitted evidence that it contacted numerous foster homes and group homes, and none would accept respondent because of his past violent and disruptive behavior while in foster care. Respondent had a history of not following the rules and using drugs. The agency that eventually accepted respondent after the finding of contempt had denied acceptance at the time of the motion. Respondent's mother would not take him back into her home, and she told the caseworker that there were no friends or family willing to accept respondent. Notably, petitioner did not simply ignore the order when it became apparent that it was unable to comply. Instead, it filed a petition seeking to terminate respondent's placement in foster care. The instant case was distinguishable from *McCain v Dinkins*, 84 NY2d 216 (1994). In the instant case, petitioner argued that it was respondent's own conduct that prevented petitioner from complying with the order. Petitioner was entitled to a hearing to present any such defense.

Matter of Andrew B., 128 AD3d 1513 (4th Dept 2015)

Respondent's Conduct Consistent With PINS Behavior, Not With Juvenile Delinquency

Respondent was adjudicated a person in need of supervision and placed on probation for one year. Upon her appearance in connection with PINS violation charges, Family Court remanded her to a specified non-secure detention facility. She immediately absconded, and her probation officer obtained a PINS warrant for respondent to be returned to the non-secure facility. Six probation officers visited respondent's home to execute the warrant. She acknowledged that she did not comply with the officers'

directions. However, the severity of her resistance was disputed. The officers eventually took her into custody and transported her to a non-secure detention facility. Subsequently, the presentment agency prosecuted respondent upon a juvenile delinquency petition charging her with attempted assault in the third degree, resisting arrest, obstructing governmental administration, and menacing in the third degree. Her attorney argued that the presentment agency was improperly seeking to “bootstrap” a PINS case into a juvenile delinquency case given that respondent’s conduct was “classic PINS behavior.” Upon a fact-finding hearing, Family Court found that respondent had committed resisting arrest and obstructing governmental administration, and dismissed the counts charging attempted assault and menacing. The Appellate Division reversed and dismissed the petition. Under the particular circumstances, respondent’s conduct was consistent with PINS behavior, not with juvenile delinquency. In a 5-2 decision, the Court of Appeals affirmed. The crime of resisting arrest required that a person intentionally prevent “an authorized arrest.” However, the restraint of a PINS pursuant to FCA § 718 was not the same as a criminal arrest. A PINS proceeding was fundamentally civil in nature. A PINS who resisted being restrained or transported back to a placement facility was not resisting arrest within the meaning of Penal Law § 205.30. With respect to the charge of obstructing governmental administration, while probation officers qualified as public servants, and respondent admitted that she wanted to “make it hard” for the officers to handcuff her and take her to the non-secure facility, a PINS’s disobedience and obstruction of lawful authority within the meaning of FCA § 712 (a) was not necessarily the same as an adult’s under the Penal Law. Because a PINS could not be placed in a secure facility, the legislature surely did not intend the type of behavior that might cause a child to be designated a PINS in the first place to become the basis for secure detention. Although physical resistance to probation officers was different from ignoring a court order, and respondent’s fractious behavior arguably posed a danger to herself, the probation officers and/or her family, respondent’s resistance fell within the bounds of the PINS statute rather than Penal Law § 195.05. The expiration of Family Court’s dispositional order did not moot the appeal because the Appellate Division’s order had the potential for future legal consequences. Judge Pigott and Judge Smith dissented, noting that the majority endorsed a trend in the Appellate Division prohibiting “bootstrapping” a PINS adjudication onto one alleging juvenile delinquency where the PINS absconds from a nonsecure facility with conduct that, if committed by an adult, would constitute certain violations of the Penal Law. Moreover, the majority imposed an unworkable test that would force probation officers, presentment agencies and courts to analyze whether specific instances of misconduct fit within “PINS-type behavior,” or behavior “more harmful to the juvenile than to society.”

Matter of Gabriela A., 23 NY3d 155 (2014)

Respondent Waived Contentions Regarding Substitution of PINS Petition for JD Petition

Family Court adjudged that respondent was a person in need of supervision, and directed her to abide by certain conditions, including an order of protection. The Appellate Division affirmed. The court could substitute a petition alleging that

respondent was a person in need of supervision for a petition alleging she was a juvenile delinquent. Here, respondent not only agreed to such substitution, she moved for the substitution. Respondent thus waived her contentions about the substitution. The non-hearsay allegations of the factual part of the petition or of any supporting depositions established, if true, every element of each of the crimes charged and respondent's commission of such crimes, specifically there were sufficient allegations that the victim suffered an impairment of physical condition or substantial pain.

Matter of Sarah C.B., 91 AD3d 1282 (4th Dept 2012)

PINS Adjudication Reversed

Family Court adjudicated respondent to be a person in need of supervision and placed him on probation for 12 months. The Appellate Division reversed and dismissed the petition. The court erred in failing to dismiss the petition because the petition failed to specify what diversion services were offered prior to the filing of the petition as required by Family Court Act § 735. The petition also failed to demonstrate that petitioner made documented diligent attempts to avoid the necessity of filing a petition. The failure to comply with such substantive statutory requirements constituted a nonwaivable jurisdictional defect requiring dismissal.

Matter of Nicholas R.Y., 91 AD3d 1321 (4th Dept 2012)

Contentions About Placement Moot

Family Court adjudged that respondent was a person in need of supervision and placed her in the custody of the Commissioner of Social Services for one year. Respondent's contentions that the court failed to advise her of her right to remain silent at the dispositional hearing and that placement was not an appropriate disposition were moot because the order of placement had expired. Respondent's contention that the court failed to comply with the Family Court Act, which required it to review the pre-petition services at the initial appearance, was unpreserved and lacked merit. The petition and the attached documents established that petitioner complied with the Family Court Act and the court's comments at the initial appearance demonstrated that the court reviewed petitioner's efforts to divert the case.

Matter of Haley M.T., 96 AD3d 1549 (4th Dept 2012)

PINS Adjudication Reversed

Family Court adjudged that respondent was a person in need of supervision. The Appellate Division reversed. Although the dispositional part of the order had expired, the appeal was not academic because of the possibility of collateral legal consequences resulting from the adjudication. The court erred in denying respondent's motion to dismiss the petition. In a report attached to the petition, the Probation Department stated in a conclusory fashion that diversion services for respondent and

his family were provided before the petition was filed. Thus, the petition failed to show that the Probation Department, pursuant to family Court Act § 735 (a), exerted diligent attempts to avoid the necessity of filing a petition. Failure to comply with the statutory requirements constituted a nonwaivable jurisdictional defect.

Matter of Joseph C.E., 99 AD3d 1245 (4th Dept 2012)

Family Court Erred in Denying Motion to Dismiss Violation Petition

Family Court revoked respondent's probation and placed respondent in the custody of the Commissioner of Health and Human Services for a period of 12 months. The Appellate Division reversed and granted respondent's motion to dismiss the violation petition. Respondent's appeal from the dispositional order brought up for review the denial of respondent's motion to dismiss the violation petition. Family Court erred in denying that motion. In the absence of the filing of a declaration of delinquency pursuant to Family Court Act Section 779-a, which tolled a disposition of probation pending a final determination on the violation petition, the court's authority to enter a dispositional order expired on the date on which the order of probation expired.

Matter of Michael S., 100 AD3d 1530 (4th Dept 2012)

PINS Adjudication Reversed

Family Court adjudicated respondent to be a person in need of supervision and placed him on probation for 12 months. The Appellate Division reversed and dismissed the petition. The court erred in failing to dismiss the petition because the petition failed to specify what diversion services were offered prior to the filing of the petition as required by Family Court Act § 735. The petition also failed to demonstrate that petitioner made documented diligent attempts to avoid the necessity of filing a petition. The failure to comply with such substantive statutory requirements constituted a non-waivable jurisdictional defect requiring dismissal.

Matter of James L. Jr., 74 AD3d 1775 (4th Dept 2010)

New Dispositional Hearing Required

Family Court advised respondent at fact-finding of her right to remain silent, whereupon she admitted to allegations in the petition. At the dispositional hearing, however, the court did not advise her of her right to remain silent and, following her testimony, adjudicated her a person in need of supervision and placed her in the custody of DSS. The Appellate Division agreed with respondent that the court violated FCA § 741 (a), which required the court to advise respondent of her right to remain silent at the commencement of any hearing under article 7, and that the violation constituted reversible error. Thus the Appellate Division modified the order and remitted for a new dispositional hearing. The petition, however, was not jurisdictionally defective: the petition and attached documents alleged sufficient detail and, although the petition did

not expressly allege that petitioner had “complied with the provisions” of FCA § 735 (§ 732 [d]), the attached documents established petitioner’s compliance.

Matter of Mercedes M.M., 52 AD3d 1210 (4th Dept 2008)

Adjudication Reversed

Family Court found that respondent was a person in need of supervision. The Appellate Division reversed. Petitioner failed to preserve for review its contention that the court erred in substituting a petition that alleged that respondent was a person in need of supervision for a petition alleging that respondent was a juvenile delinquent at the close of petitioner’s proof at the fact finding hearing. Although the court may, with the consent of petitioner, substitute a petition alleging that respondent was a person in need of supervision for a petition alleging that he or she was a juvenile delinquent, here the court failed to obtain petitioner’s consent. Further, the court failed to determine at the conclusion of the fact finding hearing whether respondent committed the acts alleged in the petition, and the court further erred in ordering that respondent be placed under probation supervision without ordering a probation investigation and then conducting a dispositional hearing.

Matter of Felix G., 56 AD3d 1285 (4th Dept 2008)

Court Failed to Advise of Right to Remain Silent

Family Court found respondent failed to comply with the terms and conditions of an order of disposition and suspended judgment. The Appellate Division reversed and remitted for further proceedings on the ground that the court failed to advise respondent of his right to remain silent before accepting his admission.

Matter of Marquis K.S., 26 AD3d 756 (4th Dept 2006)

Order Extending Placement Affirmed

Family Court did not abuse its discretion in granting the petition seeking to extend respondent’s placement for a period of 12 months. The evidence at the hearing established that, although the conduct of respondent had improved in certain areas during her initial placement, she continued to have problems at school and at her residence, and that she required additional treatment and supervision in order to enable her to return safely to her home.

Matter of Chasity B., 28 AD3d 1191 (4th Dept 2006)

No Error in Finding Good Cause for Late Filing and Granting Petition for Extension of Placement

After a six-month placement of the subject child, DSS sought an additional placement

of 12 months. Family Court did not err in finding good cause for late filing of the petition, which was filed only 11 days late. DSS established that the filing was delayed because it did not initially believe that an extension would be necessary. The petition was filed on February 7, 2006, and it was not until meetings between respondent and her mother in December 2005 and January 2006 that DSS concluded that it would not be in respondent's best interests to return home at the end of the existing placement. Further, Family Court did not abuse its discretion in granting the petition. Although respondent made improvements in behavior, she still needed to work on her relationship with her mother and to address her mental health issues. The evidence established that placement in a group home setting, a lower level of care than the residential setting, would allow respondent to continue working on her problems while learning independent living skills.

Matter of Natalie B., 32 AD3d 1323 (4th Dept 2006)

Constitutional Issue Unpreserved; No Hearing Required Pursuant to FCA § 778

Family Court extended respondent's placement following her admission that she violated a prior order of placement resulting from an adjudication that she was a person in need of supervision. On appeal, respondent contended that her right to due process was denied when Family Court failed to afford her an opportunity to present evidence at a dispositional hearing. The Appellate Division affirmed, concluding that respondent failed to preserve her contention for review because, although she requested a hearing, her contention concerning due process was raised for the first time on appeal. The Appellate Division noted, however, that no hearing was required pursuant to FCA § 778.

Matter of Vanessa S., 20 AD3d 924 (4th Dept 2005)