

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

Kathryn Nicole Keech and Amy
Marie Keech by next friends
Paul and Julie Keech

Court of Appeals No. E-11-007

Trial Court Nos. 2008-CV-1087
2009-CV-0471

Appellants

v.

Ohio Department of Jobs
and Family Services

DECISION AND JUDGMENT

Appellee

Decided: December 9, 2011

* * * * *

Thomas J. Zraik, for appellants.

Mike DeWine, Attorney General of Ohio, and Charity Robl,
Assistant Attorney General, for appellee.

* * * * *

SINGER, J.

{¶ 1} Appellants appeal the judgment of the Erie County Court of Common Pleas affirming administrative decisions that denied financial assistance for special needs adopted children. Because Ohio Adm.Code 5101-2-49-09(A)(1) limits post-decree Title

IV-E Adoption Assistance application to adoptive parents who arguably have been prevented from filing a pre-decree application, we affirm.

{¶ 2} Appellants are Kathryn and Amy Keech, by their next friends and adoptive parents, Paul and Julie Keech. Amy Keech was born in 1990, her half-sister, Kathryn, in 1991. Both are special needs children. Both were removed from the custody of their mother at birth. Permanent custody went to the Cuyahoga County Department of Human Services, a public children's services agency. In 1992, the children were placed antecedent to adoption with Paul and Julie Keech.

{¶ 3} Prior to finalization of the adoption, the Keeches filed an application for federal Title IV-E Adoption Assistance, see Section 670 et seq., Title 42, U.S.Code, for the children. This financial aid is available for parents who adopt children with special needs and meet certain "relatedness" standards. One such standard is that the natural parent be eligible for Aid for Families with Dependent Children ("AFDC") at the time of the child's removal from his or her home. Ohio Adm.Code 5101-2-49-02(A)(7)(a); 5101-2-49-02.01. On June 23, 1993, just before the adoption was finalized, appellants' Adoption Assistance application was denied on the ground that, at the time the children were removed from their natural mother, the mother was income ineligible for AFDC.

{¶ 4} On administrative appeal, a state hearing officer concluded that the county children's agency's denial of Adoption Assistance on the grounds of AFDC ineligibility was correct. The hearing officer nonetheless sustained appellants' appeal, because the county agency had made no determination as to whether the children had been eligible, at

the time the adoption proceedings were initiated, for Supplemental Security Income ("SSI") through the Social Security Administration, an alternative "relatedness" test that would have qualified them for federal Adoption Assistance. Ohio Adm.Code 5101-2-49-02(A)(7)(b). The hearing officer directed the county children's agency to apply to the Social Security Administration for an SSI determination of eligibility for appellants and to "redetermine Adoption Assistance eligibility based on the results of the SSI decision."

{¶ 5} No appeal from the 1993 state hearing decision was taken. It is undisputed that the county children's services agency never submitted an SSI application for eligibility determination, however, there is in the record a copy of a 1993 letter from a Social Security claims representative to Paul Keech, advising him that the agency had made an "informal decision" that the family was income ineligible for SSI.

{¶ 6} In 2008, the adoptive parents again filed Adoption Assistance applications for Kathryn and Amy. The claims were heard in separate proceedings. In Kathryn's case, the hearing officer determined that the circumstances were sufficient to satisfy Ohio Adm.Code 5101-2-49-09(A)(1), permitting a post-adoption decree Adoptive Assistance application. The state hearing officer ordered the county children's services agency to redetermine Kathryn's eligibility for Adoption Assistance. The county agency again determined that Kathryn was ineligible. This determination was affirmed after a state hearing and subsequent administrative appeal.

{¶ 7} Amy's 2008 application was denied at the county level and affirmed at a state hearing and in an administrative appeal.

{¶ 8} The administrative decisions were separately appealed to the common pleas court, pursuant to R.C. 119.12. The court consolidated the cases and eventually affirmed the administrative decisions. It is from this judgment that appellants appeal. Appellants set forth the following three assignments of error:

{¶ 9} "A. First Assignment of Error

{¶ 10} "The Common Pleas Court erred by failing to address one of Appellants [sic] dispositive arguments which was raised at each stage of the proceedings below.

{¶ 11} "B. Second Assignment of Error

{¶ 12} "The Common Pleas Court erred by incorrectly interpreting and misapplying Ohio Adm. Code 5151:2-49-09(A)(1)(a) [Adm. Code 5151:2-49-09(A)(1) (2010)] when it affirmed the Ohio Department of Jobs and Family Services (ODJFS) decisions denying Plaintiff-Appellants IV-E Adoption Assistance benefits, by holding the public children's services agency (PCSA) did not fail to provide the adoptive parents with relevant information about the children.

{¶ 13} "C. Third Assignment of Error

{¶ 14} "The Common Pleas Court erred in affirming the ODJFS determination that Plaintiff-Appellants were not eligible for Title IV-E Adoption Assistance."

{¶ 15} In an administrative appeal to a common pleas court, the court must affirm the decision of the administrative agency when it is supported by reliable, probative, and substantial evidence and is in accordance with law. R.C. 119.12; *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 110. "Reliable evidence" is that evidence which is

dependable and that has a reasonable probability that it is true. To be probative, the evidence must be relevant in determining the issue. Evidence with some weight, that is, having importance and value, is substantial evidence. *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571. While a common pleas court may perform a limited weighing of evidence, it must give deference to the "administrative resolution of evidentiary conflicts." *Conrad* at 111.

{¶ 16} An appeals court's standard of review is more limited. The court can only determine whether the common pleas court abused its discretion in finding that the decision of the administrative agency is properly supported. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621. An abuse of discretion is more than an error of judgment, the term connotes that the court's attitude is arbitrary, unreasonable or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. On questions of law, however, our authority on review is plenary. *Bivins v. Ohio State Bd. of Emergency Med. Servs.*, 165 Ohio App.3d 390, 2005-Ohio-5999, ¶ 7.

I. Insufficient Information

{¶ 17} In their first assignment of error, appellants maintain that they have been prejudiced by the trial court's failure to address their claim that "because the adoptive parents were never adequately informed about IV-E eligibility criteria or about the existence of the SSI program prior to final adoption, extenuating circumstances * * * have been established."

{¶ 18} As a general rule, application for Title IV-E Adoption Assistance must be made prior to finalization of the adoption. Ohio Adm.Code 5101-2-49-01(B). It is the responsibility of the county children's services agency to ensure that the adoptive family receives an Adoption Assistance application and the agency is directed to assist in the completion of the application. Ohio Adm.Code 5101-2-49-01(A). The children's services agency must determine eligibility within 30 days of submission of the application. Ohio Adm.Code 5101-2-49-01(F)(3).

{¶ 19} An exception to the rule that the application for Title IV-E Adoption Assistance must be filed prior to the final decree of adoption is found in Ohio Adm.Code 5101-2-49-09(A). The rule provides that an adoptive family may apply for Adoption Assistance post-decree if the family has not completed an Adoption Assistance application before a final adoption decree or has not executed an Adoption Assistance Agreement before the decree if due to (1) "[r]elevant facts regarding the child [being] known to the [children's services agency] and not presented to the adoptive parent(s) prior to the final decree of adoption" or (2) the children's services agency "* * * failed to advise the adoptive parent(s) of the availability of [Adoption Assistance]." If one of these criteria is satisfied, the adoptive parents are permitted to apply. Except for timeliness, the child must meet all of the remaining eligibility requirements of Adoption Assistance in effect on the date the children's services agency receives the application. Ohio Adm.Code 5101-2-49-09(B).

{¶ 20} With regard to Kathryn, a second Adoption Assistance application was filed on March 3, 2008, and denied by the county children's services agency on May 27, 2008, as untimely. At the state hearing on the application, the hearing officer found that there had never been an Adoption Assistance Agreement executed prior to the adoption decree and the agency had withheld from the adoptive parents certain "relevant facts concerning [Kathryn's] biological mother's mental health and [Kathryn's] medical conditions * * *." On these findings, the hearing officer recommended that the appeal be sustained and that the county agency be directed to determine Kathryn's eligibility based on the March, 2008 application.

{¶ 21} On administrative appeal, the administrative appeal officer, although opining that the state hearing officer misapplied the rule on post-finalized adoption applications, nonetheless sustained the state hearing officer's recommendation and directed the county agency to determine Kathryn's eligibility. In a footnote criticizing the initial hearing officer's application of the rule, the administrative appeal officer stated, "* * * the fact that the rule was misapplied in this decision does not relieve the agency of the responsibility to comply with it since 'In no event shall the administrative appeal process result in a determination more adverse to the individual than was contained in the initial decision being appealed.' OAC 5151:6-8-01(I)(6)[.]"

{¶ 22} On administrative remand, the county children's services agency again denied Kathryn's request for Adoption Assistance, citing as its sole reason that Kathryn's

biological mother's income, at the time Kathryn was removed from her care, exceeded that allowable to qualify for AFDC. The county decision makes no mention of SSI.

{¶ 23} The state hearing officer, however, in an April 2009 decision discusses the SSI issue at length. The hearing officer affirmed the conclusion of the prior proceedings that Kathryn was not eligible for AFDC. On the basis of the 1993 written informal decision of the Social Security Administration claims agent, the hearing officer concluded that the parents bore some responsibility to apply for a formal SSI determination. With respect to the county agency's failure in 1993 to file for a formal SSI determination as ordered, the hearing officer noted that the time for applying to enforce that order had long since passed without any further appeal or similar action by appellants.

{¶ 24} The state hearing officer also issued "Conclusions of Policy" in which she concluded that the prior state hearing officer's determination to permit appellants to apply for post-finalization Adoption Assistance was erroneous. The county children's services agency advised appellants of Adoption Assistance as evidenced by the application they filed before adoption finalization. Moreover, it is undisputed that the adoptive parents knew that these were special needs children. This knowledge is evidence that the agency disclosed such facts. On May 8, 2009, in an administrative appeal decision, the state hearing officer's decision was affirmed, including, specifically, the determination that Kathryn had been granted post-Adoption Assistance application consideration erroneously.

{¶ 25} Concerning Amy, her separate post-adoption application was denied by the county children's services agency and the denial was affirmed following a state hearing on a finding that "* * * the conditions necessary in order for the adoptive parents to be entitled to file an untimely/post adoption application for Adoption Assistance are not present in this case." The hearing officer found that the children's services agency advised the adoptive parents of Adoption Assistance and had not withheld relevant facts about the child that were known to it prior to the final decree. On administrative appeal, the appeal officer noted, "[T]he rule does not authorize [Amy] to file for post-adoption assistance because the agency's failure to disclose the background of [Amy's] birth obviously did not result in her failing to file her initial assistance application, prior to being adopted. In other words, the procedure for filing a post-adoption application only applies to those who were arguably prevented from filing a pre-adoption application."

{¶ 26} Appellants would place a burden on the children's services agency not only to inform prospective adoptive parents of the existence of the Title IV-E Adoption Assistance program, but to explain in detail the eligibility criteria, including the availability of SSI "relatedness" as a qualifier. Failure to satisfy this burden, appellants assert, should give rise to extenuating circumstances sufficient to permit a post-finalization application for Adoption Assistance. Appellants complain, in their first assignment of error, that when the common pleas court affirmed the administrative decisions at issue, it did not adequately address this point.

{¶ 27} Appellee responds that no consideration of SSI is necessary because appellants' claim is barred by the doctrine of laches. Appellants slept on their rights for 15 years and should be barred from now asserting these rights. Moreover, appellee insists that if Adoption Assistance was retroactively applied to 1993, the cost to the department would exceed a half-million dollars.

{¶ 28} With regard to the cost of any remedy, it is the role of the judicial system to determine whether the claimants are legally entitled to benefits, not to act as protector of the exchequer.

{¶ 29} "[T]he elements of a laches defense are '(1) unreasonable delay or lapse of time in asserting a right, (2) absence of an excuse for the delay, (3) knowledge, actual or constructive, of the injury or wrong, and (4) prejudice to the other party.'" *Portage Cty. Bd. of Comm. v. Akron*, 109 Ohio St.3d 106, 2006-Ohio-954, ¶ 81, quoting *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections* (1995), 74 Ohio St.3d 143, 145. Even if these elements are sustained, however, "* * * laches is an equitable doctrine and it is fundamental that she who comes into equity must come with clean hands." *Thomas v. Thomas*, 10th Dist. No. 03AP-1106, 2004-Ohio-2136, ¶ 15, citing *Christman v. Christman* (1960), 171 Ohio St. 152, 154.

{¶ 30} We suspect that much, if not the entirety, of these proceedings might have been avoided if the county children's services agency had simply done what it was directed to do in 1993: make an SSI application for these children. Since it did not, we decline to impose the equitable doctrine to foreclose consideration.

{¶ 31} Since we decline to apply the doctrine of laches, we reach the merits of the appeal. This is an appeal from 2008 applications for Adoption Assistance, not the 1993 claim. Appellants litigated their 1993 claim and, by most measures, would be considered to have prevailed there. If they were not pleased with the compliance of the county children's services agency, the rules provide that they may request a state hearing review of the agency's action or inaction. The claimant, however, is time limited in initiating such a review. Ohio Adm.Code 5101:6-3-02(B) provides that a claimant "* * * shall be allowed ninety calendar days to request a hearing on any action or inaction."

{¶ 32} There might be an argument in circumstances, such as here, as to when time begins to run when the complaint involves agency inaction, but such an argument would be relevant only in close calls. In the present matter, we can say with some certitude that appellants' time to seek a state hearing on the agency's compliance inaction expired some years ago. As a result, appellants are foreclosed from relitigating the 1993 issues.

{¶ 33} Accordingly, appellants' first assignment of error is not well-taken.

II. Rule Interpretation

{¶ 34} In their second assignment of error, appellants maintain that appellee misinterpreted its own rule when it concluded that they had failed to establish extenuating circumstances sufficient to allow for post-decree application for Title IV-E Adoption Assistance.

{¶ 35} An initial caveat: this assignment of error does not concern Kathryn. The hearing officer at Kathryn's state hearing concluded that extenuating circumstances were established and allowed Kathryn to make a post-decree application. Subsequent review of Kathryn's state hearing officer's decision reversed him on his interpretation of the rule, but nonetheless allowed Kathryn to submit an application. The application was subsequently denied on its merits.

{¶ 36} Other than Kathryn's first hearing officer, the remainder of the decisions of the agency, including all of the decisions relating to Amy, concluded that, "the procedure for filing a post-adoption application only applies to those who were arguably prevented from filing a pre-adoption application."

{¶ 37} Ohio Adm.Code 5101:2-49-09(A)(1) (eff. 2008) provides:

{¶ 38} "The adoptive family who has finalized the adoption of a special needs child may apply for Title IV-E Adoption Assistance (AA) after the adoption is legalized if the following conditions apply:

{¶ 39} "(1) The JFS 01451 'Title IV-E Adoption Assistance Application' (rev. 10/2006) was not completed prior to the finalization of adoption or the JFS 01453 'Adoption Assistance Agreement' (rev. 10/2006) was not executed prior to the final decree of adoption due to either of the following circumstances:

{¶ 40} "(a) Relevant facts regarding the child were known to the public children services agency (PCSA) or private child placing agency (PCPA) and not presented to the adoptive parent(s) prior to the final decree of adoption.

{¶ 41} "(b) The PCSA or PCPA failed to advise the adoptive parent(s) of the availability of AA."

{¶ 42} "[D]eference should be afforded to an agency's interpretation of its own rules if such an interpretation is consistent with statutory law and the plain language of the rule itself." *State ex rel. DeMuth v. State Bd. of Edn.* (1996), 113 Ohio App.3d 430, 433, citing *Jones Metal Products Co. v. Walker* (1972), 29 Ohio St.2d 173, 181.

{¶ 43} Appellants maintain the rule grants a right to make a post-decree application when an adoptive family either failed to file a pre-adoption application or did not execute an Adoption Assistance Agreement whenever the family was not advised of the Adoption Assistance program or relevant facts concerning the adoptee were withheld.

{¶ 44} Appellee interprets the rule to be that an adoptive family can file a post-finalization application only if they did not file an application prior to the decree. If no application was made before the adoption decree, then a post-decree application is proper only when the adoptive parents were not informed of the program or because were not presented relevant facts concerning the adoptee prior to adoption finalization.

{¶ 45} Although the rule may arguably read in favor of either party's interpretation, we must give deference to the agency's interpretation of its own rule. An assistance agreement may not be executed unless an assistance application has been filed and approved, so these documents are inextricably linked. If the agency does not inform the adoptive parents of the Adoption Assistance program, this thwarts the parents' ability to apply for assistance and thus, if, after finalization, they learn of the program and are

eligible they should not be prevented from applying. Similarly, if the children's services agency informs the adoptive parents of the program, but fails to further inform them of relevant facts concerning the child, such as that the child has special needs, and "due to" the withholding of this information prior to adoption the adoptive parents do not make application, they should be permitted to make post-adoption application.

{¶ 46} The agency's interpretation of the rule is not inconsistent with the statutory law and the language of the rule. Consequently, the agency's interpretation of its own rule is sustained and appellants' second assignment of error is not well-taken.

III. Adoption Assistance Eligibility

{¶ 47} In their remaining assignment of error, appellants maintain that the common pleas court erred when it failed to reverse appellee's determination that appellants were not eligible for Title IV-E Adoption Assistance.

{¶ 48} Again we point out, since Kathryn is the only child for whom there was an adverse determination on the merits, this assignment is inapplicable to Amy.

{¶ 49} Kathryn's determination at the county level was solely on the basis that she was ineligible for AFDC and, therefore, did not meet the AFDC "relatedness" threshold for Adoption Assistance. Since this characteristic is determined as of the time the child was removed from her birth mother and is based on the birth mother's income, the 1993 determination remains valid.

{¶ 50} With respect to SSI "relatedness," the state hearing officer in his decision and the subsequent administrative appeal panel in its decision examined this issue and

found that there was no evidence that Kathryn was SSI eligible. The only evidence related to SSI eligibility presented at all was the 1993 written informal decision from a Social Security claims agent who concluded that, based on the incomes of the adoptive parents, the children were income ineligible for SSI. There was no evidence presented concerning Kathryn's SSI eligibility in March 2008, the time at which the state hearing officer ordered the Adoption Assistance application to be considered.

{¶ 51} Even were we to accept appellants' proposition that appellee has a duty to inform adoptive parent applicants for Adoption Assistance of an SSI qualifier, by 2008 there was no question that these parents were aware of such a qualifier because the adoptive father had already discussed SSI with a Social Security Administration representative. And yet, appellants offered no evidence that they or their adoptive parents had made application to the Social Security Administration for a formal determination of SSI eligibility. Absent such evidence, we cannot say that the county children's services agency's decision to deny benefits was unsupported by reliable, probative and substantial evidence. Likewise, we cannot say that the common pleas court abused its discretion in affirming that denial. Accordingly, appellants' third assignment of error is not well-taken.

{¶ 52} On consideration whereof, the judgment of the Erie County Court of Common Pleas is affirmed. It is ordered that appellants pay the court costs pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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