No. _____

In the Supreme Court of the United States

GENA GREEN,
Petitioner,

v.

ALLEGHENY COUNTY OFFICE OF CHILDREN, YOUTH, AND FAMILIES,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA

APPENDIX

Gena Green
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Clinton, PA 15026
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Pro Se Petitioner

Twenty-first day of November, MMXXV

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APPENDIX

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Appendix A

[Seal]
Supreme Court of Pennsylvania
Western District
June 24, 2025

Benjamin D. Kohler, Esq.
Prothonotary
310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297

FILED
JUN 24 2025
PITTSBURGH
OFFICE OF
SUPERIOR COURT

RE: In the Interest of: M.G., a Minor

Petition of: G.G., Mother
No. 87 WAL 2025

Trial Court Docket No: CP-02-DP-0000050-2024

Superior Docket Number: 616 WDA 2024

Appeal Docket No:

Date Petition for Allowance of Appeal Filed:
April 9, 2025
Disposition: Order Denying Petition for
Allowance of Appeal.
Disposition Date: May 13, 2025

Reargument/Reconsideration Disposition:
Order Denying Application for Reconsideration.
Reargument/Reconsideration Disposition Date:
June 24, 2025

/tet

IN THE SUPREME COURT OF PENNSYLVANIA WESTERN DISTRICT

IN THE INTEREST OF: M.G., A MINOR	:	No. 87 WAL 2025
PETITION OF: G.G., MOTHER	:	Petition for Allowance of Appeal from the Order of the Superior Court

ORDER

PER CURIAM

AND NOW, this 13th day of May, 2025, the Petition for Allowance of Appeal and Application for Leave to File Post-Submission Communication are **DENIED.**

Appendix B

IN THE SUPREME COURT OF PENNSYLVANIA WESTERN DISTRICT

IN THE INTEREST OF: M.G., A MINOR	:	No. 87 WAL 2025
PETITION OF: G.G., MOTHER	:	Application for Reconsideration

ORDER

PER CURIAM

AND NOW, this 24th day of June, 2025, the Application for Reconsideration is **DENIED.**

Appendix C

J-S39017-24

2025 Pa Super 17

IN THE INTEREST OF: M.G., A MINOR	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: G.G., MOTHER	:	NO. 616 WDA 2024

Appeal from the Order Entered April 24, 2024
In the Court of Common Pleas of Allegheny County
Family Court at No(s): CP-02-DP-0000050-2024

BEFORE: DUBOW, J., KUNSELMAN, J., and NICHOLS, J.

Filed: January 24, 2025

OPINION BY KUNSELMAN, J.:

G.G. (Mother) appeals *pro se* from the order issued by the Allegheny County Court of Common Pleas, which adjudicated dependent her then fourteen-year-old son, M.G. (the Child), pursuant to the Juvenile Act. ***See*** 42 Pa.C.S.A. §§ 6302(1), 6351. After review, we affirm.[1]

We discern the following factual background from the juvenile court's opinion issued pursuant to Appellate Rule 1925(a). In 2014, when the Child was approximately 5 years old, the family was involved in a car accident in Ohio. The Child suffered a brain injury which required a shunt. The Child also had

[1] T.G. (Father) was also involved in this case, but he did not appeal.

some unrelated mental health issues, including Autism, and ADHD. Sometime after the accident, the family moved to Western Pennsylvania.

Nearly a decade later, in July of 2023, law enforcement responded to the family's home for a mental health call. The responding officer reported that Mother was tethered with a medical grade tether when he arrived. According to the Child, the family began using the tether on him in July of 2023.

In August, September, and October of 2023, the Child saw a therapist for medication management. The family did not discuss their use of the tether with the therapist. Another therapist began seeing the Child in November of 2023. The second therapist developed a plan with the Child for when he was feeling anxious or escalated in his emotions. The plan did not include the use of physical restraints; again, the family did not inform the therapist that they were using physical restraints. The therapist did not observe any aggressive behavior from the Child.

On January 2, 2024, Mother called 911 and wanted the Child transported to Western Psychiatric Institute and Clinic. Mother claimed the Child had barricaded himself in the bathroom. The responding officers reported that the home was cluttered and smelled of urine. Mother provided one officer with a written safety plan. The officers saw a tether system attached to a makeshift bed which resembled a wooden bench with a cushion. An officer also saw that the doorknob on the bathroom had been removed; the family reported this was for safety reasons. The Child did not appear to be in emotional distress but

was transported to the hospital. Mother reported to medical staff that the Child was attacking people and being aggressive. The Child was calm and cooperative with the attending physician. Mother gave the physician the written safety plan which included the use of physical restraints. The physician advised the Child needed different care and a different safety plan.

The Allegheny County Office of Children, Youth and Families (the Agency) was notified, and two Agency caseworkers and a police officer went to the home on January 4, 2024. The family did not open the door for approximately twenty minutes. When the caseworkers and police officer entered the home, the Child was not tethered but reported that he had been when they first arrived; the family reported that Mother had also been tethered. Mother provided a caseworker with a written safety plan which involved the use of physical restraints on the Child in many situations including: at night, during the Child's counseling sessions with his spiritual advisor, when the Child was angry or defiant, when he threw things, and when he could not control himself. The caseworker explained to Mother that using the tether was inappropriate and could be considered child abuse. Mother agreed to stop using the tether, and Father threw it away. However, the family had a second tether that they did not disclose.

On January 26, 2024, the Agency received a report that the Child was being tethered nightly again. The Agency obtained an Emergency Custody Authorization and removed the Child. After the Child's removal, the Agency determined several of the Child's specialist appointments had been

neglected prior to his removal, including a neurosurgery examination, a neurological examination, and an examination by the Traumatic Brain Injury Clinic. The Child's mental health treatment was also of concern.

On April 24, 2024, the juvenile court adjudicated the Child dependent and ordered that the Child remain in his foster care placement.[2] Mother timely filed this appeal. She presents six issues for our review, which we reorder for ease of disposition:

1. Did the trial court err when after the Appellee unlawfully removed the family's [C]hild from the home [in January 2024] using Judicial Deception by omission and misrepresenting the facts which violated the family's 14th Amendment rights under the United States Constitution, when the court did not verify reasonable efforts findings with the [A]gency and return the [C]hild home immediately for the duration of the proceedings when it was discovered that the [A]gency did not do their due diligence?

2. Did the court and or legal counsel err when the family was not given a fair shelter care hearing due to ineffective

---

[2] We note from the Appellant's, Agency's, and Guardian *ad litem*'s briefs that the Child's dependency case has since been closed, and the Child has been reunited with the parents. ***See*** Mother's Brief at 29, 31; ***see also*** Agency's Brief at 10; ***see also*** Guardian *ad litem*'s Brief at 12.

counsel that did not notify them of their rights and the misconduct of the hearing officer that was presiding over the case.

3. Did the trial court abuse its discretion when [it] acted in erroneous preclusion of the family's two expert witnesses by incorrectly classifying the witnesses, pursuant to 225§702, §703 and is supported by case law under *J-S46032-18 2019 Super 110 Bryan Wright*, Chanthavong, 682 A.2d at 338-39f. This did not provide the family with an equal and fair defense of their case, while also failing to act impartially on how the witnesses were determined and given credibility for both the Appell [sic] and Appellee.

4. Did the Trial Court fail to ensure meaningful exercise of a *pro se* litigant's constitutional right to equal access to the courts. When pursuant to 237§1152 the court took two minutes in the hearing requesting *pro se* status and did not conduct a colloquy with the litigant as required by law? The Court also did not give the Appellant adequate time to prepare for witnesses when they did not provide discovery of evidence or witnesses in a timely manner which was a violation of the Shelter Care Court

Order and 237§1340? Did the court also give the *pro se* litigant an unfair disadvantage by not having any clear procedures for evidence submission, ensuring the litigant had access to the PACFile system to ensure the litigant was getting orders and notices of the court in a timely manner and could file needed motions which did not allow the litigant to be fairly heard?

5. Did the trial court abuse its discretion and/or [err] as a matter of law or misinterpret the law, in concluding that the [Agency] established by clear and convincing evidence that a dependency existed pursuant to 42 Pa. C.S.A. 6302. Did the court misinterpret the law with regard to what constitutes child abuse in the Child Protective Services Code based on 23§6304(D) exceptions to child abuse per the child protective services code and 18§509 (Commonwealth v. Shayla Lynette Pierce, CP-22-CR-0000759-2018) per the Pennsylvania criminal code. These codes state clearly what is and is not appropriate parental discipline or control of a minor child by a parent?

6. Did the court err in finding that the [Agency] made reasonable efforts to prevent or eliminate the need for

> removal from the home. The [A]gency is required to provide services to families pursuant to 62§2172, 62§2174, 55§3130.61, §3130.66, §3130.67, § 3130.12 (4)(c) (1) (3), § 3490.57(f) (1-4), §3490.61(a)(c)(1), 23§6373, 42§6301(b)(3). Did the court fail to ask the [A]gency to verify what services have been tried to help the family?

Mother's Brief at 3-6.

Before addressing Mother's issues, we must first determine whether they are properly before us. The juvenile court and the Agency urge us to find all mother's issues waived under Pa.R.A.P. 1925. Mother's first Rule 1925(b) statement was eighty-one pages, and her amended statement was thirty-nine pages. The Agency filed a motion to dismiss for each of Mother's 1925(b) statements. We denied both motions. While we agree that Mother's amended Rule 1925(b) statement contains "lengthy explanations" not appropriate in a Rule 1925(b) statement, our review of the statement reveals that Mother raised six issues for appellate review in her summary of errors on page three. ***See*** Amended Pa.R.A.P. 1925(b) Statement at 3; ***see also*** Pa.R.A.P. 1925(b)(4)(iv). Given Mother's *pro se* status, the juvenile court analyzed Mother's issues to the best of its ability. T.C.O. at 8.

We decline to find all issues waived based on her voluminous Rule 1925(b) statement. However, as explained below, we find that Mother's first four issues warrant no relief. Her first issue is waived as

untimely. Her second issue is not subject to appellate review. Mother also waived her third and fourth issues on appeal. Additionally, we caution Mother that a Rule 1925(b) statement is not the place for lengthy explanations or argument. Mother's *pro se* status affords her no special benefit, and she must comply with the Rules of Appellate Procedure. ***See Commonwealth v. Vurimindi***, 200 A.3d 1031, 1037-38 (Pa. Super. 2018) (citations omitted).

Mother's first issue is waived because she failed to raise a timely objection to defects in the application for emergency custody. She presents her first issue as a violation of the family's 14th Amendment rights in her statement of issues. However, her arguments concern the Agency's completion of the emergency application for removal. Mother argues that the Agency incorrectly and incompletely filled out the application for emergency protective custody. Mother's Brief at 75. Mother asserts that if the Agency had given accurate information in the application, then the juvenile court would not have entered an order for emergency removal. ***Id.*** at 79. She also claims that she did not have access to this information until after adjudication and shortly before filing the appeal because she did not have access to PACFile and was not provided with the Agency's Application. ***Id.***

Rule 1126 of the Pennsylvania Rules of Juvenile Court Procedure provides:

> A child shall not be released, nor shall a case be dismissed, because of a defect in the form or content of the pleading or a defect in the

> procedures of these rules, unless the party raises the defect prior to the commencement of the adjudicatory hearing, and the defect is prejudicial to the rights of a party.

Pa.R.J.C.P. 1126.

Here, Mother did not object to any defect in the application prior to the adjudicatory hearing. Moreover, Mother was represented by counsel at the shelter care hearing, and counsel made no objection to the contents of the application nor claimed that Mother did not receive the Agency's Application. Thus, Mother's claim that the application was defective or that her family's 14th Amendment rights were violated is waived.[3]

Mother's second issue challenges the conduct of the hearing officer at the shelter care hearing held on January 31, 2024, with the order docketed on February 5, 2024. T.C.O. at 15; ***see also*** Mother's Brief at 80. This order is not subject to appellate review as it is only a temporary order, to protect the child's best interests and welfare, pending a final adjudicatory hearing.[4]

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[3] Mother also did not claim prejudice by the alleged defective application. She attended all hearings, was aware of the allegations against her and presented defenses to the dependency petition.

[4] Even if we found Mother's second issue to be subject to appellate review, we note that Mother failed to fully develop this issue on appeal. She included only three sentences in the

If a court determines that allowing a child to remain in their home would be contrary to the child's welfare, the court can enter a protective custody order authorizing the child's removal from their home. ***See*** 42 Pa.C.S.A. § 6324(1). Once the child is removed, a shelter care hearing must be held within 72 hours of removal. ***See*** 42 Pa.C.S.A. § 6332(a); ***see also*** 23 Pa. C.S.A. § 6315(d). The shelter care hearing is intended to be an "informal hearing," and its main purpose is to determine where the child should be placed pending a formal adjudicatory hearing. ***See*** 42 Pa.C.S. A. § 6332(a); ***see also*** 23 Pa.C.S. A § 6315(d); ***see also*** Administrative Office of Pennsylvania Courts Office of Children and Families in the Courts, *Pennsylvania Dependency Benchbook* 6-5 (3rd ed. 2019) ("The primary purpose of the shelter care hearing is to evaluate the agency's contention that allowing the child to remain in the home would be detrimental to the child's welfare and best interests.").

Accordingly, the shelter care hearing does not comprehensively address the merits of the case. Instead, the formal adjudicatory hearing addresses the merits, and that hearing must be held within ten days of the filing of the dependency petition if the

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Argument of Appellant section of her brief related to purported "judicial misconduct" by the hearing officer. ***See*** Mother's Brief at 80. As such, even if this issue was properly before us, we could potentially find it waived due to lack of development. ***See, e.g., Interest of R.H.***, 320 A.3d 706, 716 (Pa. Super. 2024) ("'[W]here an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived.'") (Quoting ***Commonwealth v. Johnson***, 604 Pa. 176, 985 A.2d 915, 924 (2009)).

child is in custody.[5] ***See*** 42 Pa.C.S. A. § 6335(a); ***see also*** *Pennsylvania Dependency Benchbook*, *supra*, at 6-9 ("Since the [shelter care] hearing must take place on short notice to everyone involved (even the judge or hearing officer has little time to prepare as it is often an add-on to the schedule), witnesses and evidence may be unavailable. However, only a preliminary determination is expected until the more comprehensive adjudication hearing can occur within 10 days.").

Notably, a shelter care order does not warrant specialized review under our appellate rules. ***See, e.g.,*** Pa.R.A.P. 1610 (providing for specialized review of an order granting or denying release or modifying the conditions of release before sentence); Pa.R.A.P. 1612 (allowing a juvenile to file a petition for specialized review if a court enters an order placing the juvenile in an out- of-home overnight placement in any agency or institution). Unlike review of bail orders or review of out-of-home placement in juvenile delinquency cases, there is no right to specialized review of emergency custody or shelter care orders in dependency cases.

Additionally, a shelter care order is not a final, appealable order. ***See Interest of T.C.,*** 239 A.3d 48

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[5] Our review of the record reveals that at the Shelter Care Hearing on January 31, 2024 and in the Shelter Care Order dated February 5, 2024, the adjudicatory hearing was scheduled for February 28, 2024, which is beyond ten days from the filing of the dependency petition on February 5, 2024. However, we note that the Hearing Officer stated on the record "[T]his will be scheduled for an adjudicatory hearing on February 28th . . . ." N.T., 1/31/24, at 57. None of the parties objected to this date, including Mother and Mother's counsel.

(Pa. Super. 2020) (unpublished memorandum). In ***T.C.,*** we concluded that the shelter care order was not an interlocutory order appealable by right, nor had the mother sought permission to appeal the order. ***See id.*** Also, the order was not a collateral order because it was not "separable from and collateral to the main cause of action." ***Id.*** Instead, "the salient issue surrounding both the shelter care order and the subsequent adjudication of dependency is [the child's] best interests and whether those interests were served by [the child's] removal from his parents' home." ***Id.*** Thus, this Court held that the shelter care order was not immediately appealable and quashed the appeal. ***Id.***

Here, Mother waited to appeal the shelter care order until the final adjudication of dependency. Mother could have requested a juvenile judge to conduct a rehearing following the hearing officer's recommendation, but she did not do so. Pa.R.J.C.P. 1191.C. Also, Mother's claim that she was not told of this option is belied by the hearing officer's written recommendation. Recommendation for Shelter Care, 1/31/24, at 3 (noting that "A party may challenge the Hearing Officer's recommendation by filing a motion with the clerk of courts within three (3) days of receipt of the recommendation.").

Once the adjudication occurs, no appeal lies from the shelter care order. The dependency rules and informal nature of the shelter care hearing assume that any defects that might occur at the shelter care hearing will be remedied at the formal adjudication of dependency. Thus, no appeal lies from the temporary shelter care order, but rather from the

final dependency adjudication and disposition.[6] ***See Interest of J.M.***, 219 A.3d 645, 650–51(Pa. Super. 2019) (citing ***In Interest of C.A.M.***, 399 A.2d 786 (Pa. Super. 1979)). We address Mother's challenges to the Child's dependency adjudication and disposition in Mother's fifth and sixth issues below.

In her third and fourth issues, Mother alleges that evidentiary and due process violations occurred during the dependency hearing. Mother's third issue alleges that the juvenile court erred by precluding and incorrectly classifying the family's two expert witnesses. Notably, Mother did not call these witnesses to testify on her behalf. Rather, they were introduced by Father's attorney. Thus, we first question whether Mother has standing to appeal the juvenile court's rulings with respect to these witnesses. Mother asserts that this issue was preserved for appeal because Father's attorney asked for these witnesses to be heard as experts before the

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[6] Temporary shelter care orders are like interim custody orders that are also not final orders subject to appeal due to their temporary nature. ***See, e.g., K.D. v. E.D.***, 267 A.3d 1215, 1222 (Pa. Super. 2021) ("As we stated in ***J.M. v. K.W.***, 164 A.3d 1260, 1263 (Pa. Super. 2017) (*en banc*), 'until the trial court has rendered its best-interest determination on the merits, an interim custody order is ephemeral and subject to further modification upon petition.' Thus, an order that is intended to determine the parties' temporary status during ongoing custody litigation, and is not entered following a full evidentiary hearing, is not a final order.") (citation omitted). Shelter care orders are ultimately subsumed in the final order of adjudication of dependency and disposition. Therefore, they are not subject to appellate review, and appeal properly lies with the final dispositional order. ***See Interest of J.M.***, 219 A.3d 645, 650–51 (Pa. Super. 2019) (citation omitted).

juvenile court. ***See*** Mother's Brief at 56. Mother is mistaken. **Father's** attorney arguing for these witnesses to be classified as experts does not preserve the issue for **Mother's** appeal. Our review of the record indicates that Mother minimally participated in the discussion regarding classification of these witnesses; she only spoke in support of classifying one of the witnesses as an expert and did not offer a position about the other witness. ***See*** N.T., 4/16/24, at 3-7, 11- 12, 36. Mother also did not specifically object to the juvenile court's ultimate classification of these witnesses. ***See id.*** at 7, 12-13, 23-24, 36-37. Issues not raised before the juvenile court are waived and cannot be raised for the first time on appeal. ***See*** Pa.R.A.P. 302(a). As such, Mother has waived this issue.

Even if Mother had not waived this issue, determination of expert witnesses is within the sound discretion of the juvenile court. ***See Commonwealth v. Poplawski***, 130 A.3d 697, 718 (Pa. 2015) (citation omitted). Thus, our standard of review is limited to whether the juvenile court abused that discretion. ***See id.*** "An abuse of discretion may not be found merely because an appellate court might have reached a different conclusion, but requires a result of manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous." ***Interest of M.R.,*** 247 A.3d 1113, 1121 (Pa. Super. 2021) (quoting ***Grady v. Frito-Lay, Inc.***, 839 A.2d 1038, 1046 (Pa. 2003)).

Our review of the record reveals that the juvenile court engaged in a lengthy *voir dire* process for both witnesses. The court allowed one witness to testify as an expert on confinement but not on

tethering, and the court allowed the other witness to testify as a lay person. Both witnesses testified extensively. We discern no abuse of discretion regarding the classification of the witnesses as expert or not, and the record supports the juvenile court's decision. Thus, Mother's third issue would merit no relief.

Mother's fourth issue alleges, in part, that the juvenile court "fail[ed] to ensure meaningful exercise of a *pro se* litigant's constitutional right to equal access to the courts." Mother's Brief at 5. This issue includes extensive detail in the Statement of Questions Presented section of Mother's Brief. However, Mother framed the issue on the summary page of her 1925(b) statement as "The Trial Court did not ensure meaningful exercise of a litigant's constitutional right to access to the courts, so that the pro se litigant would be afforded the right to be fairly heard." Amended Rule 1925(b) Statement at 3. Mother then provided over 30 pages of lengthy explanation of her issues. The juvenile court properly declined to review those pages, as they violated Rule 1925 by including argument and explanation. ***See*** T.C.O. at 8; ***see also*** Pa.R.A.P. 1925(b)(4)(iv), (vii). The juvenile court found Mother's issue to be "incredibly vague, and the court does not have enough information to discern which specific actions or inactions Mother argues impeded her right to access the court." T.C.O. at 15. We agree with the juvenile court. A Rule 1925(b) statement "must be specific enough for the trial court to identify and address the issue an appellant wishes to raise on appeal." ***In re A.B.***, 63 A.3d 345, 350 (Pa. Super. 2013) (citation omitted). "When a court has to guess

what issues an appellant is appealing, that is not enough for meaningful review." ***S.S. v. T.J.***, 212 A.3d 1026, 1031 (Pa. Super. 2019) (quoting ***Com. v. Dowling***, 778 A.2d 683, 686-87 (Pa. Super. 2001)). Further, when a Rule 1925(b) statement is so vague that it prevents a trial court from identifying and addressing the issue to be raised on appeal, appellate review is hampered. ***See id.*** at 1031-32. Here, the juvenile court was unable to address this claim because it was too vague. Therefore, Mother has waived this issue.

Even if Mother had not waived this issue, we would find none of the due process claims in her brief to have merit. Mother argues that the juvenile court had no "standard of submission of evidence to allow it to be heard or to submit into evidence," and that Mother did not have access to PACFile so she was unable to submit evidence. Mother's Brief at 72-73. However, as noted above, Mother's *pro se* status conferred on her no special benefit, and she was required to follow the juvenile court's procedures. ***See Vurimindi***, 200 A.3d at 1037-38 (citations omitted). The record also reflects that Mother successfully submitted evidence and asked questions at the hearing, and the juvenile court provided her with leeway. ***See*** N.T., 4/2/24, at 49, 108, 110, 122, 158; ***see also*** N.T., 4/16/24, at 98, 101-02; ***see also*** N.T., 4/24/24, at 21-23, 25, 27. Moreover, the court gave Mother the option of having someone else PACFile documents for her. ***See*** N.T., 4/16/24, at 101-02.

Additionally, Mother argues that the juvenile court violated the Rules of Juvenile Court Procedure by not conducting a colloquy when Mother decided to

proceed *pro se*.[7] Although she mentions the failure to conduct a colloquy in her brief, Mother never mentioned the colloquy in her voluminous Rule 1925(b) statement. Because Mother is raising this error for the first time on appeal, it is waived.[8] ***See generally***, Pa.R.A.P. 302(a).

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[7] The applicable Rule of Juvenile Court Procedure provides, in relevant part, "**B. Other parties.** Except as provided in paragraph (A), a party may waive the right to counsel if: (1) the waiver is knowingly, intelligently, and voluntarily made; and (2) the court conducts a colloquy with the party on the record." Pa.R.J.C.P. 1152.

[8] We note that Mother cites to a transcript from an "Audiotaped Motion to Withdraw" in which she chose to proceed *pro se* after firing her court- appointed counsel. ***See*** Mother's Brief at 73; ***see also*** Motion to Withdraw Appearance as Counsel, 2/23/24, at 3. Mother included this transcript in her reproduced record and asserts that there was not a proper colloquy because "the entire hearing was only two minutes and the only questions asked were if [Mother] wanted to proceed *pro se* and if she knew the next trial date." Mother's Brief at 73. The transcript indicates that the juvenile court confirmed with Mother that she was going to represent herself and told her that she could hire a private attorney. The court also let Mother know that representing herself could be procedurally challenging, but that the judge would help Mother through it the best he could. We do not see this transcript included in the certified record we received from the juvenile court, and thus we do not consider it attempted to provide evidence of the very thing she asserts did not occur—a colloquy on the record. On the first day of the adjudicatory hearing, the juvenile court noted on the record that Mother was not represented and confirmed that she wanted to represent herself. N.T., 4/2/24, at 8. Mother was also aware of her right to representation, as she was represented by counsel at the Shelter Care Hearing. ***See*** N.T., 1/31/24, at 2 (noting that Mother's counsel entered an appearance on her behalf).

Turning to the merits of Mother's remaining issues, her fifth and sixth issues relate to the two prongs of the dependency analysis – *i.e.*, the Child's dependency adjudication and disposition. [9] Specifically, in her fifth issue, for its merits. However, we find it curious that Mother has Mother challenges the juvenile court's determination that the Agency proved the Child was dependent by clear and convincing evidence.

To adjudicate a child dependent, the court must determine, by clear and convincing evidence, that the child:

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[9] As discussed in Footnote 2, the party's briefs indicate that the Child's dependency case has been closed and the Child reunited with the parents. The juvenile court's findings and order to that effect are not part of the certified record, and, thus, we do not consider that information for its merits. Nevertheless, closure of the dependency case and reunification would arguably make Mother's fifth and sixth issues moot. This Court has previously recognized an exception to the mootness doctrine when reviewing a dependency adjudication in which the underlying dependency case had been closed. ***See In re D.A., A Minor***, 801 A.2d 614, 616-17 (Pa. Super. 2002) (*en banc*). An exception applied in that case because the mother could have been detrimentally affected in future proceedings by the court declaring her child dependent. ***See id.*** at 617. Thus, Mother's fifth issue here regarding the Child's dependency adjudication is appropriate for our review. However, it is unclear whether Mother's sixth issue challenging the Agency's reasonable efforts before the Child's removal would fit within an exception to the mootness doctrine. Because the parties indicate in their briefs that the Child has been returned to Mother, we question whether the Child's removal could detrimentally affect Mother in future proceedings in the same way as the Child's dependency adjudication. However, we decline to find Mother's sixth issue moot because the Child's return is not verified in the certified record.

> is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals. A determination that there is a lack of proper parental care or control may be based upon evidence of conduct by the parent, guardian or other custodian that places the health, safety or welfare of the child at risk.

42 Pa. C.S.A. § 6302(1).

"Clear and convincing evidence" is defined as testimony that is "so clear, direct, weighty, and convincing as to enable the trier of facts to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." ***Interest of L.V.***, 209 A.3d 399, 416 (Pa. Super. 2019) (citations omitted).

> In accordance with the overarching purpose of the Juvenile Act "[t]o preserves the unity of the family wherever possible," ***see*** 42 Pa.C.S.A. § 6301(b)(1), "a child will only be declared dependent when he is presently without proper parental care and when such care is not immediately available." This Court has defined "proper

> parental care" as "that care which (1) is geared to the particularized needs of the child and (2) at a minimum, is likely to prevent serious injury to the child."

Id. (internal citations and citation omitted).

The standard of review in dependency cases requires an appellate court to accept the findings of fact and credibility determinations of the juvenile court if they are supported by the record; but it does not require the appellate court to accept the juvenile court's inferences or conclusions of law. ***Interest of I.R.-R.***, 208 A.3d 514, 519 (Pa. Super. 2019) (citing ***In re R.J.T.***, 9 A.3d 1179, 1190 (Pa. 2010)). As such, we review for an abuse of discretion. ***Id.***

Instantly, the juvenile court determined the Agency met its burden of showing that the Child was without proper parental care. The juvenile court noted that the parents tethered the Child to a makeshift bed at various times, including at night, which caused the court to have serious concerns for the Child's safety. ***See*** T.C.O. at 11-13. The parents also continued using the tether after explicitly being told to stop. ***See id.*** at 9. The court concluded:

> The parent's insistence on tethering their [C]hild to a makeshift bed for fear that he might sneak food, watch pornography on a cell phone, have an angry outburst, or throw objects, places his health, safety,

> and welfare at risk. For these reasons, the court found that [the Agency] has proven that the [C]hild was without proper parental care and control and that such care and control was not immediately available.

Id. at 13.

Mother's argument largely revolves around the alleged legality of the tether. Mother cites numerous statutes in support of her argument, and ultimately asserts:

> [T]he Trial Court erred in finding of [the Child] dependent based on the use of the tether system and should have allowed continued use of the tethering system based on the law and the fact that it was part of a licensed therapist's treatment plan and agreed to by [the Child] who was of age to agree to his own mental health treatment.

Mother's Brief at 56 (citation omitted).

Mother's argument fails to appreciate the posture of the civil case before us. The juvenile court did not determine whether Mother acted criminally. Instead, it determined that Mother did not provide the care necessary for the Child's physical, mental,

and emotional health. Our review is focused on whether the juvenile court abused its discretion in reaching its conclusions. In this proceeding, the courts are not focused on the legality of the tether. Whether the tether was legal is irrelevant to our analysis, as the juvenile court could have found the Child dependent regardless of the legality of the tether.

After review we conclude that juvenile court's dependency determination was supported by the record. The family tethered the Child at various times, including overnight. The juvenile court had serious concerns for the Child's safety because the tether could prevent the Child from getting help or removing himself in the case of an emergency or fire in the home. ***See*** T.C.O. at 12. Regardless of Mother's insistence that using the tether was legal, the court acted within its discretion when it found that restraining the child placed his health, safety, and welfare at risk; that the Child was without proper parental care and control; and that such care and control was not immediately available, given that the family continued tethering the Child after being told to stop. ***See id.*** at 9. In addition to the improper use of the tether, the Child's mental health was not being properly addressed. ***See id.*** at 11-13. Thus, we discern no abuse of discretion in the dependency adjudication. Mother's fifth issue merits no relief.

Mother's sixth issue relates to the second prong of the dependency analysis – *i.e.*, the Child's disposition post-adjudication. Mother argues that the juvenile court erred in finding that the Agency made reasonable efforts to prevent removal of the

Child, and the court failed to "ensure that the Agency provided adequate services and help to the family to eliminate the need for continued removal." Mother's Brief at 37 (citation omitted).

In ***In re D.A., A Minor***, 801 A.2d 614 (Pa. Super. 2002) (*en banc*), this Court explained:

> If the court finds that the child is dependent, then the court may make an appropriate disposition of the child to protect the child's physical, mental and moral welfare, including allowing the child to remain with the parents subject to supervision, transferring temporary legal custody to a relative or a private or public agency, or transferring custody to the juvenile court of another state. 42 Pa.C.S.A. § 6351(a).

Id. at 617 (citation omitted); ***see also In re M.L.***, 757 A.2d 849, 850-51 (Pa. 2000).

However, even after adjudicating a child dependent, a court may not separate that child from the parent unless it finds that the separation is clearly necessary. ***Interest of N.S.***, 237 A.3d 546, 551 (Pa. Super. 2020) (citations omitted). Such necessity is implicated where the welfare of the child demands that they be taken from their parents' custody. ***Id.*** (citation omitted). "Clear necessity" is established when the court determines that

alternatives are not feasible. *Id.* (citing ***A.N. v. A.N.***, 39 A.3d 326 (Pa. Super. 2012)).

As part of its disposition analysis, the juvenile court must decide "whether reasonable efforts were made prior to the placement of the child to prevent or eliminate the need for removal of the child from his home." 42 Pa.C.S.A. § 6351(b)(2). Neither federal nor Pennsylvania law defines reasonable efforts, but services for parents must directly promote the best interests of the child. ***See Interest of K.M.***, 305 A.3d 116, 121 (Pa. Super. 2023) (citing ***In Interest of C.K.***, 165 A.3d 935, 941-42 (Pa. Super. 2017)). By requiring reasonable efforts, "the statute recognizes that there are practical limitations to such efforts." ***Id.***

As discussed above, we review dependency cases for an abuse of discretion, but we do not have to accept the juvenile court's inferences or conclusions of law. ***See I.R.-R***, 208 A.3d at 519 (citation omitted). An abuse of discretion is "not merely an error of judgment, but is, *inter alia*, a manifestly unreasonable judgment or a misapplication of law." ***C.K.***, 165 A.3d at 941 (citing ***In re J.R.***, 875 A.2d 1111, 1114 (Pa. Super. 2005)).

As the juvenile court explained in its opinion, the Agency was involved with the family for approximately twenty-two days before removal. ***See*** T.C.O. at 8. During that time, the Agency offered to assist the family with service coordination and locating an individual therapist and gave the family contact information for Resolve Crisis Center. ***Id.*** There were some issues with the releases, which the court attributed to both the Agency and the family, but the releases were

ultimately signed and distributed. ***Id.*** The court noted that the reason for the Child's original and continued removal was due to safety concerns, as the parents began using the tether nineteen days after the Agency told them to stop, and the parents continued arguing that the tether was appropriate after removal. ***See id.*** at 9. As the court explained:

> There was not a specific service or referral that [the Agency] could have made in that timespan which would have guaranteed the [C]hild's safety in the home. Even the use of crisis in-home services or a more intensive service would not have remedied the safety concern given the family's report that they had been tethering the child every night. For these reasons, the court found that [the Agency] made reasonable efforts prior to the placement of the [C]hild to prevent removal from the family home.

Id.

Mother argues that the Agency did not make reasonable efforts to prevent removal because the Agency had limited contact with the family between the first visit to the home and the Child's subsequent removal. ***See*** Mother's Brief at 38. Mother cites numerous statutes in support of her

argument that the Agency violated the law by not providing immediate services. ***See id.*** at 38-39, 41, 48. Mother also raises many issues which are irrelevant to the analysis of whether the Agency made reasonable efforts to prevent removal. [10] Mother claims that the Agency did not present certain body camera evidence or provide it to the family. ***See id.*** at 43-46. She claims that removal of the Child was based on hearsay evidence. ***See id.*** at 43-44, 47. She also raises issues with the visitation and phone calls; and that the adjudication hearing was not timely. ***See id.*** at 48-49.

After review, we conclude that the juvenile court did not abuse its discretion when it found that the Agency made reasonable efforts to prevent the Child's removal, and the record supports the court's finding. The Agency had limited time to act between when it became involved with the family and when the Child was removed. In that time, the Agency began the process of offering services, but as the court noted, no service could have guaranteed the Child's safety because the family tethered the Child at night. Given the limited amount of time the Agency had before removal, and the safety threat the

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[10] In her arguments, Mother seemingly conflates certain things that happened after removal with evidence that the Agency did not make reasonable efforts before removal. The issue Mother has raised for our review is whether the trial court "err[ed] in finding that the [Agency] made reasonable efforts to prevent or eliminate the need for removal from the home." Mother's Brief at 3. This accords with the Juvenile Act's requirement that the court finds reasonable efforts were made before entering an order of disposition. ***See*** 42 Pa.C.S.A. § 6351(b)(2). Thus, our analysis is solely focused on the juvenile court's finding that the Agency made reasonable efforts before removing the Child.

tether posed to the Child, the court did not abuse its discretion in finding the Agency's efforts reasonable. Having already determined that the Child was without proper parental care, the juvenile court was not willing to risk the Child's safety by immediately returning him to his parents' care when it appeared likely that the parents would tether him again.

To conclude, we discern no error of law or abuse of discretion upon review of the juvenile court's determination that the Child was dependent, and that the Agency made reasonable efforts to prevent the Child's removal. Mother's remaining claims are either not subject to appellate review or have been waived.

Order affirmed.

Judgment Entered.

/s/ Benjamin D. Kohler
Benjamin D. Kohler, Esq.
Prothonotary

DATE: 01/24/2025

Appendix D

J-S39017-24 Filed 03/11/2025

IN THE SUPERIOR COURT OF PENNSYLVANIA WESTERN DISTRICT

IN THE INTEREST OF: M.G., A MINOR	:	NO. 616 WDA 2024
APPEAL OF: G.G., MOTHER	:	

ORDER

IT IS HEREBY ORDERED:

THAT the application filed February 1, 2025, requesting reargument of the decision dated January 24, 2025, is **DENIED.**

PER CURIUM

Appendix E
[Jul. 12, 2024]

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA
JUVENILE COURT DIVISION

IN RE: M.G. a minor child	**CHILDREN'S FAST TRACK APPEAL**
APPEAL OF: G.G., natural mother	OPINION
	Docket No.: CP-02-DP-0000050-2024 616 WDA 2024
	BY:
	Honorable Paul E. Cozza 440 Ross Street Suite 524 Pittsburgh, PA 15219
	COPIES EMAILED TO:
	Gena Green ProSe Julianne Washington, Esq. Andrea Spurr, Esq. Jonah Fish-Gertz, Esq. Anthony Picirrilli, Esq.

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA
JUVENILE COURT DIVISION

IN RE: M.G., a minor child	**CHILDREN'S FAST TRACK APPEAL**
APPEAL OF: G.G., natural mother	Docket No.: CP-02-DP-0000050-2024
	616 WDA 2024
	JULY 12, 2024

OPINION

PROCEDURAL HISTORY:

The Office of Child Youth and Families (hereinafter OCYF) filed a Petition alleging dependency on or about February 5th, 2024. The court heard testimony over the course of three days. On April 24th, 2024, this court found that OCYF presented clear and convincing evidence that the child was without proper parental care or control as outlined in 42 Pa.C.S.A. 6302. Mother filed a timely appeal along with an eighty-one-page Concise Statement of Matters Complained of on Appeal. OCYF filed a Motion to Dismiss and Mother petitioned the Superior Court for additional time to file an amended Concise Statement. The Superior Court dismissed OCYF's Petition to Dismiss and granted Mother additional time to file an amended Concise Statement. Mother filed this amended statement on June 13th, 2024. This

document was thirty-nine pages long and raised six issues.

HISTORY:

In 2014, the family was involved in a car accident in Ohio. They reported significant injuries to both mother and M.G. (hereinafter "child"). The child sustained a brain injury that required a shunt be placed in his brain. Tr. at 97, Day 1. It appears that the child had some additional mental health issues not associated with the brain injury that included Autism and ADHD. The court is unaware of when the family moved from Ohio to Western Pennsylvania, but it appears that they had been residing in the Pittsburgh area for some time. Law enforcement was dispatched to the family home in July of 2023 for a mental health call. It is unclear whether it was for the child or mother. The responding officer reported that Mother was tethered with a medical grade tether when he arrived at the home. Tr. at 16, Day 1. No charges were filed and OCYF was not notified. According to the child, the family began using the tether on the child during July of 2023. Tr. at 61, Day 1.

In August of 2023, the child began seeing therapist Ashley Tonsetic, from Western PA Behavioral Health Resources, for medication management. Tr. at 52, Day 1. She also met with the child in September and October. Id. The family did not discuss their use of the tether with Ms. Tonsetic.

Therapist Margaret Schopf began seeing the child in November of 2023 as a part of an acute daytime program. Tr. at 45, Day 1. Ms. Schopf

developed a plan with the child that could be used when he was feeling anxious or escalated in his emotions. Tr. at 46, Day 1. It should be noted that this plan did not use the use of physical restraints and the family did not inform Ms. Schopf that they were using this method in their home. Tr. at 45, Day 1. The therapist did not observe any aggressive behavior in her therapy sessions with the child. Id. The therapy sessions ceased in early December of 2023. Tr. at 45, Day 1. The court is unaware why this therapy stopped. At some point, the family sought the services of Dave Zusinas, as a "spiritual counselor" but the court is unaware the specifics of what that entailed

On January 2nd, 2024, Mother called 911 and reported that she wanted the child, who was fourteen at the time, to be transported to Western Psychiatric Institute and Clinic [1] (Hereinafter "WPIC"). Mother reported that the child had barricaded himself in the bathroom. Officer Patrick Zilles and Officer Brain Taslov responded to the call. When they arrived, they reported that the home was cluttered and smelled of urine. Tr. at ll, Day 1. During their interaction with the family, Mother provided Officer Zilles with a document which she referred to as a "safety plan". Id. The officers were shown a tether system which was attached to a makeshift bed which resembled a wooden bench. Tr. at 12, Day 1. This bench did not have a mattress on it but rather some type of

[1] WPIC is a medical facility that offers both in-patient and out-patient care for individuals suffering from mental health issues.

cushion. Id. While in the home, Officer Zilles also observed the doorknob on the bathroom to have been removed. Tr. at 15, Day 1. When questioned about this, the family reported it was removed for safety reasons. Id. The child did not appear to be in any sort of emotional distress during this incident, but was transported to the hospital, nonetheless. Upon arrival, Mother reported to the medical staff that the child was "attacking people in the home and being aggressive". Tr. at 32, Day l. Dr. Elizabeth Beam was the attending physician during this encounter. Dr. Beam reported that the child was "calm and cooperative" during her evaluation. Tr. at 32, Day 1. Mother presented Dr. Beam with a written safety plan which included the use of physical restraints. Tr. at 33, Day 1. Dr. Beam advised the family that the child needed "a different level of care" and "also a different safety plan". Id. It was Dr. Beam's opinion that the child did not have adequate supports in place given his ADHD and Autism diagnoses. Tr. at 35, Day 1. Dr. Beam testified that Mother did not report any minor instances in which the child was experiencing challenging behavior but rather "dramatically catastrophized" all incidents in the home, which caused her to question the veracity of Mother's reports. Tr. at 34, Day 1. The child was not admitted to the hospital that day as he demonstrated an ability to control his emotions. Tr. at 33, Day 1. Dr. Beam recommended that the family explore a partial hospitalization program or another interim level of care. Tr. at 34, Day 1.

OCYF was notified after the January 2nd, 2024, incident. As a result, two caseworkers, Mallory

Conti and Caitlin Miller, along with police officer Brian Taslov went to the family home on January 4th, 2024. The family did not open the door for approximately twenty minutes. Tr. at 77, Day 1. Upon entering the residence, the child was not tethered but reported that he had been when they first arrived. Id. The family also reported that Mother had been tethered as well. Id. Ms. Conti reported that she spoke with Mother, Mother's caregiver, Richard Dickman, and Dave Zusinas, who the family reported was a spiritual counselor. Tr. at 73, Day 1. Mother provided Ms. Conti with a written safety plan which included the use of physical restraints, namely a medical grade tether, at night. Id. The plan also required that the child be tethered during his counseling sessions with Mr. Zusinas so as to address any volitivity he may experience. Tr. at 74, Day 1. The additional instances in which the child could be tethered included when he was angry, defiant, when he thew things and when he could not control himself. Tr. at 74, Day 1. Ms. Conti explained to Mother that the use of the tether was not appropriate and could be considered child abuse. Mother agreed to stop using the restraint. Id. Officer Taslov reported that he witnessed Father throw away the tether after this conversation[2]. Tr. at 16, Day 1. Police officers and the OCYF caseworkers were able to speak with the child during this call and he denied all forms of physical and sexual abuse. Tr. at 29, Day 1. In both January incidents, law

[2] The family had a second tether in the home that they did not disclose to OCYF or law enforcement.

enforcement did not observe the child to be violent or aggressive[3]. Tr. at 20, 27, Day 1. The OCYF caseworkers did not remove the child that day because of Mother's claims that she was unaware that the tether would be considered child abuse, the tether had been thrown away, and because the family agreed to work with services. The caseworkers advised the family to contact the police, whose station was close by, or Resolve Crisis Services, if the child was experiencing behavioral concerns. Tr. at 80, Day 1. Ms. Conti and another OCYF caseworker, Patrick Reilly, went to the family's home the next day in order have the parents sign releases. Ms. Conti reported that the family would not sign the releases that day. Tr. at 84, Day 1. They eventually returned to the family home several days later and the family signed releases. Id.

On January 5th, 2024, Mother contacted the child's former therapist, Ms. Schopf. It is unclear to the court why Mother reached out to this therapist. During cross examination, Mother reported to providing Ms. Schopf with the safety plan which included the use of the wrist restraints and asked if she "had a problem with it". Tr. at 48, Day 1. Ms. Schopf reported to Mother that she had not known the family was utilizing a tether system at home and was not in agreement with its use on the child. Tr. at 48, Day 1. On January 11th, 2023,

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[3] After the January 4th, 2024, incident, the police department did reach out to the Allegheny County District Attorney's Office and a formal criminal investigation was pending relating to the parent's use of the tether on the child. Tr. at 25, Day 1.

Mother attended the child's medication management appointment with therapist, Ashley Tonsetic. Mother provided Ms. Tonsetic with the written safety plan which included the use of physical restraints. Tr. at 53, Day 1. Ms. Tonsetic advised Mother to discontinue use of the tether and confirmed with OCYF that the equipment was destroyed. Tr. at 54, Day 1.

On January 26th, 2024, OCYF received a report that the child was being tethered nightly again. Tr. at 88, Day 1. After receiving this report, OCYF obtained an Emergency Custody Authorization and removed the child. As a part of its investigation, OCYF was able to determine that the child had not been to several important medical appointments and was receiving minimal mental health services. The child underwent a forensic interview with Shane lsasky on February 13th, 2024. He reported that Mother had been using the tether on him since July of 2023[4]. Tr. at 61, Day 1. The child reported a recent incident where he had gotten into an argument with his mother because he did not wish to fix her printer. He reported that the police were called and that Mother placed the tether on him once the police left. Tr. at 61, Day 1. The child did not report any injuries from being tethered to Mr. lsasky. Tr. at 65, Day 1. He did state that his Father held him Down against his will on several occasions to affix the tether. Tr. at 63, Day 1. The child reported that he voluntarily put the tether on himself at times but

[4] The family reported that they began using the tether on the child in October of 2023. Tr. at 20, Day 3.

only at the request of someone in his family. Tr. at 70, Day 1. It was Mr. lsasky's opinion that the child had been conditioned to believe that the use of the tether was okay. Tr. at 65, Day 1. Additionally, he believed consulting with the child to develop a safety plan using a tether was inappropriate. Tr. at 67, Day 1. It was Mr. lsasky's belief that this conduct could ultimately cause the child to have some issues as he sorted out his feelings "regarding these experiences". Tr. at 65, day 1. Mr. Isasky recommended the child engage in trauma-based counseling. Tr. at 63-64, Day 1.

After the child's removal, OCYF determined that the child had a number of specialist appointments that had been neglected prior to his removal, including a neurosurgery exam, a neurology exam, and an examination by the Traumatic Brain Injury Clinic. Tr. at 57-59, Day 3. The child's mental health treatment was also of concern. Tr. at 57-58, Day 3. Prior to OCYF's involvement in the case, the child had somewhat sporadic contact with mental health treatment providers. At the time of the Adjudicatory Hearing, the child had seen a few different therapists. The parents did schedule several medical appointments after the child's removal. There were some problems with OCYF's transportation department, but it appeared that the crucial appointments for the child had been scheduled. Tr.at 73, Day 3.

Analysis:

Mother complains of six issues on appeal. These issues are raised on page three of Mother's thirty-nine-page Concise Statement. Mother

includes approximately thirty-three pages of argument and explanation[5]. Pa.R.A.P. Rule 1925(b) provides that the statement "shall concisely identify each error that the appellant intends to assert with sufficient detail to identify the issue being raised for the judge". Highlighting the need for conciseness, Rule 1925(b)(4)(iv) indicates that the Rule 1925(b) statement "should not be redundant or provide lengthy explanations as to any error". **Pa.R.A.P. Rule 1925(b)(4)(iv).** Mother's 1925(b) statement is not concise and contains the very information that is prohibitive pursuant to Rule 1925(b) (4) (iv). However, given Mother's prose status, the court has analyzed the issues raised to the best of its ability should the Pennsylvania Superior Court find that these errors are not fatal to her appeal.

First, Mother takes issue with the court's finding that OCYF made reasonable efforts to prevent the removal of the child from the home. If the court finds that a child is dependent, then the court must make an appropriate disposition of the child to protect the child's physical, mental and moral welfare". **42 Pa.C.S. 6351(a).** 42 Pa.C.S. 6351 (b)(2) requires the court to decide "whether reasonable efforts were made prior to the placement of the child to prevent or eliminate the need for removal of the child from his home". **42 Pa.C.S. 6351(b)(2).** In this instance, OCYF was involved with the family for approximately twenty-two days before the child was placed into foster care. The OCYF caseworker offered to assist the family with

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[5] The court did not review any information in these thirty-three pages as contained argument.

service coordination and to help locate a therapist for the child. Tr. at 105, 112, Day 1. The family was also given the contact information for Resolve Crisis Center should the child have any violent outbursts or uncontrollable behavioral issues. Tr. at 113, Day 1. There were some issues with the releases which were attributable to both the parents and the OCYF caseworkers. However, the releases were executed and had been sent to various agencies by OCYF's clerical department. Given the amount of time that the family was involved with OCYF, the court found that the agency made reasonable efforts to prevent removal of the child from the home. The reason for the original removal as well as the continued removal was based on safety concerns for the child in the family home. The parents were explicitly told to discontinue use of the tether by the OCYF caseworker on January 4, 2024. They were advised by Dr. Elizabeth Beam, Margaret Schopf, and Ashley Tonsetic to utilize a safety plan that did not utilize physical restraints. The family disregarded this and began using the tether nineteen days after being warned not to do so by the OCYF caseworker. Even after the child was removed, the parents persisted with their belief that the tether was appropriate. As such, the court ordered that the child remain in foster care to protect his physical, mental, and moral welfare. There was not a specific service or referral that OCYF could have made in that timespan which would have guaranteed the child's safety in the home. Even the use of crisis in-home services or a more intensive service would not have remedied the safety concern given the family's report that they had been

tethering the child every night. For these reasons, the court found that OCYF made reasonable efforts prior to the placement of the child to prevent removal from the family home.

Second, Mother argues that the trial court abused its discretion/and or erred in concluding that OCYF met its burden in establishing that a "dependency case existed pursuant to 42 Pa.C.S.A. 6302". 42 Pa.C.S.A. 6302 defines a dependent child as one who "is without proper parental care or control, subsistence, education as required by law or other care or control necessary for his physical, mental, or emotional health, or morals. A determination that there is a lack of proper parental care or control may be based upon evidence of conduct by the parent, guardian or other custodian that places the health, safety, or welfare of the child at risk". **42 Pa.C.S.A. 6302.** "The question of whether a child is lacking proper parental care or control so as to be a dependent child encompasses two discrete questions: whether the child presently is without proper parental care and control, and if so whether such care and control are immediately available". **In re D.A.**, 801 A.2d 614, 619 (Pa. Super.2002) (*en banc).* The burden of proof in a dependency proceeding is on the petitioner to demonstrate by clear and convincing evidence that a child meets that statutory definition of dependency". **In Interest of J.M.,**652 A.2d 877, 880 (1995), *appeal denied,* 663 A.2d 692 (1995).

The court is aware that there are certain situations within hospitals and institutional settings which require an individual to be restrained using

medical grade tethers. However, this is often done to prevent a patient from removing tubes or wires, to prevent movement or a fall. There are instances in which these restraints could be used to manage an agitated or aggressive individual as well. However, these restraints are utilized by medical professionals in medical settings where the patient is closely monitored by medical staff. While the court is not intimately familiar with the rules and regulations surrounding the use of wrist restraints in hospitals, it is fair to deduce that such restrictions are imposed based upon guidelines that promote patient safety and are only used when absolutely necessary. In this instance, Mother, Father, and Mother's caregiver, Richard Dickman received "crisis intervention training" from a program called Handle with Care. After attending training at this program for a few days, each received a "Basic Training Award". Neither Mother, Father, or Mr. Dickman have any medical background, nor do they have any education or experience in the mental health field. None of them work in a medical setting nor have been trained to use wrist restraints in a medical facility. Their use of medical grade restraints within the home was not supervised by a physician or any medical professional. When the family first came into contact with OCYF, they were advised that using the tether on the child was against the Child Protective Service Law and that it was considered unreasonable confinement. Tr. at 95, Day 1. Additionally, they were advised that using this type of restraint could constitute child abuse. One medical doctor, Dr. Elizabeth Beam, and two

mental health professionals, Margaret Schopf and Ashley Tonsetic, advised Mother to develop a safety plan which did not utilize a tether or any other typeof physical restraint. The only two individuals who condoned the use of the tether were Bruce Chapman and Howard Dobrushin. It should be noted that Mr. Dobrushin encouraged the use of a "calming" room along with other nonrestrictive techniques prior to restraining the child with a tether. Tr. at 56, Day 1. Mr. Chapman did not have any medical background or specialized training in mental health. He had limited knowledge about the family and had never advocated for the use of a medical grade restraint in a residential setting prior to this case. Tr. at 33, Day 2.

The family continuously attempted to justify the use of the tether as a reasonable method to de-escalate the child. However, the family could only recall two to three incidents from the last year in which they allege the child was violent or aggressive. Tr. at 30, Day 3. Law enforcement has responded to the home on several occasions and has never observed the child to be out of control. There have never been criminal charges filed against the child for committing a violent crime or for damaging property. In stark contrast to the family's reports, nearly every other service provider or professional who has come into contact with the child has described him as calm and in control of his emotions. Due to this discrepancy, the court had serious reservations about the veracity of Mother's claims and shared in Dr. Beam's opinion that Mother's claims about the child's behavior were exaggerated and catastrophized.

The child does have mental health concerns which could absolutely cause behavioral issues and the court recognizes that these behaviors could be challenging for any family. However, a teenage boy who sneaks food into his bedroom and tries to access pornography on a cell phone are behaviors that do not justify restraining a child to his bed every night. The court is unable to imagine a behavioral concern that is so extreme that a fourteen-year-old boy would be unable to freely use the bathroom overnight. A teenage boy becoming defiant when asked to do something unpleasant or uninteresting is not a behavior that would justify physically restraining him, even if only for one hour. Aside from medication management and one month of therapy in 2023, the family has not attempted to seek any professional services to address their concerns for the child's behavior. It appears that the family had not even taken minor steps to address issues like sneaking food or accessing the internet. In fact, Father admitted that there were "more things to try" to address these issues. Tr. at 166, Day 1. Rather than installing locks on the cabinets or turning off the internet in the home at night, the family made the decision to physically restrain their teenage son with a medical grade tether for the entire night.

The court has serious concerns for the child's physical safety in the home. In the case of an emergency, a medical grade tether attached to a bed would prevent the child from getting out of the home and would seriously impede any rescue efforts made by first responders. The use of the tether overnight greatly exacerbated the court's

concern in respect to an emergency or fire in the home. Supposing Mr. Dickman or Father were injured or unable to get to the keys, the child would have absolutely no chance to free himself from the restraint. It is unimaginable to this court that any parent would knowingly place their child in danger of injury or even death. While the parents report to being good intentioned, it is apparent that they were doing so without any real thought about the risks associated with the use of the tether.

It is curious to the court that Mother continues to advocate for the use of the tether despite the ramifications that it has had on her family. It is also apparent that Mother has sought out service providers who have acquiesced to her use of the tether. In the initial interaction with OCYF, Mother very much portrayed herself to be a well-intentioned parent who hadn't thought about or did not know the legalities of using a tether. That very well could have been the case except for the fact that the family had another tether in the home that they did not discard that day or admit to having. Even more concerning is that the family purchased a new, more advanced tether system prior to the adjudicatory hearing and while their child was in foster care. Tr. at 31, Day 3. This is indicative to the court that the parents had no intention to stop using the tether on the child. Mother, Father, and Richard Dickman have instead chosen to take matters into their own hands and tie the child up when he is displaying tough behaviors. This also speaks to the level of manipulation displayed primarily by Mother. She has somehow managed

to convince the child that he should physically restrain himself when he is experiencing mental health issues. This is completely contrary to what any mental health expert who has come into contact with the family has recommended. The child does have mental health issues which will likely require more intensive services. But the family needs to utilize these services and ensure that the child is regularly engaged in therapy. The court has serious concerns about the impact that the use of physical restraints could have on the child. The forensic interviewer, Shane Isasky, recommended the child participate in trauma-based therapy as a result of these experiences.

The parent's insistence on tethering their child to a makeshift bed for fear that he might sneak food, watch pornography on a cell phone, have an angry outburst, or throw objects, places his health, safety, and welfare at risk. For these reasons, the court found that OCYF had proven that the child was without proper parental care and control and that such care and control was not immediately available.

Third, Mother argues that the court improperly denied a request to classify two of the family's witnesses as experts. She alleges this denied the family "an equal and fair defense". "Determining whether a witness may testify as an expert is a matter within the sound discretion of the trial court, whose decision will only be reversed for a clear abuse of discretion. In order to qualify as an expert in a given field, a witness must possess more expertise than is within the ordinary range of training, knowledge, intelligence or experience. The test to be applied when qualifying a witness to

testify as an expert witness is whether the witness has any reasonable pretension to specialized knowledge on the subject under investigation. If witnesses possess neither experience nor education in the subject matter under investigation, the witness should be found not to qualify as an expert". **Yacoub v. Lehigh Valley Medical Associates, P.C.,** 805 A.2d 579, 591 (Pa. Super.2002).

In this instance, counsel for Father attempted to qualify two witnesses as experts. The first, Howard Dobrushin, was a therapist who had met with the child on only two occasions and received all of the collateral information contained in his report from the parents. Both the county solicitor and the guardian ad litem objected to the witness being qualified as an expert. During *voir dire,* Mr. Dobrushin reported that had been a therapist for fifty years. Tr. at 15, Day 2. He reported to working with families who utilized other forms of restraints but never a tether system. Tr. at 18, 19, Day 2. Due to his limited experience with the use of a tether restraint, the court permitted him to testify as an expert in "confinement" only. The second witness, Bruce Chapman, was an individual who taught medical professionals various behavior management techniques. He reported to being the president of a company called Handle with Care Behavior Management System. Tr. at 26, Day 2. The court did not qualify Mr. Chapman as an expert because his training and experience was only in institutional settings. Mr. Chapman had no formal education and was unable to draw conclusions as to the child's mental health or the effect of the tether system on his mental health. For those reasons, the court

considered his testimony as a "lay" person as it related to the use of restraints. The court gave the parties great leeway in the direct and cross-examination of Father's two witnesses. The court admitted Mr. Dobrushin's report into evidence and considered it in its analysis. The court admitted the training brochure for Mr. Chapman's program and considered the information contained within this document. The parents were afforded the opportunity to present these witnesses over the objection of the other parties. The parents were permitted to admit evidence prepared by these witnesses over the objection of the other parties. Neither Mr. Dobrushin nor Mr. Chapman could have provided expert testimony which would have aided the court in analyzing whether the use of a tether as a form of de-escalation was appropriate in a setting outside of a medical facility. For these reasons, Mother's argument must fail.

Fourth, Mother argues that "the court did not ensure meaningful exercise of [her] right to access the courts". This argument is incredibly vague, and the court does not have enough information to discern which specific actions or inactions Mother argues impeded her right to access the courts. "When an appellate fails to adequately identify in a concise manner, the issues sought to be pursued on appeal, the trial court is impeded in its preparation of a legal analysis which is pertinent to those issues." **Commonwealth v. Freeman**, 128 A.3d 1231, 1248 (Pa. Super. 2015) *citing* **In re Estate of Daubert**, 757 A.2d 962,963 (Pa. Super.2000). "When a court has to guess what issues an appellant is appealing, that is not enough for meaningful

review". **Lineberger v. Wyeth,** 894 A.2d 141, 148 (Pa. Super. 2006) *citing* **Commonwealth v. Dowling,** 778 A.2d 683, 686 (Pa. Super.2001). As such, the court did not analyze this argument due to its vague nature.

Fifth, Mother argues that the "trial court erred when the appellee unlawfully removed the family's child from the home using judicial deception violating the Family's 14th amendment rights". It appears as though Mother is attempting to appeal the Emergency Custody Authorization Order entered on January 26th, 2024. Sixth, Mother alleges that "the family did not get a fair shelter hearing due to ineffective counsel and judicial misconduct on behalf of the hearing officer". The Shelter Care Hearing in which Mother refers to in this argument was held on January 31st, 2024, and the order was docketed on February 5th, 2024. Pa.R.A.P. Rule 903 requires that the Notice of Appeal on a particular issue "shall be filed within 30 days after the entry of the order from which the appeal is taken". Mother did not file a timely appeal of the Emergency Custody Authorization dated January 26th, 2024, or the Shelter Care Hearing order dated and docketed February 5th, 2024. As such, both her fifth and sixth issues are waived.

For the reasons set forth above, the order of this Court should be affirmed.

BY THE COURT:

/s/ Paul E. Cozza J.
Paul E. Cozza

Appendix F
[Filed: Apr. 24, 2024]

Commonwealth of Pennsylvania	:	IN THE FAMILY COURT OF ALLEGHENY COUNTY, PENNSYLVANIA
In the Interest Of:	:	
	:	JUVENILE DIVISION
M.G. A Minor	:	
Date of Birth:	:	DOCKET NO: CP-02-DP-
[REDACTION	:	0000050-2024
ADDED]	:	RID: 02-FN-000059-2024

ORDER OF ADJUDICATION AND DISPOSITION

Attendance

Attendee Name	Attendee Role	Attendance Type
Allegheny County Solicitor's Office	Attorney - Office of Children, Youth and Families	In Person
Miller, Caitlin	Case-Worker Supervisor	In Person
KidsVoice	GAL for Child - M.G.	In Person
Piccirilli, Anthony P. Jr.	Attorney - Green, Timothy	In Person
Spurr, Andrea Lyn	Attorney - M.G.	In Person
M.G.	Child	In Person
Green, Timothy	Biological Father	In Person
Green, Gena	Biological Mother	In Person

Additional Attendees: Julianne Washington, Esq. (ACS)
Jonah Fish-Gertz, Esq. (GAL)
Richard Dickman (Witness)

AND NOW, this 24th day of April, 2024, after an adjudicatory hearing:

THE COURT FINDS that:

FINDINGS OF FACT
The findings of fact are set forth in the record of this case.

CLEAR AND CONVINCING EVIDENCE EXISTS
The Court finds that clear and convincing evidence exists to substantiate the allegations set forth in the petition.

ADJUDICATION OF DEPENDENCY
After consideration of the evidence, it is ORDERED that the Child is found, by clear and convincing evidence, to be a Dependent Child pursuant to:
(1) The child is without proper care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals.

DISPOSITION

CHILD REMOVED FROM THE HOME:
The Court finds that based upon the findings of

abuse, neglect or dependency of the minor Child, it is in the best interest of the Child to be removed from the home of Gena and Timothy Green. Relationship: Mother and Father.

REASONABLE EFFORTS TO PREVENT REMOVAL FROM THE HOME:
Further, the Court hereby finds that to allow this child to remain in the home would be contrary to the child's welfare, and that Reasonable Efforts were made by the Allegheny County Office of Children, Youth and Families to prevent or eliminate the need for removal of this child from the home.

CHILD'S SAFETY
The child is safe in the current placement setting.

CURRENT PERMANENT PLACEMENT PLAN
The current placement goal for the child is return to parent or guardian.

MEDICAL CONSENT
It is further ORDERED that if the child is in the legal custody of the county agency as defined by the Juvenile Act at 42 Pa.C.S. § § 6301-6365, the Allegheny County Children and Youth Services Agency has the authority to consent to routine treatment of the child.

FINANCIAL SUPPORT
It is further ORDERED and DECREED that the individual(s) legally responsible for the financial support of the child shall pay support to the county

in an amount as determined by the Family Court Division.

INDIAN STATUS
It has not been determined whether the child is Indian as defined in 25 U.S.C. 1903(4).

FURTHER ORDERS
IT IS FURTHER ORDERED that:

M.G. is to remain in the home of his current placement of Auberle Foster Parent Jaime Bermer.

OCYF is to make a referral for AFA evaluations. Individual evaluations of M.G., Mother Gena Green, and Father Timothy Green are to be complete. Individual interactional evaluation of M.G. and Mother, as well as of M.G. and Father, are to be completed. All three parties shall also participate in an interactional evaluation together. M.G., Mother, and Father are to follow any recommendations made by the provider.

Regarding Medical Decision-Making, parents and OCYF are to remain regarding any appointments and medical management. If there are issues regarding parents not follow up with medical care, counsel may file a Motion if issues concerning care persist.

M.G. is permitted to have unsupervised visits with his parents in the community.

Parents may provide a cell phone without Internet

access and have phone calls with M.G..

M.G. may have supervised contact with his spiritual advisor David Zusinas. No tethering is to be used when M.G. is visiting with Mr. Zusinas.

No tethering shall be used on M.G. at any point throughout the life of this case.

NEXT SCHEDULED COURT DATE(S)
Next Scheduled Court Date: - Permanency Review Hearing - 07/30/2024 - 9:00AM - Judge Paul Cozza

Such disposition having been determined to be best suited to the protection and physical, mental and moral welfare of the child.

BY THE COURT:

/s/ Paul Cozza
Judge Paul Cozza

Appendix G

Verbatim Texts of Law

-42 U.S.C. 5116 - Purpose and authority

(a) Purpose:

It is the purpose of this subchapter—

(1) to support community-based efforts to develop, operate, expand, enhance, and coordinate initiatives, programs, and activities to prevent child abuse and neglect and to support the coordination of resources and activities, to better strengthen and support families to reduce the likelihood of child abuse and neglect; and

(2) to foster an understanding, appreciation, and knowledge of diverse populations in order to be effective in preventing and treating child abuse and neglect.

(b) Authority:

The Secretary shall make grants under this subchapter on a formula basis to the entity designated by the State as the lead entity (referred to in this subchapter as the "lead entity") under section 5116a (1) of this title for the purpose of—

(1) developing, operating, expanding, and enhancing community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect that are accessible, effective, culturally appropriate, and build upon existing strengths that—

(A) offer assistance to families;

(B) provide early, comprehensive support for parents;

(C) promote the development of parenting skills, especially in young parents and parents with very young children;

(D) increase family stability;

(E) improve family access to other formal and informal resources and opportunities for assistance available within communities, including access to such resources and opportunities for unaccompanied homeless youth;

(F) support the additional needs of families with children with disabilities through respite care and other services;

(G) demonstrate a commitment to involving parents in the planning and program implementation of the lead agency and entities carrying out local programs funded under this title, including involvement of parents of children with disabilities, parents who are individuals with disabilities, racial and ethnic minorities, and members of other underrepresented or underserved groups; and

(H) provide referrals to early health and developmental services;

-42 U.S.C.§ 671 (a)(15) - Reasonable Efforts
(a) Requisite features of State plan

In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—

(15) provides that—

(A) in determining reasonable efforts to be made with respect to a child, as described in

this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families—

(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

(ii) to make it possible for a child to safely return to the child's home;

(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan (including, if appropriate, through an interstate placement), and to complete whatever steps are necessary to finalize the permanent placement of the child;

(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that—

(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii)the parent has—

(I) committed murder (which would

have been an offense under section 1111(a) of title 18, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

(iii) the parental rights of the parent to a sibling have been terminated involuntarily;

(E) if reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D)—

(i) a permanency hearing (as described in section 675(5)(C) of this title), which considers in-State and out-of-State permanent placement options for the child, shall be held for the child within 30 days after the determination; and

(ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to

complete whatever steps are necessary to finalize the permanent placement of the child; and

(F) reasonable efforts to place a child for adoption or with a legal guardian, including identifying appropriate in-State and out-of-State placements [2] may be made concurrently with reasonable efforts of the type described in subparagraph (B);

-237 Pa. Code § 1512(c) – Dispositional Hearing

C. *Duties of the court.* The court shall determine on the record whether the parties have been advised of the following:

1) The right to file an appeal;
2) The time limits for an appeal; and
3) The right to counsel to prepare the appeal.

-237 Pa. Code § 1404 (A) – Prompt Adjudicatory Hearing

A. *Child in custody.* If a child has been removed from the home, an adjudicatory hearing shall be held within ten days of the filing of the petition.

-237 Pa. Code § 1408 – Findings on Petition

The court shall enter findings, within seven days of hearing the evidence on the petition or accepting stipulated facts by the parties:

(a) by specifying which, if any, allegations in the petition were proved by clear and convincing evidence;

(b) as to whether the county agency has reasonably engaged in family finding as required pursuant to Rule 1149; and

(c) as to the efforts made by the county agency to determine whether the child is an Indian child and whether any participant has reason to know the child is an Indian child pursuant to Rule 1203.

Comment:

The court is to specify which allegations in the petition are the bases for the finding of dependency.

-237 Pa. Code § 1409 (a.1) (b.1) (c) –
Adjudication of Dependency and Court Order

(a) *Adjudicating the Child Dependent.* Once the court has made its findings under Rule 1408, the court shall enter an order whether the child is dependent.

(1) *Dependency.* If the court finds from clear and convincing evidence that the child is dependent, the court shall proceed to a dispositional hearing under Rule 1512.

(b) *Timing.*

(1) *Child in Custody.* If a child is removed from the home, the court shall enter an adjudication of dependency within seven days of the adjudicatory hearing and enter its findings pursuant to Rule 1408.

(c) *Court Order.* The court shall include the following in its court order:

(1) A statement pursuant to subdivision (a):

(i) as to whether the court finds the child to be dependent from clear and convincing evidence;

(ii) including the specific factual findings that form the bases of the court's decision;

(iii) including any legal determinations made

Comment:

Before the court can find a child to be dependent, there must be clear and convincing evidence in support of the petition. The burden of proof is on the petitioner. The court's inquiry is to be comprehensive, and its findings are to be supported by specific findings of fact and a full discussion of the evidence. *In re LaRue*, 366 A.2d 1271 (Pa. Super. 1976)

The court is to specify which allegations in the petition are the bases for the finding of dependency pursuant to Rule 1408. The court is to make an adjudication of dependency based upon the allegations in the petition, not on alternative grounds. Due process and fundamental fairness require adequate notice of the allegations to afford a reasonable opportunity to prepare a defense. *In re R.M.*, 790 A.2d 300 (Pa. 2002)

-Pa Act 65 of 2020 (1.1) (a.1) (d) – Consent to Mental Health Treatment for Minors

Section 1.1. Mental Health Treatment. --(a) The following shall apply to consent for outpatient treatment:

(1) Any minor who is fourteen years of age or older may consent on his or her own behalf to outpatient mental health examination and treatment, and the minor's parent's or legal guardian's consent shall not be necessary.

(d) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Mental health treatment" means a course of

treatment, including evaluation, diagnosis, therapy and rehabilitation, designed and administered to alleviate an individual's pain and distress and to maximize the probability of recovery from mental illness. The term also includes care and other services which supplement treatment and aid or promote recovery.

-23 Pa. Code § 6304(c)(d) Exclusions From Child Abuse

(c) **Use of force for supervision, control and safety purposes**. --Subject to subsection (d), the use of reasonable force on or against a child by the child's own parent or person responsible for the child's welfare shall not be considered child abuse if any of the following conditions apply:

(1) The use of reasonable force constitutes incidental, minor or reasonable physical contact with the child or other actions that are designed to maintain order and control.

(2) The use of reasonable force is necessary:

(i) to quell a disturbance or remove the child from the scene of a disturbance that threatens physical injury to persons or damage to property;

(ii) to prevent the child from self-inflicted physical harm;

(d) **Rights of parents**. –see petition pg. 3

-42 Pa. C.S. § 6301 (b)(3) – Juvenile Matters

(b) **Purposes.** --This chapter shall be interpreted and construed as to effectuate the following

purposes:

(3) To achieve the foregoing purposes in a family environment whenever possible, separating the child from parents only when necessary for his welfare, safety or health or in the interests of public safety, by doing all of the following:

(i) employing evidence-based practices whenever possible and, in the case of a delinquent child, by using the least restrictive intervention that is consistent with the protection of the community, the imposition of accountability for offenses committed and the rehabilitation, supervision and treatment needs of the child;

-55 Pa. Code § 3130.61 - Family service plans

(a) The county agency shall prepare, within 60 days of accepting a family for service, a written family service plan for each family receiving services through the county agency.

(b) The service plan shall be a discrete part of the family case record and shall include:

(1) Identifying information pertaining to both the child and other family members.

(2) A description of the specific circumstances under which the case was accepted.

(3) The service objectives for the family, identifying changes needed to protect children in the family in need of protection from abuse, neglect and exploitation and to prevent their placement.

(4) The services to be provided to achieve the objectives of the plan.

(5) The actions to be taken by the parents,

children, the county agency or other agencies, and the dates when these actions will be completed.

(6) Placement amendments as required by § 3130.67 (relating to placement planning).

(7) The results of family service plan reviews and placement reviews as required by §§ 3130.63 and 3130.73 (relating to review of family service plans; and recording the results of reviews and hearings).

(c) The service plan shall be signed by the county agency staff person responsible for management of the case. The parent or legal guardian and the child, if 14 years of age or older, shall be given the opportunity to sign the service plan. The county agency shall inform the parent or guardian that signing the plan constitutes agreement with the service plan.

(d) The county agency shall provide family members, including the child, their representatives and service providers, the opportunity to participate in the development and amendment of the service plan if the opportunity does not jeopardize the child's safety. The method by which these opportunities are provided shall be recorded in the plan.

(e) The county agency shall provide family members, their legal counsel, other representatives and agencies or facilities providing services to the child and family with a copy of the service plan, including service plan amendments and results of reviews when the amendments or reviews change the previously agreed upon plan.

-55 Pa. Code § 3130.66 - Case planning for children in emergency placement

(a) If a child has been placed in emergency placement and continued placement is necessary, the county agency shall prepare a family service plan under §§ 3130.61 and 3130.67(b) (relating to family service plans; and placement planning) no later than 30 days from the date the child enters emergency placement.

(b) If a child is in emergency placement and continued placement is not necessary but in-home services are needed, the county agency shall prepare a family service plan under § 3130.61 no later than 60 days after the date the child enters emergency placement.

-23 Pa. Code § 6315 (f) (1-3) Taking child into protective custody.

(f) **Conference with parent or other custodian.** --A conference between the parent, guardian or other custodian of the child taken into temporary protective custody pursuant to this section and the employee designated by the county agency to be responsible for the child shall be held within 48 hours of the time that the child is taken into custody for the purpose of:

(1) Explaining to the parent, guardian or other custodian the reasons for the temporary detention of the child and the whereabouts of the child, unless prohibited by court order.

(2) Expediting, wherever possible, the return of the child to the custody of the parent, guardian or other custodian where custody is no longer necessary.

(3) Explaining to the parent, guardian or other

custodian the rights provided for under 42 Pa.C.S. §§ 6337 (relating to right to counsel) and 6338 (relating to other basic rights).

-23 Pa. Code § 6373 (b) General protective services responsibilities of county agency.

(b) Efforts to prevent need for removal from home. –In its effort to assist the child and the child's parents, pursuant to Federal regulations, the county agency will make reasonable efforts prior to the placement of a child in foster care to prevent or eliminate the need for removal of the child from his home and to make it possible for the child to return to home.

-55 Pa. Code § 3130.12 Responsibility for children and youth services (b.4) (c.1) (c.3)

(b) The Department is responsible for:

(4) Monitoring the county agencies to ensure compliance with minimum standards for children and youth services including the requirements of this chapter.

(c) Each county is responsible for administering a program of children and youth social services that includes:

(1) Services designed to keep children in their own homes; prevent abuse, neglect and exploitation; and help overcome problems that result in dependency and delinquency.

(3) Services designed to reunite children and their families when children are in temporary, substitute placement.

-55 Pa. Code § 3130.68 (a) – Visiting policies

(a) The county agency shall provide opportunity for visits between the child and parents as frequently as possible but no less frequently than once every 2 weeks at a time and place convenient to the parties and in a location that will permit natural interaction, unless visiting is:

(1) Clearly not in keeping with the placement goal—for example, in adoption or independent living.

(2) Freely refused in writing by the parents.

(3) Not in the child's best interest and is limited or prohibited by court order.

-55 Pa. Code § 3490.57 - Protective custody

(f) Within 48 hours of taking a child into protective custody, the county agency shall do the following:

(1) Meet with the child's parents to assess their ability to assure the child's safety if the child is to be returned home.

(2) Meet with other individuals who may have information relating to the safety of the child in the home if the child is to be returned home.

(3) Determine if services could be provided to the family which would alleviate the conditions necessitating protective custody.

(4) Provide or arrange for necessary services.

-55 Pa. Code § 3490.61 - Supervisory review and child contacts

(a) The county agency supervisor shall review each

report of suspected child abuse which is under investigation on a regular and ongoing basis to ensure that the level of services are consistent with the level of risk to the child, to determine the safety of the child and the progress made toward reaching a status determination. The supervisor shall maintain a log of these reviews which at a minimum shall include an entry at 10-calendar day intervals during the investigation period.

-55 Pa. Code § 3140.111 - County agency responsibilities

(b) The county agency shall, in accordance with procedures established by the Department, certify for placement maintenance children who meet the following requirements:

(1) The child is removed from the home of the parent, guardian or other specified relative by a court order, issued under 42 Pa.C.S. §§ 6301-6365 (relating to the Juvenile Act), which finds that continuation in the home is contrary to the welfare of the child and that reasonable efforts were made to prevent or eliminate the need for removal of the child from the child's home or reasonable efforts were made to make it possible for the child to return home.

(i) The county agency shall request the court to determine if:

(A) Reasonable efforts were made to prevent or eliminate the need for placement.

(B) In the case of emergency placement, the absence of efforts to prevent placement was reasonable.

-55 Pa. Code § 3490.32 - ChildLine reporting to the county agency see petition pg. 14

-225 Pa. Code § 701 - Opinion Testimony by Lay Witnesses

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:
(a) rationally based on the witness's perception;
(b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
(c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

-225 Pa. Code § 702 - Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
(a) the expert's scientific, technical, or other specialized knowledge is beyond that possessed by the average layperson;
(b) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; and
(c) the expert's methodology is generally accepted in the relevant field.

-225 Pa. Code § 703 - Bases of an Expert's

Opinion Testimony
An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.

-62 Pa. P.S. § 2172 – Legislative Findings and Declarations of Policy
(a) Findings. –The General Assembly finds and declares that:

(1) The family is the basic institution in society in which our children's sense of self-esteem and positive self-image are developed and nurtured. These feelings and values are essential to a healthy, productive and independent life during adulthood.

(2) Dependent children are separated from their families through out-of-home placement in foster care or group home programs.

(3) Such out-of-home placement deprives children of the unique bond which exists in the parent-child relationship, leaving emotional scars on such children which may never fully heal.

(4) Despite the best efforts of county children and youth agencies to select appropriate foster care families, and despite the deep commitment to these children given by many foster parents, children are better off emotionally when their needs can be met by their biological parents.

(5) The average length of stay in foster care in Pennsylvania is three and one-half years at an average cost of $19,250 per child.

(b) Declarations. –It is therefore the policy of this Commonwealth that:

(1) The unique bond which exists between parent and child must be recognized as fundamental to the growth and development of children.

(2) The treatment of neglected and abused children must include a commitment to strengthening the families of these children through the intensive application of social services and family therapy.

-62 Pa. P.S. § 2174–Family Preservation Program

(a) Establishment. –The department, through grants to counties, shall establish and supervise a program, to be known as the Family Preservation Program, which will provide intensive intervention services to families whose children are at risk of immediate out-of-home placement under the custody of a county children and youth agency.

(b) Purpose. –The Family Preservation Program shall be designed to preserve families through the creation, within families, of positive, long-term changes which will enable children who are victims of neglect or abuse or whose parents lack the ability to control their child's behavior without in-home family support to remain with their families, thereby reducing the more expensive and potentially psychologically damaging incidence of out-of-home placement in foster care or group homes.

(c) Grants to counties. –The department shall award grants to counties without any county matching fund requirements to provide financial

support for the development and implementation of Family Preservation Programs. During the initial phase-in period of this program, such grants will be awarded by the department to counties on an open competitive basis, after review of proposals submitted to the department by interested counties. Counties, acting through their children and youth agencies, may operate these programs directly with county employees or may contract with other public or private agencies as may be appropriate to provide family preservation services.

(d) Eligible families. –Only those families, as determined by the county children and youth administration, in which one or more children are at imminent risk of separation from their families through placement in foster care, a group home or other appropriate facility are eligible to receive family preservation services. All members of the families who accept such services shall be responsible for cooperating fully with the Family Preservation Plan developed for each family under subsection (e)(4). Families in which children are at imminent risk of sexual abuse or physical endangerment perpetrated by a member of their immediate household are not eligible to receive family preservation services.

(e) Delivery of family preservation services. – Services delivered to eligible families under this program must be provided in accordance with the following requirements:

(1) Intensity of services. –Each family preservation caseworker will provide services to a maximum of five families at any given time. At least

three of the five families must be in their last month of service.

(2) Duration of service. --Each family will normally receive intensive family preservation service, beginning with the crisis of imminent risk of placement of one or more children, for six to eight weeks, with a maximum of three months of service for all eligible families.

(3) Accessibility of services. --Family preservation services will normally be provided in the family's home and community consistent with the needs of family members. Family preservation caseworkers shall be normally available by telephone and on call for visits to families at all times during the period of service to each family.

(4) Family Preservation Plan. --Within the first week of initiating family preservation services, the family preservation caseworker shall develop, after thorough consultation with the family receiving such service, a Family Preservation Plan which shall clearly state the specific goals and priorities, and approaches to be utilized to reach these goals, for the time-limited duration of these services.

-Pa. Dependency Benchbook, Supra-13.6.1-
Continuing Necessity of Placement

The court must determine whether the placement continues to be necessary and appropriate for the child and whether the child is safe. If the child is placed, the court must determine whether the placement continues to be best suited to the safety,

protection and physical, mental and moral welfare of the child. Judges and hearing officers should ask why placement is still needed, whether the child is or should be placed with siblings, if there is any family member available for placement or visitation with the child, if the placement is meeting the child's needs, if the child is happy, safe and adjusted to the placement. An additional inquiry into the services needed to assist a child who is fourteen years of age or older to make the transition to independent living should also be made (See the discussion of Transitioning Youth, Section 20.8 in Chapter 20: General Issues.) In deciding whether placement of the child remains necessary, the court should consider and assess child vulnerability, parental capacity and safety threat. Depending on the age and maturity of the child or the parents, the assessment and ultimate risk may be different. In deciding the issue of return, the court should consider the protective capacity of the parents. "Protective capacity" refers to the behavioral, cognitive and emotional characteristics that can specifically and directly be associated with a person's ability to care for and keep a child safe. This may not be the same for each sibling. For example, a parent with an intellectual disability may be able to safely parent a 16-year-old child with no special needs, but may not be able to parent a 2-year-old child or a 16-year-old child with special medical needs. Return should not be based upon compliance, but rather progress and the mitigation of safety threats. A parent may not have completed every program or goal, but once the risk to the safety of the child is removed or mitigated, in most cases, the child should return

home.

-Pa. Dependency Benchbook Supra 3.1.2

Judges and hearing officers are required to make findings regarding safety and order services to mitigate or eliminate safety threats. Even so, there can be confusion regarding what constitutes a real "threat" to the safety of a child as opposed to what may be considered "risk". In life, every person experience "risk". Risk can never be completely eliminated. When risk rises to a level where it immediately or within the foreseeable future seriously jeopardizes life, it becomes a safety threat. Ensuring that safety threats to children are eliminated or, at the very least, mitigated, is the responsibility of the Juvenile Court. While the Juvenile Act allows for an adjudication of dependency based upon factors that are more likely risk than safety (i.e. truancy, ungovernability, etc.), decisions related to removal and placement of a child should be based upon an analysis of safety. This is an important legal distinction. While removal and placement of children may mitigate a safety threat it is likely to simultaneously create some level of emotional trauma for the child and parents. This potentiality necessitates a methodical legal safety analysis by the judge and hearing officer. Threats of danger or "safety threats" are specific, observable or describable, out of-control, immediate or likely to happen soon and contain severe consequences. Because safety threats can increase or decrease over time, evidence regarding the current safety threat or threats should be presented at each hearing. A

child's level of vulnerability is impacted by a number of factors including: age, physical ability, cognitive ability, developmental status, emotional security and family loyalty. Evidence regarding the child's level of vulnerability should be provided at each hearing.

To accomplish this legal analysis information is needed. This includes information regarding: the nature and extent of the maltreatment [or threat of maltreatment]; the circumstances accompanying the maltreatment [or threat of maltreatment]; how the child functions day-to-day; how the parent disciplines the child; the overall parenting practices; and how the parent manages their own life.

Appendix H

About Bruce Chapman

Bruce Chapman is an inventor and author. He is the President of Handle With Care® Behavior Management System, Inc. (HWC) / SoftCircle™ Client Protection Products.

Handle With Care: Bruce created Handle With Care technology from 1973 to 1984 on the locked psychiatric unit of Pennsylvania Hospital in Philadelphia, where he was regarded as the hospital's authority on the prevention and management of aggression and suicide. He discovered HWC's proprietary holding method, the Primary Restraint Technique (PRT)®, in 1974 at the age of 21. The PRT has the distinction of being the only physical technique of any kind in patent history. In 2001, he was granted a groundbreaking U.S. and International Patent for the PRT's integrated safeguards to prevent positional asphyxiation during a prone restraint. He created *The* Tension/Tension Reduction Cycle (T/TRC)™ and The Solid Object Relationship (SORM)™ Models in 1980. They were first introduced to psychiatric residents at the Institute of Pennsylvania Hospital and continue to provide the theoretical foundation for HWC Training.

HWC is currently taught in 44 States and Puerto Rico, with national headquarters located in Gardiner, NY. HWC has approximately 22 licensed "Master Instructors" and "Regional Training Centers" currently under license throughout the U.S. Since 1984, Bruce has

produced many thousands of HWC Certified Instructors working across the broad spectrum of human services including:

> Mental Health and Social Service Agencies: psychiatric centers serving children and adults, general hospitals, residential treatment centers, developmental centers, substance abuse and detoxification centers, ambulance services, head injury and rehabilitation centers, group homes and foster parents. He has been a featured guest speaker and presenter to numerous professional organizations and conferences including the American Hospital Association, The Mid Atlantic Health Congress, the Delaware Valley Emergency Room Nurses Association and the Princeton Center for Health Affairs Healthcare Information [television] Network (HIN).
>
> Schools and Special Education: nursery, grammar, middle and high schools, alternative schools and police resource officers.
>
> Juvenile Justice: juvenile detention centers, juvenile correctional facilities, residential centers, family courts and probation officers.
>
> Event and Concert Security: stadiums, arenas and convention centers.
>
> Law Enforcement and Adult

> Corrections: In 1995, Mr. Chapman created "Plus", a standalone defensive tactics training program developed in response to the unique use-of force challenges of the law enforcement and correctional environment. Plus addresses higher use-of-force levels than HWC. HWC and Plus are taught to officers staffing jails and prisons, Emergency Response Teams operating in juvenile and adult facilities, police officers, parole officers, probation officers and hostage negotiators. He is a certified instructor for the New Jersey Police Training Commission and provides expert testimony on issues related to the use-of-force.

SoftCircle: In 1999, Bruce began a multiyear project to design and manufacture an innovative line of "modular" protection products for use with acutely homicidal and suicidal clients. The SoftCircle project has earned him 11 additional U.S. Patents (9 remain pending; more are expected). SoftCircle restraint products are assembled at our production facility in Gardiner. SoftCircle "dipped foam process" products are manufactured in Mexico by Red Central Foams.

Professional Affiliations (Past and Present): Associate Member of the New Jersey Hospital Safety and Security Directors Association, The American Correctional Association (ACA), the American Jail Association (AJA), the International Association of Correctional Training Personnel

(IACTP), the National Juvenile Detention Association (NJDA), the Juvenile Justice Trainers Association (JJTA) and the Association of Juvenile Detention Centers of New York State. He has been an exhibitor, presenter and topic panelist at most of the above associations' regional and national conferences and has been featured on the Law Enforcement Television Network (LETN). He is a 6th Dan and "Forms Technical Advisor" for the American Moo Duk Kwan Federation.

Appendix I

Allegheny County Court of Common Pleas
April 16, 2024 Expert Witness Transcript
Case No.: CP-02-DP-50-000002024

Bruce Chapman Voir Dire on April 16, 2024

[Reproduction of Original Transcript]

[Page 9, Line 6 to Page 10, Line 5]

MR. PICCIRILLI: Thank you, Your Honor. Your Honor, there's nothing in the law that says Mr. Chapman or any expert witness has to have educational credentials, and admittedly Mr. Chapman does not. He learned on the job. And specifically, he learned when he was working in security at a psychiatric hospital back in the 1970s.

Mr. Chapman since then has developed a number of programs, if you will, to deal with people who are experiencing various kinds of rage or other outbursts.

He recently lectured in front of the American Medical Association's convention in Washington, D.C. He has lectured at University of Pennsylvania's Hospital's mental health facility, Vanderbilt University.

Mr. Chapman has found an odd niche with regards to handling people who are having these kinds of outbursts

and has become an expert in that, such that he's represented enough where hospitals bring him in to lecture their staff on how to treat patients who are getting out of hand.

[End of Page 10, Line 5]

[Page 11, Line 6 to Page 12, Line 25]

THE COURT: Ms. Spurr.

MS. SPURR: Your Honor, again, these issues are all ripe for cross-examination.

THE COURT: I don't believe so in this case. If there's no formal education, Mr. Piccirilli, and there's no certification –

MS. GREEN: May I speak?

THE COURT: Sure. Go ahead, Ms. Green. I'm sorry.

MS. GREEN: This is where we received our training. We received the same training that they receive in hospitals. The entire class that I was with was educators that were --

THE COURT: They're educators that don't have degrees at all, right?

MS. GREEN: Huh?

THE COURT: These are educators that you took classes from, right?

MS. GREEN: No. The class that I was in that was learning the same program I was educators that were going back to teach this restraint technique in the schools they were in, and they trained

the hospitals. It's the same exact training that we received here.

THE COURT: But the people that did the training have no formal education in this training. They learned it, as Mr. Piccirilli said, on the job.

MS. GREEN: His Primary Restraint Technique is patented by the U.S. Patent Office to be a safe restraint technique, and he's been qualified as an expert in many criminal courts. He's testified in –

THE COURT: What criminal courts?

MS. GREEN: Well, I mean, you can ask him.

MR. PICCIRILLI: If I may, Your Honor –

THE COURT: Here's what we're going to do, Mr. Piccirilli. You'll be able to call him and try and qualify him as an expert how about that?

[End of Page 12, Line 25]

[Page 25, Line 16 to Page 30, Line 24]

BY MR. PICCIRILLI:

Q. Mr. Chapman, I don't know if you heard before but there has a been questions raised and objections as to your qualifications as an expert witness regarding restraints and the effects of restraints, so I'm going to ask you some questions about that, and the other attorneys will have the opportunity to do the same.

A. Okay.

Q. Okay? So simply put, what is it you do, Mr. Chapman?

A. I'm president of Handle with Care Behavior Management System. I created it on the Psychiatric Inpatient Unit at Pennsylvania Hospital from 1973 to 1984, left the hospital in '84 to found Handle with Care. We are providing training in all 50 states and Puerto Rico with Approximately 200 to 300 hospitals who would be very surprised to hear that I'm not an expert.

Q. What kind of training does handle with Care provide?

A. Handle with Care provides portable de-escalation training based on two theoretical models that I created in about 1980. I was the only nonprofessional ever asked to join the faculty of the Institute at Pennsylvania Hospital, which was a residency program for four-year psychiatric residents.

Those models were recently presented by me at the American Psychiatric Association in Washinton, D.C., at their convention in October. They would be equally surprised to hear that I'm not an expert on verbal de-escalation.

I also created a physical intervention system that includes a personal defense system that is nonviolent, nonharmful, allows staff working in facilities, residential programs et cetera to protect themselves while still protecting the safety of their client. We also train parents in that as well.

I discovered a physical holding method

in 1973 when I was 20 years old called the Primary Restraint Technique or PRT for short. It's the only physical technique ever awarded a patent in the history of the United Stated Patent Office for ability to prevent chest compression and the possibility of positional asphyxiation.

The entire physical elements of Handle with Care training revolves around the Primary Restraint Technique. It is the centerpiece for the entire program.

We also have a two-person escort, two-person takedown using the PRT. We train staff in what I call team deployment, which is how to manage someone who is aggressive, combative, and free to move and able to damage both people and property.

For hospitals and agencies that use seclusion and mechanical restraints, I have a whole list of protocols for the use of locked and unlocked seclusion which we train hospitals that use Handle with Care training in.

We also teach hospitals and other agencies using mechanical restraints how to safely use them, apply them, provide good nursing care for somebody who's in a set of four-point restraints or five-point mechanical restraints.

I also invented the Soft Circle client protection product line which includes mechanical restraints that I engineered and have patents for. I have nine patents with respect to mechanical restraints. Three have

been left in a permanent pending status.

Q. So there are hospitals from – Correct me if I'm wrong, there are hospitals that have adopted your methods? Is that Correct?

A. I can give you a short list. Arcadia has at least a hundred hospitals doing Handle with Care. University of Pennsylvania Medical Center has been doing handle with care for more than 25 years, including the Child Guidance Clinic.

Vanderbilt Child and Adolescent has been doing Handle with Care for 25 or 30 years, and about 5 years ago the entire hospital adopted Handle with Care. Almost every general hospital in the state of New Jersey does Handle with Care including our restraint training, mechanical restraint training.

Almost every hospital in Philadelphia does Handle with Care training including our training on mechanical restraints. I could go on, but it's a who's who list of hospitals throughout the United States. Carrier Clinic in Belle Meade, New Jersey.

Q. Where is the training? Where does the training take place? At your facility or at the hospitals?

A. We don't have a training facility. We do seminars throughout the entire United States. If you go to the Handle with care website, you'll see a list of training seminars that agencies can sign their employees up and come back to the agency as an instructor who's certified to teach Handle with Care.

So, it's a train the trainer's program that happens via seminars. We also do in-house training where we would go to United Health Services. They have a whole team of Handle with Care certified instructors. And, in fact, they have master instructors which I have to or we have to recertify every two years.

So, the larger collection of hospitals like Arcadia, like United Health Services we provide them with master instructors that can not only teach the program but can certify their own instructors.

Q. And how many instructors do you have?

A. We have approximately I would say 12 to 15 master instructors. We're constantly bringing more on board. There are at least a hundred master instructors which we have certified for larger agencies that can justify needing a master instructor or in the case of United Health Services I believe they have 12 or 13 master instructors that are capable of providing the instructor certification program.

Q. Okay. And what kind of credentials do these instructors have?

A. Most of the master instructors we have, have degrees and advanced degrees. They're typically the best and most accomplished staff working for whatever the agency happens to be. They're the ones that command the most respect, we ask them to send us their best staff so that the training is delivered faithfully when it gets back to the

agency or hospital.

[End of Page 30, Line 24]

[Page 31, Lines 1-7]

Q. Somewhat. Just so we're clear, though you developed these two theoretical models, and they have now been implemented in hospitals around the eastern part of the country?

A. No, the entire United States and Puerto Rico.

MS. SAMULSKI: Your Honor, I object.

A. -- and Puerto Rico.

[End of Page 31, Line 7]

[Page 31, Lines 12-23]

MS. SAMULSKI: Your Honor, I object. We understand everybody was -- I could even maybe stipulate he's trained in hospitals and institutions. That is far afield from an expert in this kind of case.

This case has nothing to do with institutions, schools, hospital. This is about treating a child and that he condones using physical restraint. That has nothing – Mental health, he's not a mental health therapist.

THE COURT: Mr. Piccirilli?

[End of Page 31, Line 23]

[Page 32, Line 2 to Page 33, Line 17]

[MR. PICCIRILLI:] Your Honor,

Mr. Chapman is here to tell the Court about the effects and the techniques of physical restraint, not just the effects physically but the effects including the calming effects that it can have on a patient.

Yes, he does not have a formal education in this, but there's nothing that requires him to have a formal education to testify as an expert. Obviously, his experience puts him well beyond the ken of the average person.

THE COURT: Well, that I'll agree with, Mr. Piccirilli. But the other thing, I agree with Ms. Samulski, is I haven't heard one think other than institutional restraints, right? I haven't heard him say anything about going to people's residence or having any clients where that happens.

MR. PICCIRILLI: He did say that he trained parents. If you like, I can ask him more about that.

THE COURT: I'll let you ask him more questions.

MR. PICCIRILLI: Thank you.

Q. Mr. Chapman, as the Court has indicated, you clearly have experience with regards to institutional use of restraints and your methods. What about noninstitutional use such as we're dealing with in this matter? Can you tell us a little bit about your experience dealing with, a patient or a subject who is, you know, residing at home

and not in an institution.

A. Well, I will admit that this is an extremely unusual case, that the mechanical restraint is being used at home. That doesn't change what takes place when someone is mechanically restrained. This young man clearly calms down –

MR. FISH-GERTZ: Your Honor --

A. – when he is tethered. That is not at all different from the impact that it can have –

[End of Page 33, Line 17]

[Page 33, Line 24 -Page 35, Line 12]

MR. FISH-GERTZ: He's not qualified in any mental health capacity. Sure, he has techniques that physically restrain people. I would allege it's not relevant because these techniques have not been discussed with the family prior to removal, but he has no capacity or qualification to discuss mental health or the effect these restraints have on people.

Maybe some of his trainers do. They're not the people asking to testify today. Unless he's specifically testifying to how he has done restraints and parents alleging they did his restraints training, I don't see how this testimony is relevant at all.

THE COURT: Mr. Piccirilli.

MR. PICCIRILLI: Your Honor, Mr. Chapman can testify as to the effects of these restraints, even the effects of the

possibility of these restraints on a patient. And whether that patient is in an institution or in their home, it's the same effect on the patient.

MR. FISH-GERTZ: How would he know? He has no mental health training.

MS. SAMULSKI: He's never seen the child.

MR. FISH-GERTZ: He's not a therapist. He's not a psychologist.

MR. PICCIRILLI: He's not commenting on the child's mental health. He's commenting on the effects and the use and the safe use of the restraint system.

MR. FISH-GERTZ: What effects *(indiscernible)* is not mental health. That's the issue in this case, the effects these restraints have had on this child.

[End of Page 35, Line 12]

[Page 35, Line 18 to Page 37, Line 18]

MR. PICCIRILLI: He's an expert witness. He takes what he knows, and he looks at the facts of this case, and he applies what he knows to the facts of this case. We're not calling him in as a fact witness.

MR. FISH-GERTZ: I'm saying he has no expertise on anything about calming or the mental effects. We're not alleging that M.G. was harmed physically. It's all about the mental

capacity, the damage that these restraints allegedly did to him and he has no qualification to testify to that.

MR. PICCIRILLI: I think any layperson is qualified to testify whether or not someone they're watching has calmed down.

THE COURT: Did he see him personally, Mr. Piccirilli?

MR. PICCIRILLI: I do not believe he saw M.G. in the restraints.

The Court: Then I don't believe he can testify about that.

MS. GREEN: He's seen videos of him when he was out of control that I sent to him.

MR. PICCIRILLI: Your honor, this is more about the parents' methodology and whether their methodology and what they have attempted was sound rather than the direct effect on M.G. It's about whether they're using sound methods, and Mr. Chapman is here to talk about those methods and whether the methods that the parents are using are recognized and to tell the Court that they are recognized across the land.

THE COURT: In institutions, right? Not in residence or at home.

But here's what I'm going to do, Mr. Piccirilli. We have a million cases today, and I want to get started. So for the purpose of this hearing I will let Mr. Chapman testify. You guys can cross.

MS. SAMULKI: As an expert or just as a lay witness.

THE COURT: I'm going to let him testify as a layperson, Mr. Piccirilli, he's going to testify as a layperson. I know he has a lot of experience with institutional confinement, so I don't want to spend half the day on determining whether he's an expert or not.

[End of Page 37, Line 18]

Allegheny County Court of Common Pleas
April 16, 2024 Expert Witness Transcript
Case No.: CP-02-DP-50-000002024

Howard Dobrushin Voir Dire on April 16, 2024

[Reproduction of Original Transcript]

[Page 14, Line 24 to Page 16, Line 13 Reproduced]
[BY MR. PICCIRILLI:]

Q. Howard, there has been some issues raised about your credentials to testify as an expert in this matter, so I would like to ask you a little bit about your background as we begin. Okay?
A. Certainly.
Q. Can you tell us your education?
A. I have a bachelor's in psychology from Point Park. My master's is from Duquesne University. My doctoral work was at the University of Pittsburgh.
Q. And what is your master's degree in?
A. Psychology.
Q. What was your Ph.D.?
A. My doctoral work was in counseling psychology.
Q. Okay. It looks like you got your master's in 1973? Is that right?
A. Correct.
Q. And what have you done since then?
A. I've been in the field working for 50 years in a variety of positions and agencies. I have worked at Western Psych at the John Merck Program. I was part of an affiliate of AGH

and at Allegheny Neuropsychiatric Institute. I have served as consultant to Beaver Valley Intermediate Unit.

I have worked with Spina Bifida Association, Achieva, the United Cerebral Palsy and Autistic Foundation. I've been providing therapy for 50 years as well as consulting.

Q. Okay. And you are a certified cognitive behavioral therapist, correct?

A. Yes, as well as national board-certified counselor.

Q. What kind of patients do you typically treat?

A. I've worked with intellectually disabled, autistic, brain injured, head trauma, concussion victims as well as more traditional therapy with ADHD individuals, depression, borderline personality.

Q. Okay. And you are at the CHARTE Center right now? Is that correct?

A. That's correct. We've been in existence since '19 or 2020. 2001.

[End of Page 16, Line 13]

[Page 16, Line 22 to Page 17, Line 15]

Q. Thank you. And you're familiar with M.G. Do you treat patients like M.G? Is he typical of some of the people you try to help?

A. Over the years, yes.

Q. Have you ever testified in a court proceeding before?

A. Yes, I have.

Q. Can you tell us some of the recent court proceedings or more recent court proceedings

that you've testified in?

A. It has been custody cases. It has been evaluations in regard to placement with family, without family and in regard to some situations that have existed in schools.

Q. So when you say custody cases, are you saying that you are assigned to be a custody evaluator in these cases.

A. No. It was more doing evaluations on the particular kids.

[End of Page 17, Line 15]

[Page 18, Line 1 to Page 19, Line 11]

BY MS. SAMULSKI:

[Q.] Of course, I was objecting to you as an expert in your field. I understand that you've been doing this for a long time and that you say that you have testified in many court hearings.

Have you done any work with children like M.G. and tethering systems and restraint systems? Have you ever had cases like --

A. I have worked with families who put their own seclusion rooms in the basements, which I did not advocate because of the confinement, the lack of supervision. I have worked with cases involving CYF where they've actually suggested putting bolts on the door to lock basically three to five-year-old in their room so they don't wander, I have not supported that.

So, there have been multiple cases that were between parents looking for input as to

who should have custody and the solutions.

Q. If I may interrupt though, I'm just asking you about the tethering mechanism that is in this case that's the crux of this case. Have you ever worked with those patients and/or parents in that regard?

A. I have not had anybody use a tethering system, but I have had families who could afford to build a seclusion room in their basement. So if you're talking about a method of restraint, from what I have seen and researched myself, the tethering system is probably the least restrictive, especially since he's never left alone.

Q. So you're just now doing research? You were just quickly doing research after you got this case, right? Would you say this is the first case you've ever had with a tethering system? That's what you're saying?

A. And I have a reciprocated question. How many have you had?

[End of Page 19, Line 11]

[Page 19, Line 16 to 17]

A. This is the first one I have had with a tethering system.

[End of Page 19, Line 17]

[Page 19, Line 23 to Page 20, Line 3]

BY MS. GREEN:

Q. Mr. Dobrushin, have you had experience working with kids with brain damage like this family's son does?

A. I have. I did at ANI, Allegheny

Neuropsychiatric Institute, as well as at the John Merch Program.

[End of Page 20, Line 3]

[Page 20, Lines 11-24]

Q. How many times have you met with M.G. at this point?

A. Three

MR. FISH-GERTZ: I'm going to object to that.

MS. SAMULSKI: Objection

MR. FISH-GERTZ: (*Indiscernible*) basis of his report

THE COURT: Let's move on Ms. Green.

Q. Can you tell the Court if you've been certified as an expert in any other courts?

A. I have been in the past.

Q. Can you tell us where?

A. New Castle, Butler County, and in Allegheny County.

[End of Page 20, Line 24]

[Page 21, Line 7 to Page 23, Line 11]

BY MR. FISH-GERTZ:

Q. So, you authored your expert report I believe two weeks ago. Approximately the week of April 8? Is that correct?

A. That was the second meeting. There was supposed to be another one that I was told transportation was cancelled.

Q. And April 8 was the first time you met with M.G.?

A. No, that was the second.

Q. So you met with M.G. before April 8?
A. I met with him one time before, two weeks prior.
Q. Okay. So, you met with M.G., then, March 25?
A. Yes
Q. Why does your report say you only met with him on April 8?
A. Pardon me?
Q. Why does your report indicate you were only able to meet with him on April 8?
A. That was the date that I finished the report.
Q. Your report also includes a letter from February 16 of 2024.
A. That was when I consulted with the family.
Q. Would you agree that the consultation with the therapy, your recommendations are largely similar to what you indicate in your report?
A. Yes.
Q. So the basis of your report. *(indiscernible)* in your report are largely based on *(indiscernible)* family and not actually interviews with M.G.
A. I met with M.G. twice.
Q. You just stated that your recommendations in the letter are similar to the recommendations in your report. The *(indiscernible)* in the letter are based only on interviews with parents, not interviews with M.G?

MR. PICCIRILLI: Your Honor, I'm gong to object. The purpose of this cross-examination was regarding --

THE COURT: Whether he's an expert or not. I agree, Mr. Piccirilli.

Q. Do you have any medical training?

A. Only with the people that I've worked with in consultation in working with neuropsychiatrists.

Q. Do you have any experience with neurosurgery?

A. I am not an M.D., so I would not be involved directly in the surgery. I have worked with kids who have had the surgeries.

Q. Have you ever worked with a brain shunt before?

A. Yes.

MR. FISH-GERTZ: No further questions.

THE COURT: Anything else, Mr. Piccirilli?

MR. PICCIRILLI: That's it. Your Honor. I would ask that Mr. Dobrushin be admitted as an expert witness.

[End of Page 23, Line 11]

[Page 23, Line 21 to Page 24, Line 10]

THE COURT: How about that? I'm going to qualify him as an expert on confinement in general. He can testify to what he knows and what he thinks about confinement. We can all agree he's not an expert on tethering and that would be for everybody to cross-examine him and see how much of an expert he is on that.

MS. GREEN: Your Honor --

THE COURT: Yes, Ms. Green.

MS. GREEN: Will he be able to testify to what he has talked to M.G. about and what he feels --

THE COURT: We will see how the testimony goes and who objects at that point.

[End of Page 24, Line 10]

—— End of Mr. Dobrushin – Voir Dire ——

Allegheny County Court of Common Pleas
April 16, 2024 Expert Witness Transcript
Case No.: CP-02-DP-50-000002024

Howard Dobrushin Testimony- April 16, 2024

[Reproduction of Original Transcript

Page 39, Line 5 to Page 41, Line 13]

BY MR. PICCIRILLI:

Q. Mr. Dobrushin, who is your relationship with M.G.

A. Right now I am consulting because of some of the trauma that existed from the age of one.

Q. So would you describe him as your patient?

A. Yes

Q. Okay. And what trauma are you referring to?

A. The auto accident that impacted the entire family, caused the closed decapitation, had him be in Columbus, Ohio. They induced a coma for five days to drill a hold and drain the fluid, moved him to Children' Institute here in Pittsburgh where they put the shunt in.

MR. FISH-GERTZ: Your Honor. I would object. He's not a medical witness.

THE COURT: Hold on. Go ahead.

MR. FISH-GERTZ: He's not a medical witness. He's qualified to a very limited thing. This is medical testimony. I do not think it would be appropriate for him.

MR. PICCIRILLI: He's just stating

the background, Your Honor, that's already been testified to by multiple witnesses. I can ask him to move along.

THE COURT: Please.

MS. SAMULSKI: Your Honor, we've not heard this from any – Well, we have heard from medical testimony, but it he is not qualified to talk about any – He doesn't even know if it's correct because he's never had any collateral information. He's only got information from the parents. That's solely it. He's never confirmed with CYF with any of the --

THE COURT: Okay, Ms. Samulski.

MS. SAMULSKI: Sorry. Sorry.

THE COURT: Let's move on. Mr. Piccirilli.

MR. PICCIRILLI: Thank you.

Q. Mr. Dobrushin, so this injury that you were describing, how does that manifest itself in your opinion with M.G.?

A. First of all, because of the hydrocephalus, which is the fluid that builds up on the brain, the pressure alone at age four causes damage that was remedied in Columbus but reoccurred when he came here.

Q. We don't want to get – Hold on. I'm sorry to cut you off. We don't want to get too far into the actual medical physical areas. Let's talk about how does it manifest itself in his behaviors?

A. Well, the parts of the brain that can cause the impulsivity, the aggression, and my

initial referral was to get the neuropsychological evaluation and an appointment with a neurologist.

Q. And has M.G. had that appointment?

A. The neuropsychological was done on the 4th, and he has the appointment with the neurologist on the 23rd of April.

[End of Page 41, Line 13]

[Page 41, Line 21 to Page 46, Line 4]

Q. Okay. When do you expect those results?

A. Hopefully within a week or so with the neuropsych, and we will get the information from the neurologist after that appointment.

Q. Okay. So, you've spoken with M.G., correct?

A. Yes

Q. On numerous occasions?

A. Yes

Q. You mentioned broadly aggressive behavior, things like that. Can you be more specific?

A. There are portions of the brain that if damaged –

MS. SAMULSKI: Your Honor, I object. This is medical testimony. This is far afield from just speaking with the child. This is going – He's making the assumption that this is based on his brain injury, which it might be, but I remember I looked at a transcript and the father was not allowed to say that his behavior is based on the fact that he has a traumatic brain injury. No one has determined that.

THE COURT: Mr. Piccirilli, I

thought that he was going to testify about confinement, right? And that's what I qualified him as, to talk about the confinement not about medical issues.

And if he is now waiting on a report before he can come up with a plan, then he can't testify about the prior confinement because he's waiting. So, I'm not exactly sure what he's going to testify to, right?

MR. PICCIRILLI: Well, I can ask him about the effects of confinement.

THE COURT: You can, but the only thing that I qualified him for was about confinement, and I thought he was going to testify about confinement and what effects it has. But for him to get into the medical aspect of this, he doesn't have any medical background.

And my last thing, as I already said, if he's waiting, if he's treating M.G. and now he just testified that he's waiting to get a report from a neuro doctor, then I'm not sure he can testify about past confinements, whether it was appropriate or not for M.G., because he is waiting for more information.

MR. PICCIRILLI: Your Honor, I can ask him if it's appropriate generally.

THE COURT: I'll give you some leeway here. Mr. Piccirilli. That's fine.

MR. PICCIRILLI: Thank you, Your

Honor.

Q. All right, Mr. Dobrushin, I'm sure you heard the Court. We're going to talk about confinement. For a patient who seems to be exhibiting symptoms such as M.G. has and such to your understanding that M.G. has, what are the effects of confinement or restraint?

A. Sometimes I have seen clients when they get into a locked unit, the stressors disappear. I have watched them be able to become calmer, and they don't act out as much. As far as the tether, when he and I spoke about it, he had voiced no objection to it because it does help him calm down. That's from my direct interview with him.

Q. Okay. There was a question raised the last time we all were here. You were not, but there was a question raised about, you know, if M.G. has the calmness, the wherewithal to put a restraint cuff on himself, doesn't that mean he's calm and doesn't need a restraint cuff? Could you comment on that?

A. There's a disorder called intermittent explosive disorder that becomes something that just comes out of nowhere. And with that in mind, if he is able to tell when he's getting to that point and would use the tether with the supervision, then that's him making that rational decision.

If it gets beyond that, then he may do things that are much more radical than that and not know.

Q. Do you believe there are instances where the

use of the tether, as you understand it in this case, is appropriate.

A. If he's able to put it on himself, yes, then he's manifesting that.

Q. So there was also a question raised that M.G. hasn't had an angry outburst particularly in his foster home. Could you comment on that?

A. When I interviewed M.G., when he thinks things are unfair to him, when he is told no, these are the causes that make him explode and make him angry. So, if that's not happened in the foster homes, then that potentially is why there's been no visual reaction to that.

Q. Are you familiar with a new plan implemented by the family for the care of M.G.?

A. I am.

Q. Now, that doesn't only involve restraint. It involves the use of a calming room, doesn't it?

MS. SAMULSKI: Your Honor --

A. Yes.

MS. SAMULSKI: Lay a foundation. There's no foundation for this. I'm not sure what he's referring to.

THE COURT: Mr. Piccirilli.

Q. Aside from restraint, what other methods does this mental health safety plan that the family has put together apply?

[End of Page 46, Line 4]

[Page 46, Line 11 to Page 49, Line 1]

MR. PICCIRILLI: Your Honor, there's a plan that was sent out to everyone that Mr. Dobrushin was a party to essentially.

MS. SAMULSKI: What is the date of that?

MR. PICCIRILLI: I think it was officially signed on the 9th of April.

MS. SAMULSKI: And authored by --

MR. PICCIRILLI: I believe authored by Ms. Green.

MR. FISH-GERTZ: And I would object. This is not relevant to adjudication as this occurred well after removal and well after the instances that (*indiscernible*) concerns.

MR. PICCIRILLI: Adjudication doesn't just regard what happened. It regards what happens from here.

THE COURT: I'll allow it, Mr. Piccirilli.

MR. PICCIRILLI: Thank you.

Q. Mr. Dobrushin, back to the safety plan, what methods does this safety plan employ to treat M.G.?

A. There was a quiet room or calming room that was there with no locks, and it is also to gather and be able to identify as the behaviors exacerbate so they could be stopped and calmed prior to the need for any restraint. Part of my role would be to help identify both for M.G. and for the family the steps so the intervention can happen early

enough so it doesn't need the tether.

Q. And looking at this safety plan, I see it appears to be your signature on the last page?

A. Yes, it is.

Q. Is that your signature, sir?

A. Yes, it is.

Q. Okay. So, you have reviewed this, and you feel it's a safe plan?

A. It is built in, and I will help them monitor the use or any identification of when things are going to escalate to stop it before it gets to the point that it has to run its course. So, if we can intervene earlier, then that reduces the need for the tether hopefully completely but also would give him the opportunity to voluntarily say he needs the calming room.

Q. And were you a party to the creation of this plan?

A. It was discussed with me.

MR. PICCIRILLI: Your Honor --

MS. SAMULSKI: Unresponsive, Your Honor, Objection, was he a party to that? He did not respond.

MR. PICCIRILLI: I believe he did. He said it was discussed with him.

Q. Did you have input in the creation of this plan?

A. We talked about the method of identifying the triggers so we can utilize the calming room prior to any escalation or need for the tether.

Q. Okay. So, the family worked with you to draw up this plan, correct?

A. Yes, we will introduce antecedent behavior checklist which will be able to specifically pinpoint when the behavior starts to become so we can deescalate prior to the aggression.

MR. PICCIRILLI: Thank you, Your Honor, I would offer this safety plan which has been sent.

[End of Page 49, Line 1]

[Page 49, Lines 19-21]

MR. PICCIRILLI: The second to last page is M.G.'s signature. Your Honor, I would offer this as Father's Exhibit A.

[End of Page 49, Line 21]

[Page 50, Line 18 to Page 51, Line 5]

THE COURT: All right. I will enter that into evidence. Anything else, Mr. Piccirilli?

MR. PICCIRILLI: Yes, Your Honor, just for purposes of housekeeping.

Q. Mr. Dobrushin, you've authored this report about M.G., correct?

A. You're talking about the one from the 8th?

Q. The one dated the 8th.

A. Yes.

MR. PICCIRILLI: Your Honor, I would offer Mr. Dobrushin's report as exhibit B, Father's Exhibit B.

[End of Page 51, Line 5]

[Page 52, Line 15 to Page 56, Line 8]

THE COURT: I'm going to allow it

into evidence, Ms. Samulski, and I'll give it the weight I think it deserves. How about that?

MS. SAMULSKI: Thank you.

THE COURT: Anything else, Mr. Piccirilli?

Q. Mr. Dobrushin, your statements to the Court today, have your conclusions and your statements, are they within a reasonable degree of professional certainty?

A. Yes, what I got from M.G. as well as the fact that the referrals that I made were followed, and that should give us clarity on information regarding the degree of neurological damage.

Q. And your testimony with regards to the effects of restraint and seclusion, are they within a reasonable degree of professional certainty?

A. Yes.

MR. PICCIRILLI: Thank you, Your Honor. I would offer for cross.

THE COURT: Ms. Samulski.

– – –

CROSS-EXAMINATION

BY MS. SAMULSKI:

Q. Sir, are you aware – I think you are aware that there's a police investigation in this matter, correct?

A. Yes, I was made aware of that.

Q. Are You aware that the District Attorney's also reviewing this matter?

A. Yes.

Q. Are you aware that this was Child Lined and it was indicated as to unauthorized restraint?

A. That's what I was told, yes.

Q. Do you know what a ChildLine is? I assume you do.

A. I do. I'm a mandated reporter.

Q. And so that doesn't affect you at all? That doesn't bother you?

THE COURT: What's your question, Ms. Samulski?

A. I am looking at the information I gathered from M.G. and the efforts of the family. It does bother me, but I think that there are more ramifications that need to be explored to find out the cause of his behaviors.

Q. By signing off on it – Well, you reviewed it. Let's put it that you just signed off as a reviewer of this, correct? That's really what your signature indicates?

A. Yes.

Q. Isn't it normal course of business, you as a therapist for so many years, to extract different information from collateral sources?

A. A lot of the information that I gathered was from the two sessions directly with M.G.

Q. Did you, in fact, contact CYF or – They didn't know you existed. Is that right? Until a week ago? Is that correct?

A. I'm assuming.

Q. Did you notify them for any reason to get information?

A. No, I wanted to evaluated M.G.

Q. Did you talk to any of the mental health providers from different facilities such as Southwood, Western Psych, Wesley, any of the places that treated him?

A. No. I did not.

Q. Did you talk to any of the neuro, the neurosurgeon and the neurologist regarding his condition?

A. I did not, but I made -- That's the reason I made the recommendations for the neurologist, to get --

Q. When di they contact you? When did the family --

A. Initially in January.

Q. And the first time you saw them was when? February? That's when you saw the family?

A. Yes.

Q. And the other thing is, I was told that you will be his therapist, M.G.'s therapist, but are you going to have the parents sitting in on your sessions?

A. No.

Q. You're just going to see him individually, correct?

A. And collaterally work with the family.

Q. In what regard? Working with the family how?

A. At ways to assess how he's reacting, looking at his escalation, looking at better interventions.

Q. And the confinement issue, which is what we're really talking about, you talked there's a safe room. I heard you speak of the safe room, and I saw that somewhere in -- Go

ahead.

A. I referred to there was a calming room.

Q. And what is a calming room? What exactly is the purpose there?

A. For him to be able, as he identifies better, to go in so he can calm himself to avoid any of the need for restraint.

[End of Page 56, Line 8]

[Page 57, Line 10 to Page 61, Line 12]

Q. So you find that concerning, that there is one door that's locked to the main room? In case there is a fire or there's any kind of medical emergency, there's one way in, one way, and he can't get out the other door? Is that a problem?

A. He will have a door that he can get out of.

Q. One door?

A. It's not that he's -- He's not going to be locked in. He will have an egress.

MS. SAMULSKI: I have no further question, Your, Honor.

THE COURT: Ms. Green.

– – –

CROSS-EXAMINATION

BY MS. GREEN:

Q. Mr. Dobrushin, do bedrooms usually have two doors?

A. No.

Q. What are your concerns if M.G. isn't restrained and he's out of control?

Q. Pardon me?

A. Huh?
Q. Can you repeat that question.
A. What are your concerns if M.G. isn't restrained and he's out of control?
A. His safety for him and everyone else,
Q. Is he doing family therapy with the family as well?
A. That was something that was asked that we could look at. Yes.
Q. Are you planning on implementing the safety plan into your treatment plan of M.G.?
A. Yes.
Q. What are you planning on doing with M.G. until you get the neurology report?
A. I'm hoping I can continue to see him to work on some issues, naturally create a treatment plan.
Q. Did M.G. disclose to you that he was prescribe oxcarbazepine about three weeks before he was removed from the home?
A. That was presented to me. Yes.
Q. To the best of your knowledge, what is the drug's usage and effect in mental health treatment?
A. It's an anticonvulsant, and sometimes that will reduce the aggression. It's one of the purposes that the use Tegretol and Depakote for.
Q. In your opinion, do you think that can be the cause of his reduced aggression since removal?
A. It potentially can, but it needs to be followed by the neurologist to make sure that everything is going the way that it's

supposed to.

MR. FISH-GERTZ: Your Honor, I'm going to object and request the testimony be stricken. He is not a psychiatrist. He did not prescribe these medications.

THE COURT: I agree, Mr. Fish-Gertz. I'm going to sustain the objection. Continue, Ms. Green.

Q. What were your thoughts on the new safety plan when Ms. Green presented it to you?

A. It was an improvement from what was initially talked about.

Q. Will you be periodically reevaluating the safety plan with M.G. and his family to ensure that it continues to meet the least restrictive method as needed?

A. If it is used correctly, it will eliminate the use of the tether. And if his behavior continues to improve with healthy aggression, then it gives him a place that he can go by himself.

Q. In the safety plan that was just admitted, it was just asked to you if the door off the living room was locked?

A. Yeah, that was just – that was asked of me.

Q. If you can refer to page 6, does it say the door off the main living space will remain unlocked? The door that is locked is the one that's to the space he's not supposed to have access to?

A. Yes.

Q. Did you ask M.G. if he was in agreement with the new safety plan if he is to return

home?

A. We did touch base on that, yes.

Q. What was his response?

A. He was okay. He was okay with that.

Q. Did he have anything to say to you about the calming room?

A. Other than the fact that at times he would like to have that kind of space.

Q. Do you feel that either the tether or the calming room pose any danger to his neck or shunt?

MR. FISH-GERTZ: Your Honor --

A. I can't answer that based on the objections since I am not the surgeon. Working with people that have had shunts, neither one of those should have a direct impact on the shunt.

Q. When a child with this type of issue has their anger tend to start increasing, if it's not caught quickly at a certain point can it get out of control quickly and be hard to bring back down?

A. My experience with people with those kinds of traumas, yes, they can get to a certain point, and then it becomes an explosion. They don't calm. If caught early enough you can talk them down and out of it. But once it reaches a certain point, it doesn't work, the talk, got to run its course.

[End of Page 61, Line 12]

[Page 62, Line 17 to Page 63, Line 13]

Q. Mr. Dobrushin, do you feel the family would be able to implement the safety measures in

a way to prevent harm to M.G. and keep M.G. and the family safe?

A. The thought that went into it, because of the need for protection of both M.G. and everyone else, I am hoping that we can figure the way to deescalate and that it can be managed successfully.

MS. GREEN: No further questions.

THE COURT: Ms. Spurr.

MS. SPURR: Yes, Your Honor. Thank you.

– – –

CROSS-EXAMINATION

BY MS. SPURR:

Q. Mr. Dobrushin, as you testified, you're a mandated reporter?

A. Yes, I am.

Q. So if it were to come to your attention that restraints were being used inappropriately or there were other concerns to indicate child abuse, you would be required to call the ChildLine, correct?

A. Yes. I've called it in the past with patients.

[End of Page 63, Line 13]

[Page 63, Line 22 to Page 64, Line 14]

Q. And are you discussing with M.G. in therapy any tools or techniques that he can use to deescalate himself?

A. That will be put in place.

Q. How soon will that be put in place?

A. Actually, it will be one of the first things that

we go to address.

Q. And when will the next time you see M.G. be?

A. Next Monday he is scheduled.

Q. Okay. And will you continue to work with the parents as well on ways that they can deescalate -- M.G. without using the calming room or the restraint?

A. Yes, yes, I will.

MS. SPURR: Thank you. That's all I have.

THE COURT: Mr. Fish-Gertz.

[End of Page 64, Line 14]

[Page 65, Line 12 to Page 66, Line 17]

Q. You also mentioned *(indiscernible)* have these restraints for the safety of M.G. and others? Is that right?

A. At points where he escalated during the middle of the night, yes.

Q. Have you ever personally seen him become escalated or violent to himself or others?

A. No. I've watched him shut down when he doesn't hear what he wants to hear.

Q. What do you base your belief that M.G. is a danger to himself or others at times?

A. His own acknowledgement that he becomes aggressive and becomes destructive.

Q. And you've been working with the family since January? Is that right?

Q. Okay. Except for. And you mentioned you believe it appropriate to get a neuropsych appointment and a neurological appointment?

A. That was the recommendation the first time I met with them, yes.

Q. The first time you met with them in February?

A. Yes. And they got that within less than two months, which by today's standards is amazing.

Q. You also mentioned intermittent explosive disorder. Is M.G. diagnosed with that, to your knowledge?

A. Not to this point, no.

Q. And also your goal in treating M.G. is to cease the use of any tether restraints or seclusion?

A. The ultimate goal will be that he does not need either.

[End of Page 66, Line 17]

[Page 67, Line 16 to Page 73, Line 17]

THE COURT: That's fair. That's fair. My last question is, are you in favor or against tethering, period?

THE WITNESS: I would be against it except for some of the aggressive behavior and some of the things that were described to me that he gets onto the computer with.

THE COURT: So if M.G.'s not being aggressive and he puts himself in the tether, do you think that's appropriate at that time?

THE WITNESS: If it's what he's viewing as a necessary method to remain calm and not escalate the anger

and aggression because when he does, he's still supervised from what I was told.

THE COURT: All right. That's fair. Thank you.

MS. SAMULSKI: Your Honor, could I ask – Sorry.

THE COURT: Go right ahead.

– – –

CROSS-EXAMINATION

BY MS. SAMULSKI:

Q. Sir, you mentioned you would be a mandated reporter if you saw something that was amiss. How can you monitor if the tether is being used correctly? I guess that's the question, because how will you know? What's your basis for that?

A. We're going to put in place an antecedent behavior checklist that will talk about some of the outbursts. We're also going to have that with some of the quality things that he does do. And Mrs. Green put together an incident report that will be filled out, have a witness who also saw it, and M.G.'s own description of what took place, and those are the things that I'll be able to monitor.

Q. So it's really basically self-reporting from the family, right? You're going to have to trust that the family is reporting this correctly, correct?

A. Yeah. That includes my getting information from M.G.

– – –

REDIRECT EXAMINATION

BY MR. PICCIRILLI:

Q. Mr. Dobrushin, if the tether were no longer available starting today and the use of the tether was no longer an option, what options would be available to keep M.G. and the family safe at night when M.G.'s having an episode.

A. The anticonvulsive medication that he started taking again –

MR. FISH-GERTZ: Again, I'm going to object.

A. -- apparently has reduced, by his description –

Q. Hold on. Hold on.

A. -- some of the agitation.

Q. Hold on. We have an objection.

MR. FISH-GERTZ: He's not a psychiatrist. He cannot testify to the effects of these medications.

THE COURT: Mr. Piccirilli?

MR. PICCIRILLI: He's a mental health professional.

THE COURT: I'm going to allow it. Let's move on.

Q. Short of the medication taking effect, is there another great option to keep this family safe and M.G. safe?

A. At this point it probably still maintains its lability, and that's something that would hope to be able to get an appropriate

medication from the neurologist that would help control the aggression.

MR. PICCIRILLI: Thank you. No further questions.

THE COURT: Ms. Green.

RECROSS-EXAMINATION

BY MS. GREEN:

[End of Page 73, Line 17]

[Page 74, Lines 10-25]

MS. GREEN: This is the incident report that the family's gonna use.

THE COURT: Go ahead.

MR. FISH-GERTZ: Thank you. I did receive this.

MS. GREEN: Because they said how would M.G., how would they know if we're –

THE COURT: Ask the question, not to me.

Q. Is there a place for M.G. to be able to disclose to you if we handled something inappropriately?

A. Yes.

Q. And was the family planning to provide video of the incident as well?

A. Yes.

Ms. Green: Nothing further.

[End of Page 74, Line 25]

—End of Mr. Dobrushin's Witness Testimony—

Bruce Chapman Witness Testimony

[Reproduction of Original Transcript]

[Page 78, Line 4 to Page 81, Line 22]

DIRECT EXAMINATION

BY MR. PICCIRILLI:

Q. Mr. Chapman, you recall a little while ago you mentioned that you had a patent for a number of restraint devices?

A. Yes.

Q. Okay. And did you ever have a patent or were you involved in the

MR. FISH-GERTZ: Your Honor, I'm going to object. We qualified him as a lay witness only, not as an expert witness. He can only testify to lay knowledge without any expertise or profession.

MR. PICCIRILLI: Your Honor, I'm asking him—

THE COURT: He can testify if he has a patent or not. He doesn't have to be an expert to say that he has a patent or not. Continue, Mr. Piccirilli.

MR. PICCIRILLI: Thank you, Your Honor.

Q. Did your company sell wrist cuffs and devices like that?

A. Yes.

Q. Okay. And were there any kind of warranties or caveats that went with the sale of those items?

A. Yes. It was very important to me that anybody who was in mechanical restraints and in this case my mechanical restraints kept that person on one-to-one supervision constantly without exception, and I notified anybody buying our restraints that the warranty would be revoked if we learned that they were not keeping somebody on one to one.

And, in fact, I engineered into the design of the restraints an easy way of letting someone out. So, there was always a lingering concern that another patient, a client, anybody who was unauthorized could actually let that person out of their restraints if they were unattended. So, I not only required it, but I engineered an element into the restraints that supported the fact that they needed to keep somebody on one-to-one supervision at all times.

Q. Okay.

A. Also, one of the restraints is for something called the movement suspension system, and it's based on the idea that for many patients, not all but for many patients, when you take away the ability to move, they calm down in a fraction of the time. That wasn't necessary with all patients. Sometimes just the idea of being in restraints is a symbolic cue to regain internal control, such as the case with M.G.

Q. So you would say the knowledge that there is a restraint available has like a prophylactic effect by your experience?

A. It does with some people who are in restraints. Some patients could be kept in a looser form of restraint. Others needed to have their movement suspended completely in order to regain control.

Q. So your methods, your company, does it have an opinion on whether or not the person who may be restrained agrees to that?

A. One of the things that I've advocated for the last 40 years is that clinical staff enter into agreements with patients who have impulse control problems to get them to see the beauty of the plan. There were a couple of elements in speaking with Gena that actually prompted me to become involved in this case. One was the fact that she kept him on one-to-one continuous supervision at all times. That struck me as being very responsible. I wish that in hospitals that we trained showed as much responsibility to their patients. Some try to keep them on video. They need to be on one to one. You can have a patient have a cardiac arrest and not know it if you're not physically present.

So that was one element that prompted me to become involved in this case, and the other was the agreement that she had with M.G. to use the tethering device, which is a very loose form of restraint. So, it's not a four point or five-point system. It's something I consider very wise.

As a parent and a grandparent, myself, we enter into agreements with our children all the time around behavioral issues that

are far less serious than M.G.'s The fact that she was able to elicit his agreement, the fact that M.G. agreed to the use of the tethering device showed me her wisdom in going about that without any training whatsoever. And M.G. need to have a basis for control. The fact that he agreed to it is no surprise.

If you look at the forensic report --

MS. SAMULSKI: Your Honor, we're going far afield now into –

[End of Page 81, Line 22]

[Page 82, Lines 8-18]

MR. PICCIRILLI: I mean, he's reporting as a fact witness using what's been shown to him with regards to this case as a basis for how it applies to what he knows and what he does.

THE COURT: Ms. Samulski

MS. SAMULSKI: Your Honor, he's not seen M.G.. Maybe this would all be different if he's ever met with him, ever seen him.

THE WITNESS: That's not true.

[End of Page 82, Line 18]

[Page 83, Line 19 to Page 85, Line 25]

Q. Mr. Chapman, you mentioned, you know, Gena's methodology. She recently took a class with your company, correct?

A. Correct.

Q. What class was that?

A. She originally contacted us to get training through the Autism Speaks website. We had

coincidentally a training in Newburgh, New York, scheduled through the following week, and she and Richard traveled from Pittsburgh to attend the training that was taught by one of my master instructors in Newburgh.

She went through the basic program, which is a one-day verbal de-escalation program. The second she learned physical intervention methods that we teach everybody who gets Handle with Care training. She did not go through the instructor level, but she went through the day 1 and day 2 which conveys both the verbal and physical intervention.

Q. And just to clarify, when you say Richard, you mean Mr. Dickman, correct?

A. – Yes.

Q. – Okay. What can you tell me about what you call the detention tension reduction cycle?

A. – Detention tension reduction cycle is the foundation for verbal and physical de-escalation. It deals with escalating tension, its changes on motor activity, speech production, verbal threats, and finally physical discharge of tension. Think of a wave theory on the front end as the intervention piece. The back side of the wave is the letting go process, how and when not just to do a physical hold but how to release somebody from that hold.

So it's a timing model for timing your verbal interventions and on the other side how to let somebody go, the correct timing

for that so they don't reescalate.

Q. Have you been to the Green family's home?

A. I have.

Q. And did you see the room where M.G. sleeps?

A. I did.

Q. And did you see the tether in question?

A. I did. I inspected it.

Q. Okay. How would you describe it?

A. It's a commercial grade or medical grade restraint, soft restraint made out of synthetic material. There is a coated cable that, looks to be attached to the wall. It's a single wrist restraint that is long enough to allow some freedom of movement in the area of the bed and also allows anybody who's in that restraint to be able to reach out and alert somebody who is laying in the bed next to them.

Q. Were there other beds in that room?

A. Gena and her husband's bed is close enough for M.G. to reach out, notify them if he needs something. There was a third bed in the room, but --

[End of Page 85, Line 25]

[Page 86, Line 12 to Page 90, Line 3]

[Q.] So based on your observations, did the proximity of the other beds in the room fulfill your requirement, your belief that a person who is restrained or tethered should be closely monitored?

A. Yes.

Q. Okay. And how long was that coated cable? Do you recall?

A. About six feet.
Q. Was it long enough for someone whose wrist was in the cuff to stand up?
A. Yes.
Q. Are you aware that the family has now set forth a plan which includes a room, a calm-down room, a calming room?
A. Yes.
Q. Okay. Does your company and your theories, do they ever incorporate the use of a similar room?
A. Yes. It incorporates it as a less restrictive modality than physically restraining or in this case tethering.
Q. So you said less restrictive. Would you save that moving towards or progressing towards less restrictive means is a goal that you promote?
A. Yes. Yes. Ultimately the goal is to not need either of the two modalities, but a quiet or timeout room works beautifully with many patients. Many individuals who are accelerating need to be separated from the sensory stimulation that's going on in this case in the household and gives them an opportunity to regather themselves and calm down.
Q. In your models, when someone is enraged or having an episode, a fit, and getting physical, what other options are available short of restraint, or are there options available short of restraint?
A. Well, there's the mechanical restraint that's the subject of this discussion, but there's also

physical holding. Gena learned a physical holding method that we were teaching and I alluded to earlier called the Primary Restraint Technique. The use of a timeout room is less invasive, less restrictive than either physical or mechanical restraint.

MR. PICCIRILLI: Okay. Thank you, Mr. Chapman. I'm going to offer you for cross-examination. Gena and the other attorneys will get to ask you some questions.

THE COURT: Ms. Samulski.

MS. SAMULSKI: Thank you, Your Honor.

– – –

CROSS-EXAMINATION

BY MS. SAMULSKI:

Q. Sir, are you aware that this case is pending a police investigation?

A. Yes.

Q. Are you aware that the District Attorney's also looking at it?

A. Yes.

Q. Are you aware that this case was ChildLine and indicated as to the restraints as the cause of the – that's the reason it was indicated, are that's the purpose behind the ChildLine system, correct?

A. Yes.

Q. Okay. I was very surprised right now to hear that you had been at the Green home. When was that?

A. I flew into Pittsburgh at my own expense, stayed in a motel, a hotel at the airport the day before. I guess that would be, well, two Tuesdays ago. On that Monday I flew in, and late afternoon I drove to their house and had a long conversation with Gena, her husband, and I'm brain locking on the name of her caretaker. And I inspected the room. I didn't have an opportunity to see M.G. until the next day.

Q. You say two weeks ago. What date? Do you have an idea?

A. Hold on. I could be very specific.

Q. Thank you.

A. I flew in on Monday the 1st. So the day I flew in was the day I paid a visit to the household. So it was on the 1st of April.

Q. Okay. And what you testified to in the room that has the tether and the cuff, you actually saw that room, correct?

A. Yes.

Q. And you saw I guess the apparatus that would attach to the wall, the cuff and the tether, right?

A. Yes.

Q. Okay. And it was still there, obviously, when you were there, and M.G.'s bed is still there? I guess we don't call it a bed. Whatever he sleeps on was there, correct?

A. Yes.

[End of Page 90, Line 3]

[Page 94, Line 3 to Page 95, Line 5]

Q. And you said you saw him the next day,

right? You met with M.G., and he didn't --

A. Yes. I --

Q. Go ahead. Sorry. Go ahead.

A. I went to the courthouse and your courtroom to testify. M.G. was there, had a pleasant couple of exchanges with M.G. while I was there waiting to be heard, and of course I wasn't that day.

Q. So your report says that you condone the cuff, correct? You condone the restraint? Is that correct?

A. Yes. I said that practice should be allowed to continue as long as they followed my recommendations with respect to the use of it.

Q. Have there ever been times where I guess injury was caused for not following through with your instructions? Did you ever encounter that?

A. Yes. I hadn't trained the Houston County Jail, but I got retained in a case where they had somebody restrained in handcuffs, not in medical grade restraints but in handcuffs to a bed, and unfortunately, he had a cardiac or respiratory arrest, and no one was there to save him.

I testified on behalf of the plaintiffs in that case, that he should have had somebody assigned to him in the room while he was handcuffed to the bed, and if not for that he would probably still be alive.

[End of Page 95, Line 5]

[Page 96, Lines 5-15]

Q. Is that a risky situation if he's forced? If M.G. is forced to put on the cuff and not doing it voluntarily, if he's being forced to put the cuff on, do you consider that a risky situation?

A. No.

MS. SAMULSKI: I don't think I have any more questions, Your Honor.

THE COURT: Thank you. Ms. Green.

– – –

CROSS-EXAMINATION

BY MS. GREEN:

[End of Page 96, Line 15]

[Page 99, Line 19 to Page 101, Line 7]

Q. Didn't the family tell you that M.G.'s always one to one?

A. Yes.

MR. FISH-GERTZ: Either speculation or hearsay.

THE COURT: Ms. Green.

Q. Are the programs that we attended the same programs you would teach to professionals?

A. Yes.

Q. Does the certification expire? If so, how long is it good for?

A. It's good for one year.

Q. Can you tell the Court how these programs may help the Green family to better manage M.G.'s behavior?

A. Well, I think the verbal program would help

anybody become what I call a solid object, which is maintaining your own calm mind state throughout the challenge of managing somebody who's aggressive and out of control.

The physical components of Handle With Care would enable somebody to avoid the use of either timeout or seclusion or restraints, but if you can catch somebody who is not so far gone that they can appreciate the fact that they're losing control, that's when you want to offer the voluntary use of restraint or a timeout room.

When somebody is so agitated that they present a physical danger to somebody, that would be the time to use physical restraint to get them physically under control. So, both voluntary use of the mechanical restraint and timeout is less restrictive than physically holding somebody. Physical intervention and physical holding is a last resort to prevent physical injury from occurring.

MS. GREEN: I'd like to submit the brochure for the Handle With Care program into evidence. It details everything that they train to show the stuff that we were trained on.

[End of Page 101, Line 7]

[Page 102, Line 3 to Page 103, Line 3]

Q. Do you believe it's important to put a plan or agreement in writing, Mr. Chapman?

A. I think it's always better to put a plan or an

agreement, a behavior plan in writing. It makes it more clear to everybody concerned, and you can always refer to the plan.

Q. Do you feel that the type of cuff that M.G was using would be likely to cause injury?

A. No.

Q. Did the family incorporate your crisis intervention training into the new safety plan?

A. Yes.

Q. How do you feel that the training – Do you feel the training was incorporated effectively into the new plan?

A. I think it was incorporated beautifully into the plan, given the fact that you are a layperson. I just think you did a great job with it.

Q. Do you feel the new safety plan's interventions use a progression of the least restrictive policies that are effective to be safe before going to mechanical tethering?

A. Yes.

Q. Do you feel that this plan is being conducted safely?

A. Yes.

[End of Page 103, Line 3]

[Page 103, Lines 18-24]

Q. Do you believe that this practice using the calming room and the mechanical tether is abusive or may cause harm to M.G.

A. Not at all.

MS. SAMULSKI: Your Honor, objection. He's not a CYF personnel. He

can't determine that.
[End of Page 103, Line 24]

[Page 104, Line 9 to Page 107, Line 13]

Q. Do you believe this Court should uphold the use of the new safety plan?

A. Yes.

MS. GREEN: No more questions.

THE COURT: Ms. Spurr

MS. SPURR: Just briefly, Your Honor, Thank you.

– – –

CROSS-EXAMINATION

BY MS. SPURR:

Q. Mr. Chapman, the report that you provided, you indicate that the ultimate goal is to provide M.G. with skills and self-control in order so that the tether will no longer be necessary. Is that correct?

A. That's correct

Q. And was that part of your discussion with the parents when they were coming up with this safety plan?

A. Yes.

Q. And do you believe that the parents are in agreement with that being the ultimate goal of not needing the tether?

A Yes.

MS. SPURR: Thank you. That's all I have.

THE COURT: Mr. Fish-Gertz

MR. FISH-GERTZ: Yes.

– – –

CROSS-EXAMINATION

BY MR. FISH-GERTZ:

Q. So on direct you indicated the importance of one-on-one supervision?

A. Yes.

Q. And, in fact, that was one of the reasons you wanted to be part of this case, work with this family, because you believe they perform one-on-one supervision at all times?

A. Yes.

Q. Do you consider one-on-one supervision if people are asleep?

A. Yes, in this case because --

Q. No.

A. --M.G.'s able to stand and reach the bed. --

THE COURT: Hold on.

Q. – That's a yes or no question.

A. – -- and alert Gena that he has a need. And that's supported by --

THE COURT: Mr. Chapman.

MR. PICCIRILLI: Hold on, Bruce. Hold on.

THE COURT: Hold on.

Mr. Chapman, that was just a yes or no question. Let's move on.

Q. Your report discusses a Temple Grandin? Is that correct?

A. Yes.

Q. And you note in your report that she would lie in a coffin sized box that completely immobilized her?

A. Yes.

Q. Do you believe that was appropriate treatment?

A. She is a world-renowned speaker on the fact that deep muscle stimulation has a calming effect, and her parents were wise enough to follow her cues, build the device and give her the opportunity to get herself calmed down when she was excited and melting down.

So yes, it is now the basis for the weighted vests that you see used with autistic folks, and it's the same deep muscle stimulation that allows the Primary Restraint Technique --

MS. SAMULSKI: Objection, Your Honor.

A. -- to have such a calming effect.

MS. SAMULSKI: Your Honor --

THE COURT: Ms. Samulski.

MS. SAMULSKI: Objection, Your Honor. He's speaking as an expert witness, as a medical --

THE COURT: I agree. Sustained. Let's move on.

[End of Page 107, Line 13]

[The Court continued this hearing after the two witnesses finished testifying until April 24, 2024]

Transcript Excerpts w/ Important Testimony
Shelter Care Hearing – Transcript
January 31, 2024

Ms. Samulski: Q. (pg. 8) – I think Ms. Conti was there. There is a video I believe that Ms. Conti has that she will present at a later date?
Mr. Reilly: A. – Yes.
Q. – To Judge Cozza?
A. – Yes.
Ms. Shreve: Q. (pg. 13)– Did the police inform you that parents had been actively using the restraint?
Mr. Riley: A. – Yes, it was reported by Findlay Township Police that the parents openly admitted that they were restraining M.G. again.
Q. – Did they admit to how, or did they give any description as to how frequent that restraining is?
A. – No, it's not in the shelter care application at all, but they did admit to doing it. They didn't specify how much.
Q. – Did the police see him being tethered or --
A. – No, it is just from a conversation whenever they entered the home.
Q. – So that would be the only proof of what the police had told you?
A. – Yes.
***
Q. – Okay. Between the home assessment on the 5th and removing M.G. on the 26th, what services did CYF provide to the family?
A. – We were in the process of finding out what he received already so we're not duplicating services, and we were in line to refer for a support coordinator.
Q. – Was that referral made?

A. – No.
***

Ms. Shreve: Q. (pg. 18)– Is he medically up to date?
Mr. Riley: A. – We were following up with that as well. We have to check in with his pediatrician.
Q. – No obvious concerns though?
A. – No, there was nothing reported when he had that physical at children's.
***

Mr. Adams: Q. (pg. 19) – To your understanding are their situations where it may be necessary to restrain at least temporarily or momentarily the child who is potentially violent?
Mr. Riley: A. – No, it's been outlawed in RTFs and otherwise because children were being killed. And I understand it was a wrist restraint, but a restraint across the board is not okay.
***

Q. – Pg. 20 – You stated that the safety plan was made by not a certified person, but aside from the author upon reviewing it, did it seem reasonable to you, or did it seem unreasonable?
A. – I wouldn't use a person like that to do any type of treatment plan with because he's not a certified counselor. I think a certified counselor would be necessary.
***

Ms. Samulski: Q. (pg. 27)– Can you talk about what you witnessed?
Ms. Conti: A. – Sure. When you walk in there is a living room area. I do want to clarify, the home in and itself is not unsafe or deplorable. It was in disarray and messy, but there was no safety concerns with the home.

Q. – (pg. 28) – Can you talk about what you told the parents and what advice you gave them regarding mental health counseling.
A. - *** (pg. 29) - Absolutely. Mr. Zusinas showed up later during the interview, but mother indicated that M.G,'s behaviors were out of control and aggressive and she was fearful for herself. She reported that M.G. targets Mr. Dickman often and targets her specifically.
Q. -- (pg. 32) You have services then that can go in, therapeutic services that are standing by?
A. – Well, if M.G. is not in the home, we wouldn't be providing therapeutic services in the home. However, we need the records from the services that he has participated in, and then we are going to make a referral for a service coordinator.
***
Ms. Shreve: Q: (pg. 33) – Are you aware that M.G. was inpatient in the fall?
Ms. Conti: A. – I am aware that he was at Southwood in the fall? ***
Q. – Okay. And the parents also informed you that he had been receiving services at Wesley?
A. – Yes, they did inform that.
Q. – Did you give the parents any information on better options to handle any aggressive outbursts in the home?
A. – I believe we talked about Resolve calling the police. ***
Q. – (pg. 35) – The service coordinator referral was not made prior to the removal, correct?
A. – I don't know if Patrick or Caitlin had made the service coordinator referral. I believe we were trying to get the collateral information before making any

kind of referrals.

Q. – So a referral wasn't made so that you could double-check his services?

A. – Right, it was about two weeks from – Caitlin and I were there on January 4th. It was January 4th not 5th.

***

The Court: Q. – (pg. 43) – Do you understand that restraining him is a crime?

T.G. Father A.- No.

Q. – Well, I'm telling you a fact.

A. – Okay.

Q. – It's a fact.

T.G. (pg. 44) – Thank you for that, because that's not the vibe I was getting. We have done a lot of renovation to it. I don't know if you ever heard of a material –

The Court: (pg. 45) – No, I know nothing about home improvements.

T.G.: - It is insulation that is made out of rock. It is extremely flame resistant. Any fire that would break out in that home would have an extremely hard time. They tried to make an example that, oh, we wouldn't be able to get, M.G. out of the house fast enough. ***

The Court: (pg. 46) Well, I happen to know Mr. Reilly pretty well, and he is one of the most non-confrontational people I know. ***

Ms. Shreve: (pg. 54) – The agency did not report any other parenting concerns. M.G. is up to date medically. M.G. was apparently in agreement with the method they used and do not harm him. Additionally, CYF did not provide any services between their initial assessment and removal.

The Court: (pg.54) – Well, there wasn't a lot of

cooperation. ***

Ms. Cox: (pg. 55) – Your Honor, I am M.G.'s legal counsel and it is his position that he would like to return home today. He feels that this is something that has worked better than other interventions he has tried.

February 28, 2025 Adjudication Transcript
Starting on Page 3

The Court: I have read your motion. Tell me what your motion is about and what you are seeking from your motion?

Ms. Green: The motion is about the charges were unreasonably restraining, and we alleged the right to restrain was for safety purposes only. It was never for punishment, never for convenience, it was to protect him and the people in the home from injuries, and he had a tendency to get violent. When he did, he would punch things and try to break things and such and we were just trying to – he was unable to be talked down when he got into these states, and we now have testing set up. A new doctor that we talked to thinks he may have possible brain damage from the car accident, and so we're trying to figure out – it's only used until we were able to get the therapies and the medicines and everything into place to get the situation calmed down without, the use of external.

And it's not an immobilizing restraint, it is actually a tether, it is four feet, and he is able to walk around the bed and he is let out when he needs to, like to use the bathroom or anything like that, and it was voluntary. We talked to him first, and he agreed because he said – he told us that he couldn't

control himself, he didn't know why he was doing the things he did, and he didn't want to do them. He helped to set the plan up himself with us and –

The Court: Not to cut you short, mom, I understand what's in your motion and that's all coming from you, so I'm not going to be able to decide this case on this motion. ***

Ms. Washington: Well, Your Honor, mom has admitted largely everything that's in the petition, and I think you could take her admissions as essentially a stipulation and find M.G. dependent today.

April 2, 2024 – Adjudication Transcript
Starting Page 14

Attorney Spurr: Q. – Officer did you review the safety plan that was given to you.

Officer Zilles: A. – I did.

Q. – Did you have any concerns with the safety plan?

A. – I did.

Q. – Did you express those concerns to the parents?

A. - Not at that time.

Q. – Why Not?

A. – I just read over it very quickly there, and I asked Ms. Green who authored that safety plan and she advised that she had.

Q. – Did you advise the parents to do anything differently?

A. – No.

Q. – Did you tell the parents that they wère participating in any illegal activity?

A. – No. ***

Attorney Spurr: Q. (pg. 18) – To clarify, Officer Taslov, who informed parents to not use the tether?

Officer Taslov: A. – CYF did.
Q. – Did you at any point advise the parents not to use the tether?
A. – I went along with CYF and told them not to use the tether, yes.
Q. – Why did you tell them not to use the tether?
A. – It was a safety risk for the child.
Q. - Were there any charges filed in regards to the use of the tether?
A. – No.
Q. – You heard the testimony of the prior officer?
A. – Yes, I did.
Q. – And you heard that he did not advise the parents to not use the tether?
A. – I heard him say that, yes.
Q. – What was different in your visit? What made you advise them not to use the tether? Was it the presence of CYF or something else.
A. – It was just – I was going along with what CYF said. They advised them not to use the tether anymore. ***
Q. – My question was, would you have advised the parents not to use the tether if CYF had not been there, and that had not been their suggestion?
A. – I would have had to call the District Attorney's office to verify that.
Q. – So it was not a black and white issue?
A. – No. ***
Anthony Piccirilli: Q. (pg. 22) – Officer Taslov, you just testified that you were concerned that the tether for M.G. was a safety risk?
Officer Taslov: A. – Yes.
Q. What specifically were your safety concerns related to the tether?

A. – If there were some types of emergencies in the house, such as a fire, how would he get safely out of the residence. I remember directly posing that to Ms. Green.

Q. – Officer, have you ever been in a home where a child was in a crib?

A. – Yes.

Q. – Is that child able to get out of the crib by itself?

Attorney Washington: Objection, Relevance.

Attorney Piccirilli: The point is, if we have a child in a crib and unable to leave on its own and needs an adult or we have a tether and the child that is unable to leave on his own and needs an adult – I'm trying to see why one is a safety risk and the other is not.

Q. – Officer, do you consider it a safety risk when you go to a home where a parent has a child in a crib?

A. – Normally a child in a crib is not able to move on their own.

Ms. Green: Q. (pg. 24) – Officer Taslov, did the family make you aware that somebody is always with the child at all times, if he is in the tether?

Officer Taslov: A. – I believe so, yes. ***

Ms. Green: Q. (pg. 28) – Lieutenant Stang, did M.G. at any time say to you if he had been abused at all, when you talked to him.

Lieutenant Stang: A. – No, he denied all forms of physical or sexual abuse.

Q. – Did M.G. describe his feelings of the restraint – tether?

A. – Yes, he did. Actually, January 4th, during my brief conversation with him outside of the home. I asked him how he felt as a person with being restrained, and he said he was ok with it.

Q. – Was anybody around from the family that could

have influenced his answers?
A. – Not at that moment, and also with the forensic interview. ***
Q. – Lieutenant Stang, did you ask him if he ever received any injuries or if the restraint ever hurt him in any way?
A. – Yeah. He denies that – He has maintained that he never sustained any injuries from it. ***
Attorney Piccirilli: Q. (pg. 37) – Did you have any discussions with M.G. about the safety plan that his mother provided you?
Dr. Beam: A. – I did not. *** I recommended the use of crisis resources.
Ms. Green: Q. (pg. 37) – It can take three or four hours sometimes for them to respond. What are they supposed to do in the meantime?
Dr. Beam: A. – That's not up to me to tell them what to do.
Q. – Is it normal for a child to maintain control while they are being questioned at the hospital, but still have outbursts at other times?
A. – Yes. Yes, that can occur.
Attorney Piccirilli: Q. (pg. 42) – Doctor, Ms. Green asked you between the time an outburst situation arises and a period of aggression arises, and the time that help arrives it could be a period of several hours?
Dr. Beam: A. – Yes
Q. – When she asked you what to do, and you said it is not up to you to tell them what to do; do you recall saying that?
A. – Uh-huh.
Q. – *** Would you say that the answer to Ms. Green's question is really that it has to be addressed

on a case-by-case basis; is that correct?
A. – It is outside the scope of my practice to tell them what to do.
Q. – Okay. In this case, the parents determined the course of action and implemented it; correct?
A. – Yes.
Q. – And you are telling them not to do that; is that correct?
A. – I can only provide recommendations. ***
Attorney Piccirilli: Q. (pg. 47) – And was this inpatient?
Margaret Schopf: A. – It was an acute program. So, they came to us during the day for school.
Q. – Was the period for a set amount of time or was there a point where it was determined that it was no longer necessary for him to come there?
A. – It was determined by insurance how long your stay can be. It can vary. ***
Attorney Washington: Q. (pg. 52) – Thank you. Can you tell us when you saw M.G. personally?
Ashley Tonsetic: A. – I first evaluated M.G. on August 21, 2023, for the establishment of care for medication management.
Q. - ***I was going to say, did you see him after you evaluated him in August?
A. – Yes. Once in September, on September 19th, and then once again on October 17, 2023.
Q. – Did you also see him in January of this year?
A. – I did, yes. January 11th. ***
Attorney Washington: Q. (pg. 62) – Did M.G. give you any more details about what would happen when the restraint was used overnight?
Shane Isasky: A. – A bit. I explored that with M.G., and just asking about things such as if he had to get

up or use the restroom, and he stated if he did have to use the restroom, he could call for his mother, and she would let him go from the restraint. And he denied that there was ever a time where he was unable to be left off from the restraint. ***

Q. – And just to be clear, he did deny any injuries from the restraint; is that correct?

A. – Correct. He denied any injuries from the restraint use. ***

Attorney Piccirilli: Q. (pg. 64) – Sir, you just testified that you had recommended M.G. for trauma-based counseling?

Shane Isasky: A. – Correct

Q. – What is the trauma?

A. – Well, from my perspective as a professional, being in these sorts of situations is not typical for a young child. *** I believe that from these experiences M.G. will have some aftermath sorting out these feelings regarding these experiences.

Q. – M.G. told you that they didn't use this cuff until he was 14; correct?

A. – Correct.

Q. – And he is still 14; correct?

A. – Yes. ***

Q. – With regards to the bed that M.G. sleeps in did he tell you that he chose to sleep in that bed?

A. – He did.***

Q. – He did say there were books available to him while he was there; correct?

A. – Correct.

Q. – And that he would be brought food he requested?

A. – This is correct.

Q. – Did he ever indicate to you that at any point he

put the restraint on himself?
A. – Yes. ***
Ms. Green: Q. (pg. 67) – Did M.G. say to you that he – did you ask M.G. if his mother or father had got his input when setting up the safety plan?
Shane Isasky: A. – Yes. I believe, yes, M.G. did speak about the family getting his input during the process.
Q. – You testified tat he was conditioned into thinking it is okay. If he had input into setting up the safety plan, how is that conditioning him?
A. – Well, I believe that the proposed safety plan was inappropriate. And I believe even having M. G's input would not be appropriate for him.
Q. – That's alright. Doesn't a 14-year-old have = be able to decide their own mental health treatment?
A. – I'm not a mental health professional, so I cannot speak on that.
Attorney Spurr: Q. – M.G. told you that he felt safe at home?
Shane Isasky: A. – Correct. ***
Attorney Piccirilli: Q. (pg. 78)- You said you can't disclose who reported, but can you tell me what was reported?
Mallory Conti: A. – That M.G. was being restrained.
Q. – I'm going to ask you basically what I asked one of the officers earlier. You have been to homes where a toddler is in a crib or a playpen?
A. – I have.
Q. – And do you consider them to be unreasonably restrained?
A. – No, because that child is much more vulnerable than a 14-year-old who is being restrained. ***

Q – So, the reason a toddler is put in a crib or a playpen is so they cannot roam around the house and do something that is going to hurt them; correct?
A. – Correct.
Q. – In fact, if they weren't restrained in that manner and they did get hurt, your agency may well say that the parents have failed to protect them: correct?
A. – Correct. ***
Attorney Washington: Q. (pg. 95)– So what led to the removal?
Caitlin Miller: A. – We received new information, after we expressed to them that this was against Child Protective Service Law, and it is a per se act of unreasonable confinement. We became made aware that they were still engaging in this behavior. ***
Ms. Green: Q. (pg. 107)– Did you consider the restraining of M.G. a serious danger to him?
Caitlin Miller: A. – Yes
Q. – If you considered it a serious danger to him on the 4th, and you felt like he was in danger, did you check up on him at all between the 4th and the 26th.
A. – The caseworker did go to your home the following Monday.
Q. – To sign paperwork; right?
A. – Yes. And again, the law states that we see children every 30 days, and that's not a very big window.
Q. – Even if they are high risk? Did you ever reach out by phone?
A. – No, I did not. ***
Q. – Did M.G. ever state to you he felt like he was abused?
A – No, he never – He does not feel like he is abused.

Q. – Did M.G. state that he felt safe in his home?
A. – He did say that.
Q. – Was anybody from the family around that could have influenced his answers when you asked him these questions?
A. – Not at the time. ***

April 24, 2024 – Adjudication Transcript

[Page 40, Line 9 to Page 42, Line 3]

Mr. Piccirilli [Closing]: Thank you, Your Honor.

Initially I'd like to bring the Court's attention to what I believe was a mischaracterization by Ms. Washington. No one testified that this tether was used to prevent M.G. from taking food. It was testified that this tether was used to prevent M.G. from taking food. It was testified that he snuck food in. No one said they were using the tether to prevent that, nor did anyone testify that they were using the tether solely to prevent him from accessing electronic devices.

That stated, this families in a difficult position. It's an unusual situation. Unusual measures might need to be taken. Parents have knocked their brains out. They've put a lot of thought, research, care and discussion into trying to find a resolution.

CYF's witnesses didn't have a resolution. In fact, when I asked the forensic interviewer, he had a lot to say

about the methods employed by my client. But when I asked him what he would suggest as an alternative, suddenly he wasn't qualified to opine on that.

So no one's offered a better solution. My client is trying to do and these parents are trying to do what is necessary to keep the child safe, to keep the household safe, to keep M.G. from having to be removed from the household, potentially be institutionalized. Okay?

Moreover, M.G.'s a 14-year-old. At that age he has a say in his own mental health treatment. This is being employ9ed to treat a mental health situation. M.G.'s therapist is on board with it. We heard from, you know, M.G.'s counselor who has even ratified and signed off on this new treatment plan, this family plan which doesn't just employ a tether but has a calming room and has attempts at verbal de-escalation, and Mr. Dobrushin said he was going to be monitoring this situation to make sure that everything's on the up-and-up.

[End of Page 42, Line 3]

[Page 42, Line 13 to Page 51, Line 16]

So, these parents are between a rock and a hard place. They've gone out of their way to try to find a method to

resolve the issues they're challenged with. There are no safety concerns. There's always someone there.

You know, just like I had previously told the Court, I mean, when my daughter was in her crib, she couldn't get out of the crib. And if the house is on fire. I'd have to go get her out of the crib.

Same situation as here. No one was saying I was treating my daughter unsafely. M.G. is not unsafe tethered because the means to untether him instantaneously are there available on the spot. No one's leaving him alone.

It's a difficult situation. It calls for unusual measures. I would ask that the court deny the agency's petition.

THE COURT: Thank you, Mr. Piccirilli. Ms. Green, your position, please.

MS. GREEN [Closing]: I want to say something about what Ms. Washington said, too. She said the therapist that M.G. saw, Mr. Dobrushin saw him on two occasions, actually three before he came in here, and the one that she was referring to only saw him for like 20 minutes that day. The reason for finding the new therapist was because of his expertise in the brain injury stuff.

An in Dr. Beam's testimony as well, she stated that she can only make

recommendations to the family because she can't tell them what to do. And as he pointed out, Mr. Piccirilli, there's gray areas involved in the situation.

And the family was not being reactive. The family had been looking for a therapist and actively trying to get help for their son. The mental health world right now is very difficult to get access to somebody, and they were trying very hard.

It just so happened that, you know, they had found one in January after they came in, and then when researching things and looking at stuff in regard to the restraint they found the training program. If they had known about it last year, it would have been done last year.

The mother feels that M.G. should not be adjudicated and he should be returned home today because the family is ready, willing and able to provide proper parental care and control of their son, M.G. The family has demonstrated throughout this whole investigation and court process that they want what is best for M.G. and have been able to provide the mental health and mental therapy he needs.

CYF has not even talked to the family in over two months outside of court. The family has been working for close to six months to get M.G. in to a

therapist, and then in January they finally found one.

The family also set up hearing and eye doctor appointments based on a referral from the primary care doctor when he was seen by them in January, set up a neurologist and neuropsychology testing when they met with Mr. Dobrushin that M.G.'s seeing now, and he told them that there may be potential brain damage from the accident. The family has set up all appointments that M.G.'s been attending since January.

They located training and crisis intervention and attended that as soon as possible to help them to be better able to manage the outbursts with de-escalation rather than having to go to tethering so often.

The family set up a new safety plan incorporating the training they just received and finished building his room and made it into a safe calming room so he can go in there and be able to calm down in a safe environment.

This now gives many more options for de-escalation before the need for any physical tethering. The new safety plan uses a progression of the least restrictive method possible and will be overseen by a mandated reporter, and the family will be providing incident reports to him as well as to make sure

that the plan continues to meet the least restrictive means necessary. The agency's main concern when they first encountered this family was that it was not overseen by a licensed therapist.

The family wanted to give him the most attention possible when he returned home, so they shut down their cattery of ten years and placed half of the cats in new homes. The family reorganized the home after the return from the Christmas trip so the home would be better organized and ready for his return. The family has always put their son first, and no one has asked or told the family to do any of the things that they have done to make his return smooth.

Their son has repeatedly stated to police, CYF and the forensic interviewer that he agreed with the plan. He was never abused. He feels safe in his home. He is happy in his home, and he wants to return home.

Their son always has had plenty of food, nice, well-fitting clothing, plenty of entertainment and activities to keep him occupied, lots of love and encouragement to help him believe he could achieve everything.

Ten years ago, January 25, 2014, our family was fighting for his life and terrified he'd never walk, talk or hug us again. And now this year, almost

exactly ten years to the day, on January 26, 2024, he was removed from our care because CYF didn't agree with how the family tried to help their child.

This family loves their son very much and has been fighting for their son through all of this. They were fighting for visitation when he was withheld for 33 days. They were fighting to get him back to school when he was kept out for 12 days.

They were fighting to get him back to his need therapy when it was withheld for a month after he was taken, and they are fighting to bring him home now.

This family keeps hearing from attorneys that CYF won't go along with this or asking their witnesses if they consulted CYF before agreeing with this new safety plan.

But the question here isn't whether CYF agrees with this or not. It's whether it's legal and safe for the parents to use a tether to help their child calm down when he is getting in an out-of-control state.

Just because CYF or someone else disagrees with a choice that a parent made for their child or family does not give them the right to infringe on the parent's rights under Pennsylvania Law 18 Pa. Code § 509.

This law gives parents the right to

use reasonable force upon the person of another if the actor is a parent who is responsible for the general care and supervision of a minor and the force used is for the purpose of safeguarding or promoting the welfare, including preventing or punishing of misconduct, and the force is not designed to cause or known to create a substantial risk of causing death, serious bodily injury, extreme pain, mental distress or gross degradation.

The parents are also cover under Pennsylvania Law 23 Pa. C.S. § 6304 (D) which states that nothing in the child abuse chapter of the Child Protective Services Code shall be construed to restrict the generally recognized existing rights of parents to use reasonable force on or against their children for the purposes of supervision, control, and discipline of their children. Such reasonable force shall not constitute child abuse.

The allegation before this Court is whether M.G. was unreasonable restrained. The law doesn't state unreasonably restrained by the parents. It states unreasonably restrained. Parents have different rights than someone else might have with regard to their child.

Now, if a parent were restraining a four-year-old for a temper tantrum, a

child tethered alone in a room to a radiator, a child restrained in a basement or locked in a room along, that is definitely unreasonable.

But a 14-year-old that is stronger than his parent when they have an aggressive outburst that is absolutely never left alone while tethered should not be considered unreasonable when the 14-year-old agreed to the plan and acknowledges that he has a problem he is working on.

This plan that was agreed to is also part of his mental health treatment plan with his new counselor, and a 14-year-old has the legal right to agree to his own mental health treatment and does not need parental consent for this.

The family consulted with their child to create the plan, provided for all of his needs while using the plan and provided one-to-one care while using the plan as well. As stated by the president of Handle With Care, the family followed all the required protocol a medical or mental health facility would be required to follow to keep patients safe.

Given everything done by the family in this situation, nothing here should rise to the level of child abuse or be considered unreasonably restraining their child. Some caseworkers may not agree or like that the family together,

including M.G., found this method that has worked well for their child and has not harmed him in any way, but whether someone likes something or not should not give them permission to violate another person's rights or tell them they cannot do something that the law clearly states are legal.
[End of Page 51, Line 16]

[Page 51, Line 25 to Page 52, Line 5]
M.G. has never had any injuries from this, and if anything, it has helped to calm the home environment down while M.G.'s working towards getting more coping skills so that he eventually won't need this intervention any longer.
[End of Page 52, Line 5]

[Page 52, Line 14 to Page 55, Line 1]
MS. SPURR [Closing]: Yes, Your Honor. As Counsel for M.G., I am asking the court to dismiss the petition today as CYF has not proven by clear and convincing evidence the allegations alleged therein.

When the police went to the home in January of 2024, they did not press charges against the parents for use of the tether. Almost five months later charges still have not been filed. The police officers did not tell parents to stop using the tether. And when asked, the police officer in court said he had to

talk with his supervisors first before making a recommendation like that.

When the family shared their plan, their safety plan, with Family links therapist, she also said she had to discuss it with her supervisor before making a recommendation and did not immediately tell the parents to stop using the tether.

The Family links ultimate position was that it was not recommended, not to stop immediately, not that it was unsafe, just that it was not recommended. When they went to the hospital, staff similarly saif it wasn't recommended but did not tell parents to cease using the tether.

However, the family has made clear their intention to use it going forward will be as a last resort for the safety of the child and the safety of the other members in the home. It will only be used after lengthy de-escalation measures have been taken.

The Court didn't get to hear from M.G. today on my advice, but M.G. is very bright, he does really well in school. He's personable. He's friendly. He's witty. He's a great kid, Your Honor, and he is in agreement with this safety plan.

You heard testimony that he restrains himself in a way to help him de-escalate as one of his coping

mechanisms. Whether CYF approves of it or not, that is on way he knows how to de-escalate. He is in agreement with using the tether as a last resort, following de-escalation measures.

He has a significant support system both at school, at his church, and with his medical professionals and therapist. If anything were to happen in the future that he felt unsafe or uncomfortable, there are any number of people, including mandated reporters, that he could reach out to and share his concerns.

M.G. does not want to be adjudicated dependent. He does not want CYF involved in his life. He believes that his family is acting in his best interests, and M.G. himself has taken an active role in ensuring his own safety. So, I would ask today that this Court dismiss CYF's petition. Thank You.

[End of Page 55, Line 1]

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[Page 60, Lines 10-16]

[Caitlin Miller:]

A. Dobrushin. And Mr. Dobrushin has agreed to the safety plan, which is highly concerning for the agency in and of itself, and we have actually got to the state CYF to investigate this further about a mandated reporter

condoning an indicated ChildLine. So we have concern about his ability to actually provide appropriate care for M.G.

[End of Page 60, Line 16]