

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: H.R.D., A MINOR

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: B.A.D., MOTHER

No. 1886 MDA 2013

Appeal from the Order entered September 24, 2013,
in the Court of Common Pleas of Centre County, Civil
Division, at No(s): CP-14-DP-0000015-2013

BEFORE: BOWES, OLSON, and FITZGERALD*, JJ.

MEMORANDUM BY OLSON, J.:

FILED APRIL 17, 2014

Appellant, B.A.D. ("Mother"), appeals from the dispositional order entered on September 24, 2013, that determined that the subject female child, H.R.D., ("Child"), born in February of 2010, remained dependent, pursuant to Section 6302(1) of the Juvenile Act, 42 Pa.C.S.A. § 6302(1), and was a victim of child abuse, as defined at Section 6303 of the Child Protective Services Law ("CPSL"), 23 Pa.C.S.A. § 6303. The trial court order further directed that Child would remain in the care and custody of Centre County Children and Youth Services ("CYS"), with a permanency goal of return to parents, until further order of court, and provided that the exact location of Child shall not be revealed to her parents unless deemed appropriate by CYS. We affirm.

In its opinion entered on November 21, 2013, pursuant to Pa.R.A.P. 1925(a), the trial court set forth the factual background and procedural

* Former Justice specially assigned to Superior Court.

history of this appeal, which we will not reiterate herein. On July 19, 2013, CYS filed a dependency petition, seeking to have Child adjudicated dependent. On August 6, 2013, the trial court held a dependency hearing. On that same date, the trial court adjudicated Child dependent pursuant to Section 6302(1) of the Juvenile Act.

Importantly, on August 27, 2013, CYS received a report from ChildLine¹ regarding suspected child abuse in relation to Child having sustained a dislocated elbow. N.T., 8/30/2013, at 6; Trial Court Opinion, 11/21/2013, at 2. Child incurred the injury on the evening of August 26, 2013. **Id.** The injury went untreated until the next morning, when a childcare employee discovered the injury and had Child taken for treatment. **Id.**

On August 27, 2013, CYS filed a petition for emergency protective custody. On that same date, the trial court entered an order for emergency protective custody, transferring legal and physical custody to CYS, and directing that Child was to be placed in foster care, and the exact location not revealed to her parents. Thereafter, on August 30, 2013, CYS filed a shelter care petition. On that same date, the trial court held a shelter care hearing. At the hearing, CYS presented the testimony of Nicole Bromiley, a

¹ ChildLine is a unit of the Commonwealth, Department of Public Welfare, that operates a statewide toll-free system for receiving reports of suspected child abuse, makes referrals for investigation, and maintains the reports in the appropriate files. **See C.K. v. Department of Public Welfare**, 869 A.2d 48, 50 n.1 (Pa. Cmwlth. 2005) *citing* 55 Pa.Code § 3490.4; 23 Pa.C.S.A. § 6332.

CYS caseworker assigned to Mother's family since August of 2011. N.T., 8/30/2013, at 5. On August 30, 2013, the trial court entered its shelter care order, continuing Child's emergency disposition and placement.

On September 24, 2013, the trial court held a dispositional hearing. CYS presented the testimony of Nicole Bromiley and Christine Rohrer, a caseworker for Cen-Clear Child Services who is involved with Mother's family as a home visitor, and with Child as a Head Start teacher in a classroom setting. N.T., 9/24/2013, at 3-4. The trial court found that Child suffered a dislocation of her elbow, and the injury to Child's elbow resulted in pain if she used her arm and hand. Trial Court Order, 9/24/13, at 2. Further, the trial court found that the injury impaired Child's functioning, the injury was not treated within a reasonable period of time, and treatment was obtained on the day following the injury, only when Mother was directed to have Child treated. ***Id.***

In the dispositional order, the trial court determined that Child remained dependent, pursuant to Section 6302(1) of the Juvenile Act. ***Id.*** at 1. The trial court also determined that Child was the victim of child abuse as defined at Section 6303 of the CPSL. ***Id.*** at 2. Additionally, the trial court found that, based upon the findings of abuse, neglect, and/or dependency, it was in the best interest of Child to be removed from Mother's home. ***Id.*** at 1. The trial court ordered that Child would remain in the care and custody of CYS until further order of court. ***Id.*** at 1. The trial court also

ordered that the exact location of Child was not to be revealed to her parents unless deemed appropriate by CYS. ***Id.*** at 2.

On October 23, 2013, Mother filed a notice of appeal, along with a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b).

On appeal, Mother raises one issue:

Whether the trial court erred and abused its discretion in determining the minor child to be a victim of abuse as defined by 23 Pa.C.S. § 6303 as it lacked sufficient evidence from which to conclude that the minor child suffered a nonaccidental serious physical injury?

Mother's Brief, at 5.²

Essentially, Mother argues that the trial court erred or abused its discretion in finding Child to be a victim of abuse without any expert testimony from Child's treating physician or an expert in the area of childhood injuries or treatment. ***Id.*** at 13-16.

This Court has stated our standard of review as follows:

The burden of proof in a dependency proceeding is on the petitioner . . . who must show [that] the juvenile is without proper parental care, and that such care is not immediately available. A finding of dependency must be supported by clear and convincing evidence that proper parental care and control are not available. The standard of clear and convincing evidence means testimony that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. Without such evidence, a child cannot be adjudged dependent and must be returned promptly to his or her parent.

² We note that Mother phrased her issue somewhat differently in her concise statement, but we, nevertheless, find it preserved for our review.

In Interest of J.M., 652 A.2d 877, 880 (Pa. Super. 1995) (quotations and citations omitted). ***See also In re D.A.***, 801 A.2d 614, 617-18 (Pa. Super. 2002) (*en banc*).

Further, our Supreme Court set forth our standard of review for dependency cases as follows:

[T]he standard of review in dependency cases requires an appellate court to accept the findings of fact and credibility determinations of the trial court if they are supported by the record, but does not require the appellate court to accept the lower court's inferences or conclusions of law. Accordingly, we review for an abuse of discretion.

In re R.J.T., 9 A.3d 1179, 1190 (Pa. 2010).

Section 6302 of the Juvenile Act provides follows:

"Dependent child." A child who:

(1) 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, including evidence of the parent's, guardian's or other custodian's use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk[.]

42 Pa.C.S.A. § 6302.

The dependency of a child is not determined "as to" a particular person, but rather must be based upon two findings by the trial court: whether the child is currently lacking proper care and control, and whether such care and control is immediately available. ***In re R.T.***, 778 A.2d 670,

677 (Pa. Super. 2001); **Matter of Read**, 693 A.2d 607, 609 (Pa. Super. 1997). Based upon the evidence presented, the trial court reached both of these factual findings.

In **In re D.P.**, 972 A.2d 1221 (Pa. Super. 2009), a panel of this Court explained:

[a] court is empowered by 42 Pa.C.S. § 6341(a) and (c) to make a finding that a child is dependent if the child meets the statutory definition by clear and convincing evidence. 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 public agency, or transferring custody to the juvenile court of another state. 42 Pa.C.S. § 6351(a).

Id. at 1227-1228 quoting **In re D.A.**, 801 A.2d 614, 617 (Pa. Super. 2002).

Once a child is adjudicated dependent, the trial court must determine who shall have custody of the child as well as what services should be provided to the child and family.

. . . [I]f a child is adjudicated dependent under the Juvenile Act, he [or she] cannot be separated from his [or her] parents absent a showing that the separation is clearly necessary. Such necessity is implicated where the welfare of the child demands that he [or she] be taken from his [or her] parents' custody. [A] decision to remove a child from his or her parents' custody must be reconciled with the paramount purpose of preserving family unity.

In Interest of J.M., 652 A.2d at 415 (quotations and citations omitted).

Regarding the disposition of a dependent child, Section 6351 of the Juvenile Act provides that, if the child is found to be dependent, the court

may make any of the following orders of disposition best suited to the safety, protection and physical, mental, and moral welfare of the child, *inter alia*: permit the child to remain with her parents, guardians, or other custodian subject to conditions and limitations as the court prescribes, including supervision directed by the court for the protection of the child; or transfer temporary or permanent legal custody to an individual, including any relative, who, after study, is found to be qualified to receive and care for the child. 42 Pa.C.S.A. § 6351(a). The Juvenile Act further directs that the court shall conduct a permanency hearing for the purpose of determining or reviewing the permanency plan of the child, the date by which the goal of permanency for the child might be achieved and whether placement continues to be best suited to the safety, protection and physical, mental and moral welfare of the child. 42 Pa.C.S.A. § 6351(e).

Moreover, Section 6351(e) provides, in relevant part:

. . . If the court does not consult personally with the child, the court shall ensure that the views of the child regarding the permanency plan have been ascertained to the fullest extent possible and communicated to the court by the guardian ad litem under section 6311 (relating to guardian ad litem for child in court proceedings) or, as appropriate to the circumstances of the case by the child's counsel, the court-appointed special advocate or other person as designated by the court.

(2) If the county agency or the child's attorney alleges the existence of aggravated circumstances and the court determines that the child has been adjudicated dependent, the court shall then determine if aggravated circumstances exist. If the court finds from clear and convincing evidence that aggravated circumstances exist, the court shall determine whether or not reasonable efforts to prevent or eliminate the need for removing

the child from the child's parent, guardian or custodian or to preserve and reunify the family shall be made or continue to be made and schedule a hearing as provided in paragraph (3).

42 Pa.C.S.A. § 6351(e).

Section 6351(f) and (f.1) set forth the matters to be determined at the permanency hearing. Moreover, Section 6351(g) states:

On the basis of the determination made under subsection (f.1), the court shall order the continuation, modification or termination of placement or other disposition which is best suited to the safety, protection and physical, mental and moral welfare of the child.

42 Pa.C.S.A. § 6351(g).

Thus, the trial court may make an appropriate disposition in order to protect the child's physical, mental and moral welfare, including transferring temporary custody to a public agency. ***In re M.L.***, 757 A.2d 849, 850–851 (Pa. 2000).

Even after a child has been adjudicated dependent, however, a court may not separate that child from his or her parent unless it finds that the separation is clearly necessary. Such necessity is implicated where the welfare of the child demands that he [or she] be taken from his [or her] parents' custody.

In re G.T., 845 A.2d 870, 873 (Pa. Super. 2004) (citations and quotations omitted) (alterations in original).

Under the CPSL, "child abuse" is defined, in relevant part, as:

(i) Any recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) Any recent act, failure to act or series of such acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

23 Pa.C.S.A. § 6303(b)(1).

Further, "serious physical injury" is defined as an injury that:

- (1) causes a child severe pain; or
- (2) significantly impairs a child's physical functioning, either temporarily or permanently.

23 Pa.C.S.A. § 6303(a).

In ***Interest of R.T.***, 592 A.2d 55, 59 (Pa. Super. 1991), this Court explained that the "CPSL does not create or include a separate action for child abuse, and, under the Juvenile Act, a finding of abuse can only be made as part of [a] dependency proceeding in which abuse is alleged." ***Id.*** at 59.

We stated:

[E]ven though abuse is alleged as a part of a dependency proceeding, [and] a court's finding of abuse as defined by the CPSL would be sufficient evidence under most circumstances to support an adjudication of dependency, it is not determinative in adjudicating a child dependent. The evidentiary burden for finding of abuse is less stringent under the CPSL due to the need

for immediate intervention for protection of the child. However, as discussed above, under the Juvenile Act, the court in a dependency hearing must make a further determination by clear and convincing evidence that the abused child is presently without proper care and control necessary for physical, mental, or emotional health or morals.

In Interest of R.T., 592 A.2d at 59 (quotations and citations omitted).

Mother essentially asks this Court to re-weigh the evidence and the trial court's assessment of credibility in this Juvenile Act proceeding in order to reach a different conclusion, *i.e.*, that Child was not the victim of child abuse, as defined in Section 6303 of the CPSL, and that her injuries were accidental. In support of her position, Mother offers Commonwealth Court decisions that are not controlling of the outcome of this appeal.³ She does not offer any legal support for her argument that CYS had to present expert testimony. Thus, we find the issue waived. ***See In re W.H.***, 25 A.3d 330, 339 n.3 (Pa. Super. 2011) ("[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.").

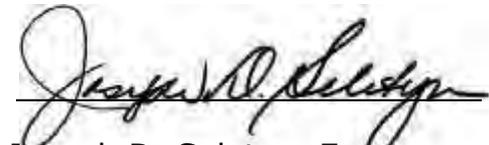
After a careful review of the evidence, we find that the trial court's findings of fact and credibility assessments are supported by competent evidence of record. In view of our standard of review as set forth in ***In re R.J.T., supra***, we cannot disturb the findings and credibility assessments of

³ We are not bound by decisions of the Commonwealth Court. ***Stackhouse v. Stackhouse***, 862 A.2d 102, 105 (Pa. Super. 2004).

the trial court. The trial court determined that Child suffered from a dislocated elbow while in Mother's care and that "it remains unclear how [Child's] injury occurred," because Mother "changed her story multiple times." Trial Court Opinion, 11/21/2013, at 3. At various times, Mother claimed the injury occurred because of horseplay, she also admitted that she yanked on the Child's arm in frustration, and she also maintained that injury resulted when Mother rescued the Child from falling off a bed. **Id.** The trial court noted, however, "the fact remains that no one in the home attempted to secure medical treatment for [her] on the night of her injury." **Id.** Moreover, the trial court noted that Child cried throughout the night in pain, that Child's arm was stiff and that Child recoiled in pain when her arm was touched. **Id.** This Court finds that the trial court did not commit an abuse of discretion in finding that Child was a victim of child abuse, and ordering her disposition with CYS. We, therefore, affirm the trial court order.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/17/2014