

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37**

IN THE INTEREST OF: A.C., A MINOR : IN THE SUPERIOR COURT OF  
: PENNSYLVANIA  
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APPEAL OF: P.S. : No. 1425 MDA 2013

Appeal from the Order entered July 10, 2013,  
Court of Common Pleas, Lancaster County,  
Juvenile Division at No. CP-36-DP-0000169-2009

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APPEAL OF: P.S. : No. 1426 MDA 2013

Appeal from the Order entered July 10, 2013,  
Court of Common Pleas, Lancaster County,  
Juvenile Division at No. CP-36-DP-0000168-2009

BEFORE: BENDER, P.J.E., DONOHUE and STRASSBURGER\*, JJ.

MEMORANDUM BY DONOHUE, J.:

**FILED APRIL 11, 2014**

Appellant, P.S. ("Great Aunt"), appeals from the order of the trial court modifying the placement of the two subject children, "ALC" (born September 2009), and "ASC" (born February 2006) (together, the "Children"), and denying the request of Great Aunt to return the Children to her home. For the reasons that follow, we must quash this appeal.

On September 18, 2009, Lancaster County Children and Youth Social Service Agency ("CYS") filed petitions for temporary custody of ALC and ASC, and the trial court entered a shelter care order granting CYS temporary

\*Retired Senior Judge assigned to the Superior Court.

physical custody of the Children. With respect to ASC, a putative father was identified but he never contacted CYS, and on October 7, 2009, the trial court issued an order adjudicating her dependent and granting legal and physical custody of her to CYS. With respect to ALC, paternity testing was ordered but no father could be identified, and on February 25, 2010 the trial court issued an order adjudicating her dependent and granting legal and physical custody of her to CYS. The goal for the Children was initially set at reunification, but Mother's parental rights to both children were terminated on November 10, 2011. The primary permanency goal for the Children was changed to adoption. On November 23, 2011, the trial court entered an order placing them in the home of Great Aunt, although CYS retained legal and physical custody. At a permanency review hearing on December 6, 2012, the trial court denied a request from CYS to remove the Children from the home of Great Aunt. On February 6, 2013, however, CYS, citing, *inter alia*, Great Aunt's failure to comply with a safety plan in accordance with foster care regulations, removed the Children from Great Aunt's home and simultaneously filed a motion for the modification of the Children's placement. After an evidentiary hearing commencing on March 21, 2013 and concluding on June 13, 2013, the trial court issued an order entered on July 10, 2013 granting CYS's placement modification request and denying Great Aunt's request that the Children be returned to her home.

Great Aunt appeals the trial court's July 10, 2013 order. She contends that the Children were well cared for in her home, that she considered the Children to be her family, and that as a blood relative it was in the Children's best interests for them to be returned to her home. Great Aunt's Brief at 8-9. As a result, Great Aunt posits that the trial court should have denied CYS's motion to modify the placement of the Children. *Id.* at 9.

Section 6336.1(a) of the Juvenile Act provides as follows:

**§ 6336.1. Notice and hearing**

(a) General rule.--The court shall direct the county agency or juvenile probation department to provide the child's foster parent, preadoptive parent or relative providing care for the child with timely notice of the hearing. The court shall provide the child's foster parent, preadoptive parent or relative providing care for the child the right to be heard at any hearing under this chapter. Unless a foster parent, preadoptive parent or relative providing care for a child has been awarded legal custody pursuant to section 6357 (relating to rights and duties of legal custodian), nothing in this section shall give the foster parent, preadoptive parent or relative providing care for the child legal standing in the matter being heard by the court.

42 Pa.C.S.A. § 6336.1(a).

As a foster parent and/or a relative providing care for the Children, Great Aunt had the right to be heard at the evidentiary hearings on CYS's motion for modification of the placement of the children. Great Aunt is not the legal guardian of the Children, however, and did not attempt to intervene as a party in the proceedings in the trial court. As a result,

pursuant to section 6336.1(a), she has no legal standing with respect to the proceedings involving the placement of the Children.<sup>1</sup> Typically only parties to an action have standing to appeal, Pa.R.A.P. 501, and appeals by non-parties will be quashed. ***In re J.C.***, 5 A.3d 284, 289 (Pa. Super. 2010) (citing ***In re Barnes Foundation***, 582 Pa. 370, 373–74, 871 A.2d 792, 794 (2005)). Because Great Aunt lacked standing to appeal, we must quash this appeal.

Even if Great Aunt had standing to appeal, we would nevertheless affirm the trial court’s decision here. In this case, both ALC and ASC had been adjudicated as dependent and remained so at the time the trial court entered its July 10, 2013 order. Once a child is adjudicated as dependent, proper placement turns on what the trial court determines to be in the child’s best interest. ***In re Sweeney***, 574 A.2d 690, 691 (Pa. Super. 1990) (“Once a child is adjudicated dependent ... the issues of custody and continuation of foster care are determined by the child’s best interests”). Although preserving the unity of the family is one relevant purpose, another purpose is to “provide for the care, protection, safety, and wholesome mental and physical development of children coming within the provisions of

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<sup>1</sup> In its Opinion *Sur Appeal*, 9/5/2013, at 16 n.2, the trial court suggests that the issue of standing was waived because CYS did not raise the issue during the proceedings below. We disagree. CYS raised the issue of Great Aunt’s standing in a memorandum to the trial court on June 25, 2013. Furthermore, in its July 10, 2013 order that is the subject of this appeal, the trial court specifically ruled that Great Aunt “has no standing to continue to participate in this matter.” Order, 7/10/2013, at 2.

this chapter.” ***In re J.J.***, 69 A.3d at 732 (citing 42 Pa.C.S.A. § 6301(b)(1.1)).

Based upon, *inter alia*, the evidence received at the hearing concluding on June 13, 2013, the trial court determined that it was in the best interests of the Children that they not be returned to Great Aunt’s home. In support of this decision, the trial court made numerous relevant findings of fact, including the following:

1. Great Aunt is unable to provide structure for the Children. (N.T. 03/21/13 at pages 13-14)
2. The Children have no boundaries with regard to personal space and would place their hands on the [CYS] worker's breasts. (N.T. 03/21/13 at page 16)
3. Great Aunt was unable to address the Children's violations of one's personal space. (N.T. 03/21/13 at page 17)
4. Great Aunt failed to instruct the Children about respecting one's personal space. (N.T. 03/21/13 at page 17)
5. Great Aunt enabled behaviors in the Children that are not healthy and productive. (N.T. 03/21/13 at page 18)
6. Great Aunt would tell the Children they are "fresh" as a means of discipline, but failed to instruct the Children as to why their behavior is inappropriate. (N.T. 03/21/13 at page 18)
7. Great Aunt attempts to use "time-outs" to discipline the Children but then tells them they had to do the time-out because they are "bad" instead of explaining the disruptive behavior which led to the

- "time-out" consequence. (N.T. 03/21/13 at pages 22-23)
8. The Children told the [CYS] worker they are "bad" and then looked down at the ground. (N.T. 03/21/13 at page 23)
  9. Great Aunt stated in front of the Children that they would be leaving her home because they are bad. (N.T. 03/21/13 at page 41)
  10. Great Aunt is unable to successfully apply discipline to the Children. (N.T. 03/21/13 at page 36)
  11. The [CYS] caseworker had been to Great Aunt's home a total of 6 times, where she personally observed Great Aunt's failure to parent the Children. (N.T. 06/13/13 at pages 13-14)
  12. Great Aunt was unable to manage both Children at the same time. (N.T. 06/13/13 at page 16)
  13. Great Aunt was required to attend a parenting program. Great Aunt attended such a program, but she failed to provide [CYS] with the name of the program. As such, [CYS] was not able to verify the content of the program or the credentials of the provider. (N.T. 03/21/13 at page 45)
  14. Great Aunt did not complete the parenting classes until April 9, 2013, well after the removal of the Children from her care. (N.T. 06/13/13 at pages 35-36)
  15. Great Aunt was required to take part in a parenting capacity evaluation, in IQ testing, and in a traditional psychological evaluation, all of which she failed to do. (N.T. 03/21/13 at pages 45-46)
  16. Great Aunt consistently stated inappropriate comments within earshot of the Children. (N.T. 03/21/13 at page 52)

17. Great Aunt failed to have the Children obtain psychological assessments. (N.T. 03/21/13 at pages 53-54)
18. After January 28, 2013, Great Aunt failed to inform [CYS] about any appointments she made for the Children for counseling or evaluations. (N.T. 03/21/13 at page 80)

Trial Court Opinion *Sur* Appeal, 9/5/2013, at 3-5. Based upon the following additional findings of fact, the trial court further concluded that placement of the children in foster care with their older brother was better suited to serve their basic needs:

54. The Children were happy to be in their new placement and greeted the foster parents with hugs. (N.T. 03/21/13 at page 61)
55. Upon their arrival in their new foster home, the Children were overjoyed to see their older brother, whom they had not seen in many months. (N.T. 03/21/13 at page 61)
56. At the time of the hearing on March 21, 2013, the Children were happy in their foster home, calling the foster parents mommy and daddy. (N.T. 03/21/13 at page 61)
57. As of the time of the March 21, 2013, hearing, [ASC] was in the first grade and was doing well. (N.T. 03/21/13 at pages 62-63)
58. The Children are scheduled to begin child-centered play therapy. (N.T. 03/21/13 at page 63)
59. The Children had one visit with Great Aunt after they were removed from her home. (N.T. 03/21/13 at page 66)

60. The Children wanted assurance at the visit that they would be going home with their foster parents and not Great Aunt. (N.T. 03/21/13 at pages 66-67)
61. The Children's current foster home is an approved foster home. (N.T. 03/21/13 at page 67)
62. The Children's brother has been adopted by the Children's current foster parents. (N.T. 03/21/13 at page 67)
63. The Children are very happy to be living in the same home with their brother. (N.T. 03/21/13 at page 68)

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67. The Children expressed anxiety the day before their visit with Great Aunt after they had been removed from her home. (N.T. 03/21/13 at pages 93-94)
68. The Children have been diagnosed with Adjustment Disorder and are receiving play therapy. (06/13/13 at pages 3-4)
69. The foster parents and the Children are engaged in therapy together since being placed with them. (N.T. 06/13/13 at pages 4-6)
70. [ASC] is doing well in the school she now attends since being removed from Great Aunt's home. (N.T. 06/13/13 at pages 8-9)
71. The Agency requested the psychological evaluations of the Children since March of 2012. (N.T. 06/13/13 at page 9)
72. Since being removed from Great Aunt's residence, the evaluations have been performed and the recommendations are being implemented. (N.T. 06/13/13 at pages 9-10)



73. In the home of Great Aunt there was no parenting, no structure and no consistency with regard to the Children. (N.T. 06/13/13 at pages 11-12)
74. In the Children's current home, the resource parents are actively parenting and providing the discipline and structure the Children need. (N.T. 06/13/13 at page 12)
75. Because the Children had no discipline while in the care of Great Aunt, they are adjusting to their current placement (where discipline exists) but at times they still struggle with their adjustment to their new placement. (N.T. 06/13/13 at page 28)
76. While Great Aunt claims that the Children asked to go home with her at her last visit with her (after their removal from her home on February 14, 2013), the Children made no such request. (N.T. 06/13/13 at pages 59-60)
77. The Children want their current foster family to be their permanent family. (N.T. 06/13/13 at page 29)

***Id.*** at 11-13.

Furthermore, the trial court determined that in order to return the Children to Great Aunt's home, it would have had to declare that they were no longer dependent and release them from CYS's legal and physical custody. ***Id.*** at 17. Such was the case because Great Aunt's home was no longer an approved foster care facility. When originally placed in Great Aunt's home, it had been authorized as an approved foster care facility under the supervision of Bethany Christian Services of Elkins Park. N.T.,

3/21/2013, at 64. As a result of Great Aunt's violation of the safety plan,<sup>2</sup> however, Bethany Christian Services withdrew its supervision. **Id.** at 65. The trial court found that it could not, based upon its factual findings, conclude that the Children were no longer dependent.

[The trial court] reluctantly concluded that [CYS's] concerns of the Children's immediate safety and long-term development while in Great Aunt's care were justified. A decision to release the Children to Great Aunt would necessarily require a finding that the Children are no longer dependant. Unfortunately, the record does not support such a decision. Great Aunt has proven that she is not a guardian to whom the [trial court] could responsibly release the Children. Great Aunt is unable to offer proper parenting care or control necessary for the Children's physical, mental, or emotional health or morals. **See** 42 Pa.C.S. § 6302. As the Children lack a parent or other suitable guardian to whom

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<sup>2</sup> CY5 determined that the Children's bedroom needed seven repairs, but the trial court found that Great Aunt made only one of them. Trial Court Opinion *Sur Appeal*, 9/5/2013, at 6 (¶ 21). Great Aunt also failed to keep medications in a locked container, failed to have the Children in car seats when in her vehicle, and consistently denied that her son lived in her home (even though his driver's license listed her house as his residence). **Id.** at ¶¶ 23-26. As a result of these and other concerns, CY5 put in place a safety plan requiring Great Aunt to, *inter alia*, provide three clearances (FBI, Pennsylvania State Police, and ChildLine) for her son so that he could remain in the home with the Children. **Id.** at ¶ 35. After two months, Great Aunt had failed to comply with the safety plan, including a failure to provide all three necessary clearances (or to provide CY5 with his social security number so that the agency could obtain the clearances for him). **Id.** at ¶¶ 37-38. Great Aunt allowed her son to be unsupervised with the Children and to pick them up after school, although he had not provided the necessary clearances to CY5. **Id.** at ¶ 40. The trial court found, as a matter of fact, that Great Aunt had been dishonest with CY5 in its efforts to obtain clearances for her son. As a result of Great Aunt's failure to comply with the safety plan, on February 6, 2013 CY5 removed the Children from Great Aunt's home. **Id.** at ¶ 46.

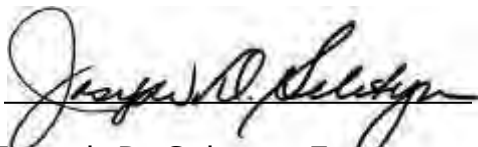
they may be released, they remain dependent. While the older child did well in school while in the custody of Great Aunt, given what is known about the chaotic circumstances in Great Aunt's home, it is reasonable to conclude that her success was supported by structure within the school. The Children need structure at home as well, and they are now receiving it. They are also building and re-enforcing their relationship with their older brother under the watchful eyes of qualified parental figures.

Trial Court Opinion *Sur* Appeal, 9/5/2013, at 17.

Based upon our thorough review, the trial court's findings of fact are amply supported by the certified record on appeal, and its conclusions of law are reasonable in light of its factual findings. As a result, no basis exists on which to conclude that the trial court abused its discretion in granting CYS's petition to modify the placement of the Children and denying the request of Great Aunt to return the Children to her home.

Appeal quashed.

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: 4/11/2014