

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN RE: K.R., A MINOR

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: B.K., MOTHER

No. 1827 WDA 2012

Appeal from the Order October 23, 2012  
In the Court of Common Pleas of Allegheny County  
Family Court at No(s): Docket Number: 706-11

BEFORE: SHOGAN, J., OTT, J., and STRASSBURGER, J.\* \*\*

MEMORANDUM BY OTT, J.

FILED: May 22, 2013

B.K., ("Mother") appeals from the order entered on October 23, 2012, by the dependency court that appointed educational and medical guardians for K.R.<sup>1</sup> On appeal Mother argues the trial court abused its discretion by: 1) misapplying the law when it found it was in K.R.'s best interest to appoint educational and medical guardians; and 2) appointing educational and medical guardians when the record was absent any evidence Mother was unable or unwilling to maintain this role. After review of the record, the

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\* Retired Senior Judge assigned to the Superior Court.

\*\* Judge Strassburger did not participate in the consideration or decision of this case.

<sup>1</sup> K.R. is a female child born in February 2010. Presently K.R. is 3 years, 3 months old.

submissions of the parties, and case law, we affirm in part and vacate in part.

K.R. originally came to the attention of Allegheny County Office of Children, Youth, and Families ("CYF") on April 4, 2011. Mother was discovered to be homeless, using heroin and cocaine, and unable to provide for the basic needs of Child. Following a hearing, by order signed on April 7, 2011 and entered on April 11, 2011, K.R. was adjudicated dependent and removed to foster care.<sup>2</sup> A family service plan ("FSP") was established requiring Mother to maintain sobriety, submit to urine screens, participate in drug and alcohol treatment, maintain visits with Child, and participate in family group decision making and parenting courses.<sup>3</sup> The dependency court granted CYF temporary legal custody of K.R. and specifically directed "that in the event of a medical emergency; the Agency shall have the right to consent to necessary treatment for the child." Order of Adjudication and Disposition – Child Dependent, 4/11/2011 at 2.

During the June 24, 2011, dependency hearing the court found Mother was non-compliant with all aspects of the permanency plan. Further, because there was no appropriate kinship home, K.R. was placed in foster

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<sup>2</sup> Child was placed to permit CYF time to assess the home of Mother and maternal aunt. .

<sup>3</sup> At the time of the April 7, 2011 dependency hearing Mother and Father stipulated to having drug, alcohol, parenting, and housing issues. These were made Findings of Fact by the court.

care. K.R. has remained in the same pre-adoptive foster care home since that time.<sup>4</sup> The court modified the terms of the medical consent to permit CYF “to consent to routine treatment of the child.” Permanency Review Order, 6/24/2011 at 2. This authorization has continued in every subsequent permanency review order.

On October 17, 2012, the guardian *ad litem* filed a motion seeking appointment of foster parents as the medical guardians for Child. The motion stated on October 6, 2012 K.R. was taken by ambulance to Children’s Hospital of Pittsburgh after suffering a seizure. The child was released the next day with a diagnosis of febrile (fever related) seizure disorder. However, on October 9, 2012, K.R. was readmitted to Children’s Hospital having suffered multiple seizures. K.R. was discharged on October 11, 2012, this time with a diagnosis of febrile seizure disorder or frontal lobe epilepsy. Because of the commencement of seizures, Child will have to undergo follow-up neurological testing, medication trials and changes, and medical appointments.

A hearing was held on the motion on October 22, 2012. CYF and foster parents testified that they tried to contact Mother during the hospitalizations but were unsuccessful. Multiple messages were left on phone numbers given by Mother but she never called back or came to the

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<sup>4</sup> K.R.’s younger sister, L.R., born 2/2012, resides in the same home.

hospital. Although Mother testified that she called the hospital every morning and evening while Child was hospitalized the court did not find her to be credible. Dependency Court Opinion, 12/24/2012 at 7. Foster parents were thereafter appointed medical and educational guardians. Mother timely appealed.

Our standard of review in dependency cases is:

whether the trial court abused its discretion, noting that the appellate court must accept the facts as found by the trial court, unless they are not supported by the record, but that the court is not bound by the trial court's inferences or legal conclusions. *Id.* at 780; *see also, e.g., In re D.P.*, 972 A.2d 1221, 1225 (Pa. Super. 2009); *In re S.B.*, 208 Pa. Super. 21, 943 A.2d 973, 977 (2008). As did the trial court, the Superior Court emphasized that the focus at a permanency plan hearing is on the best interests of the child, not the parent.

***In re R.J.T.***, 9 A.3d 1179, 1185 (Pa. 2010).

Mother's issues can be considered together. Mother contends the court erred in finding the appointment of foster parents as the medical and educational guardians is in the best interest of K.R. when Mother continues to be willing and available to maintain this role.

The record belies both of Mother's contentions. K.R.'s medical condition arose suddenly in early October 2012. The need to have consistent and ongoing communication with Mother is most important because of K.R.'s need for continued follow up non-emergency testing, care and treatment. However, the dependency court record shows a lack of responsiveness by Mother to calls from CYF has been an ongoing problem

since Child was adjudicated dependent. The permanency review orders from the inception of the case show a pattern of CYF and foster parent inability to contact Mother successfully. The court made findings of the many unanswered messages left on the various phone numbers given by Mother to CYF. On those few occasions when Mother did respond, it was usually to promise to attend a drug screen but then she would not appear. Even as late as October 11, 2012, days before the hearing, Mother failed to appear for a scheduled drug screen.

At the hearing, CYF caseworker, Kianna McKay testified she had difficulty contacting Mother. McKay stated "I tried to call every phone number I had for her... At one time all of them were disconnected." N.T., 10/22/2012 at 24. McKay also testified that the foster parents notified Mother by phone both times K.R. was hospitalized and Mother never responded or appeared at the hospital. *Id.* at 23. Although Mother testified she called the hospital twice daily each time Child was admitted the court found her to be not credible. As noted above, this court is bound by the factual findings of the trier of fact. ***See In re R.J.T., supra.***

Following the October 22, 2012 hearing on the motion the dependency court stated,

This Court, within the exercise of its discretion, found, based on the record and the testimony presented on behalf of [CYF] and Mother that Mother had not cooperated with [CYF] and that circumstances require the assignment of an educational and medical guardian for K.R. The Court determined that Mother is unavailable both mentally and physically. K.R. has urgent

medical needs that require Mother to be immediately available. Mother has demonstrated an unwillingness and inability to address her FSP goals, particularly with regard to her ongoing drug and alcohol and mental health issues. Given the ongoing difficulties in contacting Mother, the Court determined that it is in K.R.'s best interest that an educational and medical guardian be appointed.

Dependency Court Opinion, 12/24/2012 at 4. Based upon the evidence of record we cannot conclude the dependency court erred in finding the best interests of K.R. would be met by awarding foster parents medical guardianship. Furthermore, Mother's failure to respond in any manner upon hearing child was hospitalized evidences her lack of concern or willingness to place K.R.'s needs before her own.

The dependency court also appointed foster parents the educational guardians of K.R.

**Educational decision maker** is a responsible adult appointed by the court to make decisions regarding a child's education when the child has no guardian or the court has limited the guardian's right to make such decisions for the child. The educational decision maker acts as the child's representative concerning all matters regarding education unless the court specifically limits the authority of the educational decision maker.

Pa.R.J.C.P. 1120.

(A) At any proceeding or upon motion, the court shall appoint an educational decision maker for the child if it determines that:

. . .

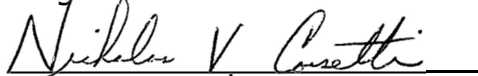
(2) the court, after notice to the guardian and an opportunity for the guardian to be heard, has made a determination that it is in the child's best interest to limit the guardian's right to make decisions regarding the child's education.

Pa.R.J.C.P. 1147(A)(2).

There is no evidence in the record to show Mother was notified prior to the October 23, 2012 order that her rights as educational decision-maker were to be taken away. The motion brought by the Guardian *ad litem* concerned only the appointing of medical guardians for K.R. Additionally, the notes of testimony from the October 22, 2012 hearing show the Guardian *ad litem* presented testimony only in support of having foster parents appointed as medical guardians. It was not until the end of the hearing when the dependency court stated, "I am going to name the foster parents as medical and educational decision-makers." N.T., 10/22/2012 at 44-45. Given the lack of notice and no evidence of record to show there is an immediate need to remove Mother, we vacate Mother's removal as educational decision maker for K.R.

Order affirmed in part and vacated in part.

Judgment Entered.

A handwritten signature in black ink, reading "Nicholas V. Casatti", written over a horizontal line.

Deputy Prothonotary

Date: 5/22/2013

