

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: T.H.R.M.T., A
MINOR

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: A.M.H., NATURAL MOTHER

No. 2171 MDA 2013

Appeal from the Order Entered November 6, 2013
in the Court of Common Pleas of Centre County
Juvenile Division, at No(s): CP-14-DP-0000027-2012

BEFORE: PANELLA, WECHT, and STRASSBURGER*, JJ.

MEMORANDUM BY STRASSBURGER, J.:

FILED MAY 06, 2014

A.M.H. (Mother) appeals the order entered November 6, 2013, which changed the permanency goal of her child, T.H.R.M.T. (Child) from "Return Home" to "Long-Term Foster Care." We affirm.

The trial court summarized the relevant facts and procedural history as follows.

[Mother] is the biological mother of a minor child, [Child], who was born [in May of 2010]. W.T. ("Father") is the biological father of [Child]. When [Child] was born, [Mother] was living at the Bowling Green Brandywine Treatment Center. [Child] was born addicted to methadone. CYS became involved with the family thereafter upon referrals indicating that [Mother] and Father were both actively using heroin and that Father was distributing heroin in Centre County. In responding to the referrals, the agency learned that the family had relocated to Franklin County, Ohio, and the agency made a referral to an agency in that county.

CYS became involved with the family again on July 5, 2012 after [Mother] was involved in a car accident while she was driving with [Child] in her car. [Mother] was suspected of being under the influence at that time. Although she passed the field sobriety tests, there was a concern she was using other

* Retired Senior Judge assigned to the Superior Court.

substances. CYS was notified by the police. On July 19, 2012, CYS made an unannounced home visit. CYS was met at the residence by [M.B. ("Grandfather")] who is the paternal grandfather of [Mother's] two other children. Father is not the father of these two other children, and they are in the care and custody of R.H., [Mother's m]other. Upon greeting CYS caseworker Andrew Stager, [Grandfather] told CYS he was glad they were there because [Mother] had just used heroin in his presence, there were legal firearms present within the residence, and there were drugs within the residence. CYS caseworker Andrew Stager observed [Mother] to be visibly intoxicated and determined that it was in [Child's] best interests that she be removed from the home. Father was also present at the time and expressed disapproval and frustration that CYS attempted to remove the child from the home. The situation escalated and CYS contacted the Spring Township Police Department.

When Father went to the door to greet officers from Spring Township Police Department and the Bellefonte Borough Police Department, [Mother] relayed to CYS caseworker Andrew Stager an incident that had occurred the night prior. [Mother] said that Father placed a gun to the back of her head, identified that he was trying to decide whether or not to kill her, that he would not permit [Child] to be removed from his care and custody, and that he would be happier if she were placed with the state. As a result of this incident and other domestic violence in the home, [Mother] obtained a Protection From Abuse Order against Father. [Mother] also identified that Father actively used heroin, had used it the night before, and used it that day. [Mother] admitted to using heroin herself as a way to cope with stress from the incident. She further identified she was the primary caregiver for [Child] because Father resided in Ohio, although Father had contact with [Child].

The officers then engaged in conversations with [Mother], Father, and [Grandfather]. Through completing an inspection of the residence, the officers discovered marijuana plants growing along the right side of the residence, as well as drug paraphernalia, including needles, in the upstairs bathroom. Father was subsequently taken into custody. After determining that [Mother's m]other was not an appropriate placement resource, CYS determined it was in [Child's] best interests to place her in an approved foster home. When CYS removed

[Child] from the home, she was observed to have severe diaper rash.

On July 20, 2012, after a hearing wherein the events that occurred on July 19, 2012 were described through testimony to the [trial c]ourt, the [trial c]ourt granted CYS's dependency petition and ordered that [Child] remain in foster care until a dependency hearing. A dependency hearing was held on August 1, 2012 and [Child] was declared dependent under the Pennsylvania Juvenile Act at 42 Pa.C.S.A. § 6302. CYS informed the [trial c]ourt that it had not ruled Father out as a placement resource for [Child] at that time. On August 23, 2012, reunification services were initiated with [Mother] through Family Intervention Crisis Services ("FICS"). Visitation at the Centre County Correctional Facility was initiated with Father.

At a review hearing on January 8, 2013, the [trial c]ourt continued biweekly visits for one hour with Father while he was incarcerated at the Centre County Correctional Facility. Father was not considered for reunification while he was incarcerated. At that time, Father's attorney made the [trial c]ourt aware that Father would be voluntarily moving to a jail in Ohio on a warrant for failure to pay child support and that he did not object to suspending visitation while he was incarcerated in Ohio in order to prevent [Child] from making long car trips.

At a review hearing on June 17, 2013, the main focus was on [Mother's] lack of follow through with regard to goals that had been set with her and FICS. [Mother] was not creating a safe home environment for [Child]. Specifically, there had been an incident where her carbon monoxide detectors were going off and instead of locating the source of carbon monoxide, [Mother] took out the batteries, which resulted in her exposure to carbon monoxide. FICS agents had to bring [Mother] to the hospital for carbon monoxide exposure treatment. Additionally, [Mother] had various roommates between January and June, none of whom were appropriate to be around [Child]. FICS also had concerns with [Mother's] ability to consistently meet [C]hild's needs. [Mother] dismissed concerns raised in a developmental assessment regarding certain sexualized behaviors that [Child] was exhibiting. The [trial c]ourt ordered that [Mother] have three additional months of reunification services to allow her time to make necessary progress. At that time, Father had been moved to a jail in Franklin, Ohio, and was not being provided

with visitation through FICS due to the distance. The agency indicated that it would consider Father for visitation and services upon his return to Centre County.

A goal change hearing was held on October 8, 2013. On October 14, 2013, after the hearing, the [trial c]ourt ordered that [Child's] placement goal be changed from "Return Home" to "Long-Term Foster Care" due to the parents' failure to progress toward alleviating the circumstances that necessitated the original placement. [The trial court also terminated reunification services. This order was entered on November 6, 2013. Mother timely filed a notice of appeal, along with a statement of errors complain of on appeal.¹]

Trial Court Opinion, 1/6/2014, at 1-4.

Mother now raises the following issue for our consideration.

Did the Court of Common Pleas commit an error of law in changing the placement goal for [Child] from Return Home to Long-Term Foster Care, with concurrent planning for Adoption, when evidence was presented that progress was being made toward alleviating the conditions that led to the placement of [Child]?

Mother's Brief at 4.

We consider this issue mindful of the following.

[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).

Pursuant to [42 Pa.C.S.] § 6351(f) of the Juvenile Act, when considering a petition for a goal change for a dependent child, the juvenile court is to consider, *inter alia*: (1) the

¹ Father also appealed the order of the trial court. Father later filed a praecipe to discontinue his appeal on March 17, 2014.

continuing necessity for and appropriateness of the placement; (2) the extent of compliance with the family service plan; (3) the extent of progress made towards alleviating the circumstances which necessitated the original placement; (4) the appropriateness and feasibility of the current placement goal for the children; (5) a likely date by which the goal for the child might be achieved; (6) the child's safety; and (7) whether the child has been in placement for at least fifteen of the last twenty-two months. The best interests of the child, and not the interests of the parent, must guide the trial court. As this Court has held, a child's life simply cannot be put on hold in the hope that the parent will summon the ability to handle the responsibilities of parenting.

In re A.B., 19 A.3d 1084, 1088-89 (Pa. Super. 2011) (citations and quotation marks omitted).

Instantly, Mother argues that the trial court abused its discretion by changing Child's permanency goal to "Long-Term Foster Care." The trial court explains that Mother "did not make necessary progress to assure the [trial c]ourt that it would be safe to return [Child] to her care and custody." Trial Court Opinion, 1/6/2014, at 4. The trial court directs our attention to the four goals set out for Mother by FICS.

The four goals were: (1) [Mother] will create and maintain a home environment that is stable, clean, and safe for herself and her daughter; (2) [Mother] will maintain employment and properly manage all of her finances; (3) [Mother] will create a healthy lifestyle by meeting her emotional, medical, and drug and alcohol needs through necessary services; and (4) [Mother] will demonstrate the ability to consistently meet her daughter's emotional, environmental, and physical needs.

Id.

The trial court concluded that, while Mother has been able to maintain employment and manage her finances, she has failed with respect to the

other goals. ***Id.*** In response, Mother contends that “the recent goal change in the instant case serves as a constructive termination” of her parental rights, and that Mother’s rights to Child “should not be terminated after she has made great progress toward alleviating the conditions that led to the placement” of Child. Mother’s Brief at 8.

First, we reject Mother’s argument that her rights to Child have been “constructively terminated.” Tellingly, Mother does not direct our attention to any authority supporting that proposition. ***Cf. In re N.C.***, 909 A.2d 818, 824 (Pa. Super. 2006) (citing ***In re A.L.D.***, 797 A.2d 326, 339 (Pa. Super. 2002)) (“A placement goal change to adoption does not terminate the parents’ rights; however, it is a step in that direction.”). Second, it is clear that the trial court did not abuse its discretion by changing Child’s permanency goal. Child has been in placement since July 19, 2012. The final hearing in this matter was held November 5, 2013, over 15 months later. During that time, Mother was offered over 1500 hours of services from FICS. N.T., 10/8/2013, at 4. Notwithstanding this assistance, the record supports the trial court’s conclusion that Mother is still incapable of providing a safe and nurturing environment for Child.

Specifically, Mother continues to associate with Father, despite a past history of domestic violence, and despite Mother’s admission that she still fears Father. ***Id.*** at 10-12. Similarly, Mother maintains contact with Grandfather despite his erratic behavior and hostility towards her. ***Id.*** at

15.² Furthermore, when Mother has attempted to live with roommates, these individuals have proven to be potential bad influences. Besides residing with Grandfather, Mother lived briefly with two other individuals. Purportedly, Mother believed that these individuals “were using marijuana due to finding rolling papers in the home.” N.T., 6/17/2013, at 6.³ Even when left to her own devices, Mother displayed an alarming lack of concern for safety, as exemplified by her failure to address a carbon monoxide issue in her home, described by the trial court, *supra*. ***Id.*** at 8-10.

² FICS counselor Tiffany Gusiewhite described Grandfather’s troubling activities in the following manner.

His behavior throughout the reunification process has not been stable. There were times that he had himself together and he appeared very cleanly and sober and organized. And he was a big support to [Mother] creating a home. But, as of recently, he’s become very aggressive with staff, yelling at staff, he’s begun drinking again, his appearance is disheveled.

As of December 5th [2012], he was suicidal. We had an unannounced check on December 4th and [Mother] had stated that she was scared of [Grandfather], he had been drinking. Again, on December 5th, the following day, he had reported to police that he had beaten another man to the pulp and ripped someone’s eyeball out. Apparently, he had lied about that, they never did find the person that was missing their eyeball.

But still, his behavior is very unstable. Even if he did or did not commit that crime, his behavior is very unstable....

N.T., 1/8/2013, at 6-7.

³ Mother also engaged in a brief relationship with a third individual, who was “in and out of the home” for some period of time. N.T., 6/17/2013, at 10. This individual was an admitted marijuana user with “two recent DUIs and some criminal history and some involvement with CYS.” ***Id.*** at 10-11.

Mother also has ceased attending counseling, and she has had difficulty providing adequate supervision and discipline for Child. N.T., 11/5/2013, at 9-10; N.T., 10/8/2013, at 10, 19, 20-21, 30. For example, Mother occasionally appears drowsy and even falls asleep while visiting with Child. N.T., 10/8/2013, at 19, 34. Child has exhibited certain sexual behaviors since being removed from Mother's care. **Id.** at 21, 46-47. When Child has exhibited inappropriate behavior during visits, Mother has failed to take sufficient corrective action. **Id.** at 21. Child does not enjoy visiting with Mother, has asked not to visit with her, and is prone to breaking down emotionally during visits. N.T., 11/5/2013, at 9-10. In contrast, Child is bonded with her foster parents and refers to them as "Mommy" and "Daddy." N.T., 10/8/2013, at 38.

Further, Mother has not been entirely forthright with FICS. Mother was regularly absent for FICS "lifestyle checks," and FICS has had difficulty locating Mother. **Id.** at 6-8. As part of the reunification effort, Mother was asked to "document her daily activities and whereabouts" in a logbook. **Id.** at 6-7. Mother was also asked to call FICS each day and "leave a message as to where she would be." **Id.** at 23. Upon review, FICS discovered "numerous inconsistencies" and inaccuracies in this documentation. **Id.**⁴

⁴ FICS counselor JoAnne Sabate offered the following example. "[S]he listed she was at her mother's house one evening, and we checked her receipt, which was for Port Matilda during that same date and time when she claimed she was at her mother's." N.T., 10/8/2013, at 23.

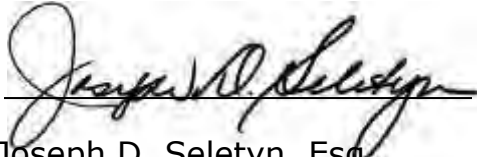
Finally, we note that the trial court emphasizes in its opinion that Mother “had positive drug tests over the course of reunification.” Trial Court Opinion, 1/6/2014, at 5. Mother was subject to random urine testing by FICS while Child was removed from her care. However, during this time, Mother had only one positive urine test for alcohol. N.T., 6/17/2013, at 14-15. Thus, the record does not support the statement of the trial court that Mother had failed multiple drug tests.⁵ Nonetheless, the trial court’s decision is bolstered amply by other evidence. Accordingly, we hold that the trial court did not abuse its discretion by concluding a change of permanency goal was in Child’s best interest. We therefore affirm the order of the trial court.

Order affirmed.

⁵ While Mother only failed one drug test, the trial court appears to have its suspicions about Mother’s ongoing sobriety. When asked to submit to testing, Mother was regularly unable to provide a urine sample. N.T., 10/8/2013, at 17. When Mother did provide a sample, it was often dilute. ***Id.*** Mother informed FICS that she was drinking extra water “at the recommendation of her doctor since she had recently stopped taking methadone, and the doctor was concerned that she may get dehydrated and sick from methadone withdrawal[.]” ***Id.*** at 26. To counter this explanation, Ms. Sabate testified that she never observed Mother drinking large quantities of water. ***Id.*** at 17, 26. The trial court indicated in the findings of fact included with its November 6, 2013, order that Mother “has not provided any medical reason for her dilute drug tests.” Findings of Fact, 11/6/2013, at 1 (unnumbered pages).

J-S29031-14

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: 5/6/2014