

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37**

IN THE INTEREST OF: M.B., A  
MINOR

: IN THE SUPERIOR COURT OF  
: PENNSYLVANIA

APPEAL OF: C.P., MOTHER

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: No. 801 WDA 2023

Appeal from the Order Entered June 28, 2023  
In the Court of Common Pleas of Jefferson County  
Civil Division at No(s): CP-33-DP-0000046-2022

IN THE INTEREST OF: M.B., A  
MINOR

: IN THE SUPERIOR COURT OF  
: PENNSYLVANIA

APPEAL OF: C.P., MOTHER

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: No. 802 WDA 2023

Appeal from the Order Entered June 2, 2023  
In the Court of Common Pleas of Jefferson County  
Civil Division at No(s): CP-33-DP-0000046-2022

IN THE INTEREST OF: E.B., A MINOR

: IN THE SUPERIOR COURT OF  
: PENNSYLVANIA

APPEAL OF: C.P., MOTHER

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: No. 803 WDA 2023

Appeal from the Order Entered June 2, 2023  
In the Court of Common Pleas of Jefferson County  
Civil Division at No(s): CP-33-DP-0000042-2022

IN THE INTEREST OF: E.B., A MINOR	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
APPEAL OF: C.P., MOTHER	:	
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	:	No. 804 WDA 2023

Appeal from the Order Entered June 2, 2023  
In the Court of Common Pleas of Jefferson County  
Civil Division at No(s): CP-33-DP-0000042-2022

BEFORE: PANELLA, P.J., OLSON, J., and STEVENS, P.J.E.\*

MEMORANDUM BY PANELLA, P.J.:

**FILED: January 18, 2024**

In this dependency action, C.P. ("Mother") appeals Jefferson County Court of Common Pleas' orders finding aggravated circumstances and changing the permanency goal of Mother's two children, M.B. and E.B., from reunification to adoption. Mother acknowledges she has not complied with her family service plan in that she continues to struggle with drug abuse and failed to visit her children in-person for over six months at the time the court entered its orders. However, Mother contends she had video and phone call contact with the children over that six-month period. Given this contact, Mother argues the court erred in finding aggravating circumstances existed on the basis that Mother failed to maintain substantial and continuing contact with

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\* Former Justice specially assigned to the Superior Court.

the children for a period of six months. Mother also argues the court erred in changing the children's permanency goal from reunification to adoption in the wake of its finding of aggravating circumstances. We affirm.

The factual and procedural history leading up to Mother's appeal is as follows. Jefferson County Children and Youth Services ("CYS") became involved with the family when Mother tested positive for several drugs, including amphetamines, THC and fentanyl, following the birth of E.B. in August 2022. M.B. was four years old at the time. CYS took emergency custody of both children. Following a shelter care hearing on August 30, 2022, the court ordered M.B. and E.B. to be placed with their maternal grandparents. The children were adjudicated dependent the following day, August 31, 2022.

Pursuant to the family service plan, Mother's objectives included obtaining a drug and alcohol evaluation, participating in drug testing and maintaining a sober lifestyle. However, Mother did not complete an evaluation and failed multiple drug tests. Mother was also given in-person visitation with the children, subject to her testing negative for drugs before the visit. However, Mother last visited the children in October 2022.

On May 11, 2023, CYS filed a motion for the finding of aggravated circumstances on the basis that Mother and R.B., the children's father ("Father"), had failed to maintain substantial and continuing contact with M.B. and E.B. for a period of six months. The court held a hearing on the petition at the scheduled permanency review hearing on May 31, 2023.

At the hearing, JoAnna Welch, the family's CYF caseworker, testified first. Welch stated her contact with Mother had been "quite sporadic." N.T., 5/31/2023, at 5. She recounted Mother failed an unannounced drug screen in March 2023 by testing positive for THC, methamphetamines, and fentanyl. **See id.** at 6, 12. Welch also reported Mother had tested positive for various substances at two drug screenings in February 2023. **See id.** at 8-9

As for visitation, Welch testified Mother was scheduled to visit the children once every two weeks for one hour. **See id.** at 8. Mother, however, had not visited the children since October 2022. **See id.** at 7. This was, in part, due to the positive drug screenings. **See id.** at 12. However, it was also due to parental cancellation. **See id.** According to Welch, there had been "a very large handbag of reasons" Mother offered as to why she had not been able to visit her children. **Id.** at 7. Those reasons included a need to renew her state identification, a need to renew her medical marijuana card, and a preference not to attend visits without Father, who was incarcerated from November 2022 to February 2023. **See id.** at 7-8. Welch also testified Father had not visited the children since November 2022, and she was not aware of any other contact Mother and Father had with the children. **See id.** at 8.

Welch testified that CYF was seeking a finding of aggravated circumstances because Mother's compliance with her case plan had been "minimal," and because of Mother's and Father's lack of engagement and lack of substantial and continuing contact with the children over the previous six

months. **See id.** at 8, 9, 11. Welch also testified she had been told by E.B. and M.B.'s maternal grandmother, T.J., that M.B. had stated she wished both of her parents were incarcerated so that she would not have to worry about them. **See id.** at 4-5.

T.J. also testified at the hearing. She explained M.B. and E.B. had both been placed with her since E.B.'s birth. Although T.J. stated she had initially allowed Mother and Father to Facetime M.B., she discontinued the Facetime calls because it was causing M.B. to have nightmares. **See id.** at 27. T.J. testified she told Mother and Father they could still call M.B. on the phone. However, T.J. stated Mother and Father stopped calling and did not resume calling T.J.'s house again until the last week in April 2023. **See id.** at 27-29. Those conversations, according to T.J., usually lasted between five and ten minutes. **See id.** at 33. T.J. also reported that the children's paternal grandparents watched the children some days while she and her husband were at work. **See id.** at 32.

Father testified at the hearing as well. He confirmed he was also offered the opportunity to visit the children with Mother once every two weeks but conceded he had not done so since his release from prison in February 2023. **See id.** at 23. Father initially contended he had not visited with the children or seen the children in-person because M.B. got upset when he and Mother had to leave at the end of the visit, and this was too difficult on him and M.B.

**See id.** at 17, 23. He later stated, however, that he did not visit the children because he was not allowed to do so. **See id.** at 18.

Father claimed that even though he did not attend the visits with his children, he video chatted and spoke on the phone with M.B. when the children's paternal grandparents were watching them while the maternal grandparents were at work. **See id.** at 18. Father said he began making those calls once he was released from prison. **See id.** at 19. According to Father, he spoke to M.B., who was four years old at the time, on the phone for four hours on one occasion. **See id.** at 18. Father testified Mother was with him during these phone calls. **See id.** at 19.

Father further stated he more recently began calling the children at their maternal grandparents once or twice a week. **See id.** at 19. He explained Mother was also with him during these calls, with Mother "usually call[ing] her mom before me and talk[ing] to her mom and get[ting M.B.] on the phone and then I talk." **Id.** Mother was present at the hearing but did not testify.

Following the hearing, the court found CYS had proven aggravating circumstances on the basis that Mother and Father had failed to maintain substantial and continuing contact with M.B. and E.B. for a six-month period. The court stated that "[p]hone calls are not substantial and continuing contact." **Id.** at 46. The court also ended reunification services and changed both M.B. and E.B.'s goal from reunification to adoption. **See id.** On June 2, 2023, the court entered an order reflecting its finding of aggravated

circumstances as well as a permanency review order reflecting the goal change and the cessation of reunification services.<sup>1</sup>

Mother filed a notice of appeal from each of the orders.<sup>2</sup> This Court consolidated the matters *sua sponte*. Along with her notices of appeal, Mother filed her Pa. R.A.P. 1925(b) statements of matters complained of on appeal. **See** Pa. R.A.P. 1925(a)(2)(i). In its responsive opinion, the orphans' court opined it had not abused its discretion by finding aggravating circumstances and that a goal change to adoption was in the children's best interests. Mother challenges both findings on appeal.

In dependency cases, we employ an abuse of discretion standard of review. **See *in re R.J.T.***, 9 A.3d 1179, 1190 (Pa. 2010). We must accept the findings of fact and credibility determinations of the orphans' court unless they are not supported by the record. **See *id.*** This deference to the court's fact-finding function stems from the reality that the orphans' court is not only able to observe the parties during the hearing at issue but has usually "presided over several other hearings with the same parties and ha[s] a longitudinal understanding of the case and the best interests of the [children] involved."

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<sup>1</sup> Father appealed separately from the court's orders finding aggravating circumstances in the case and changing M.B. and E.B.'s goal to adoption. **See** 831-834 WDA 2023.

<sup>2</sup> Mother originally inadvertently only filed a notice of appeal from the order finding aggravated circumstances. Mother filed a motion for leave to file an appeal *nunc pro tunc* from the goal-changing order, which was granted, and Mother then filed her notice of appeal from that order.

***Id.*** However, the same deference does not apply to the orphans' court's legal conclusions as we are not required to accept the orphans' court's inferences or conclusions of law. ***See id.***

We first address Mother's argument that the orphans' court abused its discretion by finding aggravating circumstances existed because of Mother's failure to maintain substantial and continuing contact with the children. Mother contends she had "regular" contact with the children while they were in the care of the paternal grandparents and that "there was communication" between Mother and the children while the children were in their maternal grandmother's care. Appellant's Brief at 14. Mother asserts, in essence, that this constitutes substantial and continuing contact, and the orphans' court abused its discretion by finding otherwise. This claim fails.

The Juvenile Act provides that either a county agency or the child's attorney may allege the existence of aggravated circumstances in the case of a dependent child. ***See*** 42 Pa. C.S.A. § 6341(c.1). The Act, in turn, defines aggravated circumstances in relevant part as circumstances where the child is in the custody of a county agency and the "identity or whereabouts of the parents is known and the parents have failed to maintain substantial and continuing contact with the child for a period of six months." 42 Pa. C.S.A. § 6302(1)(ii).

If the court finds from clear and convincing evidence that aggravated circumstances exist, the Act gives the court the discretion to "determine



whether or not reasonable efforts to prevent or eliminate the need for removing the child from the home or to preserve and reunify the family shall be made or continue to be made.” 42 Pa. C.S.A. § 6341(c.1); ***In re A.H.*** 763 A.2d 873, 878 (Pa. Super. 2000). As such, when the court finds aggravated circumstances exist, “it is well within its discretion to order the cessation of reunification services.” ***A.H.***, 763 A.2d at 878. Further, “a trial court’s finding of aggravated circumstances lends strong support for a change in a child’s permanency goal to adoption.” ***Id.***

Here, the orphans’ court found aggravating circumstances based on Mother’s and Father’s lack of contact with the children. Mother does not dispute Welch’s testimony that Mother last saw her children in-person in October 2022. Rather, Mother essentially alleges that the video and phone calls Father testified about at the hearing, ones in which Father testified Mother was present, established Mother had substantial and continuing contact with her children during the relevant six-month time period.

In addressing this contention, the orphans’ court first questioned the credibility of Father’s testimony about the quantity and length of the calls. The court noted that it simply “did not believe Father was talking and Facetiming with M.B. nearly as much as he claimed.” Trial Court Opinion, 8/11/2023, at 3. In any event, the court found that a few telephone or Facetime conversations each week, when person-to-person visits were an option, did not amount to substantial and continuing contact. ***See id.*** This was true, the

court found, not only with M.B., but with E.B., who, as an infant, lacked the developmental ability to connect over the phone. **See id.** at 2, 3. The court further observed:

[T]he only evidence of contact between [Mother] and the children was Father's testimony that she was present when he called and Facetimed M.B. Father did not relate [Mother's] level of engagement during those calls, though, and she did not testify at all. More importantly, [Mother] was free to take advantage of face-to-face visits with both of her children but chose instead to make excuses for why she could not attend. The result, couched in legal terms, is that she failed to maintain substantial and continuing contact with either of them.

Trial Court Opinion, 8/11/2023, at 3.

We discern no abuse of discretion in this conclusion. It is undisputed Mother did not visit her children in-person once from October 2022 to the hearing date of May 31, 2023, despite having the opportunity to do so. She attempts to rely on the phone and video calls Father testified about as evidence she maintained sufficient contact with her children. However, the court did not credit Father's testimony about the quantity and length of the phone calls, instead crediting T.J.'s testimony about the phone calls. These were credibility determinations the court was free to make. **See *In re Staico*, 143 A.3d 983, 987 (Pa. Super. 2016)** (stating that the orphans' court, as the fact-finder, determines the credibility of the witnesses).

Moreover, the court found that a few phone and video calls per week with a four-year-old and a baby did not establish the requisite statutory contact when in-person visits were available, especially when there was no

evidence of Mother's level of engagement during the calls. Based on all of the above, we fail to see how the orphans' court abused its discretion by finding aggravated circumstances based on a failure to maintain substantial and continuing contact with M.B. and E.B. for six months.

Next, Mother argues the court also abused its discretion by changing the children's goal from reunification to adoption. She argues this goal change was not in the best interests of the children because the primary barrier to Mother's relationship with the children is Mother's ongoing controlled substance abuse and because of the parental bond she shares with the children. This claim also fails.

We note that our analysis must begin from the premise, stated above, that when an orphans' court finds the existence of aggravating circumstances, as it did here, such a finding lends strong support to changing a child's goal to adoption. **See A.H.** 763 A.2d at 878. Generally, when considering whether to change a dependent child's permanency goal to adoption, the court must consider: 1) the continuing necessity for and appropriateness of the placement; 2) the extent of compliance with the single case plan objectives; 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 child; and 5) a likely date by which the goal of the child might be achieved. **See In re S.B.**, 943 A.2d 973, 977 (Pa. Super. 2008); **see also** 42 Pa. C.S.A. § 6351(f). The court must look to the best

interests of the child involved, **see R.J.T.**, 9 A.3d at 1183-1184, and focus on the safety, permanency, and well-being of the child when considering whether a goal change is warranted, **see S.B.**, 943 A.2d at 978.

Here, we can discern no abuse of discretion in the court's conclusion that it was in the best interests of M.B. and E.B. to change their permanency placement goal to adoption. **See In re A.K.**, 936 A.2d 528, 532-533 (Pa. Super. 2007) (stating that the appellate court applies an abuse of discretion standard of review when reviewing an orphans' court's order changing a dependent child's placement goal to adoption). As discussed above, the court found aggravating circumstances due to Mother and Father's failure to maintain substantial contact with the children for a period of six months, and this alone lends strong support to the propriety of the goal change.

Moreover, the court found that Mother really "never did anything" over the life of the case, N.T., 5/31/2023, at 46, and there had been, at best, minimal compliance with her family service plan. The court also found that the children were thriving in their current placement with the maternal grandparents. In support, the court pointed to Caseworker Welch's testimony regarding the children's development and progress under their maternal grandparents' care. **See** Trial Court Opinion, 8/11/2023, at 3; N.T., 5/31/2023, at 4-5. The court also noted that M.B. had expressed fear for her parents' safety and that the only caregivers E.B. had ever known were his grandparents, given that he had been placed with them since birth.

Mother argues, however, that the court should not have changed the goal to adoption because of her bond with the children. Mother concedes it is difficult to show she has a bond with E.B. **See** Appellant's Brief at 12. She contends, however, that Father's testimony that M.B. got upset at the end of the in-person visits they did initially have with her shows that M.B. has a bond with Mother and Father. This claim has no merit.

In the first place, the orphans' court did not credit Father's "purported reason" that M.B. got upset as the reason for the failure to visit the children in-person, calling it "a clear fabrication" and noting the inconsistent reasons Father gave for the failure to visit M.B. and E.B. Trial Court Opinion, 8/11/2023, at 2. Additionally, the court stated that any reason for not visiting the children because of M.B.'s reaction demonstrated a complete disregard for any parental responsibility for E.B. **See id.** The same could be said for M.B., as we are not persuaded that halting in-person visits with a four-year-old because of the difficulty of seeing her upset shows parental responsibility or necessarily establishes the existence of a parental bond. Regardless, even if Mother had established there was a bond with M.B., any bond the child has with the parent is but one factor to consider in determining whether a goal change is in the child's best interests. **See In re A.K.**, 936 A.2d 528, 536 (Pa. Super. 2007).

Mother also maintains that the court abused its discretion in changing the children's goal to adoption because of her drug use and the short duration

of the children's placement. To that end, Mother acknowledges she continues to struggle with drug abuse and "drug dependence [prohibits] appropriate parenting," but she avers that "overcoming substance addiction takes time." Appellant's Brief at 12-13. According to Mother, "there is still time" in this case because M.B. and E.B. had been in placement for only nine months at the time of the hearing, and not the 15-month window identified in the Juvenile Act. **See id.** at 12. Again, we do not agree.

Although not cited by Mother, Mother is presumably referring to 42 Pa. C.S.A. § 6351(f)(9), which provides in pertinent part that when evaluating at a permanency hearing whether the current placement of a child is appropriate, the court shall determine:

If the child has been in placement for at least 15 of the last 22 months or the court has determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's parent, guardian or custodian or to preserve and reunify the family need not be made or continue to be made.

42 Pa. C.S.A. § 6351 (f)(9).

Of course, Mother's argument completely ignores the plain language of this statute which speaks of either the passage of 15 months in placement or a finding of aggravated circumstances such as the one made by the orphans' court here. Moreover, the argument ignores that our Supreme Court has stated that the 15-month timeframe of Section 6351 (f)(9) is not a litmus test but is "merely one of a number of factors a trial court must consider in

ultimately determining whether the current placement is appropriate.” **R.J.T.**, 9 A.3d at 1190. Similarly, this Court has stated:

[t]he fifteen-to-twenty-two-month timeframe set forth in the Juvenile Act is not [a] prerequisite to a goal change, but rather is an aspirational target in which to attain permanency. While trial courts should not rush to change a child’s permanency goal to adoption in circumstances where a parent is making progress toward reunification, neither should courts persist in attempting to reunite a family when further reunification efforts would be futile and/or contrary to a child’s best interest.

**In re J.D.H.**, 171 A.3d 903, 909 (Pa. Super. 2017)(citation omitted).

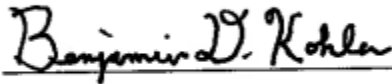
Here, there is no evidence that Mother is making progress in her struggle with substance abuse. Mother has not provided any evidence that she completed a drug evaluation as ordered or has sought treatment for the drug abuse problem she readily admits to having. Instead, she offers only that “as to length of time whereby reunification can be achieved, [Mother] needs to succeed in drug treatment before that can take place,” without identifying any measures she herself has taken to accomplish such a goal. Appellant’s Brief at 11. As this Court has repeatedly stated: “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 J.D.H.**, 171 A.3d at 908 (citation omitted).

In the end, the orphans’ court found Mother and Father had not visited the children and did not have substantial and continuing contact with them for a period of six months and based on this failure, the court concluded that aggravating circumstances existed and that changing the children’s goal to

adoption was in their best interests. Mother has failed to convince us, and we fail to see, how the court abused its discretion by reaching either conclusion.

Orders affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.  
Prothonotary

DATE: 1/18/2024