

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: A.L.W.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: MERCER COUNTY CHILDREN
AND YOUTH SERVICES

No. 1043 WDA 2013

Appeal from the Order entered May 28, 2013
In the Court of Common Pleas of Mercer County
Orphans' Court, at No(s): 48 DP 2011

BEFORE: PANELLA, OLSON, and WECHT, JJ.

MEMORANDUM BY PANELLA, J.: FILED: February 5, 2014

Mercer County Children and Youth Services ("CYS") appeals the order entered on May 28, 2013, that denied its petition for change of placement goal to adoption with respect to A.L.W. We affirm.

CYS has had A.L.W., ("the child"), within its care, custody and control as a dependent child since August 5, 2011. The child has been in foster care since that time with a permanent placement goal of return to parent. S.M. ("Mother") has been involved through the dependency proceedings and is attempting to regain custody of the child. Trial Court Opinion, 9/16/13, at 1. Mother has lived in Detroit, Michigan, since July of 2012. A.W. ("Father"), who also lives in Detroit, Michigan, but not with Mother, has not been involved with CYS throughout the dependency of the child.

Mother signed a Family Service Plan ("FSP") on February 24, 2013. Her goals were: strengthening her parenting skills; addressing some low level mental health issues; locating and maintaining stable housing; insuring

a drug-free environment; and maintaining contact with CYS. *Id.* at 1-2. On May 28, 2013, a dependency hearing was held. At the hearing, CYS recommended a permanency goal change from return to parent to adoption because the child had been in placement for 21 of the past 22 months, and CYS was not satisfied with Mother's compliance with the FSP goals. At the hearing, the trial court heard the testimony of Mother, Deborah Corban, the CYS caseworker, and Mother's landlord, Sterling A. Pace. *Id.* at 2. On May 28, 2013, the trial court entered an order, keeping the current placement goal of return to parent in place with a concurrent placement plan of adoption.

On June 7, 2013, CYS timely filed a notice of appeal. By order entered on June 12, 2013, the trial court ordered CYS to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b) within 21 days. CYS complied on June 25, 2013.

On appeal, CYS raises four issues as follows.

1. Did the Trial Court err and abuse its discretion in denying Appellant's request to change the goal in this case from reunification to adoption?
2. Did the Trial Court err and abuse its discretion in finding that the goal of reunification was appropriate and feasible?
3. Did the Trial Court err and abuse its discretion in finding that the goal of reunification was the best suited to the protection and [the] physical, physical, mental, and moral welfare of the Child?
4. Did the Trial Court err and abuse its discretion in finding that the natural mother's testimony was more credible than the

caseworker's testimony as to her progress towards meeting the goals of the Family Service Plan?

CYS's Brief, at 8.

As CYS's issue are similar, we will address them concomitantly. We review CYS's issues regarding the change of goal to adoption according to the following standard:

In cases involving a court's order changing the placement goal . . . to adoption, our standard of review is abuse of discretion. To hold that the trial court abused its discretion, we must determine its judgment was manifestly unreasonable, that the court disregarded the law, or that its action was a result of partiality, prejudice, bias or ill will. While this Court is bound by the facts determined in the trial court, we are not tied to the court's inferences, deductions and conclusions; we have a responsibility to ensure that the record represents a comprehensive inquiry and that the hearing judge has applied the appropriate legal principles to that record. Therefore, our scope of review is broad.

In re S.B., 943 A.2d 973, 977 (Pa. Super. 2008) (citations omitted).

A goal change request is governed by the Juvenile Act, 42 Pa.C.S.A. § 6301 *et seq.*, which was amended in 1998 to conform to the federal Adoption and Safe Families Act ("ASFA"), 42 U.S.C. § 671 *et seq.* ***In re M.S.***, 980 A.2d 612, 615 (Pa. Super. 2009). We have recognized that "[b]oth statutes are compatible pieces of legislation seeking to benefit the best interest of the child, not the parent. . . . ASFA promotes the reunification of foster care children with their natural parents when feasible. . . . Pennsylvania's Juvenile Act focuses upon reunification of the family, which means that the unity of the family shall be preserved 'whenever

possible.” *Id.* (citing 42 Pa.C.S.A. § 6301(b)(1)). As such, child welfare agencies are required to make reasonable efforts to return a foster child to his or her biological parent. *In re N.C.*, 909 A.2d 818, 823 (Pa. Super. 2006). When those efforts fail, the agency “must redirect its efforts toward placing the child in an adoptive home.” *Id.* We have stated,

[W]hen a child is placed in foster care, after reasonable efforts have been made to reestablish the biological relationship, the needs and welfare of the child require [the child welfare agency] and foster care institutions to work toward termination of parental rights, placing the child with adoptive parents. It is contemplated [that] this process realistically should be completed within 18 months.

Id. at 824 (emphasis omitted) (citations omitted).

At permanency review hearings for dependent children removed from the parental home, a trial court must consider the following factors:

(f) Matters to be determined at permanency hearing.—

At each permanency hearing, a court shall determine all of the following:

- (1) The continuing necessity for and appropriateness of the placement.
- (2) The appropriateness, feasibility and extent of compliance with the permanency plan developed for the child.
- (3) The extent of progress made toward alleviating the circumstances which necessitated the original placement.
- (4) The appropriateness and feasibility of the current placement goal for the child.
- (5) The likely date by which the placement goal for the child might be achieved.

(5.1) Whether reasonable efforts were made to finalize the permanency plan in effect.

(6) Whether the child is safe.

. . .

(9) 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, whether the county agency has filed or sought to join a petition to terminate parental rights and to identify, recruit, process and approve a qualified family to adopt the child unless:

(i) the child is being cared for by a relative best suited to the physical, mental and moral welfare of the child;

(ii) the county agency has documented a compelling reason for determining that filing a petition to terminate parental rights would not serve the needs and welfare of the child; or

(iii) the child's family has not been provided with necessary services to achieve the safe return to the child's parent, guardian or custodian within the time frames set forth in the permanency plan.

. . . .

(F.1) ADDITIONAL DETERMINATION.-- Based upon the determinations made under subsection (f) and all relevant evidence presented at the hearing, the court shall determine one of the following:

(1) If and when the child will be returned to the child's parent, guardian or custodian in cases where the return of the child is best suited to the safety, protection and physical, mental and moral welfare of the child.

(2) If and when the child will be placed for adoption, and the county agency will file for termination of parental rights in cases where return to the child's parent, guardian or custodian is not best suited to the safety, protection and physical, mental and moral welfare of the child.

. . .

42 Pa.C.S.A. § 6351(f)(1)-(6), (9); 42 Pa.C.S.A. § 6351(F.1)(1)-(2).

On appeal, CYS argues the trial court abused its discretion in finding that CYS and the social service agency in Detroit, Michigan, did not make reasonable efforts to reunify Mother with the child, and, therefore, it erred in refusing to change the placement goal solely to adoption. The essence of CYS's argument is that, although Mother took parenting classes with the Detroit Parenting Network, she did not follow through with her other FSP goals. CYS contends that Mother did not address her mental health issues; did not locate and maintain a drug free environment; did not maintain contact with CYS; and often did not attend visitation sessions set up CYS.

The trial court made findings of fact as part of the subject order, which, upon review, are supported by the record evidence. Specifically, the trial court considered the testimony of Mother, Ms. Corban, the CYS caseworker, and Mr. Pike, Mother's landlord, in arriving at its decision.

The trial court concluded as follows:

. . . A dependency review hearing was held on May 28, 2013[,] with CYS recommending a permanency goal change to adoption because the minor child had been in placement for 21 of the past 22 months[,] and CYS was not satisfied with [Mother's] compliance with the Family Service Plan. The Court heard

testimony from [Mother], the CYS caseworker and Mother's landlord[,] but the Court was not satisfied with the efforts of CYS and the social service agency in Detroit, Michigan. Accordingly, the Court refused to change the goal of adoption only and instead entered an Order on May 28, 2013[,] keeping current placement goal to return to parent in place with a **CONCURRENT PLACEMENT PLAN OF ADOPTION**. CYS was not satisfied with adoption merely being part of the concurrent plan and hence filed this appeal in a timely manner.

One of the problems for the court in this case is the distance between [Mother] and the child's placement here in Mercer County, Pennsylvania. In addition, CYS had to rely upon outside reports and efforts by the social service agency in Detroit, Michigan[,] in assessing, in part, [M]other's compliance with the Family Service Plan. The trial court rejected the recommendation of CYS following receipt of testimony from [M]other and [M]other's landlord who has driven [Mother] to Mercer County on several occasions for permanency review hearings and for other meetings with CYS, but CYS has never taken the time to interview him regarding [M]other's housing situation.

The recommendation of CYS to change the goal to adoption was based in part upon the report from Detroit, Michigan[,] that [M]other did not have a stable home. While CYS knew of the address where [M]other had been living for some time, they did not have the benefit they normally have when housing is located within Mercer County to go over and actually see the premises. Here, they received a report from Detroit concluding that [M]other did not have stable living arrangements because she could not produce a lease even though the building itself was appropriate.

The Court received testimony from [M]other's landlord at the dependency hearing, Sterling Addison Pace. Mr. Pace testified that he and his wife maintain a three bedroom colonial two-family flat, in Detroit, Michigan[,] which is in a nice historical area of Detroit. Tr. at 33. Mr. Pace indicated that it is a large home that has been well kept and has been in his wife's family for generations, and that [Mother] has lived there alone for approximately three years. *Id.* at 31. Mr. Pace does not charge her rent[,] and he and his wife pay the utilities[,] and they are just happy to have someone in the home to keep it from being

vandalized. *Id.* at 32. He also testified that he advised the interstate compact investigator that she could stay rent free and utility free. . . .

In addition, Mr. Pace has driven [M]other to every Court hearing in Mercer County and a few times to meet with CYS. Finally, he noted that [Mother] keeps the house clean and neat, really wants her son back[,] and is trying very hard to achieve that goal.

The Court below found Mr. Pace to be an extremely credible witness who made it crystal clear to the Court that [M]other had more than adequate housing and had the support of Mr. and Mrs. Pace during this difficult time in her life. This testimony also caused the Court to lack confidence on information coming out of Detroit, Michigan[,] from social service agencies. Thus, the testimony of Mr. Pace which was unimpeached totally contradicted the finding of the CYS caseworker that [Mother] failed to meet goal 3 in maintaining stable housing. *Id.* at 11-12.

The CYS caseworker testified that [M]other] met goal 1 which was completing the parenting classes which she completed at the Detroit Parent Network on January 30, 2013. *Id.* at 9. The testimony of CYS, when read in conjunction with the testimony of [Mother], also establishes that she has not fully satisfied CYS on the goals of medication management and remaining drug free. *Id.* at pgs. 9-14.

In addition, [Mother] continued to travel as often as she could back to Mercer County from Detroit to meet with CYS and her son. Her difficulty was that she had no driver's license and no independent means of transportation other than relying on Mr. Pace. [Mother] had been in Mercer County for only a short time when the child was placed[,] and her primary residence has been Detroit, Michigan[,] where the child's [Father] also resides. Accordingly, one of the major difficulties in this case for the Court in changing the goal to adoption only is that the circumstance of [M]other's poverty and the distance between Mercer County, Pennsylvania[,] and Detroit, Michigan[,] is substantial. In addition, this Court has had no relationship with the Detroit, Michigan[,] agencies and is unable to assess their efforts in helping [Mother] obtain mental health and/or drug treatment. Moreover, it is actually this Court's belief that the

dependency of this minor child should be transferred to Detroit, Michigan[,] so that social services agencies could work closer with [Mother] without the impediment of hundreds of miles between the two to eliminate the issues of poverty and transportation to get a more realistic assessment as to whether or not [Mother] will become capable of raising her son.

Trial Court Opinion, 9/16/2013, at 1-5.

After a review of the record, the trial court determined that it was premature to change the goal from returning the child to a parent to solely adoption. Rather, the trial court approved of the concurrent placement plan of adoption because of the child had been in placement for 21 months and Mother's low-level drug problem. *Id.* at 5. Thus, we hold the trial court's decision to be reasonable in light of its factual findings. Further, to the extent the court's decision is based on its determinations regarding credibility and weight of the evidence, we will not disturb it. ***See In re R.J.T.***, 9 A.3d 1179, 1190 (Pa. 2010) (stating an appellate court is required to accept credibility findings of trial court if supported by the record).

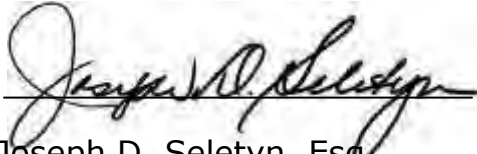
In addition, in ***In re R.J.T.***, our Supreme Court concluded that the trial court did not abuse its discretion in denying a goal change even though the children had been in placement for an extended period of time, *i.e.*, over two years, providing the basis for the ***R.J.T.*** court's decision not to change permanency goal. This case presents a similar situation with the child being held in placement for 21 months. Therefore, CYS's issues fail.

As a result, the trial court's order denying CYS's petition for a change of placement goal to adoption is affirmed.

J-S74015-13

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: 2/5/2014