

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE MATTER OF: F.H.O.C.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: M.L.O., MOTHER

No. 1126 EDA 2012

Appeal from the Order March 20, 2012
In the Court of Common Pleas of Philadelphia County
Family Court at Nos.: CP-51-DP-430-2012;
FID: 51-FN-000780-2012

BEFORE: MUNDY, J., OTT, J., and PLATT, J.*

MEMORANDUM BY PLATT, J.

Filed: February 12, 2013

M.L.O. (Mother) appeals from the order of March 20, 2012,¹ in the Philadelphia County Court of Common Pleas Family Court, adjudicating dependent her daughter, F.H.O.C. (Child), and ordering that she remain in foster care. We affirm.

On March 8, 2012, the Philadelphia Department of Human Services (DHS) obtained an Order of Protective Custody (OPC) for Child due to allegations that Mother was observed as lethargic, incoherent, and disoriented, and that Mother pushed a stroller with Child into a wall. DHS

* Retired Senior Judge assigned to the Superior Court.

¹ Although Mother purports to appeal from a March 19, 2012 order, the order in question was filed on March 20, 2012. We have amended the caption accordingly.

took custody of Child and placed her in foster care through *Asociación de Puertorriqueños en Marcha* (APM). Mother has a history of drug abuse and mental health issues. (N.T., 3/19/12, at 6, 7). On March 9, 2012, a shelter care hearing was held. The shelter care order lifted the OPC, and ordered that Child remain in temporary custody of DHS.

On March 12, 2012, DHS filed its dependency petition. The trial court held a hearing on that petition on March 19, 2012. Testifying at that hearing were a DHS social worker, Anita Bolds; an employee of Jane Adams Place, Marilyn Mock; a case manager with Behavioral Health Special Initiative (BHSI), Sarah Spell; and Mother. Father was not present at the time of the hearing due to his incarceration at Curran-Fromhold Correctional Facility. The trial court found the testimony of Ms. Bolds to be credible.

The trial court entered its order adjudicating Child dependent at the hearing on March 20, 2012. Mother timely appealed and filed a statement of errors complained of pursuant to Pa.R.A.P. 1925(a)(2)(i).

On appeal, Mother raises the following issues:

1. Did the trial court err and abuse its discretion in finding that DHS demonstrated by clear and convincing evidence that [C]hild was dependent?
2. Did the trial court err and abuse its discretion in placing the burden upon Mother[?]
3. Did the trial court err and abuse its discretion in finding that DHS had made reasonable efforts to prevent or eliminate the need for removal of [C]hild from her home?

(Mother's Brief, at 3).²

We review this matter under the following standard of review:

Our standard of review in dependency cases is well established; the standard this Court employs is broad. We accept the trial court's factual findings that are supported by the record, and defer to the court's credibility determinations. We accord great weight to this function of the hearing judge because he is in the position to observe and rule upon the credibility of the witnesses and the parties who appear before him. Relying upon his unique posture, we will not overrule [the trial court's] findings if they are supported by competent evidence.

In re R.P., 957 A.2d 1205, 1211 (Pa. Super. 2008) (citations and quotation marks omitted).

Our Supreme Court stated that:

A court is empowered by 42 Pa.C.S. § 6341(a) and (c) to make a finding that a child is dependent if the child meets the statutory definition by clear and convincing evidence. If the court finds that the child is dependent, then the court may make an appropriate disposition of the child to protect the child's physical, mental and moral welfare, including allowing the child to remain with the parents subject to supervision, transferring temporary legal custody to a relative or a private or public agency, or transferring custody to the juvenile court of another state. 42 Pa.C.S. § 6351(a).

In re M.L., 757 A.2d 849, 850-51 (Pa. 2000).

² In Mother's "Supplemental Matters Complained of on Appeal," Mother raises the issues that "[t]he trial court erred when it denied Mother's right to a fair hearing[.]" and that "[t]he trial court erred when it limited Mother's visitation." (Supplemental Matters, 5/14/12, at unnumbered pages 4-5 ¶¶ 6-7). Mother did not set forth or suggest these issues in her Statement of Questions Involved in her brief. (**See** Mother's Brief, at 3). Therefore, these issues are waived. **See Krebs v. United Ref. Co.**, 893 A.2d 776, 797 (Pa. Super. 2006) (stating that any issue not set forth in or suggested by an appellate brief's Statement of Questions Involved is deemed waived).

To adjudicate a child dependent, a trial court must determine that the child:

is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals. A determination that there is a lack of proper parental care or control may be based upon evidence of conduct by the parent, guardian or other custodian that places the health, safety or welfare of the child at risk[.]

42 Pa.C.S.A. § 6302. "The burden of proof in a dependency proceeding is on the petitioner to demonstrate by clear and convincing evidence that a child meets that statutory definition of dependency." *In re G. (Appeal of S.S.)*, 845 A.2d 870, 872 (Pa. Super. 2004).

Even after a child has been adjudicated dependent, however, a court may not separate that child from his or her parent unless it finds that the separation is clearly necessary. Such necessity is implicated where the welfare of the child demands that he [or she] be taken from his [or her] parents' custody.

Id. at 873 (citations omitted) (brackets in original).

Mother argues that the trial court erred and abused its discretion in finding that DHS demonstrated by clear and convincing evidence that Child was dependent. (*See* Mother's Brief, at 9). The trial court determined that Child's welfare demanded the removal of Child from Mother's home. (Trial Court Opinion, 5/31/12, at 12). The trial court heard testimony that Mother was working toward addressing her mental health and substance issues. (*Id.* at 8). However, the trial court found that Mother was "without the present ability to care for Child." (*Id.*). Ms. Bolds testified that she was

concerned about the safety of Child if she remained with Mother, and that Mother could not perform her parental responsibilities. (N.T., 3/19/12, at 8). Additionally, Mother admitted she was formerly a heroin and cocaine addict. (*Id.* at 59). Mother was on a methadone maintenance program to address her substance issues. (*Id.* at 59-60). Mother tested negative for methadone on March 9, 2012. (*Id.* at 62). The trial court did not accept Mother's explanation for testing negative for methadone. (Trial Ct. Op., 5/31/12, at 9).

Moreover, Mother admitted that she is bipolar. (N.T., 3/19/12, at 63). Ms. Bolds testified that, with respect to Mother's mental health, "she comes and goes," and that "[t]here are times when she is drowsy and sometimes when she is not." (*Id.* at 9). The trial court found that Mother also tested negative for her prescription to address her bipolar condition, and that Mother offered no explanation why she tested negative for the prescribed medications. (Trial Ct. Op., 5/31/12, at 9). Furthermore, the trial court found that "Mother's instability and non-compliance with her mental health and substance abuse treatment created a danger to [C]hild." (*Id.* at 10).

After careful review of the record, we find that competent evidence supports the trial court's determination that Child is dependent, and that placement of Child with DHS is warranted and appropriate. Although Mother had the desire to care for Child, the trial court concluded that Mother was not able to provide the proper care Child needed due to her unresolved mental health and substance abuse problems. Therefore, the trial court did

not abuse its discretion when competent evidence supported the conclusion that Child's welfare was at risk with Mother.

Next, Mother argues that the trial court erred and abused its discretion by placing the burden of proof on her. (**See** Mother's Brief, at 14). Mother contends that the trial court faulted Mother for failing to produce evidence. DHS presented testimony of Ms. Bolds, who testified that she investigated Mother after receiving a report that Mother was "very lethargic" and was seen pushing a stroller with Child in it into a wall. (N.T., 3/19/12, at 4-5). Ms. Bolds testified that, when she investigated, Mother appeared to be "very disoriented" and had "trouble keeping her eyes open." (**Id.** at 5). Ms. Bolds also testified that Mother "comes and goes," and that Mother's state of mind is not consistent. (**Id.** at 9). The trial court found the testimony of Ms. Bolds to be credible.

Mother presented the testimony of Ms. Mock, Ms. Spell, and herself. The trial court did not find the testimony of Ms. Mock, Ms. Spell, and Mother to be credible. (Trial Ct. Op., 5/31/12, at 9). The trial court found that Ms. Mock and Ms. Spell did not have "a sufficient basis to testify as to whether Mother was compliant with her mental health and substance abuse treatment." (**Id.**). The trial court also found that Ms. Mock and Ms. Spell "were advocates for Mother [and] turned a blind eye to evidence of her non-compliance." (**Id.**). Our standard of review does not permit this Court to re-find facts, re-weigh the evidence, or to impeach the credibility determinations of the trial court, absent an abuse of discretion. **See In re**

R.P., supra at 1211. DHS had the burden, and we find no abuse of discretion by the trial court.

Lastly, Mother argues that the trial court erred and abused its discretion in finding that DHS made reasonable efforts to prevent or eliminate the need for the removal of Child from Mother's home. (**See** Mother's Brief, at 16). The trial court "found that DHS made reasonable efforts to prevent removal and that [the trial court] considered alternatives before ordering removal." (Trial Ct. Op., 5/31/12, at 11). Ms. Bolds testified that Mother did not have anyone besides the shelter care workers to help her. (N.T., 3/19/12, at 9). When Ms. Bolds further inquired, Mother told her that the only family that would be willing to help lived six hours away in Springboro, Pennsylvania. (**Id.** at 9). The trial court did "not find this to be a feasible alternative to removal." (Trial Ct. Op., 5/31/12, at 11). We find that the trial court did not err in finding that DHS had made reasonable efforts to prevent or eliminate the need for the removal of Child from Mother's home.

Accordingly, we affirm the trial court's order adjudicating Child dependent and ordering that Child remain in foster care.

Order affirmed.