

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: Y.M.-V., A MINOR	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
APPEAL OF: R.G., MATERNAL	:	
GRANDMOTHER	:	
	:	
	:	
	:	No. 1197 MDA 2012

Appeal from the Order entered May 31, 2012, in the Court of Common Pleas of York County, Juvenile Division, at No. CP-67-DP-0000062-2012

BEFORE: BOWES, GANTMAN, and OLSON, JJ.

MEMORANDUM BY OLSON, J.: Filed: February 25, 2013

Appellant, R.G., (“Maternal Grandmother”), who is the maternal grandmother of the subject five-year-old, female child, Y.M.-V. (“Child”), appeals the order of the trial court, entered on May 31, 2012, which adjudicated Child dependent under section 6302 of the Juvenile Act, 42 Pa.C.S.A. § 6302, and placed Child with her maternal aunt, I.G., (“Aunt”), who is Maternal Grandmother’s daughter, pursuant to section 6351 of the Juvenile Act. We affirm.

In its statement in lieu of an opinion pursuant to Pa.R.A.P. 1925(a), the trial court set forth the factual background and procedural history of this appeal as follows.

The proceedings were held on May 31, 2012[,] as a result of a petition for adjudication of dependency of the minor, with aggravated circumstances, filed by the York County Office of

Children, Youth and Families[("YCOCYF")]. The minor child's mother[, O.L.V.-G. ("Mother"), who was pregnant,] was allegedly murdered by the minor child's [f]ather[, W.G.M. ("Father")]. Father has been incarcerated and is awaiting trial on charges, including murder in the first degree, in which the death penalty is sought. As [a] result of those circumstances, the [trial court] had no difficulty finding by clear and convincing evidence that the child was without proper parental care and control[,] and was dependent. In fact, counsel for the father, counsel for [Maternal] Grandmother, and the Guardian ad litem for the child[,] all stipulated that the minor child was dependent. At issue was whether the child would be placed with or [sic] [Maternal] Grandmother or Aunt. Accordingly, a hearing was held and testimony was taken from [Maternal] Grandmother and Aunt. Additionally, Father requested through counsel that custody be placed with the aunt, rather than [Maternal] Grandmother.

Statement of Lower Court Pursuant to Pa.R.A.P. 1925(a), 7/25/12, at 2.

On May 31, 2012, the trial court entered an order in which it adjudicated Child dependent, and placed Child with Aunt. On June 28, 2012, the trial court granted the request of Maternal Grandmother's trial counsel, Gregory E. Gettle, to withdraw his appearance. On June 29, 2012, present counsel, Jeanne B. Costopoulos, entered her appearance on behalf of Maternal Grandmother. Maternal Grandmother filed a motion for reconsideration in the trial court on June 29, 2012. She also filed a notice of appeal and a Concise Statement of Errors Complained of on Appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b) on that same date. In its statement in lieu of an opinion pursuant to Pa.R.A.P. 1925(a), the trial court noted that Maternal Grandmother filed a complaint in custody simultaneously with her notice of appeal and Concise Statement of Errors. **See** Statement of Lower

Court Pursuant to Pa.R.A.P. 1925(a), 7/25/12, at 1-2. The trial court did not rule on the motion for reconsideration or the custody complaint.

In her brief on appeal, Maternal Grandmother raises one issue, as follows:

Whether [Child] should not have been adjudicated dependent[,] even though she was without her biological parents because her [M]aternal [G]randmother[,] who had provided care for [Child] since birth[,] was ready, willing, and able to immediately assume custody of the [Child,] and was the only party to have come forth who had standing to maintain primary physical and legal custody pursuant to the Custody Act?

Maternal Grandmother's Brief, at 5.

Our Supreme Court set forth our standard of review for dependency cases as follows:

[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).

Initially, however, we note that, "arguments which are not appropriately developed are waived. Arguments not appropriately developed include those where the party has failed to cite any authority in support of a contention." ***Lackner v. Glosser***, 892 A.2d 21, 29-30 (Pa. Super. 2006) (internal citations omitted). After review of the certified record and Maternal Grandmother's brief, we hold that Maternal Grandmother has

waived her challenge to the trial court's adjudication of Child as dependent, and its determination that Child should be placed with Aunt.

Specifically, Maternal Grandmother argues that the trial court abused its discretion in adjudicating Child dependent and giving custody to Aunt, because Maternal Grandmother had a right to primary physical custody under the Custody Act, and no other party with standing under the Custody Act sought custody rights with regard to Child. Maternal Grandmother alleges that her standing to seek primary physical custody of Child under the Custody Act should have prevented the YCOCYF from obtaining a dependency determination or from considering placing Child with anyone who did not have standing under the Custody Act. Maternal Grandmother asserts that the trial court erred in adjudicating Child dependent, because Maternal Grandmother was ready, willing, and able to immediately assume custody of the Child, and was the only party to come forth who had standing to maintain primary physical and legal custody pursuant to the Custody Act.

Maternal Grandmother, however, confuses arguments relevant to determinations made under the Custody Act, with those made under the Juvenile Act. The order appealed from in this matter is the trial court's determination of dependency under the Juvenile Act, not the Custody Act. Maternal Grandmother, however, presents arguments and discussions on her standing to seek custody under the Custody Act, and does not set forth any discussion of the provisions of the Juvenile Act and the case law governing

determinations of dependency and the placement of a dependent child. **See** 42 Pa.C.S.A. §§ 6302 and 6351. Having provided no basis to challenge the trial court's determination with regard to the Juvenile Act, Maternal Grandmother's arguments are waived.¹

Moreover, the Pennsylvania Rules of Appellate Procedure provide that issues not raised in the trial court cannot be raised for the first time on appeal. Pa.R.A.P. 302; **R.P. v. L.P.**, 957 A.2d 1205, 1222 (Pa. Super. 2008) (issues raised for the first time on appeal are waived and cannot be considered). In addition, the Supreme Court has held that the Concise Statement of Errors Complained of on Appeal cannot be used to raise a claim for the first time on appeal. **Steiner v. Markel**, 986 A.2d 1253, 1257 (Pa. 2009).

In this matter, the counsel for YCOCYF stated on the record at the hearing on the dependency petition that there was no issue as to dependency, and the counsel for Father agreed. N.T., 5/31/, at 4-5. The trial court orally adjudicated Child dependent on the record, without any objection from any counsel. **Id.** at 10-11. The trial court stated that the

¹ We observe that YCOCYF requests this Court to dismiss Maternal Grandmother's appeal because she lacks standing in the dependency proceedings, and is part of the proceedings strictly as a potential placement resource. **See** YCOCYF's Brief, at 14. While Maternal Grandmother may lack standing as a party in the dependency proceedings, the trial court has not made any factual determinations to enable us to review that issue and render a legal determination. However, as we have concluded that Maternal Grandmother waived her issues on appeal, we need not remand the matter to the trial court on the issue of her standing in the dependency proceedings.

basis for the dependency adjudication could not be clearer. *Id.* Trial counsel for Maternal Grandmother, Attorney Gregory Gettle, did not object. Thus, Maternal Grandmother waived any objection to the adjudication of Child by her failure to preserve the issue in the trial court, as well.

Furthermore, had Maternal Grandmother not waived her issue on appeal, we would find no merit to her argument in any event. Dependency matters are governed by the Juvenile Act, 42 Pa.C.S.A. §§ 6301-6364 ("Act"). Section 6302 of the Juvenile Act defines "dependent child" as follows:

"Dependent child." A child who:

(1) 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, including evidence of the parent's, guardian's or other custodian's use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk.

* * *

(4) is without a parent, guardian, or other custodian[.]

* * *

42 Pa.C.S.A. § 6302.

Further, we have stated:

[t]he 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.

...

* * *

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.”

In re G., T., 845 A.2d 870, 872-873 (Pa. Super. 2004) (quotations and citations omitted).

Dependency must be proven by clear and convincing evidence. *In re D.A.*, 801 A.2d 614, 617 (Pa. Super. 2002) (*en banc*). “Clear and convincing evidence” is defined as that evidence “that is so clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conviction, without hesitance, of the truth of the precise facts in issue.” *In re J.L.C.*, 837 A.2d 1247, 1251 (Pa. Super. 2003) (quotation marks omitted).

The trial court found Child dependent based on the absence of both parents from her life. **See** 42 Pa.C.S.A. § 6302(4). In its order dated May 31, 2012, the trial court stated as follows:

The circumstances could not be any more tragic nor could they be any more clear. The father is currently incarcerated without bail with conditions of no contact with the minor child on an allegation that he has caused the death of the mother. Obviously, that is why she is not here and the unborn child to the mother [is also not here]. There is no clearer definition of a child that is dependent than one that is without a parent.

Father agrees with, under the circumstances, the Agency's recommendation[,] and I assume the guardian for the child that she be adjudicated dependent under these circumstances both by agreement and by clear and convincing evidence, based on the simple fact of the absence of both parents.

Accordingly, we adjudicate her dependent.

Trial Court Order, 5/31/12, at 2. There is competent, clear and convincing evidence in the record that would support the trial court's adjudication of dependency. *In re R.J.T.*, 9 A.3d at 1190. Thus, we could not alter the trial court's adjudication, even if Maternal Grandmother had not waived the issue.

Next, at the hearing on YCOCYF's dependency petition, the trial court addressed the disposition of Child and the placement with regard to Aunt and Maternal Grandmother. *Id.* at 6-7. Both Aunt and Maternal Grandmother testified at the hearing.

Regarding the disposition of a dependent child, section 6351 of the Juvenile Act provides as follows.

§ 6351. Disposition of dependent child

(a) General rule.—If the child is found to be a dependent child the court may make any of the following orders of disposition best suited to the safety, protection and physical, mental, and moral welfare of the child:

- (1) Permit the child to remain with his parents, guardian, or other custodian, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child.

(2) Subject to conditions and limitations as the court prescribes, transfer temporary legal custody to any of the following:

(i) Any individual resident within or without this Commonwealth, including any relative, who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child.

(ii) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child.

(iii) A public agency authorized by law to receive and provide care for the child.

(2.1) Subject to conditions and limitations as the court prescribes, transfer permanent legal custody to an individual resident in or outside this Commonwealth, including any relative who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child. A court order under this paragraph may set forth the temporary visitation rights of the parents. The court shall refer issues related to support and continuing visitation by the parent to the section of the court of common pleas that regularly determines support and visitation.

* * *

42 Pa.C.S.A. § 6351(a).

Further, section 6351(e) of the Juvenile Act provides in pertinent part:

(e) Permanency hearings.—

(1) [t]he court shall conduct a permanency hearing for the purpose of determining or reviewing the permanency plan of the child, the date by which the goal of permanency for the child might be achieved and whether placement continues to be best suited to the safety,

protection and physical, mental and moral welfare of the child. In any permanency hearing held with respect to the child, the court shall consult with the child regarding the child's permanency plan in a manner appropriate to the child's age and maturity. . . .

(2) If the county agency or the child's attorney alleges the existence of aggravated circumstances and the court determines that the child has been adjudicated dependent, the court shall then determine if aggravated circumstances exist. If the court finds from clear and convincing evidence that aggravated circumstances exist, the court shall determine whether or not reasonable efforts to prevent or eliminate the need for removing the child from the child's parent, guardian or custodian or to preserve and reunify the family shall be made or continue to be made and schedule a hearing as provided in paragraph (3).

(3) The court shall conduct permanency hearings as follows:

(i) Within six months of:

(A) the date of the child's removal from the child's parent, guardian or custodian for placement under section 6324 (relating to taking into custody) or 6332 or pursuant to a transfer of temporary legal custody or other disposition under subsection (a)(2), whichever is the earliest; or

(B) each previous permanency hearing until the child is returned to the child's parent, guardian or custodian or removed from the jurisdiction of the court.

(ii) Within 30 days of:

(A) an adjudication of dependency at which the court 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;

(B) a permanency hearing at which the court 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 and the permanency plan for the child is incomplete or inconsistent with the court's determination.

(C) an allegation that aggravated circumstances exist regarding a child who has been adjudicated dependent, filed under section 6334(b) (relating to petition); or

(D) a petition alleging that the hearing is necessary to protect the safety or physical, mental or moral welfare of a dependent child.

42 Pa.C.S.A. § 6351(e).

Regarding permanency, sections 6351(f) and (f.1), and (g) provide:

(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.

(3) If and when the child will be placed with a legal custodian in cases where return to the child's parent, guardian or custodian or being placed for adoption is not best suited to the safety, protection and physical, mental and moral welfare of the child.

(4) If and when the child will be placed with a fit and willing relative in cases where return to the child's parent, guardian or custodian, being placed for adoption or being placed with a legal custodian is not best suited to the safety, protection and physical, mental and moral welfare of the child.

(5) If and when the child will be placed in another living arrangement intended to be permanent in nature which is approved by the court in cases where the county agency has documented a compelling reason that it would not be best suited to the safety, protection and physical, mental and moral welfare of the child to be returned to the child's parent, guardian or custodian, to be placed for adoption, to be placed with a legal custodian or to be placed with a fit and willing relative.

(f.2) Evidence. – Evidence of conduct by the parent that places the health, safety or welfare of the child at risk, including evidence of the use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk, shall be presented to the court by the county agency or any other party at any disposition or permanency hearing whether or not the conduct was the basis for the determination of dependency.

(g) Court order.— On the basis of the determination made under subsection (f.1), the court shall order the continuation,

modification or termination of placement or other disposition which is best suited to the safety, protection and physical, mental and moral welfare of the child.

* * *

42 Pa.C.S.A. § 6351.

The trial court made the following findings of fact from the testimony of Aunt and Maternal Grandmother:

With respect to the two interested persons, the following facts were determined: [Aunt] resides . . . in the [C]ity of York. She is the maternal aunt of the subject child, who is five years of age. She testified that she had daily contact with her sister prior to her death, as well as the minor child. She resides with her two daughters, [L.], age 7, and [A.], age 12. She is married but separated from her husband, who resides in New Jersey. The minor child shares a bedroom with her cousin[, L.]. She has been residing with Aunt since the death of the mother on March 30[,] as an emergency caregiver. The minor child gets along well with her cousins because they have grown up together. Aunt works, but her work schedule is flexible, permitting her to take the child to school along with her other children. She has another sister who will help her with child care. [Maternal] Grandmother advised the court that if she does not get custody, she will not assist Aunt with child care.

Aunt testified the children have rules and structure in her house. They have chores and they engage in school activities. Aunt is also a volunteer at the school and interacts frequently with the children both at home and in school. She emphasizes academics and hopes for the children to attend college. She takes the minor child to the JCC for swimming, the gym, drawing and painting classes. She takes the child to therapy for grief counseling on Tuesdays at three o'clock at the agency for one hour. She has never missed any appointments at the agency on behalf of the child. She has no prior criminal history, and has not previously been involved with any child services agency. Her own children have no truancy issues and do well academically. She has a valid Pennsylvania driver's license and owns a motor vehicle. She was willing to work with the rest of the family to design an appropriate custody schedule so that the minor child

would not lose contact with her grandmother and aunts. She is 39 years old and is in good health. Grandmother and Aunt had previously resided together.

[Maternal] Grandmother resides . . . [in] York[,] PA. She is 68 years old and will be 69 [in October of 2012]. She is on medication for high blood pressure. She testified that historically she would provide care for the subject child on a daily basis when her mother went to work. Her son, [J.G.], previously resided with her. She originally testified that her son no longer resides there, however, it was later clarified that he does reside there, but will be moving to Boston. Her son may have a significant criminal history that would present issues pursuant to [section] 5329 [of the Juvenile Act,] and the [trial court] has concerns as to whether [J.G.'s] imminent move to Boston is a fiction. Furthermore, [Maternal] Grandmother has not been able to take the child to therapy on all occasions[,] and relies upon transportation to be provided by others.

Ultimately, [Maternal] Grandmother objects to Aunt raising the child because [Maternal] Grandmother believes that Aunt doesn't really love the child. [Maternal] Grandmother laughed in court when Aunt testified that she loved the minor child. Both homes were investigated by the agency and neither was felt to be inappropriate. There was some suggestion at the child's last therapy session that the therapist believes [Maternal] [G]randmother was coaching the child regarding her preferences. Based on the above facts, the [trial court] determined [A]unt to be the preferable placement for the minor child.

Statement of Lower Court Pursuant to Pa.R.A.P. 1925(a), 7/25/12, at 2-5.

Maternal Grandmother is seeking for this Court to change the trial court's decision as to the disposition of Child. As we find that there is competent evidence in the record to support the trial court's determination, we may not do so. *In re R.J.T.*, 9 A.3d at 1190.²

² We observe that, to the extent that [Maternal] Grandmother is seeking custody of Child under the Custody Act, the trial court has not ruled on the

Accordingly, having thoroughly reviewed the record, the briefs of the parties on this matter, and the controlling case law, had Maternal Grandmother not waived her issues on appeal, we would have found the issues lack merit. We, therefore, affirm the trial court's order.

Order affirmed.

custody matter. **See** Trial Court Opinion, 7/25/12, at 1. Thus, the issue of the custody of Child is not yet before us. We have confined our review, necessarily, to the trial court's adjudication of dependency under the Juvenile Act, and its consideration of Maternal Grandmother as a placement resource for Child. We note that the trial court did not foreclose the possibility of Maternal Grandmother having standing in a custody action to seek custody of Child, nor did it preclude Maternal Grandmother from receiving notice of future proceedings in the dependency matter involving Child. ***In re L.C., II***, 900 A.2d 378, 382-383 (Pa. Super. 2006); ***In re D.S.***, 979 A.2d 905 (Pa. Super. 2009); ***In re D.M.***, 995 A.2d 371, 378 (Pa. Super. 2010).