

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

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

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: J.B.

No. 1229 MDA 2012

Appeal from the Order Entered June 22, 2012
In the Court of Common Pleas of Dauphin County
Criminal Division at No(s): CP-22-DP-0000223-2009

IN THE INTEREST OF: N.R., A MINOR

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: J.B.

No. 1230 MDA 2012

Appeal from the Order Entered June 22, 2012
In the Court of Common Pleas of Dauphin County
Criminal Division at No(s): CP-22-DP-0000072-2009

BEFORE: BOWES, J., OLSON, J., and WECHT, J.

MEMORANDUM BY WECHT, J.:

Filed: March 18, 2013

J.B. ("Mother") appeals from the permanency review orders in the Court of Common Pleas of Dauphin County, which changed the permanency

goal to adoption with respect to her son, N.R., born in February of 2005, and her daughter, D.M., born in December of 2009.¹ We affirm.²

The trial court's opinion provides a thorough account of the facts and procedural history:

CYS first became involved in this matter in February of 2009 when CYS received a referral in regards to Mother being in a domestic violence situation in which N.R. was exposed. (N.T., 6). At this time, Mother was open to voluntary services from CYS in June of 2009 and N.R. was under Court Order for protective supervision. (N.T., 6-7). In October of 2009 N.R. was put in placement after a referral to CYS indicated that Mother was residing in a home that had no heat or hot water and that was infested with bed bugs. (N.T., 8). At approximately the same time as this referral, Mother moved to live with her grandmother and did not notify CYS of her move. (N.T., 8). CYS thereafter filed a pick-up order for N.R. in order to assure his safety and for Mother failing to provide stable housing over the five-month period in violation of the goal set in the June 2009 dependency adjudication. (NT., 8). Parent Works services were offered to Mother beginning in October and November of 2009 to effectuate reunification. (N.T., 9). However[,] this service was later closed because Mother did not attend the visits. (N.T., 10).

¹ In addition, three of Mother's other children live with her. Notes of Testimony ("N.T."), 6/14/12, at 11. Two of the children previously lived with their grandmother, but were returned to Mother's care when the grandmother passed away. *Id.* Mother's youngest child, who was born in 2011, also lives with her. *Id.* These three children are not a part of this appeal.

² With respect to N.R.'s father, A.R., and D.M.'s father, E.M., CYS and the trial court determined that a goal change to adoption was also proper. A.R. and E.M. are not parties to this appeal. Trial Court Opinion ("T.C.O."), 6/25/12, at 9.

CYS then referred Mother to Keystone Family Preservation and Reunification Services (Keystone) in February 2009. (N.T., 10). Keystone's services were provided to Mother from February 2, 2009 to February 15, 2010. (N.T., 76). Michelle Curran, the director of Keystone was the direct supervisor of the primary practitioner serving Mother and the Children. (N.T., 76). In February of 2010, Keystone closed its services to Mother because she was not making significant progress. (N.T., 77). Keystone set the following goals for Mother: (1) obtain and maintain safe and stable housing; (2) obtain and maintain financial stability, including employment; (3) address the mental health needs of both herself and her children; (4) and parent/child interactions. (N.T., 78). There was also a goal stated for D.M.'s father, [E.M.]. [E.M.] was required to attend sex-offender counseling due to N.R.'s allegations that either [A.R.], N.R.'s father, or [E.M.] sexually abused him. (N.T., 78).

Ms. Curran testified that the only goal Mother made any significant progress on was related to obtaining safe and stable housing. (N.T., 78). Mother had acquired a lease through Cumberland County Housing on or around January 31, 2010 for a three-bedroom apartment unit that had been deemed safe. (N.T., 78). Mother did not make progress with her employment goal as she worked fluctuating hours at a Days Inn from July 2009 and had sporadic employment. (N.T., 78-79). With respect to the mental health goals, Mother was not engaged in the mental health needs of herself or N.R.'s mental health needs. (N.T., 79). Initially[,] Mother did not engage in N.R.'s treatment until several months into Keystone's services. (N.T., 80). N.R. also had inpatient mental health hospitalization throughout Keystone's services of which Mother was present for only one. (N.T., 80). During one inpatient mental health hospitalization, Mother left N.R. at the hospital before his treatment was complete. (N.T., 80). Also during N.R.'s two separate hospitalizations, N.R. received sub-par care to which [*sic*] Mother failed to follow through with Keystone and CYS's recommendation in filing a grievance with the hospital. (N.T., 80). Keystone also closed its services to Mother because of parent/child interaction. Observations were made during visits from Keystone workers that demonstrated [a] poor parent/child relationship which included many outbursts from N.R. that entailed physical and verbal aggression. (N.T., 82). N.R. also reported to Keystone that he witnessed inappropriate physical actions between [E.M.] and Mother. (N.T., 82).

Keystone conducted an intake and closing evaluation of Mother as well in seven different areas. Ms. [Curran] testified that Mother only showed marked improvement in her environment which entailed housing, finances, transportation and safety in the community. (N.T., 84). In all other areas, Mother had a decrease in scores or they remained the same. (N.T., 84). The decrease in scores was directly tied to many areas that Keystone tried to address. (N.T., 84-85). This lack of overall improvement factored into Keystone's decision to close its services to Mother. (N.T., 85).

In April of 2011, Mother was referred for a psychological evaluation with Dr. Howard S. Rosen. (N.T., 11). At this time, Mother was pregnant with her fifth child in Cumberland County to which [*sic*] CYS sent a letter to the Cumberland County Housing Authority to help her acquire stable housing there. (N.T., 11). CYS also made a referral to Cumberland County Children and Youth Services to provide Mother with in-home support. (N.T., 11). Mother now had three children living with her at this time. (N.T., 11). Mother had her two other children returned to her from her mother who passed away in Washington State in addition to her youngest child being born. (N.T., 11).

Dr. Rosen, a psychologist at Hempfield Behavioral Health, conducted two psychological evaluations on Mother that were comprehensive, including clinical interviews, [and] collateral contacts with child welfare workers and family preservation workers. (N.T., 141). As part of his examination, Dr. Rosen administered intelligence testing, personality testing, an assessment on her parenting attitudes and a mental status exam. (N.T., 141). Dr. Rosen concluded that Mother scored low in his tests and that her parenting would not improve much until she addressed her personality issues surrounding her ability to be more empathetic. (N.T., 158-59). He further explained that Mother may be able to learn a very superficial technique or strategy but that she does not fully embrace it because she does not know how to and it may not be consistent with her attitudes towards childrearing. (N.T., 149). In conclusion, Dr. Rosen testified that her personality must be addressed before trying to improve her parenting. (N.T., 149).

A parenting assessment was conducted on Mother in October of 2011. Carianne Bardine[,] a CYS parent educator, conducted a parenting assessment of Mother's ability to be reunited with N.R.

and D.M. using the North Carolina Family Assessment Scale (NCFAS). (N.T., 117-19). Ms. Bardine assessed Mother in the following domains: environment, parental capabilities, family interaction, family safety and child well-being. (N.T., 119).

In environment, Mother received a low score because she did not pay attention to D.M.'s special food needs during visits. (N.T., 120). Mother would often bring foods that D.M. was allergic to and did not look at the labels on the foods which put D.M. at risk for an allergic reaction. (N.T., 120). In parenting, Mother received a score of negative two for supervising her children because she left her children unattended with [E.M.] who Mother had identified as an unfit caretaker.¹ In disciplinary practices Mother received a negative one for allegedly slapping one of her children across the face and posterior. (N.T., 121). Mother also did not effectively use timeouts with her children. (N.T., 121). Mother did receive a positive rating for Enrichment Opportunities because she is supportive of all her children in school. (N.T., 122). She also received a positive score for her mental health, physical health, and her drug and alcohol use. (N.T., 122). In bonding, Mother received a positive one because it is clear that her children love her but that her bond with her children is not that strong. (N.T., 122). With respect to safety, there were concerns with Mother living with [E.M.,] who had a history of domestic violence towards Mother. (N.T., 125). For Child Well-Being, Ms. Bardine expressed concern over Mother's ability to care for N.R.[,] who has extreme acting-out behaviors[,] in addition to caring for her other children who do not have special needs. (N.T., 126). Finally, Ms. Bardine testified as to the Caregiver and Child Ambivalence portion of the test to which she asserted that although she has verbally expressed that she wants her children back, her actions indicate otherwise by letting [E.M.] return to the home and her intention to deceive Ms. Bardine. (N.T., 126). In one particular instance during Ms. Bardine's observation, Mother's 12-year old daughter ["L."] came home and L. said that she was going to do her homework. (N.T., 128). Ms. Bardine and Mother praised [L.] for this but [L.] responded, "Oh. I'm just doing it because you're here." (N.T., 128). It was also noted that the Children view their foster home as their home and that they do not want to leave their foster home. (N.T., 126).

¹ The range for scoring on the NCFAS is from negative three to positive two. (N.T., 120). Positive two indicates a

fair strength and a negative three indicates a serious problem. (N.T., 120).

Subsequently, Pressley Ridge services were provided to Mother. Ms. Shalawn James is a family therapist at Pressley Ridge that was part of the reunification team for Mother. (N.T., 90). Pressley Ridge's services began on February 8, 2012 and closed services on May 30, 2012. (N.T., 90). Pressley Ridge's services were closed because CYS requested that they no longer conduct reunification services due to a goal change. (N.T., 91). When Pressley Ridge first opened services for Mother, it set goals for Mother and [E.M.] as follows: (1) improve their communication to a point where interfamilial conflict and dysfunction were significantly reduced; (2) where Mother and [E.M.] could work together as a team to make clear and firm decisions regarding discipline and other parenting issues; (3) develop and utilize a budget and the skills to maintain a budget; and (4) attend all medical and mental health appointments for both themselves and the Children. (N.T., 91).

During observation under Pressley Ridge's services, Ms. James testified that she witnessed petty fights last entire days between Mother and [E.M.]. (N.T., 92). In particular, Ms. James observed Mother and [E.M.] fighting an entire day because they could not decide where they would meet in an [a]isle of a grocery store. (N.T., 92). With respect to disciplining the Children, [E.M.] and Mother could not agree on disciplining D.M. Ms. James observed [E.M.] discipline D.M. and instruct her to sit down on their couch. When D.M. complied with [E.M.]'s direction, D.M. started playing while she was sitting down and [E.M.] continued to discipline her to stop having fun. (N.T., 95). Ms. James indicated this was improper discipline because he was enforcing further discipline that was not in his initial instruction to D.M. (N.T., 95). With respect to Mother's ability to budget, Ms. James testified that she was not able to develop a budget because the Pressley Ridge services were closed before a budget could be made. (N.T., 98). Ms. James further testified that Mother never made calls to prospective employers to follow up on jobs she applied for in contradiction to Ms. James' instruction. (N.T., 99). Additionally, Mother received several citations from the housing authority because of her house being overly cluttered and blocking exits to the home. (N.T., 101). Ms. James confirmed that Mother did eventually clean her home. (N.T., 101). In regard to Mother's goal of attending mental health appointments, Mother attended all medical and mental

health appointments. (N.T., 102). Finally, Ms. James testified as to [E.M.'s] sex-offender evaluation. [E.M.] refused to have a sex-offender evaluation done because he did not want to incur the \$325-to-\$375 fee. (N.T., 103).

It was elicited at the goal change hearing that Pressley Ridge's services were closed before giving adequate time for such services to be effective. (N.T., 113). However, Ms. James confirmed that even if enough time were given for the services to be rendered and even if Mother successfully achieved all four of the goals that reunification may still not have been appropriate. (N.T., 114-15).

In February of 2012, CYS made another referral for reunification and referred her for a family group conference to help identify family support. (N.T., 12). However, the family group conference did not happen because Mother did not have enough supportive people to attend the conference. (N.T., 12). The reunification service was closed in May of 2012 because CYS had decided to move forward with filing a petition to terminate parental rights and requesting a goal change to adoption. (N.T., 12).

Ms. [Stephanie] Corl[, a CYS caseworker,] testified that CYS was seeking the goal change to adoption because N.R. and D.M. had been in CYS's care for 32 months and 29 months, respectively, and CYS still had the following concerns: Mother's lack of employment or education, her lack of consistently attending N.R.'s mental health appointments and his medical appointments; her inability to set aside inappropriate relationships and her lack of structure in her home. (N.T., 13-14). As part of Mother's goals with CYS, she was to at least have a job or take classes at Kaplan Institute to complete her education. (N.T., 14). Mother has only been employed for six-to-eight months for the past 32 months N.R. has been in placement. (N.T., 14-15). With respect to Mother's educational opportunities she has failed to complete her classes at Kaplan Institute. (N.T., 15). Mother was also inattentive to N.R.'s mental health needs. In October of 2010, CYS set a goal for Mother to address N.R.'s mental health by keeping his appointments with the Pennsylvania Psychiatric Institute. (N.T., 16). Mother failed to attend most of the appointments with N.R. (N.T., 17). CYS also determined Mother to have inappropriate relationships due to the incidents of domestic violence she reported with [A.R.] and [E.M.]. (N.T., 18). Mother's

relationships with these men have been sporadic since 2009, alternating between living as a paramour with [A.R.] and [E.M.]. (N.T., 18-19). Mother's reports of domestic violence with these men occurred after placement of N.R. in 2010. (N.T., 18-19). In total, Mother has reported approximately four incidents of domestic violence, [with] both [A.R.] and [E.M.]. (N.T., 20-21). CYS also indicated that Mother's home lacks structure. Ms. [Corl] testified that Mother does not have a routine in place for N.R. and that her supervision of D.M. is insufficient for a two-year old child. (N.T., 21). Mother's 12-year old daughter [L.] has been observed taking on the duties of a parent for Mother's younger children as Ms. [Corl] has observed Mother order [L.] to help N.R. with his homework even though [L.] had her own homework to complete. (N.T., 22). [L.] also intervenes in fights between her siblings and comforts Mother's youngest child when she is crying. (N.T., 22). Ms. Corl testified that based upon her observation of Mother and her interaction with the Children that Mother struggles to provide adequate supervision for all five of her children. (N.T., 23).

With respect to [A.R.] and [E.M.], CYS also determined that a goal change to adoption was also justified. [A.R.] has not had any contact with N.R. since September of 2011. (N.T., 27). [E.M.] has not made significant progress with his service plan either. (N.T., 28). [E.M.] indicated to Ms. [Corl] that he did not want any more visits with D.M. (N.T., 28). Additionally, [E.M.] did not complete a sex-offender program. (N.T., 29).

T.C.O., 7/25/12, at 2-9.

On June 5, 2012, CYS filed Motions for Change of Goal to Adoption with regard to N.R. and D.M. The trial court held a goal change hearing on June 14, 2012. By orders filed June 22, 2012, the trial court changed the permanency goals of N.R. and D.M. from reunification to adoption.

On July 2, 2012, Mother filed timely notices of appeal and concise statements of errors complained of on appeal pursuant to Pa.R.A.P.

1925(a)(2)(i) and (b). On July 25, 2012, the trial court filed a Pa.R.A.P. 1925(a) opinion. On July 27, 2012, we consolidated the cases *sua sponte*.

Mother presents a single issue for our review as to each child: "Did the trial court commit reversible error in granting a goal change to adoption?" Mother's brief at 5.³

We review Mother's appeal in accordance with the following principles:

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).

We have stated:

Placement of and custody issues pertaining to dependent children are controlled by the Juvenile Act [42 Pa.C.S. §§ 6301-65], which was amended in 1998 to conform to the federal Adoption and Safe Families Act ("ASFA"). The policy underlying these statutes is to prevent children from languishing indefinitely in foster care, with its inherent lack of permanency, normalcy, and long-term parental commitment. Consistent with this underlying policy, the 1998 amendments to the Juvenile Act, as required by the ASFA, place the focus of dependency

³ Mother's Brief is not paginated. When citing to Mother's Brief, we count the cover page as the first page and proceed in numerical order.

proceedings, including change of goal proceedings, on the child. Safety, permanency, and well-being of the child must take precedence over *all* other considerations, including the rights of the parents.

In re N.C., 909 A.2d 818, 823 (Pa. Super. 2006) (citations and footnotes omitted; emphasis in original).

In relevant part, the Juvenile Act mandates the following inquiries for the trial court in a goal change hearing:

(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.

* * *

- (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)-(5.1), (9); 42 Pa.C.S.A. §§ 6351(f.1)(1)-(2).

Mother argues that the trial court committed an abuse of discretion by granting the motion for change of goal from reunification to adoption.

Mother contends that she was nearly 100 percent compliant with all agency service objectives as of April 22, 2012, but that, less than one month later, CYS filed a motion for change of goal. Mother's Brief at 9. Mother also claims that she: maintained contact with N.R. and D.M. through visitation; maintained housing for over a year; cooperated with family-based therapy for her children in the home; completed a parenting class; attended all court hearings, CYS meetings, and treatment plan meetings; signed all release of information forms requested by CYS; informed the agency within 24 hours of any new contact information; and maintained weekly contact with her CYS caseworker. *Id.* at 6-7. Finally, Mother asserts that, following her psychological evaluation by Dr. Rosen in April of 2011 and 2012, Dr. Rosen determined that Mother needed personal therapy for her conditions and disorders. *Id.* at 9-10. However, Mother alleges that CYS never offered her any of the services that Dr. Rosen recommended in the reports he provided to CYS. *Id.* at 10.

After a review of the record, we conclude that the trial court correctly found that maintaining the goal of reunification would be inappropriate, based on the trial court's assessment of what is "best suited to the safety, protection and physical, mental and moral welfare of the child." *In re R.J.T.*, 9 A.3d 1179, 1190 (Pa. 2010)(citing 42 Pa.C.S.A. § 6351 (g)). The trial court found that Mother has had a service plan in place since 2009, and has been provided with many of the reunification services that CYS had at its disposal. T.C.O. at 11. Although Mother claims that she was 100 percent

compliant with her services, evidence adduced at trial reveals that she has been only partially compliant. *Id.* at 11-12. Many of the services that CYS provided to her had been closed as a result of noncompliance. *Id.* at 2-4. Mother did not maintain employment or education; did not attend N.R.'s medical appointments; did not end inappropriate relationships; and failed to maintain adequate structure and safety in her home. *Id.*

The trial court credited Dr. Rosen's testimony that Mother needed to have personal therapy to address her antisocial personality, and that Mother's lack of empathy ultimately thwarted the success of every service CYS provided. *Id.* at 11. The trial court found that Mother was presented with ample opportunities to address her mental health issues. *Id.* Keystone director Curran testified that one of the goals set for Mother was that Mother engage services for her own mental health needs, but that Mother never sought such services. *Id.* The trial court determined that Mother's reluctance to participate in her own mental health services "demonstrated that, even if Mother had been presented with the mental health services proposed by Dr. Rosen, Mother would not have benefitted from them." *Id.* at 11-12. Additionally, the court found that Mother "did not have an actual intent to engage in the services that were being provided for her." *Id.* at 12. Indeed, the trial court noted testimony from Ms. Bardine of CYS that Mother's oldest daughter, L., remarked that she was only doing her homework because Ms. Bardine was present. *Id.* at 12 (citing N.T. at 128).

N.R. was in placement for 32 months and D.M. was in placement for 29 months. *Id.* at 12. The trial court reasoned that these are significant amounts of time in the lives of a seven-year old and a two-year old. *Id.* The trial court held: “to further delay a stable home environment for these children for the chance that Mother eventually may address her personality disorder and become a fit parent is not best suited to the safety, protection and physical, mental and moral welfare of the Children.” *Id.* We agree.

The trial court properly considered N.R.’s and D.M.’s best interests in arriving at its decision. The court acted well within its discretion in changing N.R.’s and D.M.’s permanency goals to adoption. *See In re R.T.J*, 9 A.3d at 1190.

Orders affirmed. Jurisdiction relinquished.