

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN RE: D.P., A MINOR,

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: D.P., BIOLOGICAL MOTHER,

Appellant

No. 1337 WDA 2012

Appeal from the Order August 1, 2012  
In the Court of Common Pleas of Allegheny County  
Family Court at No(s): 1140-12

BEFORE: BOWES, LAZARUS, and COLVILLE,\* JJ.

MEMORANDUM BY BOWES, J.:

FILED: May 29, 2013

D.P. ("Mother") appeals the order of disposition entered after the juvenile court adjudicated her son, D.P., dependent.<sup>1</sup> We affirm.

On May 6, 2012, seven-year-old D.P. sexually assaulted a four-year-old child while both children were in Mother's care. N.T., 8/1/12, at 47; Trial Court Opinion, 8/1/12, at 1. Specifically, "Mother's paramour walked in on [D.P.] . . . engaging in sexual activity with [the] child [victim]." Trial Court Opinion, 8/1/12, at 1. Mother reported the incident to authorities.

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> While Mother purported to appeal from the order dismissing her private petition for dependency, the appeal lies from the order of disposition, which the juvenile court issued on the same date. **See *In re J.P.*** 832 A.2d 492, 495 (Pa.Super. 2003) ("dependency orders are appealable when there has been a determination of dependency and a disposition of the child has been ordered"); ***In the Interest of C.A.M.***, 399 A.2d 786, 787 (Pa.Super. 1979).

On May 11, 2012, Allegheny County Children and Youth Services ("CYS") filed a petition in the juvenile court alleging that D.P. was a dependent child as the term is defined in 42 Pa.C.S. § 6341 (Dependent Child) (1), relating to children lacking proper parental care and control. The juvenile court appointed a guardian *ad litem* ("GAL"), who subsequently filed a petition asserting identical grounds for dependency. On July 9, 2012, Mother filed with the juvenile court an application to file a private dependency petition pursuant to Pa.R.J.C.P. 1320. The juvenile court granted Mother's application two days later. Thereafter, on July 24, 2012, Mother filed that petition and invoked an alternate statutory definition of dependent child, one who disobeys a parent's lawful commands and is ungovernable. Specifically, Mother alleged that D.P. previously had engaged in similar sexual conduct with this victim on several occasions over a five-day period and threatened to hurt the victim if he told anyone about their encounters.

At the outset of the dependency hearing, the juvenile court dismissed the GAL's dependency petition as duplicative of the CYS petition. Next, following Mother's offer of proof, the juvenile court summarily dismissed Mother's petition. The court proffered the following reason for its decision:

In regard to mother's petition, even taking the fact that it would be truthful that those matters happened on more than one occasion, I do not feel they rise to the level of section 6 in regard to dependency, as section 6 requires that the child has some type of specific act or acts that are habitual in their nature, as well as the child being ungovernable. I do not agree that the

facts that have been stipulated to as well as the additional testimony that is proposed by [Mother] rise to that level.

There being no other facts, no other evidence to be submitted here today, mother's petition is hereby dismissed.

N.T., 8/1/12, at 10.

The only witness CYS presented during the evidentiary hearing was Eileen Retamal, the caseworker assigned to D.P. Ms. Retamal testified about D.P.'s involvement with the agency, the services that the agency is providing D.P. and his family, and Mother's satisfactory cooperation with the agency's demands. The following exchange occurred between the juvenile court and Mother's counsel at the close of CYS's case-in-chief:

The Court: Ms. Ramsey?

Ms. Ramsey: Your Honor, I guess I don't have any – it's my turn to present a case, is that where we're at here?

The Court: Yes, ma'am.

Ms. Ramsey: Okay. I understand the Court's ruling in the dismissal of my petition. I would just place an objection on the record to that ruling –

The Court: So noted.

Ms. Ramsey: -- as I've not had the opportunity to present my petition. I don't have any witnesses to offer at this time.

**Id.** at 37. Thereafter, the juvenile court granted CYS's petition and adjudicated D.P. dependent as lacking proper parental care or control. This timely appeal followed the juvenile court's dispositional order.<sup>2</sup>

Mother initially challenged both the juvenile court's finding of a lack of proper parental care or control and its decision to summarily dismiss her private petition invoking an alternative ground for adjudicating her son dependent. However, Mother asserts only the latter argument on appeal. Specifically, she asks, "Did the Trial Court misapply the law when it dismissed Appellant's subsection 6302(6) petition before the hearing set to

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<sup>2</sup> Mother's on-the-record objection was sufficient to preserve her challenge for appeal. The purpose of requiring a litigant to level an objection before the trial court in order to preserve an issue for appeal is to ensure that the trial court had an opportunity to address the issue in the first instance. **In re F.C. III**, 2 A.3d 1201, 1212 (Pa. 2010). "Related thereto, [our Supreme Court] explained in detail the importance of this preservation requirement as it advances the orderly and efficient use of our judicial resources. Finally, concepts of fairness and expense to the parties are implicated as well." **Id.** (citations omitted).

Herein, Mother preserved her objection to the juvenile court's summary dismissal of her private petition. As the forgoing excerpt from the evidentiary hearing reveals, Mother not only objected to the dismissal of her private petition, she also highlighted the fact that since the petition was dismissed without hearing, she was precluded from presenting any evidence to establish the ground for adjudicating D.P. a dependent child under the alternative statutory definition that she asserted. N.T., 8/1/12, at 37. The juvenile court had the opportunity to address the objection in the first instance, but it declined to do so. Thus, Mother's objection served the purpose of Rule 302. The juvenile court noted Mother's objection and did nothing to address the alleged error. Having raised the objection, Mother is not responsible for the juvenile court's inaction.

take evidence on the matter even began?” Mother’s brief at 7. For the reasons that follow, we answer Mother’s query in the negative.

We recently reiterated the appropriate standard of review 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.***, 608 Pa. 9, 9 A.3d 1179, 1190 (Pa. 2010) (citation omitted).

***In re A.B.***, 63 A.3d 345, 349 (Pa.Super. 2013).

The Juvenile Act provides several alternative definitions of “Dependent child[,]” including,

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;

. . . .

(6) has committed a specific act or acts of habitual disobedience of the reasonable and lawful commands of his parent, guardian or other custodian and who is ungovernable and found to be in need of care, treatment or supervision[.]

. . . .

42 Pa.C.S. § 6302.

The crux of Mother's complaint is that by dismissing her petition without a hearing, the juvenile court prevented Mother from establishing by clear and convincing evidence the grounds for adjudicating D.P. dependent based upon his disobedience. Mother argues that regardless of the juvenile court's finding of a lack of proper parental care and control, having granted Mother's application to file a private dependency petition, the court was required to examine whether D.P. could have been adjudicated dependent upon the alternative basis that she raised. Mother reasons that both grounds for adjudicating her son dependent are critical in determining the nature and extent of services that he needs and in determining the ultimate disposition of the juvenile proceedings. Thus, she requests that this Court remand so the juvenile court can perform "an earnest and categorical inquiry as to what facts exist to necessitate its intervention." Mother's brief at 14.

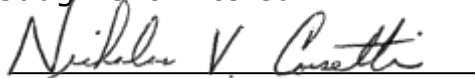
Unfortunately for Mother, no relief is due. At the outset, we observe that neither the averments in Mother's private petition for dependency nor the allegations leveled in her offer of proof during the dependency hearing established a *prima facie* claim of dependence under the sixth definition of a dependent child. Specifically, the record reveals that Mother failed to allege that she directed D.P. to stop the sexualized behavior and that D.P. ignored that directive. At most, Mother's allegations establish that D.P. repeatedly assaulted the victim over a five-day period and threatened to harm the victim if he informed anyone about their encounters. While this behavior is

patently repugnant and potentially grounds to adjudicate the child delinquent, it is not, *ipso facto*, evidence of disobedience. Stated simply, absent an allegation that D.P. disobeyed a reasonable and lawful command, Mother's private dependency petition was insufficient to adjudicate D.P. dependent under the definition she invoked. Accordingly, we do not believe the juvenile court erred in dismissing Mother's private dependency petition.

For all of the forgoing reasons, we affirm the juvenile court's dispositional order.

Judge Colville Concurrs in the Result.

Judgment Entered.

A handwritten signature in cursive script, reading "Nicholas V. Casatti", is written over a horizontal line.

Deputy Prothonotary

Date: May 29, 2013