

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37**

IN THE INTEREST OF: M.O., A MINOR : IN THE SUPERIOR COURT OF  
IN THE INTEREST OF: A.O., A MINOR : PENNSYLVANIA

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APPEAL OF: T.O., BIOLOGICAL FATHER : No. 1339 WDA 2012

Appeal from the Order entered August 3, 2012,  
Court of Common Pleas, Blair County,  
Juvenile Division at Nos. CP-07-DP-0000064-2010  
and CP-07-DP-0000065-2010

BEFORE: FORD ELLIOTT, P.J.E, BOWES and DONOHUE, JJ.

MEMORANDUM BY DONOHUE, J.:

Filed: March 5, 2013

In this dependency action, T.O. ("Father"), appeals from the trial court's orders entered on August 3, 2012, relating to his male child, M.O. (born March 2006), and female child, A.O. (born December 2007) (M.O. and A.O. will be referred collectively as "the Children"). The trial court's orders change the placement goal for the Children from reunification to permanent legal custody ("PLC"), and grant PLC to S.B., Children's maternal great-aunt ("Maternal Great-Aunt"). We affirm.

The basic factual and procedural background of this case is not in dispute. Father has been incarcerated since 2007, with the exception of the time-period between September 2011 and February 2012. Blair County Children Youth and Families ("CYF") involvement with the family began in November 2009, at which time the Children were under the care of T.A. ("Mother"). On July 19, 2010, pursuant to a voluntary plan, the Children

\*Retired Senior Judge assigned to the Superior Court.

were removed from Mother's care and placed with their maternal grandparents when Mother's substance abuse and mental health issues resulted in a lack of ability to supervise the Children. As a result of domestic violence and substance abuse in the maternal grandparents' home, however, on October 15, 2010 the Children were placed in foster care. On October 18, 2011, the Children were returned to Mother's care. On October 25, 2010, the trial court adjudicated the Children dependent. On January 28, 2012, the Children were again removed from Mother's care after Mother was found driving while under the influence with the Children in the car. The Children remained in foster care until August of 2012.

On March 30, 2012, CYF filed Motions for Permanency/Dispositional Review/Goal Change, with a request that the goal for the Children be changed to either adoption or PLC. Mother and Father both recommended family members as permanent resources for the Children. Mother offered Maternal Great-Aunt, who lives in South Dakota, while Father offered his mother, E.D. ("Paternal Grandmother"), who lives in the state of New York. After conducting evidentiary hearings, on August 3, 2012 the trial court changed the goal for the Children from reunification to PLC and granted PLC to Maternal Great-Aunt.

Father filed a timely notice of appeal, in which he raises the following two issues for our review:

1. Did the court err or abuse its discretion when it found that it was in the best interests of the Children to change the goal to permanent legal custodianship in favor of [Maternal Great-Aunt] where they never met [Maternal Great-Aunt], have never been to South Dakota, and moving the Children such a long distance will alienate Father and Father's family?
2. Did the court err or abuse its discretion when it failed to give proper weight to the Father's mother as a potential resource for the Children considering that the Children did have a bond with their grandmother and have been to her home in New York?

Father's Brief at 20.

Although set forth as two separate issues, Father essentially presents a single question for our consideration – namely, whether the trial court erred in granting PLC to Maternal Great-Aunt. In this regard, Father contends that the focus of CYF's efforts throughout the dependency proceedings was exclusively on Mother and her family. *Id.* at 23. Father argues the testimony at the evidentiary hearings did not reflect that permanent placement with the Maternal Great-Aunt in South Dakota was in the Children's best interests, since they have little familiarity with her and it would require them to move more than 1,000 miles from their home and other family members. *Id.* In contrast, Father argues that the Children are well acquainted with Paternal Grandmother and that she would provide a positive environment for them. *Id.*

Our standard of review of an order granting PLC is as follows:

When reviewing such a decision[,] we are bound by the facts as found by the trial court unless they are

not supported in the record. Furthermore, in a change of goal proceeding, the trial court must focus on the child and determine the goal in accordance with the child's best interest and not those of his or her parents.

At each review hearing concerning a child who has been adjudicated dependent and removed from the parental home, the trial court must consider: the continuing necessity for and appropriateness of the placement; the extent of compliance with the service plan developed for the child; the extent of progress made towards alleviating the circumstances which necessitated the original placement; the appropriateness and feasibility of the current placement goal for the child; and, a likely date by which the goal for the child might be achieved.

These statutory mandates clearly place the trial court's focus on the best interests of the child.

In addition[, a]lthough bound by the facts as found by the trial court and supported by the record, we are not bound by the trial court's inferences, deductions, and conclusions therefrom; we must exercise our independent judgment in reviewing the court's determination, as opposed to its findings of fact, and must order whatever right and justice dictate. We review for an abuse of discretion. Our scope of review, accordingly, is of the broadest possible nature. It is this Court's responsibility to ensure that the record represents a comprehensive inquiry and that the hearing judge has applied the appropriate legal principles to that record. Nevertheless, we accord great weight to the court's fact-finding function because the court is in the best position to observe and rule on the credibility of the parties and the witnesses.

*In re H.V.*, 37 A.3d 588, 593 (Pa. Super. 2012) (quoting *In re K.J.*, 27 A.3d 236, 241 (Pa. Super. 2011)).

Section 6351(f.1)(3) of the Juvenile Act authorizes a trial court to grant PLC if the trial court decides that neither reunification nor adoption is best suited to the child's safety, protection and physical, mental and moral welfare. 42 Pa.C.S.A. § 6531(f.1)(3). In *In re B.S.*, a panel of this Court explained that PLC transfers permanent legal custody to a custodian without requiring the termination of parental rights, and further permits (as appropriate) continued visitation by the child's natural parents. *Id.* at 976-77.

Based upon our review of the record on appeal, the trial court did not abuse its discretion in changing the goal to PLC or in granting PLC to Maternal Great-Aunt. Because neither Mother (as a result of her drug and mental health issues) nor Father (as a result of his frequent incarceration and a history of domestic abuse) presented viable alternatives for placement, CYS and the trial court focused on Paternal Grandmother and Maternal Great-Aunt as the best options for the Children. Home studies were prepared for both residences, and the trial court reviewed each of them in detail.

Based upon these home studies as well as the testimony provided at the evidentiary hearings, the trial court concluded that placing the Children with Maternal Great-Aunt offered the best available solution. With respect to the Paternal Grandmother, the record reflects that she indicated to a CYS caseworker (Melissa Stump) that "she was willing to take the children for

now, [but] that she didn't have plans on keeping them long term." N.T., 6/5/21 & 7/11/12, at 24. Instead, Paternal Grandmother indicated that she was "willing to provide a home for them until [Mother] could pull her act together." *Id.* In addition, in Paternal Grandmother's apartment the Children would have to share a bedroom. *Id.* at 28.

In contrast, Maternal Great-Aunt testified that she was willing to provide a permanent home for the Children. N.T., 7/31/12, at 52. At the time of the evidentiary hearing, Maternal Great-Aunt had served as a law enforcement officer for 16 years and was a foster parent to a 9-year-old child. *Id.* at 41, 43. Although the Children had never been to her home in South Dakota, she had visited them in Pennsylvania and had regular contact with them by phone and by Skype.<sup>1</sup> *Id.* at 45-46. A placement worker (Kelly Keagy) testified that M.O. told her that that he did not like foster care, was unhappy living in so many different places, and would pick his Maternal Great-Aunt if given the chance to decide where he wanted to live. N.T., 6/5/21 & 7/11/12, at 82-83. Although younger and with less understanding of the circumstances, A.O. was also excited about living with Maternal Great-Aunt. *Id.* at 83. Maternal Great-Aunt indicated that after the Children got settled in South Dakota, she would be open to visitation by Mother,

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<sup>1</sup> Maternal Great-Aunt acknowledged that her ex-husband had sexually assaulted Mother when she was a child, but that she knew nothing about the incident until much later in time (after divorce proceedings). *Id.* at 41-42. Nothing in the record suggests that the ex-husband would have any contact or involvement with the Children in any capacity.

supervised visitation by Paternal Grandmother, and at least updates on the Children's progress to Father. N.T., 7/31/12, at 48-51. The trial court undoubtedly found Maternal Great-Aunt to be a credible witness and a suitable custodian, stating that "[a]fter seeing you testify today, after hearing you testify today, I'm even more impressed with you, I really feel in my heart and soul this is the right thing for [Children] at this time. I really do. I really do." N.T., 7/31/12, at 103-106.

For these reasons, we conclude that the trial court's findings of fact are supported by evidence of record and that the trial court did not abuse its discretion in changing the goal to PLC and granting PLC to Maternal Great-Aunt. Contrary to Father's contentions, sufficient evidence exists in the record to support the trial court's decision to grant PLC to Maternal Great-Aunt and that it is in the best interests of the Children. It is not this Court's function to reweigh the evidence and the credibility determinations of the trial court. *In re R.J.T.*, 608 Pa. 9, 27-28, 9 A.3d 1179, 1190 (2010). As a result, we find no basis upon which to disturb the trial court's ruling.

Orders affirmed.