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NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: S.R.D., JR., A MINOR

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: S.R.D., JR., A MINOR

No. 1754 WDA 2012

Appeal from the Order October 17, 2012
In the Court of Common Pleas of Allegheny County
Orphans' Court at No(s): TPR 149 of 2011

IN RE: C.J.S., A MINOR

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: C.J.S., A MINOR

No. 1755 WDA 2012

Appeal from the Order October 25, 2012
In the Court of Common Pleas of Allegheny County
Orphans' Court at No(s): TPR 150 of 2011

BEFORE: BENDER, J., MUNDY, J., and STRASSBURGER, J.*

DISSENTING MEMORANDUM BY MUNDY, J.: FILED: May 6, 2013

The esteemed Majority today remands these cases, instructing the orphans' court to "tell us what the situation is now as it is obviously different from how it was when the orders denying termination were entered."

*Retired Senior Judge assigned to the Superior Court.

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Majority Memorandum at 7. Because I believe such a remand exceeds our scope and standard of review, I am constrained to dissent.

The Majority correctly notes our scope of review is “**broad and comprehensive**, but our standard of review is narrow.” *Id.* at 6, *quoting In re C.P.*, 901 A.2d 516, 520 (Pa. Super. 2006) (emphasis added by Majority Memorandum). This broad scope of review ensures we consider the totality of the circumstances **available for consideration** by the orphans’ court when determining whether its findings and conclusions have support in the record. We have stated these principles more fully as follows.

Scope of review, relates to the appellate court’s duty to ensure that the trial court has satisfactorily fulfilled the requirements of examining all evidentiary resources, conducting a full hearing and setting forth its decision in a full discursive opinion. A broad *scope* of review, therefore, requires that the appellate court conduct a comprehensive review of the record formulated in and the decision formulated by, the lower court. In other words, in reviewing a termination of parental rights order, our Court must consider all evidence before the lower court as well as the lower court’s findings of fact and conclusions of law.

In re K.P., 872 A.2d 1227, 1231 (Pa. Super. 2005), *quoting In the Interest of S.B.*, 833 A.2d 1116, 1117 n.1. (emphasis in original).

The remand directed by the Majority would have us consider circumstances that were **not available** for the orphans’ court to consider when it ruled on the termination of parental rights petitions that are the subject of these appeals. How the related dependency cases have

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proceeded since the orphans' court's October 17 and October 25, 2012 orders were entered can shed no light on our central inquiries in these cases.¹ Those inquiries include whether the orphans' court's findings and conclusions were supported by the record and whether the orphans' court abused its discretion or committed legal error. Our role is not to monitor the progress of an ongoing dependency case in juvenile court to determine by hindsight the correctness of a previous termination-of-parental-rights decision made by the orphans' court.²

Accordingly, I conclude that the remand directed by the Majority is improper and that we should address the merits of these appeals based on the fully developed record extant at the time of the orphans' court's orders.³

¹ The instant case is not like those where the orphans' court made a decision on a record not fully developed or without providing a comprehensive analysis of its decision. In such cases, remand may be proper. **See *In re K.P., supra*** at 1231 (remanding where the orphans' court failed to provide "its own independent analysis of the record in a full discursive opinion"); ***In re S.D.T., Jr.***, 934 A.2d 703 (Pa. Super. 2007), *appeal denied*, 950 A.2d 270 (Pa. 2008) (remanding where orphans' court's determination of effect of termination on best interest of child was not based on fully developed record of circumstances existing at time of hearing).

² Certainly, if Mother and Father fail to adequately and timely achieve the goals necessary to obviate the need for continued placement and dependency of their children, the Office of Children Youth and Families (CYF) may reinstate goal change and termination proceedings. Such considerations, however, are not the proper subject of this appeal.

³ The juvenile court scheduled a permanency review hearing for each child, in which CYF sought a goal change from "return to parent" to "adoption," for the same times as the hearing on the petitions to terminate mother and
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father's parental rights. During the hearing, the orphans' court granted CYF's motion to admit the permanency review orders and family service plans from the juvenile court's dependency cases into the record. N.T., 8/22/12, at 202-206; CYF Exhibits 6 & 7. On October 17 2012, the juvenile court entered a permanency review order maintaining the goal of return to parents. Subsequently, on November 20, 2012, the goal was changed to remain with parents. No appeal was taken from either permanency review order. By the time the orphans' court's record was certified to this Court, it contained these juvenile court orders. The Majority insists, "we cannot ignore this portion of the certified record in this case." Majority Memorandum at 6 n.6. In my view, the fact that the record contains certain juvenile court orders entered after the October 17, 2012 termination of parental rights hearing does not broaden our scope or standard of review to the matters addressed therein.