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NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

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

IN THE SUPERIOR COURT OF
PENNSYLVANIA

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

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.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: C.J.S.,

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, MUNDY, and STRASSBURGER*, JJ.

MEMORANDUM BY STRASSBURGER, J.:

FILED: May 6, 2013

S.R.D., Jr., a minor born in March 2010, through his court-appointed guardian ad litem (GAL), appeals from the order of October 17, 2012, which denied the petition filed by the Allegheny County Office of Children, Youth, and Families (CYF) to terminate the parental rights of M.J. (Mother) and S.D.

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(Father). C.J.S., a minor born in June 2008, through his court-appointed GAL, appeals from the order of October 25, 2012, which denied the petition filed by CYF to terminate the parental rights of Mother. For the following reasons, we remand to the trial court with instructions.

Mother and J.S.¹ are the biological parents of C.J.S. Mother and Father are the biological parents of S.R.D., Jr. On the day after S.R.D., Jr.'s birth, CYF became involved with this family because Mother and S.R.D., Jr. both tested positive for marijuana. CYF created a safety plan after an initial assessment. At that time, Mother was residing with family members.

On May 5, 2010, Mother entered treatment, but did not complete that program successfully, and was discharged on May 20, 2010 due to non-attendance. Mother then completed a session at another treatment program on June 15, 2010, but did not complete that program successfully either and was discharged on July 7, 2010, again due to non-attendance.

On July 16, 2010, CYF investigated an anonymous report that Mother had disciplined C.J.S. (who was then two) by choking him.² Both children

¹ J.S.'s parental rights were terminated by order of court on October 17, 2012. Although CYF sent the petition to his last known address, he never established contact with CYF. Additionally, neither J.S. nor the GAL appeals from that order. Thus, we do not disturb the order of the trial court terminating J.S.'s parental rights to C.J.S.

² Mother subsequently admitted to doing this because she was overwhelmed with caring for the children.

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were placed with members of Father's family, specifically in the home of T.C. On July 23, 2010, Mother attempted to take the children from that home, which led to the children being adjudicated dependent by the trial court. On July 28, 2010, the court conducted a shelter hearing, and formally placed children with T.C. Both children were adjudicated dependent on August 23, 2010 and remained in the care of T.C., until she informed the trial court she could no longer care for the children. The children were then placed with T.B., a member of Mother's family, on September 10, 2010.

On September 13, 2010, the trial court conducted another shelter hearing and both children were returned to Mother, who was living in Debra House, a structured residential facility for homeless women and their children. The trial court ordered that CYF was to obtain emergency custody authorization if Mother left Debra House prematurely. Furthermore, Father was not to have contact with children until he was assessed by CYF.

On September 27, 2010, Debra House reported to CYF that Mother and children had not returned from a weekend pass. After learning that Mother and children were with Father, CYF obtained emergency custody and placed Children in an Auberle foster home with V.F., where, as of the conclusion of

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the termination of parental rights hearing on October 17, 2012, they remained continuously since that time.³

On November 22, 2011, CYF petitioned to terminate Mother's and J.S.'s parental rights to C.J.S. pursuant to 23 Pa.C.S. §§ 2511(a)(1), (2), (5), (8), and (b). On the same day, CYF filed petitions to terminate Mother's and Father's parental rights to S.R.D., Jr., pursuant to 23 Pa.C.S. §§ 2511(a)(1), (2), (5), (8), and (b). Hearings were conducted on August 22, 2012 and October 17, 2012.⁴

At the hearing, the CYF caseworker testified that, *inter alia*, Mother was at most moderately compliant with her family service plan goals and Father was minimally compliant with his. They never progressed beyond supervised visitation. Although Mother obtained stable housing as of January 2012, she had still not made progress toward resolving her mental health or drug

³ The certified record contains a permanency review order dated October 17, 2012 which states that the goal for the children was to return to parent, and significantly increased Mother's and Father's visitation with children spending full days with them in Mother's home. Furthermore, a permanency review order dated November 19, 2012 provides that the goal for children was to "remain with parent" and clarified that children were living with Mother under the care of Mother and Father.

⁴ The two month period between the hearings was a result of Mother being due with a child on September 16, 2012. The certified record reveals that a child was born during that time and is in the care and custody of Mother and Father.

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issues. Father had also made little progress with his mental health and drug issues.

At the close of the hearing on October 17, 2012, the trial court granted CYF's petition to terminate J.S.'s parental rights to C.S. N.T., 10/27/2012, at 91. As to the other petitions filed by CYF to terminate Mother's parental rights to the children, and Father's parental rights to S.R.D., Jr., the trial court denied those petitions concluding that CYF did not present clear and convincing evidence that the conditions that led to the placement of the children could not be remedied by the parents within a reasonable timeframe.

The GAL filed timely notices of appeal from the orders along with concise statements of matters complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i).⁵ On December 12, 2012, the trial court filed opinions addressing issues related to its decision denying the termination of parental rights.

The procedural posture of this case presents the unusual situation where a guardian *ad litem* appointed by the Court to represent the best interests of the children has filed appeals on behalf of the children; and, for reasons unbeknownst to this Court, CYF has not informed this Court of its

⁵ We note that CYF did not file a notice of appeal in these cases or briefs with this Court. Furthermore, Mother and Father chose not to be represented by counsel at the hearing, are not represented on appeal, and have not filed briefs with this Court.

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position on the matter. Further impacting our ability to review this case is the fact that Mother and Father, both *pro se*, have not filed briefs in this appeal.

Moreover, as with many cases of this type, the situation with the children is ever-changing and the importance of understanding where the children are at the time of this writing, more than five months after the orders in question, is crucial. This is particularly so when the certified record reveals that the children were living with Mother as of the date of the last permanency review order on November 19, 2012.⁶ We recognize that “[i]n an appeal from an order terminating parental rights, our scope of review is **broad** and **comprehensive**, but our standard of review is narrow.” *In re C.P.*, 901 A.2d 516, 520 (Pa. Super. 2006) (emphasis added). Although the GAL argues that “Mother has not demonstrated the capacity to parent or to provide for [S.R.D., Jr.] on a day to day basis[,]” the certified record suggests that Mother is doing exactly that. **See** Permanency Review Order, 11/19/2012, at 2 (“All children shall remain in [Mother’s] and [Father’s] care.”). Furthermore, the mobile therapist noticed that Mother has been able to implement appropriate parenting strategies to deal with C.J.S.’s tantrums and that tantrums have not increased since transitioning to Mother’s home.

⁶ We cannot explain why the certified record includes orders that occurred subsequent to the decrees being appealed. Nonetheless, we cannot ignore this portion of the certified record in this case.

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Id. In light of this new information, we remand to the trial 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. The trial court shall file a new opinion within 20 days. Then, any party that still wishes to appeal once the new trial court opinion has been filed shall file a new brief within 30 days. Any responses to that brief shall be due within 20 days.

Case remanded to the trial court with instructions. Jurisdiction retained.

Judge Mundy files a Dissenting Memorandum.