

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN THE INTEREST OF: C.K., A MINOR

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: K.S., MOTHER

No. 123 MDA 2014

Appeal from the Order entered December 17, 2013,  
in the Court of Common Pleas of York County, Civil  
Division, at No(s): CP-67-DP-0000235-2013

BEFORE: BENDER, P.J.E, MUNDY, and JENKINS, JJ.

MEMORANDUM BY BENDER, P.J.E.:

**FILED JULY 01, 2014**

K.S. ("Mother") appeals from the order entered by the Court of Common Pleas of York County that adjudicated dependent her son, C.K., born in May of 2013.<sup>1</sup> We affirm.

The record reveals the following facts and procedural history. On November 27, 2013, the York County Office of Children, Youth & Families ("CYF") filed an application for emergency protective custody of C.K., wherein it alleged receiving a referral on October 11, 2013, when C.K. was five months old and a patient at the Hershey Medical Center following surgery for a heart condition. The Dauphin County Children, Youth & Families became involved with the family due to Mother testing positive for opiates and cocaine while C.K. was in the hospital. At the time CYF filed the application for emergency protective custody, C.K., then six months old, had been discharged from the Hershey Medical Center and was residing with

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<sup>1</sup> At the time of the subject proceedings, C.K.'s natural father was unknown.

Mother at the home of Mother's friend, L.D., in Delta, in York County, Pennsylvania. CYF alleged that C.K. was without proper parental care or subsistence necessary for his physical health. By order dated November 27, 2013, the trial court directed that the legal and physical custody of C.K. remain with Mother pending a hearing, and on the condition that she continue to reside with L.D. Thereafter, following a shelter care hearing on December 9, 2013, the trial court, by order of the same date, directed *inter alia* that C.K. be placed in foster care, that a nurse monitor C.K. on a daily basis, and that Mother be drug tested twice per week.

On December 12, 2013, CYF filed a dependency petition. On December 17, 2013, the trial court held a hearing on the dependency petition, during which Mother represented herself *pro se*. CYF presented the testimony of Nicole Henry, a nurse from PSA Healthcare; Erin Mickley, from Catholic Charities; Jill Egbert, from Families United Network, which performed drug testing on Mother; Rachel McCoy, CYF caseworker; and Ashley Rohrbaugh, CYF supervisor. In addition, Mother testified on her own behalf. By order dated December 17, 2013, the trial court adjudicated C.K. dependent. Mother filed both a timely notice of appeal and a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b).

On appeal, Mother presents the following issue:

Did the [trial] court err as a matter of law and abuse its discretion by granting the request of [CYF] for a finding of

dependency with respect to Mother [] when [CYF] failed to prove dependency by clear and convincing evidence when the [trial] court failed to administer the oath to all witnesses and permitted "expert testimony" without the presentation of any qualifications?

Mother's brief at 4.

Our standard of review for dependency cases is 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.***, 9 A.3d 1179, 1190 (Pa. 2010).

Section 6302 of the Juvenile Act defines a dependent child, in part, as a child who:

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, including evidence of the parent's, guardian's or other custodian's use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk[.]

42 Pa.C.S. § 6302.

In ***In re G., T.***, 845 A.2d 870 (Pa. Super. 2004), we stated:

The question of whether a child is lacking proper parental care or control so as to be a dependent child encompasses two discrete questions: whether the child presently is without proper parental care and control, and if so, whether such care and control are immediately available.

**Id.** at 872 (internal quotations and citations omitted); **see also In re J.C.**, 5 A.3d 284, 289 (Pa. Super. 2010) (citations omitted). “The burden of proof in a dependency proceeding is on the petitioner to demonstrate by clear and convincing evidence that a child meets that statutory definition of dependency.” **G., T.**, 845 A.2d at 872.

On appeal, Mother argues that the evidence was insufficient to support the adjudication. Specifically, Mother argues the trial court erred by failing to administer the oath to all witnesses pursuant to Pa.R.E. 603 (Oath or Affirmation to Testify Truthfully).<sup>2</sup> In addition, Mother argues the court erred by considering the professional opinion of Nicole Henry, a nurse from PSA Healthcare, when “there was absolutely no statements made as to her qualifications to render her opinion.” Mother’s brief at 13. We conclude that Mother has failed to preserve these issues for our review.

It is axiomatic that claims not raised in the trial court may not be raised for the first time on appeal. **Jahanshahi v. Centura Development Co., Inc.**, 816 A.2d 1179, 1189 (Pa. Super. 2003); **see also** Pa.R.A.P. 302(a). We have explained:

[i]n order to preserve an issue for appellate review, a party must make a timely and specific objection at the appropriate stage of

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<sup>2</sup> **Rule 603. Oath or Affirmation to Testify Truthfully**

Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness’s conscience.

Pa.R.E. 603.

the proceedings before the trial court. Failure to timely object to a basic and fundamental error will result in waiver of that issue. On appeal the Superior Court will not consider a claim which was not called to the trial court's attention at a time when any error committed could have been corrected. In this jurisdiction . . . one must object to errors, improprieties or irregularities at the earliest possible stage of the adjudicatory process to afford the jurist hearing the case the first occasion to remedy the wrong and possibly avoid an unnecessary appeal to complain of the matter.

***Thompson v. Thompson***, 963 A.2d 474, 475-76 (Pa. Super. 2008) (quoting ***Hong v. Pelagatti***, 765 A.2d 1117, 1123 (Pa. Super. 2000)); **see also *MacNutt v. Temple Univ. Hosp.***, 932 A.2d 980, 992 (Pa. Super. 2007) (holding that in order to preserve an issue for appellate review, litigants must make timely and specific objections during trial).

Upon review, none of the witnesses at the adjudication hearing gave an oath or affirmation to testify truthfully. With respect to Nicole Henry, the nurse from PSA Healthcare who was the first witness to testify during the hearing, the relevant testimony is as follows:

THE COURT: In your professional opinion, is [Mother] capable of appropriately caring for the child?

MS. HENRY: Not at this time.

N.T., 12/17/13, at 15. Mother failed to object to the lack of an oath or affirmation of the witnesses to testify truthfully, and she failed to object to

the opinion rendered by Ms. Henry. Therefore, Mother has waived these issues on appeal.<sup>3</sup>

Further, Mother argues the court “erred in making a determination of dependency prior to the completion of the hearing.” Mother’s brief at 13. Mother relies on the following statement made by the trial court on the record and in open court at the close of CYF’s case-in-chief:

THE COURT: Well, I think that [CYF] has met its burden with the information that [ha]s already been provided, so I will hear from mom unless you have some other testimony that you want to present preemptively.

[COUNSEL FOR CYF]: I don’t believe so, Your Honor.

THE COURT: [Mother], [CYF] has convinced me that the adjudication is appropriate, that the child should remain in the care of [CYF] and in foster care, so now it’s your turn to convince me that I should return him to your care.

N.T., 12/17/13, at 28-29. Thereafter, Mother, who represented herself *pro se*, presented her case. We discern no abuse of discretion by the trial court. The court simply stated its conclusion at the end of CYF’s case-in-chief, while at the same time, allowing Mother to present her defense. Indeed, the court did not issue the adjudication order until after Mother presented her case. As such, Mother’s issues on appeal fail.

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<sup>3</sup> The record reveals that Mother arrived late for the adjudication hearing, at some point during Ms. Henry’s testimony. **See** N.T., 12/17/13, at 2, 16. In its appellee brief, CYF states Mother arrived as Ms. Henry was finishing her testimony. **See** CYF’s brief at 8. There is no dispute that CYF properly served Mother with the dependency petition and notified her of the date and time of the adjudication hearing. Therefore, even if Mother was not present for the relevant testimony of Ms. Henry cited above, it would be of no consequence to our conclusion that she waived this issue on appeal.

Upon thorough review, the testimony of Ms. Henry and of Mother supports the following factual findings by the trial court:

Mother is incapable of appropriately caring for the child who has significant medical needs. She has provided excessive medication that has put [C.K.] at risk. She has failed to seek appropriate medical treatment for the child causing a delay in other necessary medical services. She continues to use illegal drugs and is unable to remain drug free to appropriately care for the child.<sup>[4]</sup> She has not followed required medical directions and directives. Sh[e] has not provided the [child's] weights and measurements to the physician's office as required for his appropriate care. She removed the NG [Nasogastric] tube without medical approval. She did not provide [the] appropriate level of formula to the child as the child requires, despite extensive training by medical professionals. [C.K.] has significantly improved since being placed in foster care. [C.K.] has increased his weight and is now being appropriately cared for by others.

Order, 12/17/13, at ¶ 1. We discern no abuse of discretion by the court in concluding that C.K. is a dependent child pursuant to 42 Pa.C.S. § 6302. We further observe that the Guardian *Ad Litem* agreed during the adjudication

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<sup>4</sup> Mother testified as follows:

THE COURT: Your bad choices you addressed, would those be positive for heroin?

[MOTHER]: Yes, ma'am.

THE COURT: How often are you using?

[MOTHER]: I haven't used since all this [has] come about. I have - I'm not - I don't use everyday, I think if I get too stressed. . . . I have some trauma that I need to work through, counseling probably I would imagine.

N.T., 12/17/13, at 43.

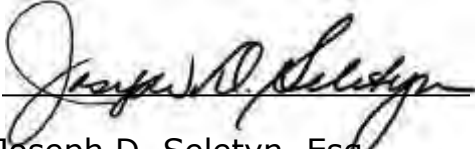
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hearing that C.K. is a dependent child. **See** N.T., 12/17/13, at 11.

Accordingly, we affirm the dependency order.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 7/1/2014