

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37**

IN RE: K.M.S., A MINOR	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
APPEAL OF: A.M.S., MOTHER,	:	No. 1716 WDA 2013
	:	
Appellant	:	

Appeal from the Order Entered September 24, 2013,  
in the Court of Common Pleas of Allegheny County  
Orphans' Court Division at No. TPR 146 of 2013

BEFORE: GANTMAN, P.J., FORD ELLIOTT, P.J.E., AND OLSON, J.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED JULY 8, 2014**

Appellant, A.M.S. ("Mother"), appeals from the order entered in the Court of Common Pleas of Allegheny County that terminated her parental rights to her daughter, K.M.S. ("Child"), born in December 2010, pursuant to 23 Pa.C.S.A. § 2511(a)(2), (5), (8), and (b) of the Adoption Act. On appeal, Mother does not challenge the statutory bases under which her parental rights were terminated. This case concerns the notice provisions of the Adoption Act and whether Mother was properly served with notice of the hearing on termination of her parental rights. After careful review, we affirm.

On May 31, 2011, Child came to the attention of the Allegheny County Office of Children, Youth and Families ("CYF"). (Notes of testimony, 9/24/13 at 8.) Mother, a minor, who had been active with CYF, was referred to CYF

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for leaving Child unattended, improperly feeding Child, and neglecting Child's medical needs. (***Id.*** at 8-9) In August of 2011, CYF obtained an emergency custody authorization and placed Child in foster care because Mother had left her court-ordered placement at a shelter and did not return until the following day. (***Id.*** at 9.) Child was adjudicated dependent on September 12, 2011. (***Id.*** at 8.) Child was returned to Mother on October 3, 2011; however, during the following two months, Mother canceled doctor's appointments for Child, left the shelter without permission, engaged in a physical altercation with another resident at the shelter, and failed to follow the shelter's rules. (***Id.*** at 9-10.) As a result, CYF obtained another emergency custody authorization, and Child was placed into foster care on December 2, 2011, where she has remained since that time. (***Id.*** at 10-11.)

Family Service Plan goals were established for Mother; those goals included parenting to ensure proper supervision of Child, to maintain contact and cooperation with CYF, and to submit to drug and alcohol assessment and any recommended treatment. (***Id.*** at 13.) Mother failed to meet any of her goals. (***Id.*** at 16.) Throughout May of 2013, Mother habitually ran away from her court-ordered placements. (***Id.*** at 16-17.) On May 31, 2013, Mother went on the run and did not return until June 24, 2013. (***Id.*** at 17.) On that day, Mother and her attorney attended a permanency

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review hearing at which the trial court scheduled the September 24, 2013 termination hearing.

Mother now asserts she was not properly served with notice of the termination hearing. Section 2513(b) of the Adoption Act provides that:

At least ten days' notice shall be given to the parent or parents, putative father, **or parent of a minor parent whose rights are to be terminated**, by personal service or by registered mail to his or their last known address or by such other means as the court may require.

23 Pa.C.S.A. § 2513(b) (emphasis added). Additionally, Section 2513(b) requires a warning that, upon failure to appear, the hearing will go on without the parent, and his rights to the child in question may be ended by the court without his presence at the hearing. **Id.**

It is undisputed that Mother's parents were served, as both parents attended the hearing.<sup>1</sup> (Notes of testimony, 9/24/13 at 4). Additionally, notice was sent to Mother's sister who lived in McKeesport. The trial court noted:

Mother has not consistently maintained a specific placement since giving birth to K.M.S. When Mother leaves without permission, she reportedly stays with family in McKeesport. Mother left her placement facility again without permission in late July or early August 2013. The petition to terminate parental rights was filed on August 29, 2013. Mother's sister accepted service on September 6, 2013. The [termination] hearing was held on September 24, 2013. Over the course of these events, Mother had

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<sup>1</sup> The record indicates Mother's aunt, a male cousin, Mother's caseworker, and Mother's family therapist were all present at the hearing. (**Id.** at 4-5.)

been missing from her placement and [was] not in contact with CYF. The caseworker testified that when Mother runs away from her placement, Mother still remains in touch with her family. Because CYF knew that Mother resides with family in McKeesport, it was appropriate that CYF used the McKeesport address as Mother's residence or last known address.

In fact, Mother's Statement of Errors does not deny that Mother was living with [her sister] at the McKeesport address. The return of service states that [Mother's sister] is a member of the household living with Mother.

Trial court opinion, 11/22/13 at 3-4 (internal citations to notes of testimony omitted).

Mother's attempt to argue that the trial court did not make every effort to assure she received notice and that notice should have been sent to her at her court-ordered placement facility is disingenuous in light of the fact Mother was missing most of the time. It appears to this court that in a good faith effort to serve Mother, CYF sent notice to Mother's sister in McKeesport at whose house Mother had been known to occasionally reside. Indeed, the record reflects Mother's sister accepted service on Mother's behalf, and she gave no indication that Mother was not living there or that she would not be giving Mother the documents. (Document #3, Affidavit of Service.) We point out, however, that the notice requirement was already met when Mother's parents were served.

Last, we address Mother's contention that her due process rights were infringed because her counsel of record was not present at the termination

hearing. Mother contends the trial court “strayed” from 23 Pa.C.S.A. § 2313 which states: “The court shall appoint counsel for a parent whose rights are subject to termination in an involuntary termination proceeding . . . .” We disagree with Mother’s contention, as Mother had counsel appointed for her when Child was adjudicated dependent on September 12, 2011. Mother had counsel throughout these proceedings. Notably, counsel was present at the permanency review hearing on June 24, 2013, when the trial court set September 24, 2013, as the date for the termination hearing. The trial court addressed this claim as follows:

At the June 24, 2013 Permanency Review Hearing, Mother indicated she sought to contest CYF’s petition to terminate her rights. Mother and [her attorney] were present in the courtroom when this Court scheduled the [termination] hearing for September 24, 2013. Both had personal knowledge. This Court’s decision to proceed at the [termination] hearing without either Mother or [her attorney] is not an error, because both were present when this Court scheduled the date and because Mother and Mother’s parents received adequate notice.

Trial court opinion, 11/22/13 at 5 (internal citations to notes of testimony omitted). We find no error here.<sup>2</sup>

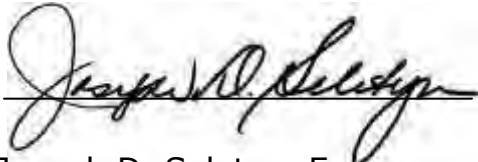
Order affirmed.

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<sup>2</sup> We note in her brief Mother sets forth an argument that in order to satisfy the requirement of waiver of counsel, the trial court is required to conduct a colloquy of the parent/minor to determine if the parent/minor did in fact knowingly, intelligently, and voluntarily waive their right to counsel. (Mother’s brief at 6.) This argument was not raised in either Mother’s original Rule 1925(b) statement or her amended Rule 1925(b) statement. Hence, we find it waived. **See *In re G.D.***, 61 A.3d 1031, 1036 n.3 (Pa.Super. 2013).

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Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style with a horizontal line drawn through the middle of the letters.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 7/8/2014