

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: Q.F.-H., A MINOR	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
	:	
	:	
APPEAL OF: P.F.-H., MOTHER	:	No. 3464 EDA 2017
	:	

Appeal from the Order Entered September 22, 2017
In the Court of Common Pleas of Philadelphia County
Family Court at No(s): CP-51-DP-0002047-2017,
FID: 51-FN-001874-2017

BEFORE: GANTMAN, P.J., McLAUGHLIN, J., and RANSOM*, J.

MEMORANDUM BY GANTMAN, P.J.:

FILED JUNE 21, 2018

Appellant, P.F.-H. (“Mother”), appeals from the order entered in the Philadelphia County Court of Common Pleas, which adjudicated Q.F.-H. (“Child”) dependent. We affirm.

In its opinion, the Family court fully and correctly set forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them.

Mother raises the following issue for our review:

WHETHER THE [FAMILY] COURT ABUSED ITS DISCRETION AND ERRED AS A MATTER OF LAW IN RELYING ON THE 23 PA.C.S.A. § 6381(D) PRESUMPTION TO FIND ABUSE AS TO MOTHER WHERE THE RECORD SUPPORTED A FINDING THAT THE PRESUMPTION HAD BEEN REBUTTED?^[1]

¹ To the extent Mother argues on appeal that the court effectively prohibited her from testifying during the dependency hearing, her argument is waived because Mother failed to include it in her Rule 1925(a)(2)(i) statement. **See *Lineberger v. Wyeth***, 894 A.2d 141 (Pa.Super. 2006) (stating generally that

* Retired Senior Judge assigned to the Superior Court.

(Mother's Brief at 6).

[T]he standard of review in dependency cases requires an appellate court to accept the findings of fact and credibility determinations of the [Family] court if they are supported by the record, but does not require the appellate court to accept the [Family] court's inferences or conclusions of law. Accordingly, we review for an abuse of discretion.

In re A.B., 63 A.3d 345, 349 (Pa.Super. 2013) (quoting ***In re R.J.T.***, 608 Pa. 9, 26, 9 A.3d 1179, 1990 (2010)).

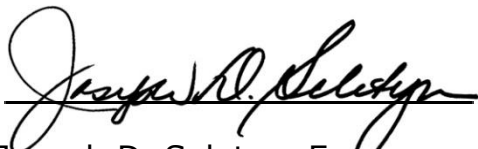
After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Daine Grey, Jr., we conclude Mother's issue merits no relief. The Family court's opinion comprehensively discusses and properly disposes of the question presented. (**See** Family Court Opinion, filed December 1, 2017, at 7-11) (finding: at dependency hearing, Dr. Bennet testified that Child could not generate enough force during his daily activities to cause his injuries, thus Child's injuries were inconsistent with accidental trauma; Dr. Bennet testified that three linear bruises on Child's stomach were consistent with child abuse because small children should not bruise on their stomach; skeletal survey showed many of Child's injuries, which indicated severity and non-accidental nature of injuries; several physicians at hospital ruled out any type of medical condition as cause

issues not raised in Rule 1925 statement will be deemed waived for appellate review). Moreover, the record makes clear the court appointed Fifth Amendment counsel out of an abundance of caution for Mother before she made her decision not to testify.

of Child's injuries; court found Dr. Bennet's testimony credible; court found Mother's lack of plausible explanation for Child's injuries suspicious; clear and convincing evidence supported court's finding of child abuse; Mother and Father were Child's only caregivers at time of Child's injuries; hematoma on Child's left leg and linear bruises on Child's stomach could not have been sustained absent abuse by parents; *prima facie* evidence established presumption that Mother perpetrated abuse; even if Mother did not physically inflict injuries, she committed abuse by omission; Mother failed to rebut presumption of abuse by presenting evidence to establish Child was not in her care when injuries occurred or that she had no reason to believe Child would be unsafe in Father's care; court properly adjudicated Child dependent after it found Mother perpetrated child abuse).² Accordingly, we affirm on the basis of the Family court's opinion.

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: 6/21/18

² Mother included in her reproduced record three documents, which are not contained in the certified record on appeal. This Court will only consider documents which have been duly certified in the record on appeal. Pa.R.A.P. 1921.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
JUVENILE DIVISION

IN RE: Q.F.-H., a Minor

SUPERIOR COURT
3464 EDA 2017

APPEAL OF: P.F.-H., Mother

COURT OF COMMON PLEAS
CP-51-DP-0002047-2017
FID: 51-FN-001874-2017

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OPINION

DAINE GREY JR., J.

DATE: December 1, 2017

P.F.-H. (“Mother”) appeals this Court’s order entered on September 22, 2017 adjudicating her child, Q.F.-H. (the “Child”), dependent based on present inability and finding child abuse as to Mother.¹ Jordan M. Rand and Stephanie Steckclair, counsel for Mother, filed a timely Children’s Fast Track Appeal from the September 22, 2017 order, with attached Concise Statement of Errors, Affidavit of Service, and other related documents necessary to perfect this appeal.

I. PROCEDURAL HISTORY & FACTS

The relevant facts and procedural history of this case are as follows: The Child was born on December , 2016. (Trial Court Order 9/22/17 at 1). On July 29, 2017, Mother and C.T. (“Father”) brought the Child to the emergency department of the Children’s Hospital of

¹ Based on the testimony that both parents were the primary custodians of the Child at the time the Child’s injuries were discovered, this Court found that Father was also a perpetrator of child abuse. Father, however, is not a party to this appeal.

Philadelphia (“CHOP”) after noticing bruises on the Child’s body. (N.T. 9/22/17 at 10). The Department of Human Services (“DHS”) received a Child Protective Services (“CPS”) report from CHOP regarding unexplained injuries to the Child. (43). An Order of Protective Custody was obtained for the Child, and a shelter care hearing was held on August 4, 2017. At the shelter care hearing, Master Baxter Macon granted temporary legal custody of the Child to DHS and allowed the Child to remain with his maternal grandfather. (Master Baxter Macon’s Trial Ct. Order 8/4/17 at 1). This Court subsequently held an adjudicatory hearing on September 22, 2017.

At the adjudicatory hearing, Dr. Colleen Bennet testified that she is currently employed at CHOP and serves as a fellow in Child Abuse Pediatrics. (N.T. 8/22/17 at 8). All counsel stipulated to Dr. Bennet’s expertise in Child Abuse Pediatrics. (*Id.* at 8-9). Dr. Bennet testified that she consults patients who are alleged to have suffered non-accidental trauma as a result of abuse or neglect. (*Id.* at 9). Dr. Bennet indicated that she was consulted on July 29, 2017 due to concerns of non-accidental trauma as the cause of the Child’s injuries. (*Id.*) She personally examined the Child on July 30, 2017 and testified that she observed bruises on the Child’s body. (*Id.* at 9-10). Specifically, the Child had a bruise on the left side of his forehead that was approximately two square centimeters. (*Id.* at 11). The Child also had a bruise along his left cheek area and bruising on his right thigh and right foot. (*Id.*) Dr. Bennet further testified that the Child had three linear bruises along the left side of his stomach, one of which was approximately four-and-a-half centimeters. (*Id.*) The Child also had two linear bruises on his left thigh, including an extensive contusion extending from the left hip area down to the knee. (*Id.*) The large contusion caused swelling in the Child’s left leg. (*Id.*) Dr. Bennet classified the larger contusion as a “hematoma” and indicated that the term “hematoma” is medically used to

describe bruises that are larger in diameter and extend deeper into the muscle tissue. (*Id.* at 11-12). Dr. Bennet could not confirm how deep the bruise was, but did indicate that the bruise was deep enough to cause significant muscle injury to the Child. (*Id.* at 12). Dr. Bennet testified that the hematoma on the Child's left leg and bruise on the Child's left cheek were so severe that they were visible on the Child's skeletal survey. (*Id.* at 24). Dr. Bennet testified that the severity of the Child's bruises raised suspicion of non-accidental trauma. (*Id.* at 19). Additionally, Dr. Bennet stated that given the size and severity of the bruises, the Child would have experienced significant pain when the injuries occurred. (*Id.* at 23; 31). Dr. Bennet also testified that the Child's injuries were noticeable and could not have been overlooked. (*Id.* at 22). Dr. Bennet could not confirm when the injuries occurred, but did, however, indicate that the injuries appeared to be new injuries. (*Id.* at 36-37). Furthermore, Dr. Bennet testified that the Child's bruises were not caused by a single event but were the result of multiple events. (*Id.* at 25-26).

Dr. Bennet testified that she meets with the patient's family to discuss medical history and the events leading up to the patient's injury to determine what mechanisms could have led to the injury. (*Id.* at 15; 18). When a history of trauma cannot be provided, doctors must consider accidental trauma or physical abuse. (*Id.* at 15). Dr. Bennet testified that neither Mother nor Father reported a history of trauma and could not explain how the Child sustained his injuries. (*Id.* at 15). Dr. Bennet testified that on the date the Child was admitted to CHOP, Mother reported that she bathed the Child that morning but did not notice any injuries on the Child's body. (*Id.* at 27-28). Mother also reported that she took the Child to baby swim class that morning, at which time, the Child was wearing a full-body wetsuit. (*Id.* at 28). Mother indicated that the Child was happy during swim class. (*Id.* at 27). Mother undressed the Child after swim class and put him in other clothes, which included a shirt, a diaper and a pair of shorts. (*Id.* at

28). Mother reported that she did not observe any injuries while changing the Child's clothes after swim class. (*Id.*). When Mother and the Child returned home, Father removed the Child's shorts and placed him in his crib. (*Id.* at 29). Mother then left the home for approximately two hours, during which time, the Child remained alone with Father. (*Id.*). Father reported that he did not notice any bruising on the Child's body while the Child was in his care. (*Id.*). Mother reported that when she returned home, the Child was still wearing a shirt and a diaper. (*Id.*). Mother removed the Child from the crib and placed him in a car seat and drove to the maternal grandmother's home. (*Id.*). While at maternal grandmother's home, the maternal aunt noticed the Child's injuries. (*Id.* at 27). The parents reported that they did not notice the Child's injuries until the maternal aunt pointed the injuries out. (*Id.* at 27; 30).

Additionally, based on the location, pattern and severity of the bruises, Dr. Bennet concluded that the bruises resulted from non-accidental trauma. (*Id.* at 15-16). With respect to the pattern and location of the bruises, Dr. Bennet emphasized that the three bruises on the Child's stomach were linear in pattern, meaning that the bruises were in the shape of a line. (*Id.* at 16). The hematoma along the Child's left thigh was also linear in shape. (*Id.*). Based on the linear pattern of the bruises, Dr. Bennet determined that the Child could not have accidentally caused the bruises. (*Id.*). Dr. Bennet indicated that the Child was seven-months-old at the time of the injuries and that children that young should not bruise on their stomach. (*Id.* at 13; 16). Furthermore, with respect to the severity of the bruises, Dr. Bennet testified that children who are not able to walk could not generate enough force during their daily activities to accidentally cause such injuries. (*Id.* at 14). Dr. Bennet also indicated that taking the Child in and out of his car seat would not have caused his injuries. (*Id.* at 31). Dr. Bennet further indicated that Mother did not describe any activities during swim class that could have caused the Child's injuries. (*Id.*

at 27). Based on the foregoing, Dr. Bennet determined that the Child's injuries were non-accidental. (*Id.* at 16; 20-21).

Dr. Bennet further testified that once accidental trauma is ruled out, doctors consider medical diagnosis that could explain the bruising or injuries. (*Id.* at 20-21). Dr. Bennet testified that several lab tests were done on the Child in order to rule out any type of bleeding disorder and that the Child's lab tests came back normal. (*Id.* at 21). The hematology team at CHOP repeated the lab tests several weeks later, and the results of those tests were also normal. (*Id.*). The hematology team found it unlikely that the Child's bruises were caused by a bleeding disorder. (*Id.*). Dr. Bennet testified that even if the Child had a bleeding disorder, it would not have explained the linear pattern of the injuries nor would it explain the muscle damage to the Child's left leg. (*Id.* at 23). For the foregoing reasons, Dr. Bennet concluded to a reasonable degree of medical certainty that the Child's injuries were the result of physical child abuse. (*Id.* at 31).

The DHS social worker, Daniel McVay, also testified at the adjudicatory hearing. Mr. McVay testified that DHS conducted an investigation based on the CPS report received from CHOP and interviewed both Mother and Father. (*Id.* at 43-44). Mr. McVay testified that neither parent could explain how the Child sustained his injuries. (*Id.* at 44). According to Mr. McVay, the parents reported that the Child may have had toys in his crib. (*Id.* at 48). Mr. McVay found it unlikely that the Child inflicted the injuries on himself with a toy. (*Id.*). Mr. McVay also indicated that it would not be appropriate for the Child to immediately return home to either parent as the Child's injuries remain unexplained and the Child's safety cannot be guaranteed with either parent. (*Id.* at 54). Mr. McVay further testified that the Child currently resides with his maternal aunt. (*Id.* at 53).

At the conclusion of the adjudicatory hearing, this Court adjudicated the Child dependent based on present inability and granted full legal custody of the Child to DHS. (Trial Court Order 9/22/17 at 1). This Court further found that the Child was a victim of child abuse as defined under 23 Pa.C.S. § 6303(b.1)² and that Mother and Father were the perpetrators of such abuse. (*Id.* at 2). This Court also ordered a parenting capacity evaluation for Mother and referred Mother to the Achieving Reunification Center for parenting classes. (*Id.*). Mother was granted supervised community visits with the Child. (*Id.*).

On October 23, 2017, Mother, along with counsel, filed a timely Notice of Appeal from the September 22, 2017 order along with a Concise Statement of Errors, the latter of which is reproduced *verbatim* herein:

1. The Honorable Court abused its discretion and erred as a matter of law and fact by entering an Order finding child abuse as to Mother.
2. The Honorable Court abused its discretion and erred as a matter of law and fact by entering an Order finding child abuse where DHS failed to prove by clear and convincing evidence that the Child was in the care and custody of Mother at the time the Child suffered the injury.

² This Court relied upon subsections (1) and (5) of Section 6303(b.1), which provides as follows:

(b.1) Child abuse.-- The term "child abuse" shall mean intentionally, knowingly or recklessly doing any of the following:

(1) Causing bodily injury to a child through any recent act or failure to act.

...

(5) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.

23 Pa.C.S. § 6303(b.1).

3. The Honorable Court abused its discretion and committed an error of law by applying the presumption of the perpetrator's identity under [23] Pa.C.S. § 6381(d) as to Mother where DHS failed to prove the existence of child abuse.
4. The Honorable Court abused its discretion and committed an error of law by entering an Order finding the child dependent.

(Statement of Errors).

II. DISCUSSION

A. This Court Properly Adjudicated the Child Dependent Based on Present Inability

Mother argues that this Court erred in adjudicating the Child dependent and finding that the Child was a victim of child abuse. (Statement of Errors ¶¶ 3-4). The Juvenile Act defines a "dependent child," in relevant 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." 42 Pa. C.S. § 6302. In determining whether a child is dependent, courts should ask whether the child is presently without proper parental care and, if so, whether such care is immediately available. *Matter of C.R.S.*, 696 A.2d 840, 845 (Pa. Super. 1997). Furthermore, parental care which is both "necessary" and "proper" is that care which (1) is geared to the particularized needs of the child and (2) at a minimum, is likely to prevent serious injury to the child. *In re Pernishek*, 408 A.2d 872, 878 (Pa. Super. 1979). A finding of dependency must be supported by clear and convincing evidence, which requires that the testimony be "so clear, direct, weighty, and convincing as to enable the trier of facts to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *Matter of C.R.S.*, 696 A.2d at 843 (quoting *In re S.M.*, 614 A.2d 312, 313 (1992)). Furthermore, it is well settled

that a finding of dependency can be premised upon physical child abuse so long as the finding of abuse is supported by clear and convincing evidence. See *In re L.Z.*, 111 A.3d 1164, 1176 (2015) (“As part of the dependency adjudication, a court may find a parent to be the perpetrator of child abuse.”). Additionally, a parent’s inability to explain a child’s injury is sufficient evidence that the child is without proper parental care or control. See *In re J.O.V.*, 684 A.2d 421, 423 (Pa. Super. 1996).

In adjudicating the Child dependent, this Court determined that its finding of child abuse was supported by clear and convincing evidence. Medical evidence demonstrated that the Child’s injuries were consistent with child abuse. (N.T. 9/22/17 at 11-13; 16). The doctor determined that the injuries were undoubtedly the result of physical child abuse. (*Id.* at 31). In reaching her conclusion, the doctor noted that the injuries were inconsistent with accidental trauma because the Child was young and could not generate enough force during his daily activities to cause his injuries. (*Id.* at 14). The doctor also testified that the three linear bruises on the Child’s stomach were consistent with child abuse because small children should not bruise on their stomach. (*Id.* at 16). Additionally, many of the injuries were so severe that they were visible on the Child’s skeletal survey, further indicating that the injuries were non-accidental. (*Id.* at 24). Furthermore, several physicians at CHOP ruled out any type of medical condition as the cause of the Child’s injuries. (*Id.* at 21). This Court found the doctor’s testimony credible. Furthermore, this Court found it suspicious that Mother could not provide a plausible explanation for the Child’s injuries. Based on the foregoing, this Court found that clear and convincing evidence existed to support a finding of child abuse. As such, it properly determined that the Child was without proper parental care and control.

B. This Court Properly Found that Mother was the Perpetrator of Child Abuse

Mother also argues that this Court erred in finding that she was the perpetrator of child abuse. (Statement of Errors ¶¶ 1-2). While the petitioning party in a dependency action must demonstrate the existence of child abuse by clear and convincing evidence, the identity of the abuser need only be established by *prima facie* evidence. 23 Pa.C.S. § 6381(d); *See In re L.Z.*, 111 A.3d at 1179. The Child Protective Services Law provides for the following evidentiary presumption:

Evidence that a child has suffered child abuse of such a nature as would ordinarily not be sustained or exist except by reason of the acts or omissions of the parent or other person responsible for the welfare of the child shall be *prima facie* evidence of child abuse by the parent or other person responsible for the welfare of the child.

23 Pa.C.S. § 6381(d). In the application of Section 6381(d), “evidence that a child has suffered injury that would not ordinarily be sustained but for the acts or omissions of the parent or responsible person is sufficient to establish that the parent or responsible person perpetrated that abuse unless the parent or responsible person rebuts the presumption.” *See In re L.Z.*, 111 A.3d at 1185. *In re L.Z.* involved a twenty-one month-old child who lived with and was cared for by his mother and maternal aunt and who sustained non-accidental physical injuries while in their joint care. Applying Section 6381(d)’s presumption, the Supreme Court of Pennsylvania determined that the mother was the perpetrator. *Id.* at 1186. The Court reasoned that the injuries were “of such a nature as would ordinarily not be sustained or exist except by reason of the acts or omissions of the parent or other person responsible for the welfare of the child”; the child was in the care of only the mother and the aunt at the time the injuries were sustained; and the mother failed to rebut the presumption by presenting evidence that the child was not in her care at the time the injuries were sustained or that she had no reason to question her decision to leave the child with his aunt. *Id.* The Court further explained that “when a child is in the care of multiple

parents or other persons responsible for care, those individuals are accountable for the care and protection of the child whether they actually inflicted the injury or failed in their duty to protect the child.” *Id.* at 1185.

Furthermore, the Superior Court in dependency cases has recognized the applicability of the evidentiary presumption in Section 6381(d) regarding the identity of the abuser. *See, e.g., In re J.R.W.* 631 A.2d 1019 (Pa. Super. 1993). In *In re J.R.W.*, the trial court found child abuse after a two-month-old exhibited signs of shaken-baby syndrome. *Id.* at 1021. The parents challenged the court’s determination that both parents were the perpetrators of the abuse when the court could not determine which parent actually caused the injury. *Id.* The Superior Court rejected the parents’ argument given the *prima facie* evidence that both parents were the primary custodians during the time of the abuse, despite the absence of any evidence demonstrating which parent inflicted the injury. *Id.* at 1025.

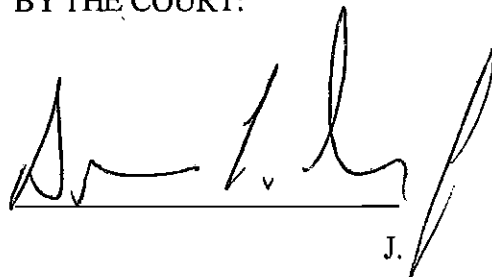
Applying the case law to the facts at bar, this Court properly determined that Mother perpetrated the abuse. The Child was in the care and control of only Mother and Father during the time the injuries were discovered. (N.T. 9/22/17 at 27-30). Additionally, medical evidence demonstrated that the injuries were “of such a nature as would ordinarily not be sustained or exist except by reason of the acts or omissions of the parent.” 23 Pa.C.S. § 6381(d). Specifically, medical evidence established that the hematoma on the Child’s left leg could not have been sustained absent abuse by the parents. (N.T. 9/22/17 at 11-13). Medical evidence also established that the three linear bruises on the Child’s stomach could not have existed absent abuse. (*Id.* at 16-17). Based on the holding in *In re L.Z.* and the presumption created in Section 6381(d), this Court properly determined that *prima facie* evidence existed to presume that Mother perpetrated the abuse. The evidence established that the parents were the primary

custodians of the Child during the time the injuries were discovered. (*Id.* at 27-30). While this Court was unable to discern which parent perpetrated the abuse, it properly found that Mother perpetrated the abuse by omission even if she did not inflict any of the injuries.³ This Court also properly determined that Mother failed to rebut the presumption by presenting evidence establishing that the Child was not in her care when the injuries occurred or that she had no reason to believe that the Child would be unsafe in Father's care.

III. CONCLUSION

Accordingly, this Court respectfully requests that the instant appeal be denied.

BY THE COURT:



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³ See, e.g., *In re A.H.*, 763 A.2d 873, 876 (Pa. Super. 2000)(finding *prima facie* evidence that the mother perpetrated abuse where she was the sole caretaker and the child's injuries could not have occurred except by her acts or omissions; and recognizing her attempt to blame her boyfriend as indicative of her failure to protect the child from abuse.).