

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: F.H.O.C., A	:	IN THE SUPERIOR COURT OF
MINOR	:	PENNSYLVANIA
	:	
	:	
	:	
	:	
APPEAL OF: M.L.O., MOTHER	:	
	:	
	:	No. 2198 EDA 2012

Appeal from the Order entered August 9, 2012, in the
Court of Common Pleas of Philadelphia County,
Juvenile Court Division, at No. CP-51-DP-0000430-2012

BEFORE: MUSMANNO, WECHT, and PLATT,* JJ.

MEMORANDUM BY WECHT, J.: Filed: February 19, 2013

In this juvenile dependency action, M.L.O. ("Mother") appeals the trial court's August 9, 2012 order that changed the placement goal for her daughter, F.H.O.C. ("Child"), born in September of 2011, from reunification to unsubsidized permanent legal custody and granted permanent legal custodianship to T.O., Child's maternal step-grandmother ("Grandmother").¹

* Retired Senior Judge assigned to the Superior Court.

¹ Permanent legal custody is a placement option under the Juvenile Act that places custody of a dependent child in a custodian, yet does not terminate the parents' parental rights. *In re B.S.*, 861 A.2d 974, 977 (Pa. Super. 2004). In such a scenario, the parents may still have visitation with their child if deemed appropriate by the trial court.

The trial court also granted Mother liberal supervised visitation of Child. We affirm.

On March 8, 2012, the Philadelphia Department of Human Services (“DHS”) filed an application for, and obtained, an Order of Protective Custody (“OPC”) for Child due to allegations that Mother was observed as lethargic, incoherent, and disoriented, and had pushed a stroller containing Child into a wall. The application further alleged that Mother was under the influence at the time of these observations and was unable to provide proper care for Child. Mother has a history of drug abuse and mental health issues. Notes of Testimony (“N.T.”), 3/19/12, at 6-7. DHS took custody of Child and placed her in foster care. On March 9, 2012, a shelter care hearing was held. The shelter care order lifted the OPC, and ordered that Child remain in the temporary custody of DHS.

On March 12, 2012, DHS filed a dependency petition. The trial court held a hearing on March 19, 2012, and entered an order adjudicating Child dependent. On that date, the trial court also ordered Mother to go to the Clinical Evaluation Unit (“CEU”) for monitoring, to undergo a drug screen, and to submit to three random drug screens prior to the next permanency review hearing. Order of Adjudication and Disposition, 3/19/12. The trial court also referred Mother to Behavioral Health Service (“BHS”). *Id.* Father was not present at the time of the hearing due to his incarceration.

On March 22, 2012, CEU evaluated Mother. N.T., 5/3/12, at 6. CEU recommended that Mother: attend a dual diagnosis treatment program, with continued stay based upon medical necessity; submit to random drug screens; participate in individual and group therapy; attend addiction education and life therapy; and participate in 12-step meetings. N.T., 5/3/12, at 6. Evidence revealed that Mother was not complying with her Individual Outpatient Program ("IOP"). N.T., 5/3/12, at 6.

DHS held a Family Service Plan ("FSP") meeting on April 18, 2012. Family Service Plan, 5/8/12. DHS set FSP objectives for Mother, including: to meet with a therapist weekly in order to understand how her behavior resulted in Child's neglect; to attend weekly parenting classes; to participate in drug and alcohol evaluation, and to comply with recommended treatment; and to undergo a parenting capacity evaluation. *Id.*

Following her adjudication, Child was placed in a foster home. N.T., 5/3/12, at 3. Child has no special needs. N.T., 5/3/12, at 3. However, Grandmother and Grandfather, residents of Crawford County, Pennsylvania, presented themselves as placement resources for Child. N.T., 5/3/12, at 3-4. DHS then contacted the Crawford County Children and Youth Department ("CYD"), which evaluated Grandmother's home and determined that it was safe for Child. N.T., 5/3/12, at 4. In addition, Crawford County CYD also ran background checks on Grandmother and Grandfather. *Id.*

On May 3, 2012, a Permanency Review Hearing was held, at which time Grandmother appeared and requested custody of Child. N.T., 5/3/12, at 15. At the time of the hearing, Grandmother had custody of Mother's other child, J.O., for whom Grandmother had provided care for almost four years. N.T., 5/3/12, at 14-15. At the hearing, Grandmother expressed her desire to care for Child, and stated that she understood that she would be legally responsible for all of Child's care and could be held liable if harm befell Child. Grandmother noted that she had no concerns about taking Child to reside with her. N.T., 5/3/12, at 15. Grandmother also had no concerns with supervising any visitation between Mother and Child. N.T., 5/3/12, at 16. However, Grandmother testified that she would not be comfortable with unsupervised visitation between Mother and Child until she has proof that Mother was "going to stay clean." N.T., 5/3/12, at 17-18. At the hearing, Sheena Banks, a DHS social worker, testified that she had no record of Mother complying with her IOP. N.T., 5/3/12, at 6.

Following the hearing on May 3, 2012, the trial court granted Grandmother temporary legal and physical custody. There was testimony that Mother had received a report of non-compliance from CEU. N.T., 5/3/12, at 11-12. Mother was again referred to CEU for a drug and alcohol screen, and for assessment and monitoring. Order, 5/3/12, at 2.

On August 1, 2012, CEU issued a report of non-compliance for Mother. Family Court Behavioral Health System Clinical Evaluation Unit Report of

Non-Compliance, 8/1/12. The report stated that, although CEU scheduled an intake appointment for Mother at the Consortium Family Preservation Program for May 7, 2012, Mother had not contacted either the Consortium or CEU for evaluation or treatment. *Id.*

Another Permanency Review Hearing was held on August 2, 2012. At the hearing, Linda McClean, a Philadelphia DHS social worker, testified that, since Grandmother had been awarded temporary legal custody on May 3, 2012, Child was doing well, and looked clean and healthy. N.T., 8/2/12, at 3. Ms. McClean further testified that, when she was last at the home of Grandmother on July 27, 2012, she observed Child interacting well with both grandparents. *Id.* Ms. McClean explained that the grandparents play with Child, take Child out, and meet all of Child's needs. N.T., 8/2/12, at 3-4. When questioned about the possible discharge of DHS involvement, Ms. McClean opined that Child would be fine because Grandparents were doing well caring for Child on their own. N.T., 8/2/12, at 4. In addition, Ms. McClean spoke with the Crawford County CYD, which did not see a need for services because Child was well cared for by the grandparents. *Id.* Moreover, Ms. McClean testified that Child's grandparents stated that they were not interested in receiving kinship services, and did not need any financial services. N.T., 8/2/12, at 8.

Ms. McClean further testified that Mother's most recent drug screen was positive for Benzodiazepine. N.T., 8/2/12, at 6. Ms. McClean noted that

Mother still did not have proper housing. N.T., 8/2/12, at 7. Finally, Ms. McClean testified that Mother had only requested and received one visit with Child. N.T., 8/2/12, at 9.

Mother also testified at the hearing. Mother asserted that she had enrolled in a methadone treatment program at My Sister's Program through Thomas Jefferson University. N.T., 8/3/12, at 34. Mother noted that she then went to the Thomas Jefferson Family Center for treatment. N.T., 8/2/12, at 34-35.

At the conclusion of the hearing, DHS asked the trial court to discharge the case because Grandmother had been granted temporary legal custody of Child, and because there were no dependency issues with Grandmother as legal guardian. N.T., 8/2/12, at 37. However, both the Child Advocate and Mother's counsel objected to an award of temporary legal custody because, they asserted, this did not ensure that Child would have permanency. In response, DHS's counsel proposed to draft an unsubsidized Permanent Legal Custody Order for the trial court to consider and sign. N.T., 8/2/12, at 37-40.

At a hearing on August 9, 2012, which incorporated the testimony from the Permanency Review Hearing on August 2, 2012, DHS presented a proposed unsubsidized permanent legal custody order to change Child's permanency goal to unsubsidized permanent legal custody with Grandmother. N.T., 8/9/12, at 2-3, 7. Following the hearing, the trial court

entered an order on August 9, 2012, granting Grandmother unsubsidized permanent legal custody of Child, and granting Mother liberal supervised visitation with Child. Order, 8/9/12. On August 10, 2012, Mother filed a timely notice of appeal.² On the same date, Mother filed a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b).

Mother raises one issue for our review:

Did the trial court err and abuse its discretion in changing the goal to permanent legal custody?

Mother's Brief at 3.

We review an order granting permanent legal custody for an abuse of discretion.

When reviewing such a decision[,] we are bound by the facts as found by the trial court unless they are not supported in the record. Furthermore, in a change of goal proceeding, the trial court must focus on the child and determine the goal in accordance with the child's best interest and not those of his or her parents.

At each review hearing concerning a child who has been adjudicated dependent and removed from the parental home, the trial court must consider: the continuing necessity for and appropriateness of the placement; the extent of compliance with the service plan developed for the child; the extent of progress made towards alleviating the circumstances which necessitated the original placement; the appropriateness and feasibility of the current placement goal for the child; and, a likely date by which the goal for the child might be achieved.

² Mother also is appealing the trial court's finding of dependency at 1126 EDA 2012.

These statutory mandates clearly place the trial court's focus on the best interests of the child.

In addition[, a]lthough bound by the facts as found by the trial court and supported by the record, we are not bound by the trial court's inferences, deductions, and conclusions therefrom; we must exercise our independent judgment in reviewing the court's determination, as opposed to its findings of fact, and must order whatever right and justice dictate. We review for an abuse of discretion. Our scope of review, accordingly, is of the broadest possible nature. It is this Court's responsibility to ensure that the record represents a comprehensive inquiry and that the hearing judge has applied the appropriate legal principles to that record. Nevertheless, we accord great weight to the court's fact-finding function because the court is in the best position to observe and rule on the credibility of the parties and the witnesses.

In re H.V., 37 A.3d 588, 593 (Pa. Super. 2012) (quoting *In re K.J.*, 27 A.3d 236, 241 (Pa. Super. 2011)) (alterations in original).

Section 6351(f) of the Juvenile Act prescribes the pertinent inquiry for the trial court:

(f) Matters to be determined at permanency hearing.-- At each permanency hearing, a court shall determine all of the following:

- (1) The continuing necessity for and appropriateness of the placement.
- (2) The appropriateness, feasibility and extent of compliance with the permanency plan developed for the child.
- (3) The extent of progress made toward alleviating the circumstances which necessitated the original placement.
- (4) The appropriateness and feasibility of the current placement goal for the child.

(5) The likely date by which the placement goal for the child might be achieved.

(5.1) Whether reasonable efforts were made to finalize the permanency plan in effect.

(6) Whether the child is safe.

* * *

42 Pa.C.S.A. §§ 6351(f)(1)-(6).

Additionally, section 6351(f.1)(3) authorizes the trial court to grant PLC if the trial court decides that neither reunification nor adoption is best suited to the child's safety, protection, and physical, mental, and moral welfare. Finally, the court should consider the bond between the child and her parents, foster parents, and siblings. *H.V.*, 37 A.3d at 594-595.

In *In re B.S.*, we summarized the permanent legal custody goal change procedure as follows:

Section 6351(f.1) of the Juvenile Act lists the alternatives available to the juvenile court for the permanent placement of a [dependent] child. Upon a child's adjudication of dependency, the juvenile court may order reunification with the child's parent, guardian, or custodian. 42 Pa.C.S.A. § 6351(f.1)(1). If reunification with the child's parent, guardian, or custodian is not best suited to the child's safety, protection and physical, mental and moral welfare, the court may terminate parental rights and place the child for adoption. 42 Pa.C.S.A. § 6351(f.1)(2). If the court decides that neither reunification nor adoption is best suited to the child's safety, protection and physical, mental and moral welfare, it may order the child to be placed with a legal custodian. 42 Pa.C.S.A. § 6351(f.1)(3). If the court decides that neither reunification, adoption, nor placement with a legal custodian are best suited to the child's safety, protection and physical, mental and moral welfare, the court can place the child with a fit and willing relative. 42 Pa.C.S.A. § 6351(f.1)(4). Finally, the court may place the [dependent] child in another

permanent living arrangement if DHS presents a compelling reason that any of the previous options are not suited best to the child's safety, protection and physical, mental and moral welfare. 42 Pa.C.S.A. § 6351(f.1)(5).

In 2001, Pennsylvania created a subsidy program, SPLC, which provides financial support for families willing to become permanent legal custodians pursuant to section 6351(f.1)(3). SPLC transfers permanent legal custody to the [dependent] child's legal custodian without requiring the termination of natural parental rights. When deemed appropriate, the trial court has the power to permit continued visitation by the [dependent] child's natural parents. To be eligible for SPLC, the legal custodian must meet all of the requirements for foster parenthood, submit to an annual eligibility evaluation, and have the ability to provide for the child without court supervision.

Upon the filing of a SPLC petition that alleges the [dependent] child's current placement is not suited to the safety, to the protection, and to the physical, mental, and moral welfare of the child, the trial court must conduct a permanency hearing within 30 days. 42 Pa.C.S.A. § 6351(e)(3)(ii)(D). At the hearing, the trial court must make numerous findings, most of which focus on the best interests of the dependent child. **See** 42 Pa.C.S.A. § 6351(f). Additionally, before the trial court may order SPLC, the trial court must find that neither reunification nor adoption is best suited to the child's safety, protection and physical, mental and moral welfare of the child. 42 Pa.C.S.A. § 6351(f.1)(3).

In re B.S., 861 A.2d 974, 976-77 (Pa. Super. 2004); ***see also H.V.***, 37 A.3d at 589 n.1.

In her appeal, Mother contends that the trial court erred or abused its discretion in awarding permanent legal custody to Grandmother. Mother argues that the goal change to permanent legal custody permanently deprives her of the right to petition for primary legal and physical custody of Child in the future. Mother's Brief at 11-12.

In its opinion, the trial court explained its decision as follows:

[T]he testimony from the previous permanency hearings provided a basis, by clear and convincing evidence, for an order of unsubsidized permanent legal custody. The testimony clearly reflected Grandmother's desire to have custody of the Child without DHS involvement. Grandmother had indicated that there was no need for services nor did she require financial assistance. This was confirmed by the testimony of DHS social worker, Ms. McClean[,] at the Permanency Hearing of August 2, 2012. Based upon this, combined with the testimony that the Child was doing extremely well under the Grandmother's care, along with the fact that Grandmother had been caring for Mother's other [c]hild for the last four years, this Court clearly had a sufficient basis to sign the order granting unsubsidized Permanent Legal Custody to Grandmother. This order did not constitute an abuse of discretion and was clearly in the best interest of the Child.

Furthermore, the sole basis for this appeal, as identified in Appellant's Statement of Matters Complained of on Appeal [*sic*] was the allegation that "the trial court erred when it permanently deprived Mother of custody of Child."

The law of the Commonwealth of Pennsylvania empowers a Juvenile Court to make an award of Permanent Legal Custody as a permanency option for a dependent child. 42 Pa.C.S.A. § 6351(a)(2.1). At the same time, under The Child Custody Act, 23 Pa. C.S.A. § 5321, in Pennsylvania, a parent has the right to file for custody of his or her child. This Act provides for the modification of an existing custody order. Specifically, the Child Custody Act states that, "upon petition, a court may modify a custody order to serve the best interests of the child.[]" 23 Pa.C.S.A. § 5338(a). The Act makes clear that the section is applicable "to any custody order entered by a court of this Commonwealth or any other state . . . [.]" 23 Pa.C.S.A. § 5338 (b).

Neither the terms "permanent" nor "permanent legal custody" are found in the definition of the Juvenile Act. 42 Pa.C.S.A. § 6302. The Pennsylvania Department of Welfare, Office of Children and Youth provides guidance on the meaning of permanent legal custody. **See** OCY Bulletin 3130-10-02; 314010-03 (July 30, 2010)("The Bulletin"). The Bulletin defines permanent legal custody as a permanency plan for a child. ***Id.*** p. 4. The Bulletin is careful to note that permanent legal custody

does not provide the same level of permanency as adoption in that the parent retains the right to file for custody of a child who has been the subject of a grant of permanent legal custody. *Id.*, p. 5, 9, 12. Finally, the Bulletin recognizes that permanent legal custody is not permanent, and may be terminated upon an order of the court. *Id.*, p. 26.

Similarly, the Pennsylvania Dependency Benchbook makes clear that a parent does not lose his or her right to petition for custody following a grant of permanent legal custody. Pennsylvania Children's Roundtable Initiative, *Pennsylvania Dependency Benchbook*, Harrisburg, PA: Office of Children and Families in the Courts, 2010, p. 86. The Benchbook explains:

Although the custodianship is considered permanent, it may be terminated with judicial approval, following the filing of a petition by the agency. (Because the grant of permanent legal custody closes the dependency case, however, this is technically a new proceeding.) The biological parent or legal guardian may also file motions to have the legal custodianship terminated.

Consequently, appellate counsel's sole argument of error stating that this Court permanently deprived Mother of custody is without merit in that custody orders in Pennsylvania may be modified based upon the best interests of the child.

Trial Court Opinion ("T.C.O."), 9/24/12, at 4-6.

After a careful review of the record in this matter and the controlling case law, we find no abuse of discretion on the part of the trial court. The trial court found credible the testimony of Grandmother and DHS Social worker McClean. T.C.O. at 2. The trial court weighed the desirability of maintaining the goal of reunification, and of changing the goal to adoption. The trial court heard testimony that Grandmother was providing care for Child and that there were no concerns with Grandmother's ability to provide or with her home environment. Mother had not been able to alleviate the

conditions which led to dependency. Additionally, Grandmother's custody of Child provided Child the opportunity to live with her brother. The trial court then determined that a goal change to unsubsidized permanent legal custody was in the best interests of Child.

We find the situation in the instant case different from the scenario in *H.V., supra*. In that case, we addressed a mother's appeal from a trial court order changing her children's permanency goal from reunification with mother to an award of permanent legal custody to paternal grandparents. We ruled that the trial court failed to consider the fact that the mother had alleviated the conditions that had led to the initial placement of the children, and had failed to consider the bond between Mother, her children, and their grandparents. Moreover, we held that the trial court had failed to consider the impact of separation of the children from their siblings. Thus, we reversed the trial court's order, and reinstated the goal of reunification. *H.V.*, 37 A.3d at 594-96.

This case differs in several particulars. The trial court considered the fact that Mother had not alleviated the conditions that led to the initial placement of Child, and that Mother was not prepared to care for Child at this time. The trial court also considered the bonds that existed between Mother and Child, and between the grandparents and Child, in arriving at its decision. Competent evidence also revealed that Child's grandparents have been taking care of Mother's other child for the past four years.

Likewise, we find the instant appeal distinguishable from *B.S., supra*. In *B.S.*, DHS filed an appeal from the trial court's order denying DHS' petition for subsidized permanent legal custody. We found that the trial court had applied an incorrect legal standard when it denied the subsidized permanent legal custody petition, erroneously requiring DHS to present a compelling reason that reunification would not best serve the child's physical, mental, or emotional health, safety, or moral welfare. We also found that the trial court failed to make the appropriate determinations under section 6351(f). We determined that the trial court had focused unduly on the mother's progress in improving her parenting skills and her efforts toward building a relationship with the subject child, without considering the other subsections pursuant to section 6451(f) to ensure that the child's best interests were taken into account. *Id.* at 977-78. Accordingly, we reversed and remanded the matter for a new hearing, and instructed the trial court to consider all of the pertinent factors under section 6351(f) in making its determination. *Id.* at 979.

By contrast, we conclude here that the trial court considered Child's best interests and the relevant factors under section 6351(f).³ The trial court found credible the testimony that Child was safe and well cared for by

³ As required, we accept the trial court's findings of fact and credibility determinations. However, in this case, we must observe that the trial court's discussion of the application of those facts and determinations to the relevant factors is bare-boned. While we conclude that the record supports the trial court's decision, a more thorough trial court opinion would have facilitated our review.

Grandmother and Grandfather, and that unsubsidized permanent legal custody with her grandparents would best serve Child's safety and protection, as well as her physical, mental, and moral welfare. The trial court found that reunification with Mother was not in Child's best interests, because Mother still had drug and alcohol issues which had not been adequately addressed. Although Mother continued to hope that she might be able to regain custody of Child if and when Mother addresses her drug and alcohol problems, the trial court was bound to consider Child's best interests at the time of the hearing. Thus, the competent evidence in the record supports the trial court's findings of fact and decision to enter the unsubsidized permanent legal custody under section 6351.

As we find sufficient evidence in the record to support the trial court's orders directing a change in the permanency goal for Child to unsubsidized permanent legal custody, and implementing that change in placement in Child's best interests, we may not disturb the order. In *In re R.J.T.*, our Supreme Court instructed as follows.

[A]ppellate courts must employ an abuse of discretion standard of review, as we are not in a position to make the close calls based on fact-specific determinations. Not only are our trial judges observing the parties during the hearing, but usually, as in this case, they have presided over several other hearings with the same parties and have a longitudinal understanding of the case and the best interests of the individual child involved. Thus, we must defer to the trial judges who see and hear the parties and can determine the credibility to be placed on each witness and, premised thereon, gauge the likelihood of the success of the current permanency plan. Even if an appellate court would have made a different conclusion based on the cold

record, we are not in a position to reweigh the evidence and the credibility determinations of the trial court.

In re R.J.T., 9 A.3d 1179, 1190 (Pa. 2010); *see also In re Adoption of S.P.*, 47 A.3d 817, 826 (Pa. 2012).

Thus, regardless of Mother's compliance with certain FSP objectives, the trial court determined that Child's best interests were served by changing the goal to unsubsidized permanent legal custody. We cannot find that the trial court erred in this regard.

In her brief, Mother purports to raise a second issue. Therein, Mother asserts a variety of claims of error, including that the trial court did not provide sufficient notice to Grandmother of the hearing, that Child had not been dependent for enough time to justify permanent legal custodianship, that evidence concerning Mother's treatment was excluded or curtailed, and that the record did not support the finding that Grandmother requested unsubsidized permanent legal custody. Mother's Brief at 12-18. Unfortunately, Mother only raised one issue in her concise statement of errors complained of on appeal: whether the trial court erred in permanently depriving Mother of custody. The issues that Mother now seeks to raise in the second section of her brief are not encompassed in or fairly suggested by the sole issue in her concise statement. Accordingly, we are constrained to find those issues waived. *See Commonwealth v. Lord*, 719 A.2d 306, 309 (Pa. 1998); Pa.R.A.P. 1925(b)(4)(vii).

Order affirmed.