

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

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| IN THE INTEREST OF: A.C., a Minor      | : | IN THE SUPERIOR COURT OF |
|  | : | PENNSYLVANIA             |
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| APPEAL OF: A.C., Mother of Minor Child | : |                          |
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| Appellant                              | : | No. 2665 EDA 2012        |

Appeal from the Order entered September 17, 2012,  
in the Court of Common Pleas of Philadelphia County,  
Family Court Division, at No(s): DP-51-DP-0055518-2008;  
FID: 51-FN-465036-2008

BEFORE: BOWES, GANTMAN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.: Filed: March 11, 2013

A.C. ("Mother"), the mother of the subject child, A.C. ("Child"), appeals from the Order adjudicating Child dependent under section 6302 of the Juvenile Act, 42 Pa.C.S.A. § 6302, and maintaining the Philadelphia Department of Human Services's ("DHS") custody over Child and Child's placement with her maternal great-grandmother pursuant to section 6351 of the Juvenile Act, 42 Pa.C.S.A. § 6351. We affirm.

Child was born in September 2004. On September 6, 2012, DHS filed a dependency Petition with regard to Child. The trial court held an adjudicatory hearing on the Petition on September 17, 2012. At the adjudicatory hearing, DHS presented the testimony of its social worker

assigned to the case, Ebony Boyd. The trial court summarized the testimony:

Ms. Boyd testified that the case came in to DHS due to a report of lack of supervision by Mother. (N.T. 9/17/12 at 3). Specifically, Ms. Boyd testified that Mother left eight-year[-]old [Child] home with her fifteen-year[-]old sibling, B.C., overnight from 9:00 p.m. to 9:00 a.m.[,] while Mother was at work. (N.T. 9/17/12 at 5-6). Ms. Boyd stated that DHS was concerned about the frequency of the lack of supervision by Mother of [Child], as Mother left the children alone overnight five days a week. (N.T. 9/17/12 at 5-6). Ms. Boyd further stated that there was a history of a lack of supervision by Mother and that three of Mother's other children were in placement because of Mother's lack of supervision. (N.T. 9/17/12 at 4, 6). Ms. Boyd testified that Mother also had a history of padlocking the refrigerator and doors when the children were left unsupervised. (N.T. 9/17/12 at 6-7).

On August 30, 2012, DHS obtained an Order of Protective Custody ("OPC") and placed [Child] with her maternal great-grandmother. (N.T. 9/17/12 at 3). A shelter care hearing was held on August 31, 2012, at which time the [trial court] transferred temporary legal custody of the child to DHS.

Trial Court Opinion, 11/26/12, at 1-2.

In the Order entered on September 17, 2012, the trial court found that Child was dependent, ordered that DHS would have custody of Child, and directed that Child would remain in placement with her great-grandmother.

On September 27, 2012, Mother filed a timely Notice of appeal, along with a Concise Statement of Errors Complained of on Appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b).

In her brief on appeal, Mother raises the following issue: "Did the trial court err and abuse its discretion in finding that Child was dependent by clear and convincing evidence?" Mother's Brief at 3.

Mother contends that the trial court abused its discretion in adjudicating Child dependent. *Id.* at 8. Mother argues that the trial court did not properly address whether Child had proper parental care. *Id.* at 10. Mother asserts that the trial court improperly used her prior history in caring for her children in adjudicating Child dependent. *Id.* at 9-10. Mother also asserts that the trial court could not find Child dependent because another child in her care had previously been found dependent. *Id.* at 9. Mother claims that Child was at home with her fifteen-year-old sister and that there was no evidence that Child needed any further supervision. *Id.* at 10-11. Mother points out that the trial court discharged the dependency petition as to her fifteen-year-old daughter. *Id.* at 9-10.

[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).

Dependency matters are governed by the Juvenile Act, 42 Pa.C.S.A. §§ 6301-6375. Section 6302 of the Juvenile Act defines "dependent child" as follows, in relevant part:

**"Dependent child."** A child who:

(1) 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.A. § 6302; *see also Matter of C.R.S.*, 696 A.2d 840, 845 (Pa. Super. 1997) (defining "proper parental care" as "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.").

Dependency must be proven by clear and convincing evidence. *In re D.A.*, 801 A.2d 614, 617 (Pa. Super. 2002) (*en banc*). "Clear and convincing evidence" is defined as that evidence "that is so clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conviction, without hesitance, of the truth of the precise facts in issue." *In re J.L.C.*, 837 A.2d 1247, 1251 (Pa. Super. 2003) (quotation marks omitted).

Further, we have stated that

[t]he 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.

\* \* \*

Even after a child has been adjudicated dependent, however, a court may not separate that child from his or her parent unless it finds that the separation is clearly necessary. Such necessity is implicated where the welfare of the child demands that he [or she] be taken from his [or her] parents' custody

*In re G., T.*, 845 A.2d 870, 872-73 (Pa. Super. 2004) (quotation marks and citations omitted); *see also A.N. v. A.N.*, 39 A.3d 326, 331 (Pa. Super. 2012) (stating that "it is not for this Court, but for the trial court as fact finder, to determine whether [a child's] removal from [his/]her family was clearly necessary.") (citation omitted).

[A] court is empowered by 42 Pa.C.S.[A.] § 6341(a) and (c) to make a finding that a child is dependent if the child meets the statutory definition by clear and convincing evidence. If the court finds that the child is dependent, then the court may make an appropriate disposition of the child to protect the child's physical, mental and moral welfare, including allowing the child to remain with the parents subject to supervision, transferring temporary legal custody to a relative or a private or public agency, or transferring custody to the juvenile court of another state. 42 Pa.C.S.[A.] § 6351(a).

*In re D.A.*, 801 A.2d at 617 (citation omitted). The determination "of whether a child is lacking proper parental care and control so as to be a dependent child encompasses two discrete questions: whether the child presently is without proper care and control, and if so, whether such care and control are immediately available." *Id.* at 619.

Here, the trial court set forth the following reasoning in finding that Child was dependent:

[T]he [trial court] found that [Child] was dependent under subsection (1) of 42 Pa.C.S.[A.] § 6302. Specifically, the [trial

court] found that [Child] was dependent because she was “without proper parental care or control, subsistence, education as required by law, or other care or control necessary for [her] physical, mental, or emotional health, or morals.” In making this finding, the [trial court] heard testimony from various witnesses[, including Mother,] and carefully considered all of the evidence that was presented at the adjudicatory hearing. The evidence revealed that Mother left her eight-year[-]old child [at] home with her fifteen-year[-]old sibling almost every night. Indeed, this was not a one-time occurrence, but rather amounted to [a] significant period of time that the child was left unsupervised by Mother. There was also testimony that Mother had a history of a lack of supervision with DHS and that three of Mother’s other children were in placement because of her lack of supervision. Mother also had a history of padlocking the refrigerator and doors when the children were left unsupervised. The totality of these circumstances compelled the [trial court] to find that Mother’s lack of supervision placed the health, safety, and welfare of [Child] at risk. As such, the [trial court] found that [Child] was a dependent child within the meaning of the statute and placed her with her great-grandmother.

Trial Court Opinion, 11/26/12, at 4.

Contrary to Mother’s argument, the trial court did not rely solely upon Mother’s prior history in finding Child dependent. ***See id.***; ***see generally In the Interest of Black***, 417 A.2d 1178, 1182 (Pa. Super. 1980) (stating that a parents’ lack of supervision of their other children was relevant and could be considered by the trial court in dependency action). Indeed, the trial court made findings that Child was lacking proper care or control, that such care and control were not immediately available, that Mother was using her fifteen-year-old daughter to care for and control Child, and that there was no alternative in Mother’s household to the care being rendered for Child by Mother’s fifteen-year-old daughter. Mother complains that the trial

court determined that her fifteen-year-old daughter was not lacking parental care and control, as it did not find her dependent. Such a finding does not mean that the trial court could not find Child to be dependent. ***See In Interest of R.T.***, 592 A.2d 55, 61 (Pa. Super. 1991) (stating that the decision to adjudicate a child dependent should not be based upon solely upon the decision to adjudicate the child's sibling). Moreover, while Mother cites to babysitting classes provided by the American Red Cross and the Girl Scouts for children as young as eleven years old, she has not demonstrated through any pertinent legal authority that she can substitute her parental duties and care for the Child with that of her fifteen-year-old daughter. ***See*** Pa.R.A.P. 2119(a). Because the trial court's credibility and weight determinations are supported by competent evidence in the record, we will not disturb them. ***See In re R.J.T.***, 9 A.3d at 1190.

Accordingly, having thoroughly reviewed the record, the briefs of the parties on this matter, and the controlling case law, and finding no abuse of discretion, we affirm the trial court's Order.

Order affirmed.