

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN THE INTEREST OF : No. JV 175-2007
:
A.B. and B.B. : CHILDREN & YOUTH
:
MINOR CHILDREN :
: 1925(a) Opinion

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this Court's Order dated June 29, 2007, in which the Court found A.B. and B.B. to be dependent children as defined in the Juvenile Act, 42 Pa.C.S.A. §6302.

FACTUAL FINDINGS

The Court held a dependency hearing on June 29, 2007, regarding A.B., date of birth December 12, 2005, and B.B., date of birth October 24, 2004.

At the present, the children reside with T.B., Sr. (hereinafter Father) and N.B., (hereinafter Mother) in the home of Father's mother and stepfather.

Previously the family resided in South Williamsport and Union County. Father also has two older children from a prior relationship living with the family, T.B. and Z.B.. Union County Children and Youth were working with the family in regard to parenting issues, discipline issues and medical neglect problems. N.T., p. 54. T.B. had to have ten (10) teeth extracted and he had ten (10) teeth capped. N.T., p. 54. Z.B. has a condition called neurofibromatosis, which requires a neurologist to closely monitor growth of tumors. The family was not keeping medical appointments. Union County children and Youth made an

indicated finding of medical neglect. N.T., p. 55.

The Union County court petitioned for a finding of dependency of T.B. and Z.B., but Father moved out of Union County to Lycoming County. Further, Father signed a voluntary order placing custody of T.B. and Z.B. with his mother and stepfather. N.T., p. 56.

Father and Mother then moved with the two younger children, A.B. and B.B. to N.B.'s maternal mother's home in South Williamsport, Lycoming County in July 2006. Around January 2007, Father and Mother moved to the paternal grandmother's home with A.B. and B.B. in Montoursville. When Father and Mother moved to Lycoming County, Union County Children and Youth referred the case to Lycoming County Children and Youth (hereinafter referred to as the "Agency") in September 2006.

In September 2006, Agency caseworker Mary Martin and Kristin Beattie went to the parents' residence and made contact with the family. It took the family about five minutes to answer the door because they were sleeping, but Father answered the door. The caseworkers discussed Agency Services for A.B. and B.B., but the parents were not interested in services. N.T., p. 57. Ms. Martin mentioned medical appointments for the boys and Mother acknowledged she just had forgot about a medical appointment, which was scheduled for one of the boys that morning. N.T., p. 57.

The home looked fine physically although there was an odor of cat urine. N.T., p. 57.

Ms. Martin testified that in several subsequent home visits, which occurred around 11:00 a.m., the boys would be asleep and when Mother would bring them downstairs they would be in their clothes. The youngest would be in a soaking wet diaper. N.T., p.p. 57-58.

The parents did not want services, and they did not cooperate with Ms. Martin. N.T., p. 58.

Ms. Martin then made a referral for an outreach worker who she hoped might be able to establish a better rapport with the parents. N.T., p. 55. She felt the parents needed to establish a routine schedule for the young children, ages one and two.

Ms. Martin also was concerned with the parenting being given to the children, so she also made a referral for the family to the Early Intervention Program. N.T., p. 59. Mother indicated she was not interested in the services. N.T., p. 59.

Patricia Walker of Lycoming/Clinton Early Intervention Services also provided testimony to the Court. She works with young children, age birth to three, who have developmental delays. On September 20, 2006 the Agency referred A.B. and B.B., for evaluation. N.T., p.5. Ms. Walker called the parents on September 28, 2006 and left a message for them. She tried to call again on October 6, but could not reach the parents. She then sent them a letter requesting they contact her by October 27, 2006. The parents failed to contact her. N.T., p. 6. Thus, she closed the case for lack of contact and sent a letter to the parents on November 29, asking the parents to reconsider and to contact her. N.T., p. 6.

In January 2007, Mary Martin of the Agency, again referred the parents to Early Intervention Services. Once again Ms. Walker sent a letter to the parents without a response. Ms. Walker left a message on Father's cell phone on January 29, 2007. She called the paternal grandmother on February 27th and left a message. She left a second message for the paternal grandmother on March 1, 2007. N.T., p. 8. Mary Martin then interceded and arranged for Ms. Walker to meet Mother. Ms. Walker then immediately went to Mother's residence on March 1, 2007 to meet with her.

Ms. Walker did an intake on both boys on March 1, 2007, but did not complete the process. She asked Mother for her work schedule to try and arrange completion of the process, but Mother did not have her schedule. Mother said she would call Ms. Walker back. When Ms. Walker did not hear from Mother by March 13th, she called Mother to schedule the completion of the evaluations on March 15, 2007. N.T., pp 8-9.

The evaluations were completed on March 15th and both boys were found to be significantly developmentally delayed. N.T., p. 9.¹ Workers were to come into the home for B.B. one hour, one time per week and for A.B., one-half hour, one time per week.

The case worker initially assigned to go into the home Yvonne, had difficulty in getting the parents to respond to effort to make an initial appointment. N.T., p. 18. She was finally able to schedule the first appointment for April 18, 2007. N.T., p. 18. Yvonne had scheduled an appointment for April 5th, but when she went to the home she learned Mother had gone to work. N.T., p. 18.

Ms. Walker's testimony established that it took almost half a year from September 2006 until March 2007 from referral of the Early Intervention Program to getting into the home to start the evaluation process. N.T., p. 24.

Tammy Bradley of the Family Support Outreach Program testified for the Agency. The Outreach Program works through the Agency. The Outreach workers go to the home, typically once per week, and they work directly with the family on parenting issues. Mary Martin asked Ms. Bradley to work on parenting skills and setting up routines and schedules for the children. N.T., p. 28.

Ms. Martin introduced Ms. Bradley to the family on October 3, 2006. Father

indicated he did not want services. N.T., p. 29. Both Father and Mother were defensive and felt they did not need services. Ms. Bradley also encouraged the parents to cooperate with the Early Intervention Program. The parents were encouraged to talk about it and to call and schedule something for the next week. After a week, N.B. contacted Ms. Martin and indicated they would cooperate with services. N.T., p. 31.

Ms. Bradley then called the parents to schedule an appointment leaving messages for them on their phone. They did not respond. Finally on October 26, 2006, Ms. Bradley and Mary Martin made an unannounced visit to the parents' residence. They went to the residence at 11:00 a.m. and Mother eventually answered the door. It appeared she and the children were asleep. When asked about cooperation, Mother cursed at the workers and asked them to leave. She said they could just go "F----- Court." N.T., p. 21. The workers were not allowed to see the children on October 26th. N.T., p. 32.

The next day, Ms. Bradley and Ms. Martin went back to the residence around 11:00 a.m. Mother apologized for her behavior the day before. The children were asleep. Mother advised the workers that Father was working out of state.² N.T., p. 32. Mother got the children up so the workers could see them. Mother indicated she didn't want family support services, but when it was explained to her that the case would be taken to court if she did not cooperate, she agreed to accept services. N.T., pp. 32-33.

Ms. Bradley noticed the children appeared to have slept in their clothes, and they needed to be washed up. N.T., p. 33. Ms. Bradley set up the next meeting for October 31st.

1 See N.T., pp. 9-10 for a percentage listing of developmental delays of the two boys.

2 It was later learned that Mother was not being truthful about Father's whereabouts. In fact, Father at the time was incarcerated.

On October 31, 2006, Ms. Bradley met with Mother, the maternal grandmother and the children. Ms. Bradley noticed the younger boy had a very bad diaper rash. N.T., p. 33. N.B. agreed to participate in a parenting class with Ms. Bradley in the home. This lasted for only two sessions.

November 21, 2006 was the next time Ms. Bradley came back to the home. Ms. Bradley visited with Mother on November 28th. After this, Mother. was not home for a scheduled appointment. She left a note for Mother to call her. Mother did not contact Ms. Bradley. N.T., p. 36.

In mid-December, Ms. Bradley and Mary Martin made an unannounced visit to drop off Christmas presents. Mother was not home so the presents were left with her mother.

Ms. Bradley left several messages for Mother to call her. Mother called and scheduled a visit for the week of January 8, 2007. However, when Ms. Bradley appeared for this visit Mother was not home. N.T., p. 37. Ms. Bradley learned that Mother was preparing to move into the home of Father's mother. Ms. Bradley listed the case as open until March or April, 2007 when Mary Martin telephoned and told her that the parents did not want services. N.T., p. 38.

During Ms. Bradley's time with her, Mother told Ms. Bradley she was not interested in the kids receiving the Early Intervention Services as she felt the kids were not developmentally delayed. N.T, p 39. She described Mother's attitude as being very angry at the Agency, and Ms. Bradley described Mother's attitude as being very negative. N.T., p. 39. She testified she only met Father once or twice, and he was not cooperative with services. She subsequently learned that when Mother said Father was working out-of-town, he was actually incarcerated for the offense of driving under the influence. N.T., p. 40. When she confronted

Mother about being untruthful about this, Mother got angry and indicated it was none of their business. N.T., p. 40.

Caseworker Mary Martin testified she had initial concerns from the history in Union County with Father's older children. She felt the parents missed medical appointments and that there appeared to be no routine or structure for the young boys. The fact that there were significant developmental delays with the boys escalated her concerns for their welfare. N.T., p. 59. Ms. Martin also noted that the parents in the short time of her involvement moved out of Union County, lived with Mother's parents, then moved to Father's mother's home. Father refused to sign any service plans. N.T., p. 52. These concerns ultimately led Ms. Martin to file the dependency petition. N.T., p. 62

Ms. Martin testified that the paternal grandmother's home appears to be clean and adequate. However, she notes some concern about significant smoking in the home. N.T., p. 64. The paternal grandmother also has two of Father's older children in the home.

Ms. Martin, in questioning from the Guardian Ad Litem for the children, described the youngest boys diaper rash on October 27, 2006 as being bright red with open sores. It appeared like it had been bleeding. She suggested Mother take the child to the doctor, but Mother felt the cream would resolve the problem. N.T., p. 67. She noted Mother did not keep medical appointments for B.B. in March 2007 and May 2007. This information was provided by the Divine Medical Clinic. N.T., pp.70-71. A.B. was scheduled for an appointment for June 27th. This appointment was then rescheduled to June 29th and then again to August 4th. N.T., p. 72.

Ms. Martin, in questioning from the Court, testified that her concerns involved the failure of the parents to keep medical appointments, the failure to appreciate medical

conditions as illustrated by the Union County indicated finding, the lack of a regular schedule for the children for feeding and sleeping, the significant developmental delays shown in the children, and the lack of the parents to seemingly engage with the children. N.T., pp. 74-76. Ms. Martin had been to the home approximately fifteen times to make observations, and has been a case worker for over twenty years. N.T., pp. 76-77. She noted the Divine Medical Clinic contacted her about their concerns that the children were not being seen as needed for their age. N.T., p. 77.

Ms. Martin testified that while the paternal grandmother's home seems adequate, the family plans to locate independent housing.³ N.T., p. 78. Ms. Martin opined the parents are not meeting the children's needs, and she does not feel that the grandparents are doing this either at this time. N.T., p. 80.

Mother was called as a witness by counsel for the Agency on cross-examination. N.T., p. 83. Mother acknowledged her husband Father did not appear at the dependency hearing because he would not sign papers and does not feel he needs to appear. N.T., p. 86. He is presently unemployed. He is on five years probation supervision for the offenses of driving under the influence of alcohol. N.T., p. 85. Mother indicated they will stay at the residence where they are now living until she saves money to move. Father's two older children are in the custody of his mother and stepfather. Z.B. is age 11. T.B. is age 6. Mother and Father plan to take the two older children when they move out of the grandparents' home. N.T., p. 87. Mother works a full time job from 7:00 am. until 5:00 p.m., Monday through Thursday.

³ This was told to Ms. Martin by Mother who told Ms. Martin she and Father plan to move out of the paternal grandmother's residence. N.T., p. 78.

Mother claimed her delayed meetings with Early Intervention and Ms. Bradley of Outreach were because of Mother's busy work schedule. Mother acknowledged she missed two medical appointments for the boys. She does not feel Father has a drinking problem, but he still drinks on weekends despite being on supervision for DUI. N.T., p. 90. She claimed there is no counseling, which either her husband or her are in at this time N.T., p. 90

Mother acknowledged that Father does not get involved in things like Early Intervention learning for the boys. She testified, "he don't really care." N.T., p. 95. She also acknowledged that the burden of taking care of all the boys is on her. N.T., p. 95. She testified Father would not cooperate with any workers or program stating "he won't cooperate with anything." N.T., p. 97. She takes care of all four of the boys. N.T., p. 97. She is not sure if she can continue to do this while working full time. N.T. p. 97.

DISCUSSION

The Court, after completing the testimony in this case, offered its reasons for finding the two children, A.B. and B.B. to be dependent children. *See*, Transcript filed September 26, 2007, pp. 2-4, attached.

In order to find a child "dependent," under the Juvenile Act, it must be shown that the child:

is without proper parental 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 . . . that places the health, safety or welfare of the child at risk;

42 Pa. C.S.A., §6302(1).

Facts of dependency must be proven by evidence that is clear and convincing. *See In Matter of Jackson*, 302 Pa. Super, 369, 373, 448 A.2d 1087, 1088

(1982). Moreover,

the Juvenile Act does not require proof that a parent has committed or condoned abuse before a child can be found dependent. Rather, dependency as defined in the Act exists where a child is without proper parental care, defined as 'care or control necessary for his physical, mental or emotional health or morals.' 42 Pa. C.S. §6302. Thus, the Juvenile Act permits a finding of dependency if clear and convincing evidence establishes that a child is lacking the particular type of care necessary to meet his or her individual special needs.

In Re: R.R., 455 Pa. Super. 1, 4, 686 A.2d 1316, 1317-1318 (1996). The Superior Court in the case of ***In the Interest of Pernishek***, 268 Pa. Super 447, 458, 408 A.2d 872, 877-878 (1979) states:

In determining whether a child is dependent, the hearing judge should not ask what are the child's 'best interests' but whether the child is presently without proper parental care and, if so, whether such care is immediately available.

The Court in this case felt the testimony of the experienced caseworker, Mary Martin, along with the other evidence, showed in a clear and convincing manner that the two young children were lacking in care needed for their special needs. The Court is particularly concerned about the significant developmental delays exhibited by both children. If this situation continues unabated the Court is concerned there could be lifetime detriments to the children. The Court is likewise concerned with missed medical appointments and lack of schedule and structure for the children. Every time a caseworker went to the home around 11:00 a.m. it seemed like the children had slept in their clothes, had not had a breakfast and had diapers saturated with urine. On October 27, 2006 Ms. Martin testified that the younger boy had such extreme diaper rash that she described the skin as bright red with open sores as if it had been bleeding. N.T., p. 67. The missed medical appointments for the boys were of such significance that the Divine Medical Clinic

contacted Ms. Martin to raise their concern. The evidence of the indicated finding of medical neglect by the Father in Union County concerning his older children further heightens the concern about the care which the younger children are receiving. It is also apparent in Mother's testimony that Father is not helping her care for the boys despite the fact that she is working full time and Father is not working at all. N.T., p. 95. She testified she takes care of all four of the boys. N.T., p. 97.

While the paternal grandmother is providing a home and has custody of the two older boys it does not appear she is a help in caring for the younger boys. As stated, Mother testified she cares for all the boys. Mary Martin testified that the paternal grandmother also has not appreciated the concerns for the developmental delays shown by both boys. N.T., p. 59.

It is also apparent from Mother's testimony that she and Father plan to move out of the grandmother's house as soon as they save some money.⁴

Finally, the Court notes that both parents have been extremely uncooperative with services for the children. It took almost half a year, September 2006 until March 2007, from referral to the early intervention program until the worker could get into the home to evaluate the boys. N.T., p. 24. Mother described Father by saying, "he won't cooperate with anything." N.T., p. 97.

Finally, we note that the Guardian Ad Litem for the children, Eric Linhardt, at the conclusion of testimony, strongly argued for the Court to find dependency. *See*, attached transcript of the Guardian's arguments.

⁴ We note along this line the recent history of lack of stability as to homes, as Mother and Father moved from Union County to South Williamsport, to Montoursville and plan to move again.

For these reasons, the Court believes that A.B. and B.B. are, at this time,
dependent children.

DATE: _____

By The Court,

Kenneth D. Brown, P. J.

cc: Charles F. Greevy, III, Esquire
Eric Linhardt, Esquire
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