

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

IN THE INTEREST OF:	:	NO. JV-298-2006
	:	
R.W., C.W., AND C.W.,	:	
	:	
MINOR CHILDREN	:	CHILDREN & YOUTH

OPINION

This opinion is written in support of this court's order of October 15, 2007, in which the court affirmed the dependency of all three children under the Juvenile Act, 42 Pa.C.S.A. §6302.

Factual Findings¹

The court held a dependency hearing on October 15, 2007, regarding R.W., born on March 19, 1997; Christopher W., born on March 15, 2000; and Courtney W., born on November 5, 2002. The children were adjudicated dependent on September 15, 2006, due to extremely poor home conditions and school issues of truancy and tardiness. The children were placed together in the same resource home, where they have resided ever since, and where they are doing very well.

Mother has been highly inconsistent in her visits with the children. She has attended eight out of sixteen possible visits. For two other visits, she was 1 ½ hours late. Most of the non-attended visits were cancelled by Mother on the day of the visit.

Moreover, there have been problems at the visits. Caseworker Kristin Sweger testified that Mother does not understand how to meet her children's emotional needs.

¹ The court notes that we found the testimony of all caseworkers credible and the testimony of Mother highly uncredible.

She does not comprehend how her missed visits affect the children, nor does she understand how some of her inappropriate behavior at the visits affects them. For instance, shortly after Mother and Father separated, Mother attended a visit near Father's Day, during which she told the children she had a new boyfriend. Although the children had never met this man, Mother had them make Father's Day cards for him, identifying him as "stepfather." Another time, Mother had the children make crafts for this man which said, "I love you Tom." N.T., pp. 11, 16.

Mother is also unable to meet the children's special needs. Christopher has serious behavioral issues, which sometimes elevate to the point of requiring physical restraint. Mother's treatment of his behavior is highly inconsistent, which exacerbates the behavior. As Ms. Sweger testified, "Sometimes she addresses him appropriately. Sometimes she hollers at him. Sometimes there is a time out. Sometimes there is not. Sometimes there is a threat." N.T. pp. 16, 17. Robert has trouble with his bowels, and Mother does not address that issue effectively, either.

Ms. Sweger has repeatedly told Mother that before the visits are moved from the Sharwell building she needs to attend the visits regularly, and be more consistent in her discipline and her intervention with the children. Ms. Sweger testified that Mother's typical response has been "to scream at me and threaten to call my supervisor, the director, and the commissioners and those type of things." N.T. p. 21.

Psychologist Bruce Anderson performed a psychological evaluation on Mother, and determined there was no psychological reason Mother could not follow the Family Service Plan and effectively parent her children. Mr. Anderson also stated Mother was

puzzled as to why the children were placed in foster care, and opined that Mother has little or no awareness of her parenting shortcomings.

Another major issue is Mother's instability. On September 15, 2006, the date of the dependency hearing, neither Mother nor the children appeared at the hearing. The court was told that Mother relocated to Louisiana, that Mother had been promoted to manager at a Flying J restaurant in Bossier, Louisiana, and that she had left with the children. The Master called the Flying J and spoke with the manager, who stated Mother had not received a promotion to work at Flying J in Louisiana, but it was possible she would be transferred to Winchester, Virginia some time in the future. Caseworker Linda Wurster testified she had just been notified that Robert and Christopher were withdrawn from the Jersey Shore School District, and that Mother told school authorities she was leaving for Louisiana. Ms. Wurster was told by Courtney's daycare the family was moving to Virginia or West Virginia.

Presented with this information, the court found the children dependent, and they were taken into custody before Mother was able to leave the area with the children. Despite her children being placed in foster care, Mother left for Louisiana. She testified her car broke down on the way to Louisiana, and then she was called by the Flying J and told to go to Virginia. Mother lived in Virginia until March 2007, when she moved to Carlisle. She has remained in Carlisle to the present. At some point, which is unclear from the testimony, she worked at a Bob Evans restaurant. Three weeks prior to this dependency hearing, Mother began working for a diner in the Carlisle area. In recent months she worked as a caretaker for Thomas Buster's family in the state of Kentucky, as well as performing accounting work for Buster's Tree Service, located in

Kentucky. Apparently, she went to Kentucky on the weekends. Mother testified that she stopped going to Kentucky three weeks ago, but still does accounting via mail.

There was a further issue with Mother's boyfriend, Thomas Buster. During the summer of 2007, Mr. Buster was calling the Agency, making threatening and harassing statements. In August 2007, the Agency expressed to Mother that Mr. Buster was having a detrimental impact on her case, and would be considered a high risk person if she were to assume custody of the children. After this conversation, Mother informed the Agency she was no longer involved with Mr. Buster. At the hearing, Mother denied any relationship with him at the present, but the court found this testimony not credible. We note that she admitted working as a caretaker for Mr. Buster's family until very recently, that she still performs accounting work for his family, and that Mr. Buster currently lives with her twenty-year-old son.

The Agency recommended Mother go to personal counseling, which she has not yet done. The Agency also recommended she take additional parenting classes, which she has not done. The Agency further recommended that she move back to the Williamsport area, so she can have more frequent visits with her children and be more involved with their educational and medical issues. Caseworker Melissa Young testified that Mother refused to move "because she's very upset with this county. She feels that when in-home services were provided by this county that it was too much. There were three workers providing services and she felt that that was invading her privacy." N.T. p. 59.

Discussion

In order to find a child “dependent,” it must be shown that a child:

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

42 Pa.C.S.A. §6302. Facts of dependency must be proven by evidence that is clear and convincing. In Matter of Jackson, 302 Pa. Super 369, 373, 448 A2d 1087, 1088 (Pa. Super. 1982).

As stated in the Findings of Fact, this court is highly concerned about the home conditions of any residence where Mother may reside with the children. Mother has refused to acknowledge responsibility for the deplorable home conditions. Without such an acknowledgement, the court cannot believe the problem will be remedied.

Rather than admitting her housekeeping shortcomings, Mother blames others. When asked by her attorney what changes have taken place to prevent these conditions from occurring again, she replied, “I have no male in my life.” N.T. p. 72. Prior to placement, Mother repeatedly told caseworkers the children make the messes, so the children should clean them up. *See* order of September 15, 2006.

Similarly, Mother blames others for deplorable home conditions in her past. Various Children and Youth agencies in different counties have been involved with this family since 1995. Each time the issue of home conditions was paramount. When questioned about Children and Youth involvement in other counties, Mother blamed others for her poor home conditions. *See* N.T., p. 87-91. Furthermore, Mother’s

response when faced with agency intervention has been to flee the area, which she has done on at least three occasions, rather than remedy the home conditions.

This history demonstrates that deplorable home conditions are a common occurrence in Mother's household. Until Mother acknowledges this and accepts responsibility for it, the court does not believe she will change. If her children are returned to her, the conditions of her household will sooner or later deteriorate to the point of posing health and safety hazards again. Moreover, Mother's history demonstrates that her method of dealing with the problem is to leave the area, to try to avoid child protective services. She attempted to do just that in this case, but was unsuccessful, as her children were taken into custody before she left the area. For these reasons, the court concludes the children are currently without parental care and control necessary for their physical health.²

To the extent Mother may claim her problems in Lycoming County were caused by depression which had been building up for two years prior, as stated to Bruce Anderson, the court rejects that argument. The court believes this is simply another excuse for failing to cure the deplorable home conditions. Moreover, Linda Wurster recommended to Mother that she seek help for depression, which Mother apparently did not readily do. *See* order of September 15, 2006, p. 7. And certainly her depression in Williamsport does not account for her past failures in other counties. Furthermore, Mother testified at the October 15, 2007 hearing her family physician told her there was

² The court acknowledges that no problems have been found with her apartment in Carlisle. However, as she lives there alone, that is a poor indicator of what would transpire if her three young children were returned to her custody.

no reason for her to be on medication, and that she has not been on medication since December 2006. N.T. pp. 74, 92.

Two additional concerns are Mother's highly unstable work history and her frequent moves. Within the last year, Mother has lived in Williamsport, Virginia, and Carlisle, with frequent trips to Kentucky. She has also attempted to move to Louisiana. She has worked at a number of different jobs. Very recently, Mother was traveling to Kentucky on the weekends for employment, as well as maintaining at least one job in Carlisle. She now claims she is only working at a diner in Carlisle (very recent employment) and doing accounting by mail from Kentucky. Given this chaotic employment history and her frequent moves, the court does not believe Mother can provide a consistent home for the children at this point.

These concerns are compounded by the fact that Mother has been so untruthful with the Agency regarding her employment and living situation. It is difficult to believe her testimony that she is now uninvolved with Mr. Buster, that she is no longer going to Kentucky on the weekends, and that she is committed to remaining in Carlisle.

Moreover, as stated in the Findings of Fact, the court believes Mother cannot at this time meet the children's emotional needs, nor can she deal with the special needs of Christopher and Robert. The court finds credible the testimony of the experienced caseworkers on this issue.

The court is also concerned about Mother's failure to attend visits with her children. Certainly the distance is a barrier, but it is a barrier created by Mother herself, who moved out of the area to avoid contact with the Agency.

For all these reasons, the court has affirmed dependency of the children.

BY THE COURT,

Clinton W. Smith, Specially Presiding

cc: Charles Greevy III, Esq.
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