

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN THE INTEREST OF: : **JUVENILE DIVISION**
DD : **NO. DP-61-2018**
: **FID: FN-41-2018**
:
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Date: March 27, 2020

OPINION IN SUPPORT OF THE ORDER OF MARCH 4, 2020,
IN COMPLIANCE WITH RULE 1925(a) OF THE
RULES OF APPELLATE PROCEDURE

KD, (hereinafter referred to as “Father”) has appealed this Court’s Permanency Review Order and Finding of Aggravating Circumstances and Abuse by Omission entered on March 4, 2020 after a hearing held on February 18, 2020. Father timely filed his Notice of Appeal on March 12, 2020.

The Court notes that this appeal has been designated a Children’s Fast Track appeal and, pursuant to the Rule of Appellant Procedure 1925, Appellant has filed his Concise Statement of Matters Complained of on Appeal contemporaneously with his Notice of Appeal. Father raises the following issues:

1. The court erred in making a finding of abuse as a perpetrator by omission as defined at 23 Pa.C.S. § 6303 against KD as there was no evidence KD was present when harm was caused to the child.
2. The court erred in making a finding of abuse as a perpetrator by omission as defined at 23 Pa.C.S. § 6303 against KD as there was no competent evidence KD observed or was aware of any harm being done to the child.

3. The court erred in granting the Agency's motion for a finding of aggravating circumstances as it pertains to KD as there is no competent evidence KD was present when injuries occurred or was aware of the injuries to the child.

Section 6303 defines "perpetrator" as "a person who has committed child abuse" which is defined as "intentionally, knowingly or recklessly . . . causing bodily injury to a child through any recent act or failure to act" or "creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act." 23 Pa.C.S.A. § 6303(a); 23 Pa.C.S.A. § 6303(b.1)(1) and (5). Finally, "aggravated circumstances" include when "the child . . . has been the victim of physical abuse resulting in serious bodily injury, sexual violence, or aggravated physical neglect by the parent." 42 Pa.C.S.A. § 6302.

During the February 18, 2020 hearing, the Mother of the child, who had nothing to gain from her testimony, testified that Father either caused the child's bodily injuries or at the very least was aware of and saw the child's bodily injuries, particularly extensive bruising, and failed to act upon that knowledge. *See February 18, 2020 Transcript at pages 95-107.* The child's bodily injuries were so severe the doctors that examined the child could not catalog them in accordance with their standard practice. *See February 27, 2019 Transcript at page 79, line 3 through page 80, line 13.* The Mother testified the Father was present and saw the child during the period the injuries occurred. *See February 18, 2020 Transcript at page 96, lines 3-11.* The Court specifically addresses its findings of fact and analysis at pages 117-119 of the February 18, 2020 hearing transcript.

The Court's Aggravated Circumstances Order and the hearing transcript of February 18, 2020, which is considered the Opinion of the Court in support of said Order, should be affirmed and Father's appeal denied. The Order and transcript provide a comprehensive analysis of the Court's decisions and findings of fact, and are supported by the testimony from the hearing held on February 18, 2020, particularly the Mother's testimony. This Court will rely on the transcript and Order for this appeal.

BY THE COURT,

Ryan M. Tira, Judge

RMT/ads

cc: Superior Court (Original +1)
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