

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN THE INTEREST OF: : JUVENILE DIVISION
H.J. : NO. DP-33-2021
: :
: :
: :

Date: June 8, 2022

OPINION IN SUPPORT OF THE ORDER DOCKETED MAY 4, 2022,
IN COMPLIANCE WITH RULE 1925(a) OF THE
RULES OF APPELLATE PROCEDURE

D.J., (hereinafter referred to as “Appellant”) has appealed this Court’s Order Regarding Modification of Child’s Placement docketed on May 4, 2022, after a hearing held on April 22, 2022. Appellant timely filed her Notice of Appeal on May 5, 2022.

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 her Concise Statement of Matters Complained of on Appeal contemporaneously with his Notice of Appeal. Appellant raises the following issues:

1. The court erred in terminating court supervision of H.J. and placing the child with her biological father because it is not in her best interest because she has no bond with the father, she will be separated from her sisters and mother, and there has been an insufficient investigation by the agency to demonstrate that the child’s needs, welfare, safety, protection, and physical, mental, and emotional welfare would be served by placing her with her father.
2. The court erred in terminating court supervision of H.J. and placing her with her biological father as it is not in her best interest because it is contrary to

the goal of reunification with H.M.'s [sic] mother as is required pursuant to the Juvenile Act.

3. The court erred in terminating court supervision of H.J. and placing her with her biological father because it was a de facto termination of mother's parental rights without changing the goal from reunification as required by Rule 1601(B) of the Pennsylvania Rules of Juvenile Procedure and without complying with the Domestic Relations laws pursuant to 23 Pa.C.S. §2511.

On July 14, 2021, Lycoming County Children and Youth Services ("Agency") was verbally granted the authority to take emergency protective custody of H.J.. On July 15, 2021, a Confirmation of Verbal Order for Emergency Protective Custody was entered, finding that allowing H.J. to remain in the home of Appellant would be contrary to her welfare. At the time of the scheduled Shelter Care hearing, the Agency withdrew its Application as H.J. had been placed in the physical and legal custody of a fit and willing relative and services from the Agency were no longer necessary.

On January 24, 2022, the Agency filed a Dependency Petition alleging H.J. was without proper parental care or control pursuant to 42 Pa.C.S. §6302. The family member with whom H.J. and her siblings were placed was kicked out of the home and Appellant was in the process of being evicted. There were concerns with truancy, and when she and her sister attended school they were often not picked up by a caregiver. Appellant failed to take H.J. to a dentist appoint. Appellant was behind on her rent and was not cooperative with Outreach services. At the time of the filing of the petition, the father of H.J. was unknown.

A dependency hearing was held on February 9, 2022, at which time the Court found by clear and convincing evidence that H.J. was without proper parental care or control, subsistence, education as required by law, or other care or control necessary for her physical, mental, emotional health or morals. The Court further found that it was in the best interest of H.J. to be removed from Appellant's home. Physical and legal custody of H.J. was granted to the Agency.¹ At the Dependency hearing, T.D. ("Father") was identified as H.J.'s biological father, and Tiffani Kase, Esquire, was appointed counsel on February 16, 2022.

On March 21, 2022, the Agency filed a Motion for Modification of Child's Placement, indicating that following the Dependency hearing, a caseworker located Father in Philadelphia. The caseworker visited Father's home on March 16, 2022, and found his home to be appropriate with no safety concerns. The Agency, Father, and Angela Lovecchio, Esquire, GAL, concurred with the Motion. Appellant objected and a hearing was scheduled. On March 21, 2022, the Agency also filed a Motion to Vacate Dependency and Terminate Services. After a hearing on April 6, 2022, at which time H.J. indicated that she was excited to get to know Father but hesitant to leave her sisters and move in with him as she had no prior relationship with him, this Court declined to grant the Agency's motion, but did approve periods of visitation at Father's home, including H.J.'s spring break from school and every other weekend until the next permanency review hearing.

On April 22, 2022, the Agency again filed a Motion for Modification of Child's Placement and a Motion to Vacate Dependency and Terminate Services. The Motion

¹ The Order filed February 15, 2022, inadvertently indicated that legal and physical custody was to remain with Mother. An Amended Order was entered on April 14, 2022, reflecting that the Agency was

for Modification of Placement alleged that H.J.'s current resource home was struggling with the placement of H.J. and her siblings in their home, and that H.J. had a successful spring break visit with Father, where she was able to meet several family members and was eager to return. The Motion alleged that Father was a fit, willing, and appropriate parent and wanted custody of his daughter, H.J.

Following a hearing on April 29, 2022, the Court granted the Agency's Motion to Modify Placement, and placed H.J. in the legal and physical custody of Father. Additionally, the Court entered an Order for Termination of Court Supervision, as court-ordered services from the Agency were no longer needed. In its Order, the Court noted that although dependency had been terminated, the Court strongly encouraged Father to take proactive steps to ensure that H.J. maintained contact with her sisters. This appeal was timely filed on May 5, 2022.

The first issue raised by Appellant alleges that this Court erred in terminating court supervision and placing H.J. with Father because she has no bond with him, would be separated from Mother and her sisters, and that an insufficient investigation was performed by the Agency to ensure that H.J.'s needs, welfare, and protection would be served by placing her with Father. For the purposes of this appeal, the Juvenile Act defines a dependent child as one who 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." 42 Pa.C.S.A. §6302. "Whether a child is lacking proper parental care and control encompasses two discrete questions: 1) is the child "at this moment without proper parental care or control?"; 2) if so, is such care

and control “immediately available?” *In the Interest of Justin S.*, 543 A.2d 1192, 1197 (Pa. Super. 1988).

Here, at the time the Agency sought to have H.J. declared dependent, Father’s identity was unknown. At the time of the Dependency Hearing, the Court found by clear and convincing evidence that H.J. was without proper care or control, and that allowing H.J. to remain in Mother’s home would be contrary to her welfare. The Court ordered the Agency to engage in additional family finding with regard to all individuals identified at the hearing, including Father. Two Agency caseworkers went to Father’s home in March of 2022 and found there to be no safety concerns. A criminal background check was completed on Father, and although he had some history with possession of illegal substances, his last involvement with law enforcement was over 10 years ago. Father has no Childline history. Father receives Social Security income and works part time at a barber shop. He provided the Agency caseworker with a copy of the lease to his residence.

Father himself testified at the hearing on the Motion to Modify Placement. With regard to schooling, Father attempted to make arrangements for H.J. to attend the same charter school as his 6 year old son; however, due to it being so late in the academic year they were not accepting additional students. (T.P. 4/29/22, pg. 30). Father anticipates that she will be accepted and enrolled at the beginning of the next school year. (Id.). At the time of the hearing, Father had started the enrollment process for a cyber school for H.J. for the remainder of the school year, as he felt that was a safer alternative to sending her to a Philadelphia public school. (Id.). Father indicated that H.J.’s healthcare providers would be through CHOP, and that he would be able to

obtain benefits for her as soon as he received her records. (Id. at 31). Most importantly, Father testified about his willingness to put forth efforts to ensure ongoing contact between H.J. and her sisters, whose placement was transferred to a kinship resource home approximately 45 minutes away from Father's home. (Id. at 33-34).

"The plain language of the statutory definition of a dependent child compels the conclusion that a child is not dependent if the child has a parent who is willing and able to provide proper care to the child." *In re M.L.*, 757 A.2d 849, 851 (Pa. 2000). "When a court adjudges a child dependent, that court then possesses the authority to place the child in the custody of a relative or public or private agency." *Id.* "Where a non-custodial parent is available and willing to provide care to the child, such power in the hands of the court is an unwarranted intrusion into the family." *Id.* As the Court found that Father was immediately available to provide care and control to H.J., this Court did not err in vacating dependency and awarding custody of H.J. to him.

While Appellant alleges in her Concise Statement that vacating dependency and placing H.J. with Father was not in her best interest because it is contrary to the goal of reunification with Mother, the fundamental purpose of proceedings under the Juvenile Act is to preserve the unity of the family and the care and protection of children are to be achieved in a family environment whenever possible. 42 Pa.C.S.A. § 6301(b)(1)(3). This Court, after a hearing in which both the Agency caseworker and Father himself testified, determined that Mother was unable to provide proper parental care and control "at this moment" and Father was "immediately available" to provide such care. Once dependency was terminated and custody granted to Father, "the care, protection, and

wholesome mental and physical development of the child” can occur in a family environment as the purpose of the Juvenile Act directs.” *In re M.L.*, 757 A.2d at 851.

Appellant’s last issue raised in her Concise Statement alleges that this Court erred in placing H.J. with Father because it was a *de facto* termination of Mother’s parental rights without changing the goal from reunification. The Court’s action, in vacating the adjudication of dependency, was not akin to terminating Appellant’s parental rights, *de facto* or otherwise. The appropriateness and feasibility of the current placement goal for the child is to be addressed at each permanency hearing. 42 Pa.C.S.A. §6351(f)(4). Permanency hearings must be held within six months of the child’s removal from his parent and every six months thereafter, until the child is returned to his parent or removed from the jurisdiction of the court. 42 Pa.C.S.A. §6351(e)(3)(i). In the instant case, before the Court was a Motion for Modification of Child’s Placement and a Motion to Vacate Dependency and Terminate Services, not a Permanency Review hearing. As the Court determined that Father was a fit, willing, and available parent, the temporary legal and physical custody by the Agency of H.J. was discharged prior to the matter reaching a review hearing and evaluating the placement goal.

Additionally, Appellant’s assertion that this Court essentially terminated her parental rights is without merit. Father is free, in his discretion, to allow continuing contact and/or visitation between Appellant and H.J. Appellant is free to file a custody action to establish or enforce her custodial rights to H.J. In fact, when placing its decision to vacate dependency on the record, the Court emphasized to Father the importance of keeping H.J. connected to her siblings, and suggested it would be

appropriate for the parties to pursue some sort of custody to effectuate that. This Court, in terminating court supervision of H.J. and placing her with Father, did not terminate Appellant's parental rights. It simply removed the parties from the jurisdiction of the Juvenile Act and placed them in within the jurisdiction of the family court, should either parent file a custody complaint.

For all of the foregoing reasons, this Court respectfully requests that the Order for Termination of Court Supervision and the Order Regarding Modification of Child's Placement, both docketed May 4, 2022, be affirmed and the Appellant's appeal be dismissed.

BY THE COURT,

Ryan M. Tira, Judge

RMT/jel

cc: Superior Court (Original +1)
Jeana Longo, Esquire
Tiffani Kase, Esquire
John Pietrovito, Esquire
Angela Lovecchio, Esquire
CASA
Gary Weber, Esquire (Lycoming Reporter)