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PENNSYLVANIA SUPREME COURT

In re: A.J.H. and I.G.H.

Date of Order: August 1, 2017

Cite: 372 MAL 2017

The Pennsylvania Supreme Court granted Petition for Allowance of Appeal in the above-captioned matter on the issue of whether the Superior Court overlooked and misapprehended controlling precedent when it affirmed the trial court’s decision to admit into evidence over one hundred fifty exhibits that were not authenticated, but were submitted for the truth of the matter asserted therein; as well as whether the Superior Court misapplied the law when it affirmed the decision as harmless error.

PENNSYLVANIA SUPERIOR COURT

In the Interest of R.W., a Minor

Date of Decision: August 18, 2017

Cite: 24 WDA 2017

Holding:

Trial Court did not abuse its discretion when it ruled out reunification as a permanency goal and ordered the Agency to file a Petition for Involuntary Termination of Parental Rights.

Facts and Procedural Posture:

In June of 2014, shortly after R.W.’s birth, Westmoreland County Children’s Bureau (“The Agency”) filed an application for shelter care and subsequently sought an adjudication of dependency and a finding of aggravated circumstances based upon Mother’s aggravated physical neglect of R.W.’s half-sibling. R.W.’s half-sibling A.M. had suffered horrific and life-threatening injuries perpetrated by the biological Father, and Mother was found to have neglected both prevention of and care for these injuries. As a result, Mother pled guilty to a charge of endangering the welfare of children. At the time of R.W.’s adjudication, Mother was incarcerated, but was permitted visitation with R.W. twice a month. Upon Mother’s release from prison, visitation with R.W. was expanded to in-home visits three times per week. Permanency review hearings were held

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throughout the life of the dependency matter. In May of 2016, when R.W. had been in placement for about twenty-three months, the Agency filed a petition for a permanency review hearing, and asserted that they did not intend to file a petition seeking involuntary termination of Mother's parental rights, as it "would not serve the needs and welfare of the child: the mother has been making a lot of progress toward reunification." At that time, R.W. was visiting with his Mother in her home for five days and four overnights per week. At the conclusion of the permanency review hearing, the Agency recommended a "trial home visit" which would give Mother physical custody of R.W. "24/7 for a three-month span" until the next review hearing, when the Agency would recommend reunification between Mother and R.W. The Trial Court denied the Agency recommendation for a "trial home visit," in large part due to concerns regarding Mother's paramour, specifically the lack of an interstate background check for him and testimony it would contain information raising safety concerns. . Following subsequent discovery that Mother's paramour had criminal charges of possession of a controlled substance pending in Allegheny County, the Trial Court issued an order prohibiting unsupervised contact between Mother's paramour and R.W. In October of 2016, the Agency filed a petition for a permanency review hearing, and again asserted that Mother had been making "a lot of progress towards reunification," and that termination of Mother's parental rights would not best serve the needs and welfare of the child. A permanency review hearing followed, at the conclusion of which the Agency renewed its recommendation for a "trial home visit." The trial court again denied the Agency's request, based in part upon evidence of a drug test completed by Mother's paramour in which he tested positive for cocaine, and the revelation that Mother lied to the caseworker regarding paramour's continued involvement in the child's life. The trial court also balanced testimony of Mother's service providers, Mother, Foster Mother, and a Court-Appointed Special Advocate (CASA). At the culmination of the hearing the trial court found that the placement goal of reunification was not appropriate and/or feasible, and directed the agency to "forthwith file a petition for Termination of Parental Rights." The trial court also issued an order directing that visitation between Mother and R.W. be substantially decreased, and supervised from that point forward. The Agency appealed.

Issue:

Whether the trial court abused its discretion in ordering the Agency to file a Petition for Involuntary Termination of Mother's parental rights where the Agency believed that Mother was in substantial compliance with the requirements of the Family Service Plan and that compelling reasons existed to continue reunification efforts?

Rationale:

The Superior Court began by reviewing the relevant statutory authority set forth in §6351(f)(1)-(6) and (9) of the Juvenile Act regarding determinations to be made at a permanency hearing, as well as (f.1) (2) regarding the election of an adoption goal. It noted that the legal requirement for the court to consider these enumerated factors at permanency review hearings mandated a focus on the best interests of the child, and supported the concept that "safety, permanency, and the well-being of the child must take precedence over all other considerations." In re: S.B., 943 A.2d 973, 978 (Pa. Super. 2008). While the Trial Court agreed with the Agency's assertion that Mother had demonstrated substantial compliance with the objectives of the Family Service Plan, they disagreed that said compliance demonstrated substantial progress towards reunification. Specifically, the Trial Court noted that Mother had displayed a course of conduct that could jeopardize the safety of the child if reunification was permitted, including Mother's lying to her caseworker regarding the extent of involvement of her paramour in the life of the

child contrary to strict prohibition of unsupervised contact between the two pending resolution of Mother's paramour's criminal charge of possession of a controlled substance, Mother's pattern of involvement with paramours who have criminal issues, and Mother's current paramour's disingenuous statements to the court regarding his drug use. The Trial Court surmised that these factors, among others, were sufficient to defeat the Agency's argument against filing for involuntary termination, as Mother should, contrary to Agency belief, be held accountable for the recreational drug use of her paramour, and Mother's inability to put the needs of her child above those of her paramours was an unremitting pattern throughout the life of the dependency case. The Superior Court believed that the Trial Court's decision was not only within their discretion, but supported by the evidence in the record; the permanency review order changing the child's permanency goal from reunification to adoption and directing the Agency to file for involuntary termination of parental rights was affirmed.

Concurring and Dissenting Opinion:

Justice Strassburger wrote a separate opinion concurring with the Majority's conclusion that the Agency was unable to meet the "difficult burden of establishing that the trial court abused its discretion when it directed the Agency to initiate termination proceedings." Justice Strassburger noted that the evidence only slightly weighed in favor of affirmance. He disagreed, however, with both the trial court's decision to substantially decrease visitation and its underlying rationale to do so, asserting that this substantial decrease in visitation prior to a termination hearing was "essentially stacking the deck against Mother", making it more difficult for her to prevail. Justice Strassburger additionally opined that in his view, unless circumstances changed, "the Agency may have a difficult time meeting its burden of clear and convincing evidence" necessary to support termination of Mother's parental rights.