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In the Interest of N.G.

IN THE INTEREST OF N.G.
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Juvenile Action No. 153-1999

The Juvenile Act, 42 Pa.C.S. Section 6351; Adoptions and Safe Families Act, 1997, 42 U.S.C.A. Sections 671, 675; Placement Goal Change from Reunification to Adoption

- (1) The purpose of the Adoptions and Safe Families Act and the Pennsylvania Juvenile Act is to move a dependent child from the legal, physical and emotional limbo of foster care into a more final, permanent living situation; in deciding whether to change the placement goal from reunification to adoption or some other arrangement, the court must be guided by the child's, not the parents', best interests.
- (2) The court may remove a child from his parents or terminate parental rights only upon clear and convincing proof of neglect and dependency; the appellate court must give great deference to the trial court's findings of fact regarding dependency and placement matters, with the standard of review being abuse of discretion.
- (3) The clear and convincing evidence of record showed mother's progress toward correcting the problems which led to her daughter's placement in foster care was insufficient to require Children and Youth Services to continue efforts toward reunification.
- (4) Where mother was either unable or willing to change her lifestyle to focus on her daughter's needs, and this failure was causing the daughter emotional stress which exacerbated her medical problems, the court was justified in changing the goal to termination of parental rights and adoption by the foster family in whose care the child's emotional, educational and physical state had steadily improved.
- (5) Mother was not "denied the right to counsel" for the first 21 months of her daughter's placement where she specifically told the court during one of the early hearings that she wanted to proceed without an attorney, did not request counsel until 2 months before the goal change hearing, and specifically admitted at that hearing that she did not request counsel earlier because she had agreed all along with the court's finding of dependency and its directives and the help offered by Children and Youth.

Appearances:

Julie G. Dorsett, Esq., *Court-Appointed Attorney for Mother*

Beth Ann Gabler, Esq., *Counsel for Franklin County Children and Youth Services*

OPINION

Herman, J., June 22, 2001

Introduction

Before the court is the appeal of mother B.J.G. from this court's March 29, 2001, Order changing the placement goal concerning her child N.G., born September 7, 1991, from reunification to adoption. We write in support of our decision to change this goal.

Background

N.G., then age 7, was placed in the temporary custody of Franklin County Children and Youth Services (CYS) based on a petition the agency filed on or about May 12, 1999, alleging excessive truancy and lack of adequate shelter and medical care. Mother B.J.G. was at this time living in a tent after having been evicted from her residence and N.G. suffered from an abscessed tooth and severely swollen jaw. The court held a detention hearing on May 14, 1999, with Attorney Anne Sheller Johnson, Esquire, appearing as N.G.'s guardian ad litem. The court found sufficient grounds for placing N.G. in foster care and directed N.G.'s parents, father C.G. and mother (who were separated), to undergo psychological evaluations. Attorney Julie G. Dorsett, Esquire, became court-appointed counsel for father on May 21, 1999, pursuant to his application for counsel. Mother did not request legal representation at that time.

After a hearing on May 24, 1999, the parents were directed to complete a parenting program and begin individual and family counseling. Mother was ordered to complete a psychological evaluation and a similar evaluation was to be done of N.G. Both parents were ordered to maintain stable residences for the child. Mother did not request the appointment of legal counsel for herself at or before the hearing.

CYS filed a petition on or about August 4, 1999, requesting the court to upgrade the level of foster care to specialized foster care because N.G. was exhibiting an increase in defiant behavior, as well as unusual urination and defecation patterns. The court granted that request.

A placement review hearing was held on November 12, 1999. It was determined that N.G.'s soiling and wetting behavior was partly an expression of stress and partly the result of bowel abnormalities. Preliminary indications of sexual abuse by father led the court to allow him only supervised visits pending investigation. Mother was then living at a homeless shelter at 223 South Main Street in Chambersburg. She completed parenting classes but was resisting psychological treatment for herself. The court determined the appropriate placement goal at that time was for N.G. to return to mother's home and to that end the court directed mother to maintain proper housing and follow through with mental health services. Mother did not request the appointment of legal counsel for herself at or before the hearing.

The next placement review hearing was held on April 13, 2000. Father was represented by Attorney Dorsett; mother again did not request counsel for herself. The evidence indicated that N.G. continued to behave in a manipulative, passive-aggressive manner as a means of acting out her emotional problems, though her behavior had improved since being in specialized foster care. She suffered from bowel irregularities which required a special diet and it was confirmed that this condition was linked to stress. N.G. also was below normal in terms of her educational progress.

Mother was employed full time and living in a one-bedroom apartment at 252 Lincoln Way West in Chambersburg as of the April 13th hearing and visited with N.G. once every two weeks at the Children's Aid Society. Father was in a nursing home due to his own health problems and therefore was not the focus of the reunification effort. Although the court found substantial progress had been made toward reunifying mother and daughter, the court also found mother's parenting capacity was not yet up to par so as to allow N.G. to return home at that time. In particular there was a need for N.G. to have her own bedroom.

The court became aware during this hearing that N.G. had two sisters in foster care in Washington County, Maryland, after having been removed from B.J.G.'s home. B.J.G. had signed an adoption consent form but then withdrew her consent and their placement had not been finalized. N.G. had no contact with her sisters since she came into placement in May of 1999. The court and her caseworkers believed it would be helpful to N.G. to maintain contact with her sisters but also recognized this was not a matter within our jurisdiction and depended entirely on the Maryland foster family's willingness to take steps to preserve those contacts.

The court directed that all efforts toward reunification be intensified, including parenting classes, counseling and educating mother about N.G.'s special medical needs. N.G. had not yet been in foster care for 15 of the prior 22 months and therefore the court did not need to address whether some other placement goal was appropriate.

By the time of the next hearing on July 20, 2000, father had died and his counsel Attorney Dorsett was permitted to withdraw. Mother specifically told the court that she did not want counsel for herself (N.T. July 20, 2000, p. 2). The evidence showed N.G. was becoming attached to her foster parents. Her school performance had improved, her emotional problems were becoming more manageable and she was dealing well with her father's death. Although the court was still concerned about mother's continued failure to provide stable, adequate housing for N.G., the placement goal remained reunification based on mother's assurances that she expected to purchase a home with a girlfriend within a few weeks.

The reunification goal was again maintained following the next hearing on October 26, 2000, even

though mother's plans to purchase a home had fallen through. She was living instead in an apartment at 302 East Catherine Street in Chambersburg which caseworkers found to be an improvement over her previous living situations but not yet adequate for N.G. Mother was pursuing child care for times when she would be working, though those plans were not yet certain. The court ordered increased contact between mother and daughter to include overnight home visits where appropriate, as well as intensive joint therapies. Mother was directed to educate herself more fully about N.G.'s medical needs and make additional efforts toward preparing her home for N.G.'s return. The court made it clear to mother that speedy progress was critical because N.G. had already been in placement for at least 15 of the prior 22 months. Mother again made no request for legal counsel at or before this hearing.

CYS's next petition for a hearing filed January 5, 2001, requested the court to change the placement goal from reunification to adoption, with continued visitation. Mother applied for court-appointed counsel but was denied same by the court administrator on February 7, 2001. When the court convened the hearing on February 9, 2001, we directed that counsel be appointed to represent mother in light of the request for a goal change and her limited finances. The court continued the hearing to give mother and counsel an opportunity to confer. It should be noted that mother's address as of January 5, 2001, had again changed since the October 26, 2000, hearing, this time to 327 South Main Street in Chambersburg. Attorney Dorsett became mother's counsel shortly after the hearing.

Following a lengthy hearing on March 29, the court found there were no compelling reasons to continue reasonable efforts toward reunification and changed the placement goal to adoption. The basis for this decision was mother's insufficient progress in those areas which first necessitated N.G.'s placement - substandard parenting skills and poor choices of personal associations which undermined her ability to provide a safe and stable home for N.G. or to make N.G.'s welfare a priority on any consistent basis. N.G. had at that time been in placement for 22 months.

Mother filed a notice of appeal from this ruling, as well as a concise statement of matters complained of on appeal. Her appeal grounds are:

1. The court's findings that her progress toward compliance with the permanency plan was insufficient is not supported by the facts of record and therefore the court abused its discretion in changing the goal from reunification to adoption.
2. The best interests of the child are not served by a change of goal to adoption in light of the recent loss of the rest of her family - her father and two sisters - and the strong bond between mother and child.
3. Mother was denied the right to counsel until 21 months into the child's placement and less than two months prior to the hearing at which the goal was anticipated to be changed from reunification to adoption.

Discussion of the Law

In making our ruling, we followed the policies and procedures set out in the Juvenile Act, 42 Pa.C.S.A. section 6301 et seq., specifically section 6351(f)(9) which provides:

[I]f the child has been in placement for at least 15 of the last 22 months or the court has determined that...reasonable efforts to prevent or eliminate the need to remove the child from the home or to preserve and reunify the family need not be made or continue to be made, [the court shall] determine whether the county agency has filed or sought to join a petition to terminate parental rights and to identify, recruit, process and approve a qualified family to adopt the child unless...the county agency has documented a compelling reason for determining that filing a petition to terminate parental rights would not serve the needs and welfare of the child...

This section of the Juvenile Act is consistent with the Adoptions and Safe Families Act of 1997, 42 U.C.S.A. sections 671 and 675, amending sections 471 and 475 of the Social Security Act. The Adoptions and Safe Families Act contemplates shortening the time a dependent child spends in foster care once reasonable efforts have been made towards reuniting a biological parent with his or her child. The emphasis is on moving the child from the legal, physical and emotional limbo of foster care into a more final, permanent living situation where the child will receive the familial security and stability to which the child is entitled. In the Interest of Carl Lilley, 719 A.2d 327 (Pa.Super. 1998). Once a child has been adjudicated dependent, the guiding principle to be considered in deciding whether to change the goal from reunification to adoption or some other arrangement is the child's best interests, not the interests of the parents. Id.

The court may remove a child from his parents or terminate parental rights only upon clear and convincing proof of neglect or dependency. Santosky v. Kramer, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d

599 (1982). The appellate court must give great deference to the trial court's findings of fact regarding dependency and placement matters, with the standard of review being abuse of discretion. In re A.P., 728 A.2d 375 (Pa.Super. 1999); In re R.C. & J.C., 628 A.2d 893 (Pa.Super. 1993).

Although the appellate court must accept the trial court's findings when they are supported by the record and is bound by them, the appellate court is not bound by the inferences, deductions and conclusions which the trial court made from those facts. The appellate court's task is to determine whether, based on properly supported facts of record, the trial court abused its discretion. In the Interest of J.Y., 754 A.2d 5 (Pa.Super. 2000). Contrary to her allegations, the record was more than sufficient under the clear and convincing standard of proof to justify changing the placement goal from reunification to termination of parental rights and adoption.

Discussion of the Evidence

I.

The evidence shows that N.G. originally came into placement in May of 1999 because B.J.G. was not meeting her most basic needs. The hygiene conditions in B.J.G.'s apartments had been terrible, leading to eviction and outdoor living in a tent. Mother did not dress N.G. adequately for cold weather, forcing the school to take on the task of providing N.G. with proper shoes and clothing. Mother did not seek medical care for N.G.'s swollen face and initially resisted the efforts of CYS to take the child to the hospital for what turned out to be a severely abscessed tooth. N.G. was excessively truant due to B.J.G.'s repeated failures to get her to school. At the time of initial placement, N.G.'s school performance was below normal.

Mother did complete parenting classes early on in the proceedings and maintained regular employment. However, her subsequent progress toward improving her parenting skills and gaining insight into her own behavior was unduly slow, in large part because she was less than completely forthright with CYS and was either unable or unwilling to change her lifestyle to focus on N.G.'s needs. Mother was easily distracted by the contrary influences of her friends.

The day before the March 29 hearing, mother moved to a three-bedroom apartment at 368 East Washington Street in Chambersburg. Although the apartment provided more than adequate living space, there were still reasons for the court to be troubled. First, it had taken her an unduly long time to obtain such suitable space. Second, mother had allowed as many as nine unrelated individuals to live in her previous apartment contrary to parameters set by CYS which she had agreed to follow. At least some of those individuals were present in the home during the Thanksgiving holiday when mother knew that time was supposed to be reserved for her and N.G. to spend alone together as part of N.G.'s transition back into her full time care. Persons other than N.G. and B.J.G. were also present at a two-hour visit shortly thereafter. When caseworkers learned about these incidents, mother refused to accept responsibility and denied the living situation could have negatively affected N.G. despite indications her daughter had been sexually abused in the past by her father and/or mother's boyfriend and did not respond well to transient living arrangements and spotty supervision. Based on these incidents, the court could not accept mother's representation that no male guests would be staying in her apartment overnight or be in N.G.'s presence without supervision.

Caseworkers also noticed the apartment lacked adequate heat in the winter months but mother did not follow through with their suggestion to promptly contact the landlord about the problem. She had not made permanent child care arrangements by March 29 despite having told the court at the prior hearing on October 26 that her arrangements were all but final. She also did not demonstrate an energetic commitment to getting mental health therapy for herself; she did not start such treatment until January 2001, more than 20 months after N.G.'s initial placement.

The evidence clearly showed that B.J.G.'s conduct was having a substantial negative effect on N.G. The child became distressed and disappointed when her mother failed to arrive on time for their visits, which occurred approximately 40% of the time. N.G. also was aware of her mother's failure to keep other individuals out of the apartment during home visits contrary to CYS instructions. The child was also aware of the heating problem in the apartment. Of particular concern to the court was the recent deterioration of N.G.'s eating and hygiene habits. She began refusing to take medication, eat her special diet or to drink the large quantity of water which her bowel condition required. She also began soiling herself. This was a backslide to her previous tendency to use eating and elimination to express distress and to exercise control over her environment. N.G. also displayed an increase in defiant behavior between November and February which counselors attributed partly to feelings of disappointment with her mother's lack of consistency and commitment.

The conclusion we reached - that N.G.'s interests would be best served by adoption and not by a return to her mother's full time care - is amply supported by the foregoing facts of record. N.G. came into

placement as a very neglected and disturbed 7 year old child showing signs of sexual abuse and suffering from serious medical problems. Mother failed to show sufficient consistency and commitment to changing her own attitudes and behaviors which had placed her daughter in that compromised state.

II.

B.J.G. alleges in her second ground for appeal that N.G.'s best interests will not be served by changing the placement goal to adoption in light of the recent death of her father and her separation from her sisters, as well as the strong bond between mother and daughter. The evidence showed N.G. was saddened by having lost contact with her sisters who are in foster care in Washington County, Maryland, after not receiving adequate care from B.J.G. As of the March 29 hearing, it appeared B.J.G. had finally consented to termination of her parental rights and their adoption.

We certainly did consider N.G.'s relationship with her sisters and hope their relationship is maintained. However, aside from the fact that their placement in Maryland foster care demonstrates mother's inability to properly care for them, mother now has no control over when or whether N.G. has contact with her sisters. That decision depends entirely on whether the two sisters' adoptive parents will encourage such contact. Reuniting N.G. with B.J.G. in no way guarantees this relationship would be reestablished. On the contrary, mother's inability or unwillingness to consistently provide even basic supervision and protection for N.G. makes it unlikely she would exert the necessary effort to promote N.G.'s relationship with her sisters.

The evidence of record indicates that N.G. was dealing well with the death of her father which occurred between the April 13 and July 20, 2000, hearings. There was little if any evidence presented at any of the hearings that N.G. was strongly bonded in a positive way to her father. She was not living with him before her placement in May of 1999 and he testified at the initial detention hearing to having last seen her at Christmas time of 1998. Father's death from an illness was neither sudden nor unexpected. His death during these proceedings has nothing to do with whether N.G.'s best interests lie in providing her with the type of stable and protective home environment available to her with her foster family to whom she has become very attached.

We acknowledged at the hearing that a bond exists between B.J.G. and N.G. However, N.G.'s feelings about her mother were ambivalent at best. Their relationship more closely resembles that of peers rather than one between parent and child. Indeed, B.J.G.'s failure to develop a normal mother-daughter relationship featuring proper protection and boundary setting was part of why returning N.G. to her mother's home full time posed such a risk to this still-vulnerable child. It would do a disservice to N.G. to deprive her of the stability and proper care she so desperately needs to overcome her problems. The evidence shows N.G. has forged a strong attachment to her foster parents, is happy in their home and continues to improve academically with their consistent support.

III.

B.J.G.'s third appeal issue is that she was "denied counsel" for the first 21 months of placement and received court-appointed counsel less than two months before the final hearing. 42 Pa.C.S. section 6337 provides:

Except as provided in section 6311 (relating to guardian ad litem for child in court proceedings), a party is entitled to representation by legal counsel at all stages of any proceedings under this chapter and if he is without financial resources or otherwise unable to employ counsel, to have the court provide counsel for him. If a party appears without counsel the court shall ascertain whether he knows or his right thereto and to be provided with counsel by the court if applicable. The court may continue the proceeding to enable a party to obtain counsel....

"An effective waiver of a party's right to counsel requires (1) that the trial court explain the benefits of assistance of counsel and inform the party that if he or she is indigent, counsel will be provided to him or her at no cost, and (2) that the party affirmatively waive the right to counsel on the record." In re Manuel, 566 A.2d 626, 628 (Pa.Super. 1989), citing In Interest of Michael Y., 530 A.2d 115, 120 (Pa.Super. 1987).

The record clearly shows B.J.G. did not request counsel at any time before February 2001. In fact, she specifically told the court at the July 20, 2000, hearing she wanted to proceed without an attorney (N.T. July 20, 2000, p. 2). Once she expressed a desire for counsel, the court took pains to appoint counsel and gave her six weeks to prepare for the goal change hearing with counsel's assistance. Attorney Dorsett was already very familiar with the case, having been father's court-appointed counsel between May 21, 1999, and July 20, 2000, with the parents' interests in N.G. never having been adverse to one another. At

the March 29 hearing, B.J.G. admitted on the record she had not retained counsel before February because she had agreed all along with the court's finding of dependency and its directives as well as the help offered by CYS and only became concerned about obtaining counsel once it appeared the placement goal might be changed (N.T. March 29, 2001, p. 45).

Admittedly the transcripts of the detention and placement hearings do not contain a reference to the court specifically using any particular "magic" words to indicate to B.J.G. the benefits of assistance of counsel and that counsel would be provided at no cost if she was indigent. However, we believe it is clear from the record as a whole that B.J.G. understood these matters. She was aware that her husband C.G., father of N.G., had been appointed counsel because of his indigent status, and she participated fully in the proceedings. Moreover, the instant case is distinguishable from *In the Interest of Michael Y.*, 530 A.2d 115 (Pa.Super. 1985) cited by B.J.G. in which the great-grandmother who was originally the child's custodian disputed the child's dependency right from the start of the proceedings and did not affirmatively waive her right to counsel, remaining silent instead. By contrast, B.J.G. affirmatively waived her right to counsel at the July 20, 2000, hearing and admitted at the March 29, 2001, hearing that she had been aware of her right to counsel at all times before her request on February 9, 2001, but did not request counsel because she agreed with the treatment recommendations of CYS and the previous dependency findings of the court. Under these circumstances, mother's assertion that she was "denied the right to counsel" rings hollow.

The evidence of record clearly and convincingly shows that N.G.'s best interests will be served by terminating B.J.G.'s parental rights and allowing adoption to go forward. We submit that no error was committed in any aspect of this proceeding and respectfully request our decision to change the placement goal be affirmed.

ORDER OF COURT

Now, June 22, 2001, pursuant to Pennsylvania Rules of Appellate Procedure 1931(c), it is hereby ordered that the Clerk of Courts of Franklin County shall promptly transmit to the Prothonotary of the Superior Court the record in this matter along with the attached Opinion Sur Pa.R.A.P. 1925(a).