

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: J.H.	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
	:	
APPEAL OF: BUCKS COUNTY	:	
CHILDREN AND YOUTH SOCIAL	:	
SERVICES AGENCY	:	NO. 1335 EDA 2006

Appeal from the Order entered April 20, 2006,
in the Court of Common Pleas, Bucks County,
Criminal, No. 134 CW 2003

BEFORE: BENDER, BOWES, JJ., and McEWEN, P.J.E.

MEMORANDUM:

FILED JANUARY 8, 2007

Appellant, Bucks County Children and Youth Social Services Agency ("CYS"), appeals from the order granting legal and physical custody of J.H., a dependent child, to her paternal aunt and her husband (collectively, "aunt"), who reside in the Commonwealth of Virginia. We affirm.

J.H., following her birth on August 3, 2001, resided with her mother and her two-year old twin half-sisters (the "twins"), who had been born to mother on June 22, 1999. Two years later, on September 8, 2003, the court entered an emergency *ex parte* order granting CYS legal and physical custody of the J.H., as well as both twins. Two days thereafter, on September 10, 2003, all three children were adjudicated dependent. The identity and whereabouts of J.H.'s father ("father") were not known at the time of these proceedings, and he had not played a role in her upbringing.

CYS placed the children in foster care, but separated J.H. from the twins, who required special needs placement. J.H. visited with the twins for the first time on June 23, 2004, seven months after their separation, and a second visit took place in December of 2004. Meanwhile, father was identified and located in prison in Virginia, and, following a paternity test performed at his request, he sought to intervene and have aunt, his sister, assume custody of J.H. Father, on February 22, 2005, filed a petition to modify the disposition with the juvenile court. Although aunt did not formally join in this petition, the record reveals that she participated fully in all proceedings related to the custody of J.H, and was in communication with CYS, as well as similar agencies in Virginia.

CYS, in March of 2005, placed the child under the foster care of William and Alvanor Mack, and a schedule for visitation between J.H. and the twins was arranged. Visits began with Sunday afternoons, and escalated to weekends with one twin, then to weekends with both twins. Three months later, in June of 2005, the twins moved in with the Macks, and were reunited with J.H.

The trial court held hearings on the petition to modify the disposition on October 20, 2005, November 10, 2005, December 8, 2005, and March 9, 2006. The trial court, on April 20, 2006, entered an order that transferred physical and legal custody of J.H. to aunt. CYS filed a motion to reconsider,

and the trial court, on May 12, 2006, denied the motion following a hearing. This appeal followed.

CYS, in the brief filed in support of this appeal, raises two questions for our review:

Whether the trial court disregarded evidence that “splitting” J.H. from her siblings would, in all likelihood, cause the child to never see her siblings again?

Whether the trial court entered an order in the best interests of the child?

Since CYS challenges a disposition order transferring physical and legal custody of the child, our review of the order is governed by the following standard:

[W]e must accept the facts as found by the trial court unless they are not supported by the record. Although bound by the facts, we are not bound by the trial court's inferences, deductions, and conclusions therefrom; we must exercise our independent judgment in reviewing the court's determination, as opposed to its findings of fact, and must order whatever right and justice dictate. We review for abuse of discretion. Our scope of review, accordingly, is of the broadest possible nature. It is this Court's responsibility to ensure that the record represents a comprehensive inquiry and that the hearing judge has applied the appropriate legal principles to that record. Nevertheless, we accord great weight to the court's fact-finding function because the court is in the best position to observe and rule on the credibility of the parties and witnesses.

In re C.M., 882 A.2d 507, 513 (Pa.Super. 2005)(citation omitted). When entering a disposition order under 42 Pa.C.S. § 6351, the exercise of discretion by the trial court is “subject only to the express limitation that the

disposition be best suited to the protection and physical, mental and moral welfare of the child." *In re Lowry*, 506 Pa. 121, 125–126, 484 A.2d 383, 385–386 (1984) (internal quotations and citations omitted).¹

CYS argues that the trial court, by authorizing the transfer of child to aunt, improperly separated the child from her half-siblings in contravention of the "family unity" doctrine, and entered an order that was not in the best

¹ 42 Pa.C.S. § 6351 states, in relevant part:

(a) General rule.--If the child is found to be a dependent child the court may make any of the following orders of disposition best suited to the safety, protection and physical, mental, and moral welfare of the child:

(1) Permit the child to remain with his parents, guardian, or other custodian, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child.

(2) Subject to conditions and limitations as the court prescribes transfer temporary legal custody to any of the following:

(i) Any individual resident within or without this Commonwealth, including any relative, who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child.

(ii) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child.

(iii) A public agency authorized by law to receive and provide care for the child.

42 Pa.C.S. § 6351(a)(1)–(2).

interests of the child.² Our review, however, reveals that the record supports the conclusion of the trial court that the transfer of physical and legal custody of J.H. to aunt is in the best interest of the child.

CYS, at the hearings, opposed the transfer of physical and legal custody to aunt based solely upon the family unity doctrine.³ This Court, in *Johns v. Cioci*, 865 A.2d 931 (Pa.Super. 2004), ably summarized the family unity doctrine and its relationship to the best interest of the child standard.

[T]he policy in Pennsylvania is to permit siblings to be raised together, whenever possible (the doctrine of "family unity" or "whole family doctrine"). Absent compelling reasons to separate siblings, they should be reared in the same household to permit the "continuity and stability necessary for a young child's development." This policy does not distinguish between half-siblings and siblings who share both biological parents. However, ***this Court has made clear that the policy against separation of siblings is only one factor—and not a controlling factor—in the ultimate custody decision.*** In the majority of cases in which this doctrine has been invoked, the children have been reared together prior to separation or divorce of the parents. In cases where the

² CYC, in its brief, stated two questions for review, but presented a single argument section devoted largely to the issue of whether the separation of the child from her siblings was in her best interests. Since the overarching consideration in this appeal must be the best interest of the child, we will consider this consolidated argument despite its noncompliance with Rule 2119(a) of the Pennsylvania Rules of Appellate Procedure.

³ Indeed, CYC expressed no reservations regarding aunt's willingness and capability to provide care for child, but opposed the grant of custody to aunt due to her inability to also care for the twins. Moreover, contrary to the contention of CYC that the transfer of custody to aunt would sever all relationships among the siblings, both aunt and her husband expressed a willingness to provide accommodations for visitation. **See:** N.T., October 20, 2005, at pp. 25, 40–41, 63.

siblings have not been reared in the same household, the force of the doctrine is less compelling.

Id. at 942–943 (citations omitted)(emphasis supplied).

In support of its claim, CYS introduced evidence of the bonding between the child and the twins, and cross-examined father and aunt as to the importance of this bonding. However, although CYS aptly argues the importance of this sibling connection, the extent of the bonds between J.H. and the twins, and the weight to be accorded to those bonds rest upon a foundation less secure than CYS posits. In this regard, the record shows that the three siblings were raised together under the tumultuous care of mother for the first two years of the J.H.'s life. J.H., however, was then separated from the twins after the children were adjudicated dependent in September of 2001. Thereafter, sporadic visitations occurred over two years later in the summer and winter of 2004, a trial bonding period through scheduled visitations began in March of 2005, and the siblings were ultimately reunified under the foster care of the Macks in June of 2005.

Thus, based upon our review, we conclude (1) that the record supports the conclusion of the learned Judge John J. Rufe that aunt provides a stable kinship relationship and a suitable home environment that are in the best interests of J.H., (2) that the weight accorded to the goal of family unity was appropriate, and (3) that the failure of the trial court to state explicitly a compelling need to separate the child from the twins did not, in this instance, amount to an abuse of discretion when granting legal and physical

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custody to aunt based upon the best interest of the child. **See: *Cardamone v. Elshoff***, 659 A.2d 575, 583 (Pa.Super. 1995).

Order affirmed.

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Sambitt", written over a horizontal line.

Prothonotary

Date: _____