

Third District Court of Appeal

State of Florida

Opinion filed October 10, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-577
Lower Tribunal No. 13-16176

L.Q., the Father,
Appellant,

vs.

Department of Children and Families, et al.,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Jason E. Dimitris,
Judge.

Steven Grossbard, for appellant.

Karla Perkins, for appellee Department of Children and Families; Thomasina
F. Moore and Joanna Summers Brunell (Tallahassee), for appellee Guardian ad
Litem.

Before FERNANDEZ, HENDON, and LOBREE, JJ.

HENDON, J.

L.Q., the father (“L.Q.” or “the Father”), appeals from a final judgment

terminating his parental rights to N.L., S.L., and A.L. (collectively, “the Children”) based on the statutory ground set forth in section 39.806(1)(b), Florida Statutes (2018)—abandonment as defined in section 39.01(1), Florida Statutes (2018).¹ Because the final judgment terminating the Father’s parental rights is supported by competent, substantial evidence, we affirm.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The day after N.L. was born in December 2013, he was sheltered by the Department of Children and Families (“the Department”) and placed into foster care. The shelter petition reflects that the father was unknown, but several documents filed thereafter reflect that L.Q. was N.L.’s prospective father. When N.L. was sheltered, the Mother was seventeen years old and in foster care. Approximately two months later, the Mother and N.L. were reunited and lived in a group home until the Mother aged out of the foster care system in October 2014. In September 2014, the trial court entered an order prohibiting the Mother from having any type of contact with L.Q. In January 2015, following the Mother’s completion of her case plan tasks, the

¹ The parental rights of the Children’s mother, T.L. (“the Mother”), were also terminated based on different statutory grounds. She appealed the final judgment (3D19-557). Her appellate counsel filed a motion to withdraw as counsel pursuant to Jimenez v. Department of Health & Rehabilitative Services, 669 So. 2d 340 (Fla. 3d DCA 1996). This Court issued an order withholding ruling and allowing the Mother to file a brief in support of her appeal. After the Mother failed to file a brief, this Court dismissed her appeal on August 20, 2019, and the mandate has issued.

trial court dismissed the case against the Mother. The Mother and L.Q. began to live together, and they had two other children together, S.L, who was born in May 2015, and A.L., who was born in September 2016.

In January 2017, the Father and the Mother were involved in domestic violence incident in the Children's presence.² As a result, the Father was arrested, and after being released, the Father moved to Ohio.

On February 9, 2017, the Department removed N.L. from the Mother, and the following day, the Department filed a dependency shelter petition based on the medical neglect of N.L.'s eczema, which has been an ongoing problem. At that point, N.L.'s eczema was all over his body, and he had bloody wounds that were not covered, and N.L. was seen scratching his wounds and shaking. Following a hearing, the trial court entered a dependency shelter order as to N.L., and an order requiring L.Q. to submit to paternity testing. Later that month, on February 18, 2017, S.L. and A.L. were also sheltered and placed into foster care after the Mother was evicted and could not provide S.L. and A.L. with a safe place to reside. Thereafter, the trial court entered a dependency shelter order as to S.L. and A.L. As of February 2017, the Father knew that the Children were in foster care.

In March 2017, a dependency petition was filed as to the Children, and

² N.L., who was three years old, was able to recount, with detail, the domestic violence incident to his classmates.

thereafter, during a level of care assessment, the Father acknowledged he was the father of the Children. The Father was aware that he could not have any contact with the Children until he presented himself before the trial court and his paternity was established. Later that month, the Children were adjudicated dependent, and case plans were entered.

Following the Mother's completion of case plan tasks, the Children were returned to the Mother on July 19, 2017, over the Department's objection. It is undisputed that while the Children were in foster care from February 2017 to July 2017, the Father did not attempt to contact the Children, failed to provide financial support for the Children, and failed to present himself before the trial court.

Despite knowing about the ongoing proceedings, the Father first appeared before the trial court on September 6, 2017—approximately nine months after the Department removed the Children from the Mother's care.³ At that time, the Father acknowledged his paternity of the Children, waiving DNA testing, and paternity orders were later entered nunc pro tunc to September 6, 2017. The trial court appointed counsel to the Father, granted the Father supervised visitations twice a week, and ordered the Father to submit a financial affidavit for the purpose of

³ The Father claimed that he did not present himself earlier to the trial court because he was afraid of being arrested for having sex with the Mother when she was a minor. The trial court found that the Father's testimony throughout the trial lacked credibility.

calculating his child support obligation for the Children.⁴ Thereafter, the Father did not take advantage of the order granting him supervised visitations with the Children.

On December 12, 2017, during an unannounced visit at the Mother's home, the Mother's case manager found the Father hiding in a closet. As a result, the Department removed the Children from the Mother's care once again, and the Children were placed into foster care with the present foster mother.⁵ It was then that the Department learned that the Father was secretly seeing the Mother. The Father testified that, in violation of the trial court's order, he would randomly and briefly see the Children while picking up his other daughter⁶ who was staying at the Mother's home. The Father acknowledged that the visits with the Children were not quality visits and were sporadic. As found by the trial court in the final judgment, which finding is supported by competent, substantial evidence, "there was no indication that the Father, although being found in the Mother's closet during an unannounced visit, was engaging in visitation with the Children or maintaining a

⁴ The record before this Court does not include a financial affidavit filed by the Father.

⁵ The present foster mother is the previous foster mother's cousin. After the Children were returned to the Mother in July 2017, the present foster mother helped the Mother with the Children.

⁶ This daughter is not subject to these proceedings and is one of the Father's three children that he had with his wife.

substantial and positive relationship with the Children during the brief period of time of July of 2017 to December of 2017 when the Mother had custody of the Children.”

The following day—December 13, 2017—the Department filed a motion for supplemental findings of dependency as to the Father based on the Father’s history of domestic violence in the Children’s presence. Although personally served, the Father failed to appear at the hearing on January 17, 2018, and as a result, the trial court entered a consent by non-appearance as to the supplemental dependency findings. Thereafter, on February 14, 2018, the trial court entered a visitation order allowing the Father, who had returned to Ohio, to have either Skype or Facetime visits with the Children. At this point, the case plan goal was adoption. On March 7, 2018, the Department filed a petition for termination of parental rights as to both parents. As to the Father, the sole statutory ground was abandonment pursuant to section 39.806(1)(b).

Despite knowing that the Children had been placed into foster care once again in December 2017, the Father did not visit with the Children (in person or video) until August 2018—a period of eight months. Moreover, he did not provide any financial support to the Children.

Starting in August 2018, the Father began to Skype with the Children. By this time, the hearing on the petition for termination had already been scheduled. Further, when the Father traveled to Miami for hearings on six occasions, he visited

with the Children only on one occasion. In addition, despite working full-time in Ohio, the only financial support the Father provided to the Children was buying each child a sweater and a pair of shoes for their December 2018 trip to North Carolina with the foster mother.

Based on the facts in this case, the trial court entered a final judgment terminating the Father’s parental rights, finding that the Department established by clear and convincing evidence the requirements for terminating parental rights—(1) a statutory ground for terminating parental rights, section 39.806(1)(b); (2) termination of the Father’s parental rights is in the manifest best interest of the Children based on the factors set forth in section 39.810, Florida Statutes (2018); and (3) termination of the Father’s parental rights is the least restrictive means of protecting the Children from serious harm. The Father’s appeal followed.

STANDARD OF REVIEW

A trial court’s “finding that evidence is clear and convincing enjoys a presumption of correctness and will not be overturned on appeal unless clearly erroneous or lacking in evidentiary support.” C.G. v. Dep’t of Children & Families, 67 So. 3d 1141, 1143 (Fla. 3d DCA 2011) (quoting D.P. v. Dep’t of Children & Family Servs., 930 So. 2d 798, 801 (Fla. 3d DCA 2006)). Thus, “the standard of review is whether the trial court’s judgment is supported by substantial and competent evidence.” C.G., 67 So. 3d at 1143.

ANALYSIS

To terminate parental rights, the trial court must find that the Department established by clear and convincing evidence the following: (1) the existence of at least one statutory ground for terminating parental rights set forth in section 39.806(1); (2) termination is in the manifest best interest of the child; and (3) termination is the least restrictive means to protect the child from serious harm.

I. Existence of a Statutory Ground—Section 39.806(1)(b)

As to the Father, the sole statutory ground alleged in the petition for termination of parental rights was section 39.806(1)(b), which provides as follows:

“(1) Grounds for termination of parental rights may be established under any of the following circumstances: (b) Abandonment as defined in s. 39.01(1)”

Section 39.01(1) defines “abandonment” as follows:

“Abandoned” or “abandonment” means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child’s care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. For purposes of this subsection, “establish or maintain a substantial and positive relationship” includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child. A man’s acknowledgment of paternity of the child does not limit the period of time considered in determining whether the child was abandoned. The term does not include a surrendered newborn infant as described in s. 383.50, a “child in need of services” as defined in

chapter 984, or a “family in need of services” as defined in chapter 984. The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child’s welfare may support a finding of abandonment.

Here, based on the findings of fact set forth in the final judgment terminating the Father’s parental rights, which findings are supported by competent, substantial evidence, the Father clearly abandoned his Children as defined in section 39.01(1). Without completely rehashing the trial court’s findings, the Father’s contacts and/or communications with the Children and his financial support of his Children over the various time periods are as follows: (1) from February 2017, when the Children were placed into foster care, to July 2017, when the Children were returned to the Mother, the Father, despite knowing his Children were in foster care, did not present himself before the trial court, had absolutely no contact with the Children, and did not provide child support⁷; (2) from July 2017, when the Children were returned to the Mother, to September 6, 2017, when the Father went before the trial court, the Father had secretive contact with the Mother and saw the Children sporadically; (3) from September 6, 2017, when the Father presented himself to the trial court and was granted supervised visitations, to December 12, 2017, when the Father was

⁷ The Father worked full-time while in Ohio. As to all time periods, the record demonstrates that he did not make any child support payments through the Department. However, the Father testified that when the Mother would ask him for money, he would give her money. However, in the final judgment, the trial court found that the Father’s testimony throughout the trial was not credible.

found hiding in the Mother's closet, the Father did not exercise any supervised visitations with the Children, and instead, without the trial court's consent or Department's knowledge, would sporadically see the Children,⁸ and the Father did not pay any child support; (4) from December 2017, when the Children were placed into foster care once again, to August 2018, the Father did not have any visitations with the Children—in person or through Skype—and he did not pay child support; (5) after August 2018, which is after the hearing on the petition for termination of parental rights had been scheduled, until the termination of his parental rights, he began to Skype with the Children, visited the Children once although in Miami on numerous occasions for hearings, and bought each child a sweater and a pair of shoes for their trip with the foster mother to North Carolina.

Based on these facts, we conclude that the trial court's finding that the Department established by clear and convincing evidence that the Father abandoned the Children is supported by competent, substantial evidence. The evidence showed that the Father did not make significant contribution to the Children's care and maintenance and did not establish or maintain a substantial and positive relationship

⁸ As stated earlier, the trial court specifically found that “there was no indication that the Father, although being found in the Mother's closet during an unannounced visit, was engaging in visitation with the Children or maintaining a substantial and positive relationship with the Children during the brief period of time of July of 2017 to December of 2017 when the Mother had custody of the Children.”

with the Children. Any efforts made by the Father were marginal.

II. Manifest Best Interest of the Children

Prior to terminating parental rights, the trial court is required to consider the manifest best interest of the children, addressing the eleven relevant factors set forth in section 39.810 of the Florida Statutes. In the instant case, the final judgment terminating the Father's parental rights addressed the relevant factors. The only finding that favored the Father was that he loves his Children and an emotional tie exists. However, as the trial court recognized, the bond between the parent and a child is not meant to be preserved at the cost of a child's future. See F.L.C. v. G.C., 24 So. 3d 669, 671 (Fla. 5th DCA 2009). Importantly, the trial court found that the Father has failed to demonstrate that he has an ability to care for the Children; the Father lacked involvement and active participation in the case; the "Father has only recently began engaging in nominal visitation with the Children despite being provided an opportunity to do so"; the "Father has not met a minimal level of parental responsibility for the Children"; and the Father is "unable to care for the Children's mental and physical health."

Importantly, the trial court addressed the Children's current stability and relationship with the foster parents. The Children are currently in a pre-adoptive, stable home with the foster parents, and therefore, it is very unlikely that they will remain in long-term foster care. Further, the Children have the "ability to form a

significant relationship with a parental substitute” as the Children are bonded to their current caregivers, and love and affection exists between the Children and their foster parents. A review of the record before this Court demonstrates that the trial court’s finding, that the Department established by clear and convincing evidence that termination of the Father’s parental rights is in the manifest best interest of the Children, is supported by competent, substantial evidence.

III. Least Restrictive Means

A trial court must also find that the Department established by clear and convincing evidence that termination of a parent’s parental rights is the least restrictive means of protecting the child from serious harm. The least restrictive means test “is not intended to preserve a parental bond at the cost of a child’s future.” S.M. v. Fla. Dep’t of Children & Families, 202 So. 3d 769, 778 (Fla. 2016) (citation omitted).

The Father argues that the Department failed to establish that termination was the least restrictive means to protect the Children from serious harm because they did not provide him with services after the supplemental findings of dependency were entered, and instead, less than three weeks later, filed a petition to terminate his parental rights based on abandonment. First, “[a] petition for termination of parental rights may be filed at any time.” § 39.501(5), Fla. Stat. (2018). Second, as the Father’s parental rights were terminated pursuant to section 39.806(1)(b)—the

Father's abandonment of his Children—the Department was not required to provided him with services. See § 39.806(2), Fla. Stat. (2018) (“Reasonable efforts to preserve and reunify families are not required if a court of competent jurisdiction has determined that any of the events described in paragraphs (1)(b)-(d) or paragraphs (1)(f)-(m) have occurred.”); R.L. v. Dep’t of Children & Families, 273 So. 3d 1012, 1016 (Fla. 4th DCA 2019) (“Under section 39.806(2), Florida Statutes (2018), reasonable efforts to preserve and reunify families are not required when termination is proven under sections 39.806(1)(b) through (d) or (1)(f) through (m).”); see also C.A.H. v. Dep’t of Children & Families, 830 So. 2d 939, 941 (Fla. 4th DCA 2002) (“Florida’s governing statutes clearly state that when DCF seeks to terminate parental rights due to abandonment, it need not offer the parent a case plan with a goal of reunification.”). Finally, the “focus of the ‘least restrictive means’ prong is whether the parent has the ability to be a parent to the child with all the responsibilities that it entails and not merely to be an occasional presence in the life of the child.” S.M., 202 So. 3d at 772 (internal quotations and citations omitted). The record before this Court and the findings made by the trial court clearly demonstrate that the Father made, at best, nominal efforts to be present in the Children’s lives despite knowing that they were lingering in foster care. Accordingly, based on the facts of this case, we conclude that the trial court’s finding, that the Department established by clear and convincing evidence that

termination of the Father's parental rights is the least restrictive means to protect the Children from serious harm, is supported by competent, substantial evidence.

IV. Conclusion

Based on the above analysis, we affirm the final judgment terminating the Father's parental rights.

Affirmed.