

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: ADOPTION OF Q.R.M., A MINOR : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
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APPEAL OF: B.M., ADOPTIVE FATHER :
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: No. 1008 WDA 2012

Appeal from the Order entered May 23, 2012 in the
Court of Common Pleas of Westmoreland County,
Orphans' Court Division, at No. 73 of 2010

BEFORE: MUSMANNO, WECHT, and COLVILLE*, JJ.

MEMORANDUM BY WECHT, J.:

Filed: January 4, 2013

Appellant, B.M. ("Adoptive Father"), appeals from an order dated May 22, 2012, and entered on May 23, 2012, in the Westmoreland County Court of Common Pleas, Orphans' Court Division. The order terminated Adoptive Father's parental rights to his daughter, Q.R.M. ("Child"). We affirm.

The record reveals the following relevant facts and procedural history. Child was born in China in August 2003. Notes of Testimony ("N.T."), 3/7/2011, at 100-01. In 2005, Child was adopted by T.H. ("Adoptive Mother") and Adoptive Father, who were married at the time. Trial Court Opinion, 6/28/2012 ("T.C.O."), at 2. Adoptive Mother and Adoptive Father have an older biological son, S.M, who was born in September 1995.¹ N.T.,

¹ The instant case does not involve S.M.

3/7/2011, at 107-08. Adoptive Mother and Adoptive Father separated in November 2005, and divorced in March 2009. *Id.* at 105.

Following their separation in 2005, Adoptive Mother retained physical custody, while Adoptive Father had unsupervised visitation on alternate weekends. *Id.* at 108-09. In 2006, Adoptive Mother filed a custody action in Westmoreland County at No. 1474 of 2006. Numerous custody orders pertaining to Child's custody were entered. Regarding this period, Mother testified as follows:

[COUNSEL.] After you were separated from [Adoptive Father], can you give the Court sort of an overview of the custody arrangements that [Adoptive Father] had with [Child].

[MOTHER.] In the beginning, in 2006 when it first started, we were doing every other weekend, but we were supposed to meet at Excela Health for the exchange. Then there was [*sic*] a couple of incidents that occurred and then it started to be supervised visits.

* * *

A couple of incidents [Adoptive Father] kind of made a scene at Excela Health

Id. at 108-09.

From 2007 through the present, Adoptive Mother and Child have resided in a house in Youngwood, Pennsylvania, with M.H. ("Stepfather"). Adoptive Mother and Stepfather married in June 2010. Adoptive Father has always lived within five miles of Adoptive Mother and Child.

On or about March 20, 2007, an emergency proceeding arose out of an allegation by Child's guardian *ad litem* that Child was harmed by S.M. while

she was in Adoptive Father's physical custody. *Id.* at 110-11; T.C.O. at 3. On or about April 8, 2008, Adoptive Mother was awarded sole legal custody and primary physical custody of Child. T.C.O. at 3. In August 2008, Adoptive Mother filed an emergency petition alleging that S.M. had inappropriate contact with Child while in Adoptive Father's custody. During the August 4, 2008 custody review hearing, Adoptive Father stated in open court that he did not want to see Child until she was 18 years of age. *Id.* Following the custody proceeding, the trial court issued an order suspending Adoptive Father's right to supervised and unsupervised visitation of Child. N.T., 3/7/2011, at 111, 116.

In the spring of 2009, Adoptive Father filed a petition for reunification with Child. On April 17, 2009, the trial court entered an order which provided for parent-child reconciliation and supervised visitation overseen by Joe Narduzzi, a licensed professional counselor associated with Carol A. Hughes and Associates. *Id.* at 25; T.C.O. at 3. Adoptive Father completed eight sessions of parent-child reconciliation therapy from May 16, 2009, through September 9, 2009. T.C.O. at 3. On August 19, 2009, Adoptive Father met privately with Mr. Narduzzi and stated that he would have to stop reconciliation serves due to financial difficulties. *Id.* Mr. Narduzzi offered Adoptive Father a reduced rate of \$50 per session for the reconciliation

therapy.² Around this time, Adoptive Father also was making payments for S.M. to take a trip to China in the summer of 2010. The payments ranged from \$500 to \$1,000 per month toward the \$7,000 expense associated with the China trip. *Id.* at 3-4; N.T., 6/16/2011 at 202-03. On September 23, 2009, during his last visitation session, Adoptive Father again told Child, who was six years of age, that he would see her when she was eighteen. T.C.O. at 4; N.T., 3/7/2011, at 116.

Adoptive Father had contact with Child on a few occasions after terminating reconciliation counseling. He attended an outing with Adoptive Mother and Child in Greensburg, Pennsylvania, in December 2009 or early January 2010, bearing Christmas gifts that he had purchased for Child. Adoptive Father also surprised Child and Adoptive Mother by appearing unannounced at a Chuck E Cheese's restaurant in Greensburg. Adoptive Father also noted occasions when he waved to Child when he provided transportation for Adoptive Mother to exercise partial physical custody of S.M. T.C.O. at 4.

On August 19, 2010, Adoptive Mother filed a petition to terminate Adoptive Father's parental rights to Child, so that Child could be adopted by Stepfather. The trial court held hearings on March 7, 2011, June 16, 2011, October 17, 2011, and November 18, 2011. By order dated May 22, 2012,

² Notably, Mr. Narduzzi testified that he offered this rate from the outset of therapy based upon Adoptive Father's representations of financial difficulties associated with Adoptive Mother and Adoptive Mother's family, who he claimed had stolen money from him. N.T., 3/7/2011, at 39.

and entered on May 23, 2012, the trial court granted Adoptive Mother's petition to terminate Adoptive Father's parental rights to Child.

On June 22, 2012, Adoptive Father filed a timely notice of appeal.³ On the same date, Adoptive Father filed a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b).

Adoptive Father raises two issues on appeal:

1. Did the trial court err in finding that competent evidence established the statutory grounds for termination of [Adoptive Father's] parental rights pursuant to 23 Pa.C.S.A. §§ 2511(a)(1)?
2. Did the trial court err in finding that [Child's] best interest and welfare were served by termination of [Adoptive Father's] parental rights pursuant to 23 Pa.C.S.A. § 2511(b)?

Adoptive Father's Brief at 4.

We review the present appeal in accordance with the following standard:

[A]ppellate courts must apply an abuse of discretion standard when considering a trial court's determination of a petition for termination of parental rights. As in dependency cases, our standard of review requires an appellate court to accept the findings of fact and credibility determinations of the trial court if they are supported by the record. If the factual findings are supported, appellate courts review to determine if the trial court made an error of law or abused its discretion. As has been often stated, an abuse of discretion does not result merely because the reviewing court might have reached a different conclusion. Instead, a decision may be reversed for an abuse of discretion only upon demonstration of manifest unreasonableness, partiality, prejudice, bias, or ill[]will.

³ The trial court's order was dated May 22, 2012, but actually was filed on May 23, 2012. The Clerk of Courts incorrectly listed the order on its Docket as having been filed on May 22, 2012.

* * *

[T]here are clear reasons for applying an abuse of discretion standard of review in these cases. . . . [U]nlike trial courts, appellate courts are not equipped to make the fact-specific determinations on a cold record, where the trial judges are observing the parties during the relevant hearing and often presiding over numerous other hearings regarding the child and parents. Therefore, even where the facts could support an opposite result, as is often the case in . . . termination cases, an appellate court must resist the urge to second[-]guess the trial court and impose its own credibility determinations and judgment; instead we must defer to the trial [court] so long as the factual findings are supported by the record and the court's legal conclusions are not the result of an error of law or an abuse of discretion.

In re Adoption of S.P., 47 A.3d 817, 826-27 (Pa. 2012) (citations omitted).

The burden is upon the petitioner to prove by clear and convincing evidence that the asserted grounds for seeking the termination of parental rights are valid. *In re R.N.J.*, 985 A.2d 273, 276 (Pa. Super. 2009). "The standard of clear and convincing evidence is defined as testimony that is so clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conviction, without hesitation, of the truth of the precise facts in issue." *Id.* (internal quotation marks and citation omitted).

In this case, the trial court involuntarily terminated Adoptive Father's parental rights pursuant to sections 2511(a)(1) and (b), which provide as follows:

§ 2511. Grounds for involuntary termination

(a) General rule.--The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds:

(1) The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.

* * *

(b) Other considerations.--The court in terminating the rights of a parent shall give primary consideration to the developmental, physical and emotional needs and welfare of the child. The rights of a parent shall not be terminated solely on the basis of environmental factors such as inadequate housing, furnishings, income, clothing and medical care if found to be beyond the control of the parent. With respect to any petition filed pursuant to subsections (a)(1), (6) or (8), the court shall not consider any efforts by the parent to remedy the conditions described therein which are first initiated subsequent to the giving of notice of the filing of the petition.

23 Pa.C.S. § 2511(a)(1), (b) (emphasis in original).

In *In re Z.S.W.*, 946 A.2d 726 (Pa. Super. 2008), this Court stated:

To satisfy the requirements of section 2511(a)(1), the moving party must produce clear and convincing evidence of conduct, sustained for at least the six months prior to the filing of the termination petition, which reveals a settled intent to relinquish parental claim to a child or a refusal or failure to perform parental duties. In addition, Section 2511 does not require that the parent demonstrate both a settled purpose of relinquishing parental claim to a child and refusal or failure to perform parental duties. Accordingly, parental rights may be terminated pursuant to Section 2511(a)(1) if the parent either demonstrates a settled purpose of relinquishing parental claim to a child or fails to perform parental duties.

Once the evidence establishes a failure to perform parental duties or a settled purpose of relinquishing parental rights, the court must engage in three lines of inquiry: (1) the parent's

explanation for his or her conduct; (2) the post-abandonment contact between parent and child; and (3) consideration of the effect of termination of parental rights on the child pursuant to Section 2511(b).

In re Z.S.W., 946 A.2d at 730 (internal quotations marks and citations omitted).

After carefully reviewing the testimony and the evidence, the trial court found that Adoptive Father had failed to perform his parental duties for well over the six months prior to the filing of the termination petition under section 2511(a)(1). The trial court noted that, for purposes of strictly calculating the time-period referenced in the statute, the six-month period preceding the filing of Adoptive Mother's petition to terminate Adoptive Father's parental rights would have begun to run in February 2010. The trial court found that there are many inconsistencies in Adoptive Father's accounts listed in the log that he kept concerning contacts he had with Child from December 2009 until June 2010. However, Adoptive Father, upon being confronted with evidence that his contacts with Child could not have occurred as listed, attempted to correct the dates. His efforts were unavailing, because Adoptive Mother, maternal grandparents, and even Adoptive Father's own witnesses contradicted Adoptive Father's testimony. T.C.O. at 4-5.

The trial court also recognized that certain occasional contacts with Child were not disputed. It was not disputed that Adoptive Father joined Adoptive Mother and Child in Greensburg in December of 2009 or January of

2010 in order to bring presents that he purchased for Child. Adoptive Father also appeared unexpectedly at Chuck E Cheese's when Adoptive Mother and Child were there. On that occasion, Adoptive Father and Child posed for a picture together. *Id.* at 4.

However, based upon inconsistencies in Adoptive Father's testimony regarding his contacts with Child, and the court's observations of Adoptive Father's demeanor during the testimony, the court found that Father's testimony was not credible. *Id.* at 6. The trial court further found Adoptive Father's contact with Child insufficient. Adoptive Father's contact "has not been steady and consistent over a period of time, but has rather been episodic, sporadic and based on whim." *Id.* at 7. Thus, the first part of the analysis under section 2511(a)(1) has been established. ***See In re K.Z.S.***, 946 A.2d 753, 759 (Pa. Super. 2004) (stating that, to be legally significant, post-abandonment contact must be steady and consistent over a period of time).

The trial court also found clear and convincing evidence that Adoptive Father refused or failed to perform his parental duties with regard to Child. Although Adoptive Father contends that he has attempted to re-establish a relationship with Child, the trial court found to the contrary. The trial court was unpersuaded of Adoptive Father's performance of his parental obligations by the testimony and evidence regarding Adoptive Father's interest in Child's physical health, academic progress, and emotional well-

being. T.C.O. at 8. Thus, the second requirement of section 2511(a)(1) (parent “refused or failed to perform parental duties”) was established, and competent evidence supported the trial court’s finding that the relevant section 2511(a)(1) criteria were satisfied.

The testimony of Child indicates that Adoptive Father’s actions have been confusing and unnerving to her. Child told Alvaro Barriga, Ph.D., who was called as Adoptive Father’s witness and qualified as an expert in psychology, that she felt “weird” when Adoptive Father appeared unexpectedly at Chuck E Cheese’s after telling her that he did not want to see her until she turned eighteen. N.T., 6/16/2011, at 55. Child indicated that she felt “mad and sad” as a result of Adoptive Father’s actions. *Id.* at 44. Consequently, the trial court found Adoptive Father’s actions not to be the actions of a parent who is committed to re-establishing a relationship with his child. T.C.O. at 7-8.

Having found section 2511(a) satisfied, the trial court was required to consider whether the termination of parental rights would best serve the developmental, physical, and emotional needs and welfare of Child. *See* 23 Pa.C.S. § 2511(b); *In re C.M.S.*, 884 A.2d 1284, 1286-87 (Pa. Super. 2005). “Intangibles such as love, comfort, security, and stability are involved in the inquiry into the needs and welfare of the child.” *C.M.S.*, 884 A.2d at 1287 (citation omitted). “The trial court must also discern the

nature and status of the parent-child bond, with utmost attention to the effect of permanently severing that bond." *Id.*

When evaluating a parental bond, "the court is not required to use expert testimony. Social workers and caseworkers can offer evaluations as well. Additionally, section 2511(b) does not require a formal bonding evaluation." *In re Z.P.*, 994 A.2d 1108, 1121 (Pa. Super. 2010) (citations omitted). Although it often is wise to have a bonding evaluation and make that evaluation part of the certified record, "[t]here are some instances . . . where direct observation of the interaction between the parent and the child is not necessary and may even be detrimental to the child." *In re K.Z.S.*, 946 A.2d at 762.

A parent's abuse and neglect likewise are a relevant part of this analysis:

[C]oncluding a child has a beneficial bond with a parent simply because the child harbors affection for the parent is not only dangerous, it is logically unsound. If a child's feelings were the dispositive factor in the bonding analysis, the analysis would be reduced to an exercise in semantics as it is the rare child who, after being subject to neglect and abuse, is able to sift through the emotional wreckage and completely disavow a parent. . . . Nor are we of the opinion that the biological connection between [the parent] and the children is sufficient in [and] of itself, or when considered in connection with a child's feeling toward a parent, to establish a *de facto* beneficial bond exists. The psychological aspect of parenthood is more important in terms of the development of the child and its mental and emotional health than the coincidence of biological or natural parenthood.

In re K.K.R.-S., 958 A.2d 529, 535 (Pa. Super. 2008) (internal quotation marks omitted). Thus, the court may emphasize the safety needs of the child. *See K.Z.S.*, 946 A.2d at 763. “[A] parent’s basic constitutional right to the custody and rearing of his or her child is converted, upon the failure to fulfill his or her parental duties, to the child’s right to have proper parenting and fulfillment of his or her potential in a permanent, healthy, safe environment.” *In re B., N.M.*, 856 A.2d 847, 856 (Pa. Super. 2004).

The trial court found that it was the care of Stepfather, rather than Adoptive Father, which served the best interests of Child. Both Stepfather and Adoptive Mother provided for Child’s developmental, physical, and emotional needs. When Carol A. Hughes, the licensed psychologist who evaluated Child on behalf of Mother, asked Child to describe her relationship with Adoptive Father, Child’s “initial response was that she was silent. And then finally she came up with the word nice. So I asked her her reason for choosing the word nice. And she said, because [Adoptive Father] gives her presents for no reason.” N.T., 6/16/2011, at 103; *see* T.C.O. at 8. When Ms. Hughes asked Child to give two words to describe her relationship with Stepfather, Child stated that she “love[d] him.” N.T., 6/16/2011, at 103. Asked what Adoptive Father did that made her feel loved, Child reiterated: “I really do love him.” *Id.* Child indicated that Stepfather taught her how to swim and worked on a fire truck kit with her. *Id.* Thus, the trial court found that the evidence showed that Child was looking not to Adoptive Father to

meet her needs, but instead relying upon Adoptive Mother and Stepfather to provide for her.

The trial court further held that the record showed that no bond existed between Adoptive Father and Child pursuant to section 2511(b), and that Adoptive Father provided no credible evidence to the contrary. Ms. Hughes testified that Child denied any relationship with Adoptive Father and expressed her desire to be adopted by Stepfather, with whom she shared a strong bond, even if it meant that Adoptive Father “won’t be [her] daddy.” According to Ms. Hughes, Child was not looking to Adoptive Father to meet her needs. Rather, she looked to Adoptive Mother and Stepfather to do so. *Id.* at 111-12. Among her conclusions, Ms. Hughes indicated that “this is [not] a child who has a connection” with Adoptive Father. *Id.* at 111. In addition, Dr. Barriga, Adoptive Father’s expert, characterized Child’s attachment with Adoptive Father as “weak.” *Id.* at 47.

Thus, the trial court appropriately concluded that the termination of Adoptive Father’s parental rights would best serve the Child’s needs and welfare, because it would provide Child with the permanency and stability that she needs in her life with Adoptive Mother and Stepfather. A child cannot wait indefinitely for a parent to decide to be a parent. The evidence supports the trial court’s conclusion regarding the termination of Adoptive Father’s parental rights to Child pursuant to section 2511(b).

We have thoroughly reviewed the record, Adoptive Father's brief, and the applicable law. We find that the trial court ably and methodically considered the evidence presented at trial, and addressed Adoptive Father's issues as presented on appeal. We detect no error of law or abuse of discretion. Accordingly, we affirm the trial court's order.

Order affirmed.