NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: L.E.F., A MINOR	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
	:	
APPEAL OF: E.F., MOTHER,	:	
	:	No. 1015 MDA 2013
Appellant	:	

Appeal from the Decree, May 2, 2013,
in the Court of Common Pleas of Berks County
Orphans' Court Division at No. 82984

BEFORE: FORD ELLIOTT, P.J.E., SHOGAN AND PLATT,* JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED DECEMBER 03, 2013**

E.F. ("Mother") appeals the decree dated and entered on May 2, 2013, which granted the petition filed by the Berks County Office of Children and Youth Services ("BCCYS") to involuntarily terminate her parental rights to her female child, L.E.F. ("Child"), born in August of 2011, pursuant to Section 2511(a)(1), (2), (5), and (b) of the Adoption Act, 23 Pa.C.S.A. § 2511(a)(1), (2), (5), and (b).[1] We affirm.

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* Retired Senior Judge assigned to the Superior Court.

[1] In a decree dated and entered on May 2, 2013, the trial court granted BCCYS's petition to terminate the parental rights of Child's putative father, R.F. In a separate decree dated and entered on May 2, 2013, the trial court granted BCCYS's petition to terminate the parental rights of Unknown John Doe, Putative Father, or Anyone Claiming Paternity with regard to Child. None of these individuals is a party to the instant appeal, nor has any of them filed a separate appeal on his own behalf.

On February 1, 2013, BCCYS filed a petition seeking the involuntary termination of Mother's parental rights to Child. The trial court held a hearing on the petition on April 22, 2013. At the hearing, BCCYS presented the testimony of its caseworker, Carol Rentschler. (Notes of testimony, 4/22/13 at 4-5.) The trial court set forth the following factual background and procedural history of this appeal from Ms. Rentschler's testimony and other evidence admitted at the hearing.

> BCCYS has been involved with Mother since the minor child's birth. (Notes of Testimony, hereinafter N.T., 4/22/13, at 7). When [Child] was born [in August of 2011], Mother was only seventeen (17) years old and was residing with maternal grandmother, who was involved with BCCYS herself in relation to her minor children. (N.T., 4/22/13, at 7). The child was permitted to leave the hospital with Mother with services in place to assist with the child's care. (N.T., 4/22/13, at 7-8). From the time that the child left the hospital until the child was declared dependent in January 2012, multiple concerns were identified concerning Mother's ability to care for the minor child. (Exhibit 22 -- Notes of the Caseworker, at 2-4). During this time, Mother moved three times in four months, Mother failed to take the infant to four scheduled medical appointments, and Mother appeared to be largely uninvolved with the child's daily care. (N.T., 4/22/13, at 8-9; Exhibit 22 -- Notes of the Caseworker, at 2-4).
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> The minor child was declared dependent on January 11, 2012, and was allowed to remain in Mother's care on the condition that Mother take immediate steps to relocate to a residential facility, such as Y-Haven or Opportunity House, where she would have supportive services in a structured environment. (N.T., 4/22/13, at 9-10; Exhibit 7 -- Order of Adjudication and Disposition, dated

> January 11, 2012). Unfortunately, Mother failed to take the steps necessary for this relocation and the child was removed from Mother's care on February 15, 2012. (N.T., 4/22/13, at 10; Exhibit 9 -- Order of Adjudication and Disposition, dated February 15, 2012). Mother was ordered, in relevant part, to: (1) cooperate with parenting education; (2) cooperate with a mental health evaluation and any recommended treatment; (3) cooperate with drug and alcohol evaluation and any recommended treatment;[Footnote 1] (4) establish and maintain appropriate housing and income; and (5) cooperate with casework sessions. (N.T., 4/22/13, at 12).
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> [Footnote 1] Mother did attend a drug and alcohol evaluation and, based upon the results of that evaluation, no treatment was recommended. (Exhibit 22 -- Notes of the Caseworker, at 11-12).

Trial court opinion, 6/25/13 at 4-5 (footnote in original).

In the decree dated and entered on May 2, 2013, the trial court granted the petition to involuntarily terminate Mother's parental rights to Child pursuant to Section 2511(a)(1), (2), (5), and (b). On May 31, 2013, Mother, through her appointed counsel, filed a notice of appeal and concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b).

On July 29, 2013, Mother's counsel filed a motion to withdraw as counsel and an ***Anders***[2] brief. In the ***Anders*** brief, Mother's counsel raises the following issue:

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[2] ***See Anders v. California***, 386 U.S. 738 (1967).

> Did the Honorable Court err by terminating Appellant's parental rights because the evidence presented by Appellee was insufficient to support the lower court's decision?

Mother's brief at 5.

We begin by addressing the motion to withdraw and the issue in the ***Anders*** brief. ***See Commonwealth v. Rojas***, 874 A.2d 638, 639 (Pa.Super. 2005) (quotation omitted) (stating, "[w]hen faced with a purported ***Anders*** brief, this Court may not review the merits of the underlying issues without first passing on the request to withdraw").

In ***In re V.E.***, 611 A.2d 1267, 1275 (Pa.Super. 1992), this court extended the ***Anders*** principles to appeals involving the termination of parental rights. We stated that counsel appointed to represent an indigent parent on a first appeal from a decree involuntarily terminating parental rights may, after a conscientious and thorough review of the record, petition this court for leave to withdraw representation and must submit an ***Anders*** brief. ***Id.*** at 1275. To withdraw pursuant to ***Anders***, counsel must: 1) petition the Court for leave to withdraw, certifying that after a thorough review of the record, counsel has concluded the issues to be raised are wholly frivolous; 2) file a brief referring to anything in the record that might arguably support the appeal; and 3) furnish a copy of the brief to the appellant and advise him of his right to obtain new counsel or file a ***pro se*** brief to raise any additional points that the appellant deems worthy of

review. ***In re V.E.***, 611 A.2d at 1273. Thereafter, this court examines the record and determines whether the appeal is wholly frivolous. ***Id.***

Our supreme court, in ***Commonwealth v. Santiago***, 602 Pa. 159, 978 A.2d 349 (2009), stated that an ***Anders*** brief must:

> (1) provide a summary of the procedural history and facts, with citations to the record;
>
> (2) refer to anything in the record that counsel believes arguably supports the appeal;
>
> (3) set forth counsel's conclusion that the appeal is frivolous; and
>
> (4) state counsel's reasons for concluding that the appeal is frivolous. Counsel should articulate the relevant facts of record, controlling case law, and/or statutes on point that have led to the conclusion that the appeal is frivolous.

Santiago, 602 Pa. at 178-179, 978 A.2d at 361.

The supreme court reaffirmed the principle that indigents "generally have a right to counsel on a first appeal, [but] . . . this right does not include the right to bring a frivolous appeal and, concomitantly, does not include the right to counsel for bringing such an appeal." ***Santiago***, 602 Pa. at 173, 978 A.2d at 357 (citation omitted). Our supreme court stated:

> In the Court's view, this distinction gave meaning to the Court's long-standing emphasis on an indigent appellant's right to "advocacy." . . . As the Court put it, "[a]lthough an indigent whose appeal is frivolous has no right to have an advocate make his case to the appellate court, such an indigent does, in all cases, have the right to have an attorney, zealous for the indigent's interests, evaluate his case and attempt to discern nonfrivolous arguments."

Santiago, 602 Pa. at 173, 978 A.2d at 357-358 (citation omitted).

Mother's counsel has complied with the first prong of the test in ***Santiago*** by providing a summary of the procedural history and facts in her ***Anders*** brief. Counsel has also complied with the second prong of the test in ***Santiago*** by referring to any evidence in the record that counsel believes arguably supports the appeal. Counsel has also set forth her conclusion that the appeal is frivolous, and stated her reasons for that conclusion, with appropriate support. Moreover, counsel filed a separate motion to withdraw as counsel, wherein counsel states that she has made an exhaustive review of the record and applicable law, and she has concluded that the appeal is frivolous. Further, counsel has attempted to identify and fully develop any issues in support of Mother's appeal. Additionally, counsel states that she sent a letter to Mother in which she provided a copy of the ***Anders*** brief. Counsel states that she informed Mother that she has filed a motion to withdraw and an ***Anders*** brief, and she informed Mother of her rights in light of her motion. Thus, Mother's appellate counsel has satisfied the requirements of ***Santiago***.

Next, we address the issue in the ***Anders*** brief; that is, whether the trial court erred in granting the termination petition because the evidence was insufficient to support the termination. In reviewing an appeal from the termination of parental rights, we review the 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. ***In re: R.J.T.***, 608 Pa. 9, 9 A.3d 1179, 1190 (Pa. 2010). If the factual findings are supported, appellate courts review to determine if the trial court made an error of law or abused its discretion. ***Id.***; ***R.I.S.***, [___ Pa. ___, ___, 36 A.3d 567, 572 (Pa. 2011) (plurality opinion)]. As has been often stated, an abuse of discretion does not result merely because the reviewing court might have reached a different conclusion. ***Id.***; ***see also Samuel Bassett v. Kia Motors America, Inc.***, 613 Pa. 371[, 455], 34 A.3d 1, 51 (Pa. 2011); ***Christianson v. Ely***, [575 Pa. 647, 654-655], 838 A.2d 630, 634 (Pa. 2003). Instead, a decision may be reversed for an abuse of discretion only upon demonstration of manifest unreasonableness, partiality, prejudice, bias, or ill-will. ***Id.***
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> As we discussed in ***R.J.T.***, there are clear reasons for applying an abuse of discretion standard of review in these cases. We observed that, unlike 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. ***R.J.T.***, [608 Pa. at 28-30], 9 A.3d at 1190. Therefore, even where the facts could support an opposite result, as is often the case in dependency and 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 judges 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 Atencio***, [539 Pa. 161, 165,] 650 A.2d 1064, 1066 (Pa. 1994).

In re Adoption of S.P., 616 Pa. 309, 325-326, 47 A.3d 817, 826-827 (2012).

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).

Moreover, we have explained:

> [t]he 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 hesitance, of the truth of the precise facts in issue."

Id., quoting ***In re J.L.C.***, 837 A.2d 1247, 1251 (Pa.Super. 2003).

This court may affirm the trial court's decision regarding the termination of parental rights with regard to any one subsection of Section 2511(a). ***See In re B.L.W.***, 843 A.2d 380, 384 (Pa.Super. 2004) (***en banc***), ***appeal denied***, 581 Pa. 668, 863 A.2d 1141 (2004).

Here, we will discuss Subsection 2511(a)(2) and (b), which provide as follows:

Section 2511 provides, in relevant part, 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:
>
> . . . .

(2) The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.

. . . .

(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 subsection (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.A. § 2511.

Here, the trial court found as follows:

> [Child] has been in the care of [BCCYS] since February 15, 2012. The child has remained in BCCYS' custody since that date. Mother has failed to follow the steps she was ordered to cooperate with and the child has been in care for a period exceeding six (6) months.
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> Contrary to Mother's assertion . . . that she has complied with all court-ordered services, the [trial court] believes, based upon a review of the

testimony and exhibits admitted, that Mother's compliance with court-ordered services was minimal, at best, and left [the trial court] with great doubt that Mother could successfully care for the minor child in the foreseeable future.

Mother has failed to establish stable and appropriate housing. Since the minor child was declared dependent in February 2012, Mother has resided at five (5) different addresses. (N.T., 4/22/13, at 12-13; Exhibit 22 -- Notes of the Caseworker, at 8-9). More importantly, Mother has never lived alone or demonstrated that she could finance and maintain a residence on her own. (N.T., 4/22/13, at 12). While Mother has been employed since February 2013, her employment is relatively recent and her employment history is sporadic. (N.T., 4/22/13, at 31-32; Exhibit 22 -- Notes of the Caseworker, at 9).

While Mother did attend a mental evaluation and has been somewhat compliant with mental health treatment, the [trial court] cannot be assured, based on the evidence presented, that Mother's mental health issues have been addressed. Mother attended a mental health evaluation, conducted in three sessions, in March and May 2012. (N.T., 4/22/13, at 14-15). As a result of this evaluation, it was recommended that Mother receive psychiatric evaluation and treatment, psychotropic medication, and long-term counseling. (N.T., 4/22/13, at 15; Exhibit 12 -- Psychological Evaluation by Berks Counseling Associates, at 5). It is acknowledged that Mother received some form of treatment with Berks Psychiatry from 2008 until November 2012, but Mother's diagnoses, participation and treatment progression during this time period are unknown. (N.T., 4/22/13, at 16; Exhibit 13 -- Letter from Dr. Khan, dated January 14, 2013). In fact, Mother herself didn't know the names of her treatment providers, her medication or the amount of medication she was taking. (Exhibit 22 -- Notes of the Caseworker, at 11). Since January 2013, Mother has been receiving mental health treatment from

> FamiliCare Counseling. (N.T., 4/22/13, at 16). It appears that Mother has been regularly participating with FamiliCare, but it is unknown if Mother has addressed any of the mental health issues noted in her initial psychological evaluation. (N.T., 4/22/13, at 16-17).
>
> In addition, the [trial court] has great concerns about Mother's ability to provide safe and proper hands-on parenting to the minor child. During Mother's combined parenting education sessions and visits with the child, the visit supervisors observed numerous safety concerns, including Mother's failure to properly secure the infant in a car seat and highchair as well as Mother's failure to properly observe the minor child. (N.T., 4/22/13, at 18-20; Exhibits 18-21 -- Progress Reports from Signature Family Services). Mother's limited mental ability, her poor judgment, and failure to understand the conditions which led to the child's placement add to [the trial court's] finding that Mother is not presently capable of providing the care necessary for this minor child. (N.T., 4/22/13, at 14; Exhibit 22 -- Notes of the Caseworker, at 9).

Trial court opinion, 6/25/13 at 4-6.

The evidence supports the trial court's finding that Mother has been unable to overcome her issues with housing, mental health, and parenting. (***Anders*** brief at 10.) There is sufficient, competent, clear, and convincing evidence in the record to support the trial court's conclusion that the evidence supported a finding that Mother's parental rights should be terminated pursuant to Section 2511(a)(2). ***See In re Adoption of S.P.***, 616 Pa. at 325-326, 47 A.3d at 826-827.

After we determine that the requirements of Section 2511(a) are satisfied, we proceed to review whether the requirements of Subsection (b)

are satisfied. ***See In re Adoption of C.L.G.***, 956 A.2d 999, 1009 (Pa.Super. 2008) (***en banc***). This court has stated that the focus in terminating parental rights under Section 2511(a) is on the parent, but it is on the child pursuant to Section 2511(b). ***Id.*** at 1008.

In reviewing the evidence in support of termination under Section 2511(b), our supreme court recently stated as follows.

> [I]f the grounds for termination under subsection (a) are met, a court "shall give primary consideration to the developmental, physical and emotional needs and welfare of the child." 23 Pa.C.S. § 2511(b). The emotional needs and welfare of the child have been properly interpreted to include "[i]ntangibles such as love, comfort, security, and stability." ***In re K.M.***, 53 A.3d 781, 791 (Pa.Super.2012). In ***In re E.M.***, [620 A.2d 481, 485 (Pa.1993)], this Court held that the determination of the child's "needs and welfare" requires consideration of the emotional bonds between the parent and child. The "utmost attention" should be paid to discerning the effect on the child of permanently severing the parental bond. ***In re K.M.***, 53 A.3d at 791.

See also In re: T.S.M., ___ Pa. ___, ___, 71 A.3d 251, 267 (2013).

Regarding Section 2511(b), Ms. Rentschler testified that, during visits with Mother, Child looks to her foster mother for reassurance that she is returning to the foster home. (Notes of testimony, 4/22/13 at 20.) The trial court quoted the following from Ms. Rentschler's testimony, as she responded to direct examination by BCCYS's counsel.

> Ms. Grimes: Now, Ms. Rentschler, have you had the opportunity to observe [Child] with her foster parents?

> Ms. Rentschler: I do. I see [Child] in the home monthly and [Child] is bonded and attached to the foster parents and the family, the siblings there. She looks to them to have all her needs met.
>
> Ms. Grimes: And what about during the visits, have you had the opportunity to observe [Child] during the visits?
>
> Ms. Rentschler: During the visits it has been noted that [Child] goes to the door to search for foster mother, to look for her, probably for reassurance, you know. They have noted that [Child] is used to coming to the visits, but she has to look for foster mom just to be reassured that she is going to go back home with them.

(N.T., 4/22/13, at 19-20).

Trial court opinion, 6/25/13 at 7.

Ms. Rentschler confirmed that Child is bonded to her foster parents, who have provided for all of Child's needs. (Notes of testimony, 4/22/13 at 20.) Ms. Rentschler testified that Mother's parental rights should be terminated, so that Child may be adopted. (***Id.*** at 21.)

The trial court appropriately relied on Ms. Rentschler's testimony, as Ms. Rentschler is the caseworker assigned to the case. We have stated that, in conducting a bonding analysis, the court is not required to use expert testimony, but may rely on the testimony of social workers and caseworkers. ***In re Z.P.***, 994 A.2d 1108, 1121 (Pa.Super. 2010).

The trial court found, without any doubt, that the termination of Mother's parental rights would serve Child's best interests. (Trial court

opinion, 6/25/13 at 7.) The trial court stated that, although Mother loves Child, she is unable to provide for Child's developmental, physical, or emotional needs. (***Id.***) The trial court found that Child's foster parents satisfy all of Child's developmental, physical, or emotional needs. (***Id.***)

The record includes clear and convincing evidence that Child has developed a parental, bonded relationship with her foster parents, and that there is a lack of a bond between Child and Mother. The trial court noted that Child was placed in foster care when she was six months old. (Trial court opinion, 6/25/13 at 4-5.) This court has observed that no bond worth preserving is formed between a child and a natural parent where the child has been in foster care for most of the child's life, and the resulting bond with the natural parent is attenuated. ***In re K.Z.S.***, 946 A.2d 753, 764 (Pa.Super. 2008). Mother failed to "exhibit [the] bilateral relationship which emanates from the parent['s] willingness to learn appropriate parenting . . . ." ***In re K.K.R.S.***, 958 A.2d 529, 534 (Pa.Super. 2008). She did not put herself in a position to assume daily parenting responsibilities so that she could develop a real bond with Child. ***See In re J.L.C.***, 837 A.2d 1247, 1249 (Pa.Super. 2003).

Additionally, as part of its bonding analysis, the trial court appropriately examined the Child's relationship with her caregivers. ***See In re: T.S.M.***, ___ Pa. at ___, 71 A.3d at 267-268 (stating that existence of a bond attachment of a child to a parent will not necessarily result in the

denial of a termination petition, and the court must consider whether the child has a bond with the foster parents).

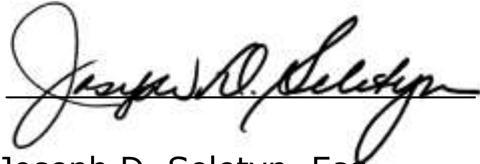
The trial court appropriately observed that, although Mother loves Child, a parent's own feelings of love and affection for a child, alone, will not preclude termination of parental rights. (***See*** trial court opinion, 6/25/13 at 7.) ***In re Z.P.***, 994 A.2d at 1121. We stated in ***In re Z.P.***, a child's life "simply cannot be put on hold in the hope that [a parent] will summon the ability to handle the responsibilities of parenting." ***Id.*** at 1125. Rather, "a parent's basic constitutional right to the custody and rearing of his 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), ***appeal denied***, 582 Pa. 718, 872 A.2d 1200 (2005).

As there is competent evidence in the record that supports the trial court's credibility and weight assessments, we conclude that the trial court did not abuse its discretion in finding that Mother's appeal lacks merit as to Section 2511(b). ***See In re Adoption of S.P.***, 616 Pa. at 325-326, 47 A.3d at 826-827.

Further, as there is no merit to the challenge to the involuntary termination of Mother's parental rights, we find the appeal is frivolous. Accordingly, we grant counsel's motion to withdraw.

Decree affirmed. Motion to withdraw granted.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/3/2013