

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: J.J.L., A MINOR

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: L.K., BIRTH MOTHER

No. 1063 WDA 2013

Appeal from the Order of June 7, 2013
In the Court of Common Pleas of Allegheny County
Orphans' Court at No.: TPR 023 of 2013

BEFORE: FORD ELLIOTT, P.J.E., WECHT, J., and STRASSBURGER, J.*

MEMORANDUM BY WECHT, J.

FILED: December 16, 2013

L.K. ("Mother") appeals the June 11, 2013 order that terminated her parental rights to her daughter, J.J.L. ("Child"). We affirm.¹

Child was born in August 2011. At that time, Mother was homeless and was perceived to have intellectual limitations and mental health issues. Child originally came to the attention of Allegheny County's Office of Children, Youth and Families ("CYF") upon referral from the hospital where she delivered Child. Mother had requested CYF services. CYF discovered

* Retired Senior Judge assigned to the Superior Court.

* Judge Strassburger did not participate in the consideration or decision of this case.

¹ In a decree entered on June 7, 2013, the parental rights of Child's father, J.A.L., and the Unknown Father, also were terminated. J.A.L. has not appealed that order and is not participating in the instant appeal.

that Mother had been living at A Sister's Place in Clairton, Pennsylvania. Trial Court Opinion ("T.C.O."), 7/25/13, at 1.

On October 4, 2011, the trial court adjudicated Child dependent. The trial court considered Mother's homelessness, criminal activities, mental health issues, drug and alcohol history, and inability to care for herself and Child. The trial court ordered Child to remain in the custody of Mother, and ordered CYF to put crisis in-home services in place immediately to assist Mother until she found appropriate housing. The court further ordered Mother to attend Mercy Behavioral Health for mental health evaluation and treatment. Family Group Decision-Making was offered to Mother, although the program ultimately proved unsuccessful. T.C.O. at 1-2.

On November 1, 2011, CYF obtained an Emergency Custody Attachment because Mother left supportive housing with Child, and CYF did not know Mother's and Child's whereabouts. On November 5, 2011, CYF located Mother and Child. Child was placed in foster care. On November 7, 2011, a shelter hearing was held, after which the trial court ordered Child to remain in her foster home. Mother had supervised visitation with Child three times per week, with parenting educators present. The trial court ordered multiple services for Mother, including Family Resources In-Home, Achieva, Urban League, Travelers Aide, and psychological evaluations. Since CYF removed Child, Child has not been returned to Mother's care. T.C.O. at 2.

On February 4, 2013, CYF filed a Petition for Involuntary Termination of Parental Rights, alleging that there was support for termination pursuant

to 23 Pa.C.S.A. §§ 2511(a)(1), (2), (5), (8), and (b). At the June 4, 2013, termination hearing, Haywood El, a CYF caseworker, testified concerning the services provided to Mother. In the beginning, Auberle Crisis worked with Mother. Mother was then referred to Family Resources for parenting skills and to the Urban League for housing assistance. Mother also received transportation services through Travelers Aide. CYF provided Mother with Greyhound bus tickets to Ohio, where her family is located. Family Group Decision-Making attempted to work with Mother. Achieva, which provides services to individuals with intellectual and developmental disabilities, began working with Mother on March 27, 2012 and provided her with in-home assistance for parenting skills. Also, CYF provided Mother with tangible goods such as furniture. Notes of Testimony ("N.T."), 6/4/13, at 13-15.

Mr. El further testified that, on March 12, 2012, the trial court ordered CYF to arrange urine screens and a drug and alcohol evaluation for Mother following recommendations made by Terry O'Hara, Ph.D. Mother did not participate in a drug and alcohol evaluation. Mother submitted to urine screens, and, on one occasion, tested positive for opiates. Mother claimed that she had been prescribed pain medication following an automobile accident. ***Id.*** 15-16.

Mr. El described the schedule for Mother's visitation with Child. Mother's visits originally occurred at the CYF office, until Mother found housing on the North Side of Pittsburgh, whereupon the visits were moved to her home. However, when Mother lost her housing due to the fact that

an unapproved person was living with her, the visits returned to the CYF office. When Mother demonstrated consistency with her visits, those visits were moved to her home in Swissvale, Pennsylvania. During Child's dependency, Mother's visits have always been supervised. At the time of the hearing, Mother's visits were supervised by Achieva. Also, at that time, Mother had maintained housing for nine months in Swissvale. ***Id.*** at 16-18.

Mr. El testified that Mother had made minimal progress in her parenting goals. ***Id.*** at 18. She had been engaged in mental health treatment for a little over a year, and had begun drug and alcohol treatment in March 2013, after the termination petition was filed. ***Id.*** at 20. Mother also participated in evaluations conducted by Dr. O'Hara, whose recommendations were explained thoroughly to her. ***Id.*** at 20-21.

The evidence demonstrated that, while Mother had made moderate progress in meeting Child's basic needs of food and clothing, it was not evident that Mother could support herself and Child financially. Mr. El testified that Mother's situation has not improved sufficiently to recommend reunification. ***Id.*** at 21.

Colleen Sokira, a parenting education specialist from Achieva, also testified at the termination hearing. Ms. Sokira created goals for the staff who supervised Mother's visits. Ms. Sokira also attended most of Mother's meetings with CYF. ***Id.*** at 37.

Ms. Sokira testified that she evaluated Mother on April 5 and 11, 2012, to determine the parenting skills that Mother had mastered and the skills

that Mother needed to develop in order to parent Child independently. ***Id.*** at 38-40. At that time, the agency recommended that Mother would need services seven days a week for a minimum of two to four hours. The agency began to provide those services to Mother in June 2012. At the time of the hearing, Achieva was still working with Mother. However, even with the benefit of services, Achieva had continuing concerns regarding Mother's ability to parent Child and regarding Child's safety in Mother's care. ***Id.*** at 40-43.

Achieva's overall concern was Mother's inability to recognize Child's needs in any given situation, to identify those needs, and to choose an appropriate response. Achieva expressed ongoing concern over Mother's feeding of Child. During a four-hour period, Mother would offer Child food every half hour. Mother did not recognize Child's nonverbal cues, including spitting up food, demonstrating that Child had finished eating. Mother also had difficulty recognizing the toys or activities with which Child was interested in engaging. Mother might take suggestions from staff or Child's therapists too literally and have Child work on a therapeutic task longer than developmentally appropriate. Mother also became either emotional or very introverted during her visits and was less observant of her surroundings, including Child. Because Child was still a toddler, this lack of attentiveness caused safety concerns. Also, when Mother was cooking, she sometimes failed to monitor Child, and expected staff to meet Child's health and safety needs. Ms. Sokira noted that Achieva had not recommended unsupervised

visits because of these safety issues. Achieva recommended that Mother continue to receive services and that Mother be supervised twenty-four hours per day if Child would be in Mother's care. ***Id.*** at 42-44.

Next, Dr. O'Hara testified about his evaluation of Mother. On February 8, 2012, Dr. O'Hara conducted an interactional interview with Mother and Child. Dr. O'Hara noted that Child smiled only once during the session, and that Child did not have an emotional connection with Mother despite the three visits per week schedule. At that time, Mother was not attuned to Child's cues, and Mother did not respond in an emotionally appropriate way to Child. However, Mother did show affection to Child, and she sang and talked with Child. ***Id.*** 57-59.

Dr. O'Hara also compared Mother's interview with the interactional interview between Child and her foster mother. As opposed to her time with Mother, Child smiled at her foster mother and interacted spontaneously with her. Dr. O'Hara opined that Child appeared to be developing an attachment or a bond with her foster mother, and that her foster mother appeared to be meeting all of her needs. Dr. O'Hara had no concerns with Child's foster mother. ***Id.*** at 56-57.

Dr. O'Hara next conducted an individual evaluation of Mother. He testified that Mother acknowledged her chronic homelessness. Dr. O'Hara also noted that she assumed no responsibility for her circumstances. Dr. O'Hara found that Mother had no insight as to why her other children were removed from her care in Ohio, or as to how services would be helpful for

her. During the evaluation, Mother minimized her substance abuse history as well as her history of psychiatric hospitalization. Mother had not been employed since 2004. Dr. O'Hara noted that Mother's IQ score was 80, which suggested "intellectual limitations." At that time, Dr. O'Hara's prognosis for Mother was "guarded," and he still had many concerns about Mother's ability to care for Child. He advised Mother to participate in a parenting program, to work with her Western Psychiatric Institute and Clinic ("WPIC") case manager, and to provide random drug screens. ***Id.*** at 59-62.

Dr. O'Hara also conducted further evaluations in December 2012 and January 2013. By that time, Mother had secured housing, had been working three times per week with Achieva since June 2012, and had been participating at Mercy Behavioral once per week since June. Yet, Dr. O'Hara found that Mother continued to disavow any responsibility for her past history, including the fact that her seven children had been removed from her care. Mother also did not follow Dr. O'Hara's subsequent recommendations, which included domestic violence treatment, non-offender treatment, and substance abuse evaluation. Dr. O'Hara testified that he did not believe that Mother could enforce limits or ensure her daughter's safety. ***Id.*** at 66-71, 76.

Dr. O'Hara also conducted another interactional visit between Child and her foster mother. He found that Child's attachment with her foster mother was strong. Specifically, Dr. O'Hara noted that, although Mother's relationship with Child had improved, Child's primary attachment was to her

foster mother. Dr. O'Hara opined that Child's foster mother had positive parenting skills and was stable. He recommended that Child be adopted by her foster mother. *Id.* at 76-77. Finally, Dr. O'Hara postulated that there was "an urgency for permanency for someone of [Child's] age," as "several developmental milestones . . . depend on a foundation of a primary attachment, including identity, including autonomy." *Id.* at 78.

Following the termination hearing, the trial court granted CYF's petition and terminated Mother's parental rights on June 11, 2013, pursuant to 23 Pa.C.S.A. §§ 2511 (a)(2), (5), (8), and (b). Mother timely filed a notice of appeal on June 25, 2013, along with a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and Pa.R.A.P. 1925(b).

Mother's issues on appeal are as follows:

1. Did the trial court abuse its discretion and/or err as a matter of law in granting the petition to involuntarily terminate Mother's parental rights pursuant to 23 Pa.C.S. § 2511(a)?
2. Did the trial court abuse its discretion and/or err as a matter of law in concluding that CYF met its burden of proving by clear and convincing evidence that termination of Mother's parental rights would best serve the needs and welfare of the child pursuant to 23 Pa.C.S. § 2511(b)?

Mother's Brief at 5.

We review appeals from the involuntary termination of parental rights according to 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.***, 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.***; ***In re R.I.S.***, 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.***, 34 A.3d 1, 51 (Pa. 2011); ***Christianson v. Ely***, 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.***

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.***, 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***, 650 A.2d 1064, 1066 (Pa. 1994).

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

In terminating parental rights, the court must consider 23 Pa.C.S.A. § 2511, which provides the grounds for termination.

[U]nder Section 2511, the court must engage in a bifurcated process prior to terminating parental rights. Initially, the focus is on the conduct of the parent. The party seeking termination

must prove by clear and convincing evidence that the parent's conduct satisfies the statutory grounds for termination delineated in Section 2511(a). Only after determining that the parent's conduct warrants termination of his or her parental rights must the court engage in the second part of the analysis [prescribed by Section 2511(b)]: determination of the needs and welfare of the child under the standard of best interests of the child. Although a needs and welfare analysis is mandated by the statute, it is distinct from and not relevant to a determination of whether the parent's conduct justifies termination of parental rights under the statute. One major aspect of the needs and welfare analysis concerns the nature and status of the emotional bond between parent and child.

In re Adoption of R.J.S., 901 A.2d 502, 508 (Pa. Super. 2006) (citations omitted).

Section 2511 of the Adoption Act provides in pertinent part:

(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.

* * * *

(5) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to

the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.

* * * *

(8) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency, 12 months or more have elapsed from the date of removal or placement, the conditions which led to the removal or placement of the child continue to exist and termination of parental rights would best serve the needs and welfare of the child.

* * * *

(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.

23 Pa.C.S.A. §§ 2511(a), (b).

“[W]e need only agree with [a trial court’s] decision as to any one subsection [of 2511(a), along with 2511(b),] in order to affirm the termination of parental rights.” *In re B.L.W.*, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*). Therefore, we focus our inquiry upon the trial court’s analysis under subsection (a)(8).

To terminate parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(8), the following factors must be demonstrated: (1) the child has been removed from parental care for 12 months or more from the date of removal; (2) the conditions which led to the removal or placement of the child continue to exist; and (3) termination of parental rights would best serve the needs and welfare of the child. Section 2511(a)(8) sets a 12-month time frame for a parent to remedy the conditions that led to the [child’s] removal by the court. Once the 12-month period has

been established, the court must next determine whether the conditions that led to the child's removal continue to exist, despite the reasonable good faith efforts of [the child welfare agency] supplied over a realistic time period. Termination under Section 2511(a)(8) does not require the court to evaluate a parent's current willingness or ability to remedy the conditions that initially caused placement or the availability or efficacy of [the child welfare agency's] services.

In re K.Z.S., 946 A.2d 753, 759 (Pa. Super. 2008) (citations omitted).

Regarding the "needs and welfare" analysis pertinent to Sections 2511(a)(8) and (b), we have observed as follows:

[I]nitially, the focus in terminating parental rights is on the parent, under Section 2511(a), whereas the focus in Section 2511(b) is on the child. However, Section 2511(a)(8) explicitly requires an evaluation of the "needs and welfare of the child" prior to proceeding to Section 2511(b), which focuses on the "developmental, physical and emotional needs and welfare of the child." Thus, the analysis under Section 2511(a)(8) accounts for the needs of the child in addition to the behavior of the parent. Moreover, only if a court determines that the parent's conduct warrants termination of his or her parental rights, pursuant to Section 2511(a), does a court "engage in the second part of the analysis pursuant to Section 2511(b): determination of the needs and welfare of the child under the standard of best interests of the child." Accordingly, while both Section 2511(a)(8) and Section 2511(b) direct us to evaluate the "needs and welfare of the child," we are required to resolve the analysis relative to Section 2511(a)(8), prior to addressing the "needs and welfare" of [the child], as proscribed by Section 2511(b); as such, they are distinct in that we must address Section 2511(a) before reaching Section 2511(b).

In re C.L.G., 956 A.2d 999, 1008-09 (Pa. Super. 2008) (*en banc*) (citations omitted).

On appeal, Mother argues that the record contains insufficient evidence to support termination of her parental rights pursuant to Section

2511(a)(8). Mother contends that the conditions that led to Child's removal did not continue to exist at the time of the filing of the petition to terminate her parental rights on February 1, 2013, and did not exist at any subsequent time. Mother asserts that the primary condition leading to the removal of Child was a lack of appropriate housing, and that this condition had been remedied. Mother argues that the record contains sufficient evidence to prove that she had obtained proper housing in Swissvale for herself and Child nine months before the termination hearing took place. Mother notes that CYF concedes that she procured housing in Swissvale. Mother's Brief at 16-17.

We find no error of law or abuse of discretion in the trial court's conclusions. Mother does not contest that the Child has been removed for more than twelve months. Mother's Brief at 17. Contrary to Mother's assertion, our review of the record demonstrates that housing was only one of several reasons for finding Child dependent. The others included inappropriate supervision, mental health issues, history of drug and alcohol use, inability to provide for herself and Child, and insufficient parenting skills. N.T. at 9-11. The record supports the conclusion that these concerns had not been remedied. The trial court considered Dr. O'Hara's findings and determined that several significant concerns remained, including Mother's continued inability to parent Child safely without supervision and her inability to meet Child's needs consistently.

The trial court also considered Dr. O'Hara's testimony that Mother either refused to, or lacks the ability to, follow through with his recommendations. *Id.* at 68-70. In short, the evidence supports the trial court's conclusion that the conditions that led to the removal of the Child were not yet remedied at the time of the filing of the termination petition.

As to the third prong of Section 2511(a)(8), whether the termination of parental rights would serve the needs and welfare of Child, clear and convincing evidence supports the conclusion that termination of parental rights serves the needs and welfare of Child in this case. The evidence supports the trial court's finding that, although Mother consistently visited with Child, Mother remained unable to provide for all of Child's needs or to provide a safe environment without extensive supervision and assistance.

Child is currently living in a pre-adoptive home and is adjusting well. The foster mother meets all of Child's needs and loves her. Therefore, we find no error of law or abuse of discretion in the trial court's determination under Section 2511(a)(8) that terminating Mother's parental rights served Child's needs and welfare.

Having found that the trial court's decision was based upon clear and convincing evidence under subsection (a), we proceed to the next stage of our inquiry: subsection (b). With respect to Section 2511(b), we have explained:

Subsection 2511(b) focuses on whether termination of parental rights would best serve the developmental, physical, and emotional needs and welfare of the child. In *In re C.M.S.*, 884

A.2d 1284, 1287 (Pa. Super. 2005), this Court stated, "Intangibles such as love, comfort, security, and stability are involved in the inquiry into the needs and welfare of the child." In addition, we instructed that the trial court must also discern the nature and status of the parent-child bond, with utmost attention to the effect on the child of permanently severing that bond. **Id.** However, in cases where there is no evidence of a bond between a parent and child, it is reasonable to infer that no bond exists. **In re K.Z.S.**, 946 A.2d 753, 762-63 (Pa. Super. 2008). Accordingly, the extent of the bond-effect analysis necessarily depends on the circumstances of the particular case. **Id.** at 763.

In re J.M., 991 A.2d 321, 324 (Pa. Super. 2010).

Mother asserts that the evidence does not support the termination of her parental rights because it demonstrates that Mother now has a significant bond with Child, and that, if Child is not allowed to see Mother, Child will be adversely affected. Mother argues that Child's progress in her foster home does not constitute a sufficient reason to terminate Mother's parental rights. Mother's Brief at 19-21.

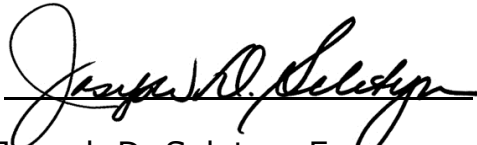
Dr. O'Hara acknowledged the existence of some bond between Child and Mother, but opined that Child would not be adversely affected by permanent severance of this bond. **Id.** at 71-72, 76-78. Competent record evidence also demonstrates that Child is doing well in her foster mother's care. The foster mother provided for all of Child's physical, developmental, and emotional needs, and Child's primary attachment was to her foster mother. N.T. at 57, 70-71. Thus, the trial court relied upon Dr. O'Hara's testimony to find that the bond which existed between Mother and Child was not strong, and that Child would not be affected adversely by the

termination of Mother's parental rights. Therefore, competent evidence supports the trial court's involuntary termination of Mother's parental rights pursuant to Section 2511(b).

Accordingly, we affirm the order of the trial court involuntarily terminating Mother's parental rights to Child pursuant to 23 Pa.C.S.A. §§ 2511(a)(8) and (b).

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/16/2013