

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN RE: ADOPTION OF: A.J.

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: J.J., NATURAL FATHER

No. 1115 WDA 2012

Appeal from the Order of June 18, 2012,  
in the Court of Common Pleas of Washington County,  
Orphans' Court, at No. 63-07-0913

IN RE: ADOPTION OF: E.J.

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: J.J., NATURAL FATHER

No. 1116 WDA 2012

Appeal from the Order of June 18, 2012,  
in the Court of Common Pleas of Washington County,  
Orphans' Court, at No. 63-07-0914

IN RE: ADOPTION OF: A.J.

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: J.J., NATURAL FATHER

No. 1120 WDA 2012

Appeal from the Order of June 18, 2012,  
in the Court of Common Pleas of Washington County,  
Orphans' Court, at No. 63-07-0915

BEFORE: SHOGAN, OTT and COLVILLE\*, JJ.

MEMORANDUM BY COLVILLE, J.:

Filed: January 3, 2013

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\* Retired Senior Judge Assigned to the Superior Court.

J.J. ("Father") appeals from the order involuntarily terminating his parental rights to his children, E.J., Ad.J., and Aq.J.<sup>1</sup> We affirm.

The relevant facts are as follows. Father is the father of E.J., born in September 1998, and Ad.J. and Aq.J., twins, born in April 2001. The family has a long history of involvement with the child welfare system dating back to 1995, when the family resided in Michigan. The family moved to Ohio, during which time the children were adjudicated dependent and placed in foster care from 2001 to 2002. Thereafter, the family moved to Pennsylvania. Washington County Children and Youth Services ("CYS") became involved with the family in 2005, at which time the children were removed from the parents and placed in foster care, where they have remained. The children were adjudicated dependent in July 2005.

A previous petition for the involuntary termination of the parents' rights to the children was filed by CYS in 2007. The court denied those petitions on February 11, 2009. In April 2010, CYS again petitioned for the involuntary termination of the parents' rights to the children. On January 14, 2011, following hearings on the petitions, the court terminated Father's parental rights to E.J., Ad.J., and Aq.J. and Mother's parental rights to the children and to her son, R.W., pursuant to 23 Pa.C.S.A. §§ 2511(a)(1), (2), (5), (8), and (b). The parties appealed this decision. On appeal, this Court concluded the evidence supported the trial court's

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<sup>1</sup> By separate order, the trial court also terminated the parental rights of E.J. ("Mother") to these children as well as her rights to her son, R.W. Mother did not file an appeal.

termination of Mother's and Father's parental rights pursuant to Section 2511(a)(2), but found the trial court failed to conduct a thorough needs and welfare analysis as required by Section 2511(b). This Court vacated the order terminating Mother's and Father's parental rights and remanded this matter to the trial court to give the parties an opportunity to present evidence concerning the needs and welfare of the Children as described in Section 2511(b) and the effect that termination of Mother's and Father's parental rights would have on the children.

Upon remand, the trial court appointed Dr. Michael Crabtree to conduct an assessment of the bond between the children and their parents. The court held a remand hearing on April 2, 2012. At that time, E.J. had been in his current foster home since January 2011 and efforts were being made to secure a permanent placement for him. Ad.J. and Aq.J. were placed together in their current foster home in May 2009. Ad.J. and Aq.J. both have mental health diagnoses and behavior issues. At the time of the hearing, Ad.J. was residing in a residential treatment facility. Ad.J. continues to have visitation with the foster parents and it is anticipated that he will be discharged to their home. Although not a pre-adoptive placement, this is a permanent placement for Ad.J. and Aq.J. Following the hearing, the trial court terminated Mother's and Father's parental rights to their children. Father's appeal of this order followed.

In reviewing an order terminating parental rights:

[O]ur scope of review is comprehensive: we consider all the evidence presented as well as the trial court's factual findings and legal conclusions. However, our standard of review is narrow: we will reverse the trial court's order only if we conclude that the trial court abused its discretion, made an error of law, or

lacked competent evidence to support its findings. The trial judge's decision is entitled to the same deference as a jury verdict.

***In re L.M.***, 923 A.2d 505, 511 (Pa. Super. 2007) (citations omitted).

The burden is upon the petitioner to prove by clear and convincing evidence that its asserted grounds for seeking the termination of parental rights are valid. ***In re S.H.***, 879 A.2d 802, 806 (Pa. Super. 2005). We have previously stated:

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."

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

"The trial court is free to believe all, part, or none of the evidence presented, and is likewise free to make all credibility determinations and resolve conflicts in the evidence." ***In re M.G.***, 855 A.2d 68, 73-74 (Pa. Super. 2004). If competent evidence supports the findings of the trial court, we will affirm even if the record could also support the opposite result. ***In re Adoption of T.B.B.***, 835 A.2d 387, 394 (Pa. Super. 2003).

Termination of parental rights is governed by Section 2511 of the Adoption Act. ***In re L.M.***, 923 A.2d at 511 (citing 23 Pa.C.S.A. § 2511). The trial court "must engage in a bifurcated process prior to terminating parental rights." ***In re L.M.***, 923 A.2d at 511.

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 if

the court determines that the parent's conduct warrants termination of his or her parental rights does the 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. One major aspect of the needs and welfare analysis concerns the nature and status of the emotional bond between parent and child, with close attention paid to the effect on the child of permanently severing any such bond.

*Id.* (citations omitted).

This Court has already determined that the trial court properly terminated Father's parental rights pursuant to Section 2511(a)(2). Our review is limited to the trial court's determination under Section 2511(b).

Section 2511(b) provides as follows:

**(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(b).

With respect to Section 2511(b), this Court has explained the requisite analysis as follows:

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.*, 2005 PA Super 340, 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.*, 2008 PA Super 62, 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 63.

***In Re: Adoption of J.M.***, 991 A.2d 321, 324 (Pa. Super. 2010).

Moreover, “the mere existence of an emotional bond does not preclude the termination of parental rights.” *In the Interest of K.M.*, 53 A.3d 781, 791 (Pa. Super. 2012). As this Court explained:

[I]n addition to a bond examination, the trial court can equally emphasize the safety needs of the child, and should also consider the intangibles, such as the love, comfort, security, and stability the child might have with the foster parent. Additionally, this Court stated that the trial court should consider the importance of continuity of relationships and whether any existing parent-child bond can be severed without detrimental effects on the child.

***Id.***

With respect to Section 2511(b), Father argues that Dr. Crabtree’s opinion and observations of Father’s interaction with the children were very positive and the children were very comfortable in Father’s presence. Father argues the only evidence that Dr. Crabtree took into account in assessing the bond between Father and the children was the amount of time that had passed since the children have been out of Father’s care. Thus, Father argues the evidence indicates there is a bond between Father and the

children and the trial court incorrectly found the children would not be negatively affected by severance of the bond.

In determining that CYS had satisfied the statutory criteria to terminate Father's parental rights pursuant to Section 2511(b), the trial court stated:

The primary witness at the remand hearing was Dr. Michael Crabtree. Dr. Crabtree was appointed by this Court on November 10, 2011 to assess the bond that exists between both parents and their children and to determine what psychological effect a termination of parental rights may have upon each child. Dr. Crabtree is a licensed psychologist and the Court qualified him as an expert, permitting him to render a professional opinion on the issues before him. To conduct this assessment, Dr. Crabtree obtained brief background information from CYS and briefly interviewed each parent. Dr. Crabtree then observed the Mother and all of the children together and then observed Mother with each individual child. Similarly, Dr. Crabtree observed the Father and all the children together and observed the Father with each child individually, with the exception of [Ad.J.]

. . .

The evidence presented at the hearing was that Dr. Crabtree observed the interaction between Father and the children and found their interaction to be positive and appropriate. The Father and his sons exchanged hugs and kisses and they were all relaxed with each other. Dr. Crabtree, however, concluded that while the quality of the interaction with the Father to the children is much better and more appropriate than the interaction with the Mother, the bond between the Father and the children was not a secure attachment and [he] opined that it would be extremely doubtful that the severance of the bond would have a deleterious effect on the social and psychological development of any of the children.

Dr. Crabtree testified that the critical time for bonding is during the first twelve months of a child's life and he found it to be highly unlikely that the children were able to develop a secure

bond with the Father during that time due to the circumstance existing then. The history of the case established that the parents had drug problems and lacked parenting skills during that period. It is also true that the Father has had very little contact with his children over the last several years. The evaluation took place on January 4, 2012; the previous visit with the children or any contact with them was almost a year before. Whether a strong bond never developed due to the parents' problems or whether the passage of time has diminished the bond, the Court finds that the existing bond was not a strong attachment. Both E.J. and [Aq.J.] separated easily from Father. [Ad.J.] interacted well with the Father in the family session but did not engage with the Father at all when it was just the two of them; Dr. Crabtree noted, however, [Ad.J.s'] behavior was not related to what the Father had done but rather due to the child's mental health problems and the long day. It appeared to the Court that the children were able to display love and affection to their Father, much like one would show to an uncle or close friend, but they did not look to him for guidance and approval, which would be more indicative of a parental paternal bond. . . . Dr. Crabtree's professional opinion, given to a psychological certainty, was that the severance of the bond would have no deleterious effect on the children's mental health. Dr. Crabtree further opined that the children's need for permanency is great. He felt that the mental health of each child may be "compromised" by the continued lack of permanence. <sup>[2]</sup> Dr. Crabtree testified that in his opinion, the children will do as well and probably better if the bond is terminated than if it was maintained.

Caseworker David Cincinnati testified that, in his opinion, the children would not suffer any detrimental harm by having the parents' rights terminated.<sup>[3]</sup> Also, the Guardian Ad Litem told the Court that based upon Dr. Crabtree's report and her conversation with E.J., she supported the termination and

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<sup>2</sup> Dr. Crabtree testified that the benefit of permanency for each of the children outweighs maintaining their parental relationships as they currently exist.

<sup>3</sup> Mr. Cincinnati testified that terminating the parents' rights would be appropriate for all of the children "so they can move on with their future." N.T., 04/02/12, at 91.

offered nothing to suggest that a severance of the relationship between Father and each son would be harmful to any child. The children themselves did not articulate a close and strong relationship with their Father. These children have been out of the Father's care for over seven (7) years and have had prolonged periods of no visitation. . . .

. . . From the evidence presented, the Court found that a bond existed but that it was not a strong parental bond, that the bond was not [a] strong attachment. The evidence showed that the bond was positive and thus beneficial, but there was no evidence that the bond was a necessary one for the children's mental health. . . . The credible and unrefuted testimony of Dr. Crabtree was accepted by the Court and was consistent with the other evidence of the case from the caseworker and the Guardian Ad Litem when the Court found that the severance of the bond would not have any extreme emotional consequences or have a deleterious effect in the psychological and social health of each child. The termination of Father's rights provides some permanence and stability with very little loss or deleterious emotional impact.

Trial Court Opinion, 08/10/12, 4-8 (citations omitted).

Based on the foregoing, we conclude the evidence supports the trial court's termination of Father's parental rights pursuant to Section 2511(b). Father argues that the only evidence Dr. Crabtree took into account in assessing the bond between Father and the children was the amount of time that had passed since the children have been out of Father's care. However, he does not explain why relying on such evidence would be improper in assessing the bond and the effect on the children of terminating that bond. Nevertheless, it is clear from the testimony that Dr. Crabtree's opinions were based on his observations of the interaction between the children and Father in addition to the period of time that had elapsed since Father spent any time with the children. Thus, Father fails to persuade us that the trial court's reliance on Dr. Crabtree's conclusions was improper on this basis.

Moreover, although Dr. Crabtree observed positive interactions between Father and the children, his ultimate conclusion was that the quality of the bond between Father and the children was not strong and that severance of the bond would not have a detrimental effect on the children. Thus, despite the trial court's recognition that a bond, to some extent, exists between Father and the children, the trial court concluded based on the evidence that it was not a strong, secure bond and that severance of the bond would not negatively impact the needs and welfare of the children. We find no trial court error in this regard.

Order affirmed.