

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37**

IN RE: ADOPTION OF: S.B., A MINOR : IN THE SUPERIOR COURT OF  
CHILD : PENNSYLVANIA  
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APPEAL OF: A.M., NATURAL MOTHER : No. 1122 WDA 2011

Appeal from the Decree entered June 9, 2011,  
Court of Common Pleas, Fayette County,  
Orphans' Court at No. 51-Adopt-2009

BEFORE: DONOHUE, MUNDY and PLATT\*, JJ.

MEMORANDUM BY DONOHUE, J.:

Filed: March 5, 2013

A.M. ("Mother") appeals from the decree entered on June 9, 2011 by the Court of Common Pleas, Fayette County, granting the petition filed by the Fayette County Children and Youth Services ("CYS") on February 15, 2011, terminating her parental rights to her son, S.B., born in November 2001 ("Child"), pursuant to the Adoption Act, 23 Pa.C.S.A. § 2511(a)(1), (2), (5), (8), and (b). Upon review, we affirm.<sup>1</sup>

Our review of the record reveals the following facts.<sup>2</sup> In 2008, Mother was charged with child endangerment after she left Child, then six years old,

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<sup>1</sup> The orphans' court also terminated the parental rights of T.B., S.B.'s father. N.T., 6/9/11, at 139. T.B. has not appealed this determination.

<sup>2</sup> The orphans' court in its written opinion and the guardian *ad litem* ("GAL") in her appellate brief both include a detailed history of Mother's prior involvement with CYS. **See** Orphans' Court Opinion, 11/27/12, at 2; GAL's Brief at 5-6. It is clear that the orphans' court is very familiar with this case. Unfortunately, this Court is not, and the certified record is sparse, containing no background information. The law is well settled that this Court may only consider information contained in the certified record on appeal; anything

\*Retired Senior Judge assigned to the Superior Court.

to supervise his nine-month-old brother while Mother slept. While being supervised by Child, the baby sustained "a deep laceration to his foot and required medical attention." Petition for Involuntary Termination of Parental Rights, 2/15/11, at ¶ 9. There was little food in the home and it was in a deplorable condition. CYS also had concerns about Mother's mental health.

Child was removed from Mother's home pursuant to a voluntary placement agreement granting custody of Child to CYS on February 3, 2008. That same day, CYS placed Child in the foster home of R.H. and S.H., where he remained at the time of the termination hearing. The juvenile court adjudicated Child dependent on March 14, 2008. Mother's Family Service Plan goals required her to attend parenting classes, obtain and maintain a suitable, clean and safe home, undergo a mental health evaluation and follow any recommendations, and visit Child consistently.

Mother was sentenced to a period of incarceration for child endangerment.<sup>3</sup> In August of 2008, she was paroled to her mother's home in Allegheny County. Following completion of parole,<sup>4</sup> she moved in with

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not contained therein does not exist for appellate purposes. *In re J.F.*, 27 A.3d 1017, 1024 n.10 (Pa. Super. 2011). Therefore, this information will not be considered in reaching our decision.

<sup>3</sup> The record does not contain any sentencing information. Mother testified that she served six months of incarceration. N.T., 6/9/11, at 109.

<sup>4</sup> The record does not reflect when Mother completed parole.

friends, eventually securing her own apartment in January of 2011 in Allegheny County.

Mother completed parenting classes and a mental health evaluation.<sup>5</sup> The evaluator recommended that Mother participate in mental health counseling, which Mother agreed to do.<sup>6</sup> Mother self-referred to Dr. Sadie Strick, a psychologist in Pittsburgh, who conducted a clinical evaluation of Mother on October 7, 2010. Dr. Strick had concerns about Mother's mental health, finding "evidence of, perhaps, bipolar disorder, depressed, anxiety disorder," and requested that Mother return for another visit so that she could complete the clinical evaluation and "determine what was going on really with her in a psychological sense." N.T., 6/9/11, at 12, 14. Mother did not immediately schedule her second appointment, instead setting it up on March 31, 2011, approximately six months after her initial appointment. However, Mother did not attend the March 31 appointment. She was not in contact with Dr. Strick at all until the day before the termination of parental rights hearing, on June 8, 2011, when Mother asked Dr. Strick if she could provide Dr. Strick's name to her attorney. Dr. Strick stated that she told

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<sup>5</sup> CYS referred Mother for the mental health evaluation through Chestnut Ridge Counseling Services, but the record does not indicate when this occurred.

<sup>6</sup> The evaluation does not appear in the certified record, but Mother does not contest its results.

Mother she could provide her name, but “she must not say that she is in therapy” with Dr. Strick, because she was not. *Id.* at 13.

CYS scheduled biweekly visits for Mother with Child at the CYS office in Fayette County. Mother attended only approximately 62 percent of the visits, citing illness and transportation difficulties as the reasons for the missed visits. For some of the missed visits, Mother called and canceled in advance; for others, Mother simply failed to appear. Mother had to travel approximately 50 miles by bus from her home in Allegheny County to attend visits with Child. According to David Hixon (“Hixon”), the CYS caseworker, it was Mother’s choice to live in Pittsburgh.

Hixon supervised many of the visits between Mother and Child, and although he could not always hear everything that was said, he testified that he observed Mother and Child largely engaged in small talk during the visits. Hixon further testified that communication between them gradually tapered throughout the visit, such that, “by the end of the visit there’s not much being said.” *Id.* at 77.

Mother, Child, and Child’s foster parents participated in bonding evaluations with Carol Patterson, A.B.D., who at the termination of parental rights hearings, the orphans’ court recognized as an expert in parenting assessments, psychological evaluations and bonding assessments. During the first round of evaluations in June, July, and November of 2010, Child appeared conflicted to Ms. Patterson. He reported that he enjoyed living in

the foster home, had made friends and was doing well in school, and referred to his foster parents as “mom and dad” when interacting with them, but also reported that he wanted to return to his mother’s care and did not want to remain in the foster home. *Id.* at 22. Furthermore, there was conflict between what Child was saying and how he was behaving, as Child “demonstrated very little bond or emotional connection” with Mother, and demonstrated the beginning of an attachment with his foster parents. *Id.* at 20. With Mother, Ms. Patterson observed Child to be “solemn, very flat, almost no mood demonstrated,” and Mother was likewise flat and not responsive to Child. *Id.* at 32, 34. With his foster parents, Ms. Patterson observed Child to be “animated,” he “initiated conversation easily,” and appeared to be “generally happy and content.” *Id.* at 32.

Child had a follow up interview with Ms. Patterson in April of 2011, at which time he disclosed the reason for his internal conflict. Child told Ms. Patterson that he believes he is at fault for his brother’s injury and his removal from Mother’s care. Ms. Patterson testified that this belief “continues to enhance his loyalty to his mother because in his mind, his mother did nothing wrong, so therefore he must have indeed caused all of this, caused all of this pain to his mother, caused all of these conflicts that he has, and therefore he has to go back to his mother.” *Id.* at 23-24. Ms. Patterson opined that Child would benefit from permanency through adoption with his foster family. *Id.* at 33. Although difficult for her to

answer, she testified, to a reasonable degree of professional certainty, that if Child can come to understand that it was not his fault that his brother was injured and that it was Mother's responsibility to care for her children, he would not be harmed if the court terminated Mother's parental rights, and that terminating her rights would allow the attachment process with Child and his foster parents to continue. *Id.* at 24-25.

Child has been working on this issue with his therapist, Beatrice Oliver Young. He told Ms. Young that he blames himself for the circumstances that led to his removal and that he believes Mother does not visit him because she also blames him for what occurred. Ms. Young testified that Child has been making progress in his treatment, going "[f]rom anger and sadness to feeling that things are going to be okay[.]" *Id.* at 46.

Child has been diagnosed with Attention Deficit Disorder and Oppositional Defiant Disorder, and is now on medications, which have helped him quite a bit, especially in school. Child also participates in family therapy with his foster parents and in individual therapy. He has revealed to Ms. Young that he wants permanency and that he wants to remain with his foster parents.

Mother testified at the termination hearing. She stated she did not have a choice about living in Allegheny County, as she was released on parole to her mother's home. She did not explain why she continued to live in Allegheny County following completion of parole. Regarding her mental

health treatment, she testified that she lost insurance coverage when she lost her Supplemental Security Income benefits, and had to wait to receive counseling until she started receiving insurance through her father's death benefits. Despite Dr. Strick's testimony to the contrary, Mother testified that she was in counseling with Dr. Strick. She testified that she has seen Dr. Strick twice, the most recent session occurred right before the termination hearing – sometime in June 2011, according to Mother – and that she believed this level of treatment to be sufficient to satisfy her mental health goal.

Mother testified that she loves Child and will do whatever she can to get him returned to her care. She disagreed with Child receiving medication for his mental health diagnoses, and testified that instead she "would take him to [*sic*] somewhere – that thing they show on TV to get him counseling and teach him how to deal with his and [*sic*] help him, teach him how to teach him." *Id.* at 119-20.

At the time of the hearing, Mother was not working. She testified that she obtained housing and "go[es] to counseling whenever [she] can," and that otherwise, "there's not much [she's] supposed to do." *Id.* at 116.

The final witness to testify at the termination hearing was Child's foster mother. She testified that Child has been in their care since his initial placement on February 3, 2008. They love Child as their own son, and he tells them that he loves them. He refers to the member of his foster family

as “mom,” “dad,” “brother,” and the like. Child went from receiving poor grades in school to being an honor roll student, receiving awards for citizenship and student of the month. The foster mother agreed with Ms. Young that Child’s medications have helped him. The foster mother testified that Child needs stability and structure. She further testified that if Mother’s parental rights were terminated, she and her husband want to adopt Child.

At the conclusion of the termination hearing, the orphans’ court acknowledged that CYS filed a petition to terminate Mother’s rights 14 months prior, and although the orphans’ court denied the petition, it recognized that Mother “had a lot to do.” *Id.* at 137. The orphans’ court found that Mother made “no significant progress since that time,” and granted CYS’ petition to terminate her parental rights to Child. *Id.*

This timely appeal follows,<sup>7</sup> wherein Mother raises one issue for our review: “Whether the honorable [orphans’] court erred in determining that [CYS] adduced sufficient evidence to meet the clear and convincing

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<sup>7</sup> Mother filed her notice of appeal concomitantly with her Pa.R.A.P. 1925(a)(2)(i) concise statement of errors complained of on appeal on July 8, 2011. For reasons unknown to this Court, the orphans’ court did not file its Pa.R.A.P. 1925(a) opinion until November 27, 2012, more than 16 months later. This is a children’s fast track case, and the purpose of this designation is to expedite the disposition of these cases. *In re K.T.E.L.*, 983 A.2d 745, 748 (Pa. Super. 2009). This Court prioritizes children’s fast track cases because the resolution of these cases have profound effects on the lives of children as they await permanency. We note with disapproval that the orphans’ court’s failure to promptly file its written opinion has unnecessarily delayed our decision in this matter and permanency for this child.



evidentiary standard required to terminate the parental rights of [Mother]?"  
Mother's Brief at 3.

We review decrees terminating a parent's rights to his or her children according to the following standard:

When reviewing an appeal from a decree terminating parental rights, we are limited to determining whether the decision of the [orphans'] court is supported by competent evidence. Absent an abuse of discretion, an error of law, or insufficient evidentiary support for the [orphans'] court's decision, the decree must stand. Where a[n] [orphans'] court has granted a petition to involuntarily terminate parental rights, this Court must accord the hearing judge's decision the same deference that it would give to a jury verdict. We must employ a broad, comprehensive review of the record in order to determine whether the [orphans'] court's decision is supported by competent evidence.

*In re B.L.W.*, 843 A.2d 380, 383 (Pa. Super. 2004) (*en banc*), *appeal denied*, 581 Pa. 668, 863 A.2d 1141 (2004) (internal citations omitted).

Furthermore, we note that the [orphans'] court, as the finder of fact, is the sole determiner of the credibility of witnesses and all conflicts in testimony are to be resolved by [the] finder of fact. The burden of proof is on the party seeking termination to establish by clear and convincing evidence the existence of grounds for doing so.

*In re Adoption of A.C.H.*, 803 A.2d 224, 228 (Pa. Super. 2002) (internal citations omitted).

The standard of clear and convincing evidence means 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.D.W.M.*, 810 A.2d 688, 690 (Pa. Super. 2002). We may uphold a termination decision if any proper basis exists for the result reached. *In re C.S.*, 761 A.2d 1197, 1201 (Pa. Super. 2000) (*en banc*). The orphans' court is free to believe all, part, or none of the evidence presented. *In re M.G.*, 855 A.2d 68, 73-74 (Pa. Super. 2004). If the orphans' court's findings are supported by competent evidence, we must affirm its decision, even though the record could support an opposite result. *In re R.L.T.M.*, 860 A.2d 190, 191 (Pa. Super. 2004).

Mother's argument on appeal is based upon her belief that the evidence of record does not support some of the orphans' court's findings of fact. Specifically, Mother asserts that there is no support for the court's findings that Mother "chose not to live in public housing in Fayette County where she could have seen her son with ease," and that Mother's apartment in Allegheny County "was not approved by [CYS] as appropriate." Mother's Brief at 9-10 (quoting Orphans' Court Opinion, 11/27/12, at 6). Mother contends that the record sheds a far more positive light on her performance of her Family Service Plan goals, that her "accomplishments in pursuing her Family Service Plan were considerable given the economic and logistic limitations she faced," and the orphans' court therefore erred by terminating her parental rights to Child. *Id.* at 11-12.

We have thoroughly reviewed the record. Although Mother is correct that there was no mention of Mother's ability to pursue public housing in Fayette County, Mother is incorrect that there was no testimony presented that she chose to live in Allegheny County. The record reflects that Hixon testified that Mother elected to live in Pittsburgh, further away from Child. N.T., 6/9/11, at 97. While Mother testified that she was required to live in Pittsburgh with her mother when she was paroled from incarceration, she acknowledged that she had completed parole, and did not indicate that she continued to be required to live in Allegheny County. *Id.* at 102, 117. Mother left her mother's home – the home to which she was paroled – and reportedly moved in with friends. *Id.* at 65. She subsequently entered into a yearlong lease for an apartment in Allegheny County from January 1, 2011 through January 1, 2012. *Id.* Thus, the orphans' court's conclusion that Mother chose to live in Allegheny County is not "speculation," as Mother contends. **See** Mother's Brief at 9.

The record also supports the orphans' court's conclusion that Mother's apartment was not approved by CYS as appropriate. Hixon testified that although the home was clean, at least one of the utilities was in her landlord's name, which is a concern to CYS, as CYS requires proof that the utilities are on and stable. *Id.* at 67-68. According to Hixon, this is to avoid sending a child home "where the heat's going to be shut off." *Id.* at 68.

Mother was informed of this, and she did not provide proof to Hixon that the utilities were changed to her name or were otherwise stable. *Id.*

Furthermore, we disagree with Mother that her “accomplishments” with respect to her Family Service Plan goals were “considerable.” Mother attended parenting classes as required, but failed to complete any of the other goals set forth for her by CYS. She attended a mental health evaluation, which recommended she seek mental health counseling, but she failed to follow through. Mother explained that this was because she was without health insurance for an unspecified period of time, which caused her to be unable to pursue treatment. *Id.* at 107. It appears the orphans’ court did not find Mother’s testimony on this issue to be credible, as it found “Mother had purposely avoided a vital portion of the family service plan” by failing to attend mental health treatment. Orphans’ Court Opinion, 11/27/12, at 6. This finding is supported by the record, as Mother herself testified later that she believed she complied with the mental health counseling goal in her Family Service Plan – that she had done enough by attending a single introductory session with Dr. Strick (or, as Mother contends, two sessions eight months apart). N.T., 6/9/11, at 113-14.

Mother also failed to visit Child consistently, attending little more than half of the visits made available to her. She asserts that this should not be held against her, as she was required to travel a great distance to attend the visits, using a bus system that “was complicated and often inefficient.”

Mother's Brief at 11. As testified by Hixon, however, her difficulty securing reliable transportation to visit Child was a direct result of her decision to continue to reside in Allegheny County after she completed her parole. N.T., 6/9/11, at 97.

Pursuant to Section 2511(a)(1), the rights of a parent may be terminated if, *inter alia*, "[t]he parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition [...] has refused or failed to perform parental duties." 23 Pa.C.S.A. § 2511(a)(1). The record reflects that for over a year leading up to the termination of parental rights hearing, Mother failed to comply with the requirements of her Family Service Plan. She did not visit with Child regularly, and even when she did visit, testimony reflects that she was not very conversant with or responsive to Child. **See** N.T., 6/9/11, at 77. There is no indication in the record that she made any other efforts to communicate or have contact with Child, or that she in any way performed her parental duties with respect to Child.

[P]arental duty requires that a parent exert himself to take and maintain a place of importance in the child's life. Parental duty requires that the parent act affirmatively with good faith interest and effort, and not yield to every problem, in order to maintain the parent-child relationship to the best of his or her ability, even in difficult circumstances. A parent must utilize all available resources to preserve the parental relationship, and must exercise reasonable firmness in resisting obstacles placed in the path of maintaining the parent-child relationship.

***In re E.M.***, 908 A.2d 297, 305-06 (Pa. Super. 2006).

Mother had an affirmative duty to work towards Child's return from foster care by, "at a minimum, [...] showing [...] a willingness to cooperate with the agency to obtain the rehabilitative services necessary for the performance of parental duties and responsibilities." ***In re Julissa O.***, 746 A.2d 1137, 1141 (Pa. Super. 2000). Mother failed to do so. Based upon the record before us, we therefore conclude that the record supports the orphans' court's decision to terminate Mother's rights pursuant to 23 Pa.C.S.A. § 2511(a)(1). ***See In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (stating that this Court need only agree with the orphans' court's decision as to any one subsection of section 2511(a) in order to affirm the termination).

Mother raises no argument that the orphans' court erred by finding that termination of her rights serves Child's developmental, physical and emotional needs and welfare pursuant to Section 2511(b), but for purposes of completeness, we briefly address that subsection as well.<sup>8</sup> ***See, e.g., In re C.L.G.***, 956 A.2d 999, 1009-10 (Pa. Super. 2008) (*en banc*) (evaluating

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<sup>8</sup> The termination of parental rights is controlled by statute. ***In re Adoption of R.J.S.***, 901 A.2d 502, 507 (Pa. Super. 2006). Under Section 2511 of the Adoption Act, the orphans' court must engage in a bifurcated process. First, the orphans' court must examine the parent's conduct under 2511(a). ***Id.*** at 508. If termination is found by the orphans' court to be warranted under section 2511(a), it must then turn to section 2511(b), and determine if termination of the parent's rights serves the children's needs and welfare. ***In re K.M.***, 53 A.3d 781, 791 (Pa. Super. 2012).

the orphans' court's findings that terminating mother's parental rights served the child's needs and welfare despite mother's failure to raise any argument in opposition).

Section 2511(b) states, in relevant part:

**(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(b).

A needs and welfare analysis involves the consideration of "the presence of any parent-child emotional bond, which encompasses intangibles such as love, comfort, security, and stability. When an emotional bond is present between parent and child, the court must consider the effect of its permanent severance on the child." *In re Adoption of R.J.S.*, 901 A.2d 502, 514 (Pa. Super. 2006). This is based upon the understanding that continuity of relationships is very important to a child, and severing close parental ties can be painful. *See In re William L.*, 477 Pa. 322, 348, 383 A.2d 1228, 1241 (1978).<sup>9</sup> Our Supreme Court has recognized that "[t]he

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<sup>9</sup> *In re William L.* was decided prior to the current version of the Adoption Act containing subsection (b). *See* 1 P.S. 311 (repealed effective Jan. 1, 1981). Nonetheless, the *William L.* Court, and others before it, expressly considered the needs and welfare of the child when deciding whether to terminate a parent's rights. *See In re William L.*, 477 Pa at 339, 383 A.2d

'continuity of relationships' consideration [] is equally applicable where, as here, the child has lived with one foster family for a considerable period of time. Removal of the children from their foster homes, or inflicting upon them the fear that they might be removed at any time, could create psychological and emotional distress similar to that caused by their removal from their natural parent." *Id.*; *see also In re N.A.M.*, 33 A.3d 95, 103 (Pa. Super. 2011). Thus, we are also required to consider the child's bond with his or her caregivers when determining whether the child's needs and welfare are served by termination.

The testimony of Ms. Patterson, Ms. Young, and Hixon all support a finding that terminating Mother's parental rights serves Child's emotional, developmental, and physical needs and welfare. Ms. Patterson, an expert in parenting assessments, psychological evaluations, and bonding assessments, testified that Child exhibits a minimal bond with Mother, the severance of which will not be harmful for him if he is able to appreciate and understand that he is not to blame for his brother's injuries and his removal from Mother's care. N.T., 6/9/11, at 24-25. He is currently in therapy with Ms. Young, who testified that Child also shared his feeling with her that he is to blame and that she is working with him on this issue. *Id.* at 55. Child is comfortable and beginning to attach with his foster family, and disclosed to

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at 1237; *see also* 1 P.S. 311 (Joint State Government Commission, Official Comment, Adoption Act) (stating that the Adoption Act "centers judicial inquiry upon the welfare of the child rather than the fault of the parent").



Ms. Young that he wants to remain with his foster family. *Id.* at 20, 32, 51-53. He refers to his foster parents as “mom and dad.” *Id.* at 22, 53, 127-28.

Child is thriving in his foster home by all accounts. He is making progress in his mental health treatment and excels in school. *Id.* at 46, 125. As such, we find no error in the orphans’ court’s determination that terminating Mother’s rights serves Child’s emotional, physical, and developmental needs and welfare.

Decree affirmed.