

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: S.L.M., MINOR

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: K.L.M., MOTHER

No. 1152 MDA 2012

Appeal from the Order Entered May 21, 2012
In the Court of Common Pleas of Juniata County
Orphans' Court at No(s): 01 Adopt 2012

IN RE: S.L.M., MINOR

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: M.E.M., FATHER

No. 1153 MDA 2012

Appeal from the Order Entered May 21, 2012
In the Court of Common Pleas of Juniata County
Orphans' Court at No(s): 01 Adopt 2012

BEFORE: PANELLA, J., OTT, J., and STRASSBURGER, J.**

MEMORANDUM BY OTT, J.:

Filed: January 24, 2013

K.L.M. ("Mother") and M.E.M. ("Father") appeal from separate orders entered in the Court of Common Pleas of Juniata County on May 21, 2012,

** Retired Senior Judge assigned to the Superior Court.

which terminated their parental rights to S.L.M. ("Child") pursuant to the Adoption Act, 23 Pa.C.S. § 2511(a)(1),(2),(5),(8), and (b). For the following reasons, we affirm.

Child, a female, was born in November 2010. When she was two days old Juniata County Children and Youth Services ("Agency") was contacted by the hospital over concerns of the ability of K.L.M. and M.E.M. to safely and properly parent Child. Specifically, Father's uncontrolled outburst of anger at hospital staff, his inability to properly hold Child, and his having overturned a rocking chair while he was holding S.L.M. Prior to this case, the Agency had been involved with Mother and Father in July 2001 because of domestic violence issues concerning another child, D.M.¹ As a result of all of these safety concerns, two days after her birth, S.L.M. was removed from the parents' care. S.L.M. has never returned to Mother's and Father's care.

The Agency filed petitions to terminate Mother's and Father's parental rights to Child on March 1, 2012. A joint termination hearing was held on May 18, 2012 for both parents. Mother's and Father's rights were

¹ D.M. was nine-months-old when she was struck in the head by Father as he and Mother fought. Father was charged with and convicted of simple assault. Mother obtained a protection from abuse order (PFA) for herself and D.M., however when she permitted Father to have contact with child during the PFA term the Agency intervened. D.M. currently lives in kinship foster care and parents have not sought her return, the Agency case was closed at a time prior to S.L.M.'s birth.

terminated by separate orders pursuant to 23 Pa.C.S. §§ 2511(a)(1),(2),(5),(8), and (b).

The standard and scope of review applicable in termination of parental rights cases are:

When reviewing an appeal from a decree terminating parental rights, we are limited to determining whether the decision of the trial court is supported by competent evidence. Absent an abuse of discretion, an error of law, or insufficient evidentiary support for the trial court's decision, the decree must stand. Where a trial 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 trial court's decision is supported by competent evidence.

In re B.L.W., 843 A.2d 380, 383 (Pa. Super. 2004) (*en banc*).

Furthermore, we note that the trial 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 and quotation marks omitted). 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 R.M.G.***, 997 A.2d 339, 347 (Pa. Super. 2010)(internal citations omitted).

If the trial court's findings are supported by competent evidence, we must affirm the court's decision, even though the record could support an opposite result. *In re R.L.T.M.*, 860 A.2d 190, 191 (Pa. Super. 2004).

The termination of parental rights is controlled by statute, 23 Pa.C.S. § 2511 *et seq.* *See also In re Adoption of R.J.S.*, 901 A.2d 502, 507 (Pa. Super. 2006). Under Section 2511, the trial court must engage in a bifurcated process. The initial focus is on the conduct of the parent. *In re A.L.D.*, 797 A.2d 326, 339 (Pa. Super. 2002). The party seeking termination must prove by clear and convincing evidence the parent's conduct satisfies at least one of the nine statutory grounds in Section 2511(a). If the trial court determines that the parent's conduct warrants termination under Section 2511(a), it must engage in an analysis of the best interests of the child under Section 2511(b), taking into primary consideration the developmental, physical, and emotional needs of the child. *R.J.S.*, 901 A.2d at 508; *See also In re I.J.*, 972 A.2d 5, 10 (Pa. Super. 2009). However, because neither Mother nor Father challenges the court's findings with regard to Section 2511(b) we need only determine whether Section 2511(a) has been met.

The petitions herein sought termination under Sections 2511(a) (2), (8), and (b). The trial court terminated both Mother's and Father's parental rights under each section. We will focus on whether the trial court properly terminated their parental rights to Child pursuant to Sections 2511(a)(8).

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*).

On appeal, Mother and Father separately argue the same issues. They contend the court erred in finding clear and convincing evidence that: 1) parent exhibits a continued incapacity to parent Child; 2) parent's incapacity has caused Child to be without essential parental care; and 3) parent's incapacity will not or cannot be remedied.²

The statutory basis for involuntary termination pursuant to Section 2511(a)(8) is as follows:

(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:

...

(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.

23 Pa.C.S. § 2511(a)(8).

² "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 Agency] services." *In re K.Z.S.*, 946 A.2d 753, 759 (Pa. Super. 2008).

The first element of Section 2511(a)(8) has been met. S.L.M. had been in the Agency's care for a period of 15 months from the time she was placed into care until the termination petitions were filed.³

We now examine the second element of Section (a)(8), whether the conditions, which lead to Child's placement, continue to exist. The Agency presented the testimony of Barbara Geedey, caseworker. Ms. Geedey testified that following S.L.M.'s birth the Agency was contacted by the hospital with concerns with Mother's and Father's ability to parent the child.

The issues the Agency found concerning Mother were her lack of parenting skills, near total dependence upon Father, and domestic violence issues. Father's issues were anger management and his ability to safely and properly parent Child. A family service plan (FSP) was written directing both parents to improve their parenting skills, attend scheduled mental health appointments, and visit with S.L.M. twice a week. For parenting skills the Agency found the need for parents to learn how to: set an alarm clock for feeding reminders; find ways to transport child to/from doctor's appointments; realize the signs of illness in infants and toddlers; read a prescription and properly use medication; attend medical visits for child;

³ December 2, 2010 to March 1, 2012. Additionally it was 13 months from the adjudication of dependency on February 4, 2011 until the petitions were filed.

meet with and follow recommendations of all service providers; and submit to a psychological evaluation.

David G. Ray, M.Ed, a licensed psychologist was appointed to conduct evaluations of Mother's and Father's capacity to parent S.L.M. and provide the Agency with recommendations for services for them. Mr. Ray determined after testing Mother had a full-scale IQ of 65 suggesting a significant level of cognitive impairment. N.T., 5/18/2012, at 213. Mr. Ray testified that the tests he administered indicated that Mother had a great deal of difficulty when confronted with something new or unknown to her. Several witnesses supported this finding. Caseworker Geedey testified Mother was taught to bottle feed Child one ounce at a time burping in between each ounce. However once Mother "didn't check to see how much formula was in a bottle [at the start of S.L.M.'s feed], so then she didn't know what to do after she started to feed [S.L.M.]." Geedey stated Mother's parenting skills remain limited and "someone has to be telling [parents] what the next step is," *Id.* at 87.

Stacy McNaughton, of Families First, a parent support, education, and advocacy program began working with the family in December 2010. She also testified about Mother's lack of ability to problem solve. McNaughton stated, "[m]y concern with [Mother] is always trying to find the thing that is unexpected. If we can review it [prior to happening] and [Mother] knows it

and understands it, she does fine. But if it's unexpected, anything, she—it's a struggle." *Id.* at 173.

Geedey, McNaughton, and Mary Minium of Juniata County Early Head Start⁴ testified because Mother is extremely quiet and does not ask questions they were unsure how much she understood until a situation arose. McNaughton testified, "I feel that both parents have not fully taken that information and are able to go with it independently." *Id.* at 169.

In addition to the above concerns, Mr. Ray also testified that Mother's personality characteristics also impede her parenting. He noted she is "passive, docile and utilizing an unhealthy coping mechanism, defense mechanism, if you will, and that is denial." *Id.* at 232. This behavior remains a safety concern. As an example, Mr. Ray testified that when asked if Father had ever physically harmed her she denied it. In an interview with Father, he admitted to punching Mother very hard in the stomach area when she was pregnant with S.L.M. When confronted with this Mother eventually acknowledged it was true.

Geedey also testified to several examples of this denial mechanism. She stated during Father's outbursts of anger, some which occurred during visits with Child, Mother sat silently crying, and holding Child. Mother made

⁴ Minium attends visits between parents and Child to teach them how to work with Child in the areas of speech and language, fine motor skills, gross motor skills during different developmental stages.

no effort to either remove Child from the room or place herself between Child and Father.⁵ *Id.* at 67. In addition Geedey testified in July 2011 police were called to the home because Father was enraged and threatening to hurt S.L.M.⁶ Mother denied the episode to police. In October 2011 when Geedey arrived at Mother's home to pick her up for a visit with S.L.M. she heard Father yelling at Mother. When asked why Father was angry Mother denied knowing and shrugged it off.

Mother has a history of having been sexually abused by maternal grandfather. Maternal grandparents continue to reside together. Mother has contact with them and does not understand the Agency's concerns about maternal grandmother's ability to protect S.L.M from harm. This failure to recognize a mother's duty to protect her child from harm is consistent with Mother's inaction during Father's rages when Child is there.

The Agency witnesses did acknowledge Mother had improved in some areas, such as holding, feeding, and changing Child. However, Mother's continued inability to react to changing circumstances and her denial coping mechanisms continue to be detrimental to S.L.M.'s safety.

⁵ During one episode the Sheriff's office was called, Father was removed, and the caseworker supervisor intervened taking Child from Mother to permit her to collect herself.

⁶ S.L.M. was not on the premises.

Mr. Ray testified Father's evaluation revealed his ability to learn is slow and he needs to be taught by breaking lessons down "into a few little bite-size pieces, because he can be quickly overwhelmed in his learning." *Id.* at 218. Father's full-scale IQ was determined, upon testing, to be 51. The components of this figure indicated Father's ability to learn was slow, his working memory was slow and his ability to process what he sees is slow. *Id.* at 217-218. Mr. Ray also noted Father's longstanding, ongoing, and well documented anger issues. During the course of this case, Father's anger has been directed at hospital staff, Child, Mother, and Agency personnel. Following his outburst during a July 2011 supervised visit the dependency court prohibited Father from visiting with S.L.M. The visits were only restarted in January 2012, two months prior to the termination petition being filed.

In addition to his anger issues, the Agency's witnesses testified to Father having the same adaptability issues as Mother when faced with new situations. The witnesses testified to Father's continued incapacity to understand the capabilities of an infant/toddler.

Mr. Ray testified, "I absolutely concluded, in my opinion, that [Father] could not parent [S.L.M.] alone [as a result of Mother having moved out of the marital home in December 2011]; and in fact, I was still worried about his aggressiveness, his temper, his impulsivity, etc., that I think I suggested that he needs to be closely supervised." *Id.* at 235. Our review of the

record shows the concerns which brought Child into care, Father's anger issues, and his inability to safely and properly parent S.L.M. continue.

The record supports the conclusion that the second element of Section (a)(8), whether the conditions, which lead to Child's placement, continue to exist for both Mother and Father.

Finally we now examine the last element of Section 2511(a)(8), whether termination of Mother's and Father's parental rights would best serve the needs and welfare of S.L.M. At the time of the termination hearing in May 2012, Child was 17 months old. In May 2012, the Agency was having increased concerns about possible developmental issues in Child, specifically delay in her speech and motor skills. The testimony shows Mother and Father rarely participated in medical appointments or asked questions about Child's developmental or health status. Further, there was minimal interaction with Child during visits as parents watched rather than interacted by playing, singing, or even feeding. Only when prompted by supervising caseworkers did they engage with S.L.M.

Mr. Ray testified based upon his testing of parents and observation of them with and without Child that, "they lacked capacity to ever care for [Child] and meet her needs, her health and welfare, safety, her emotional needs, psychological needs and her physical needs." *Id.* at 232. He went on to state, "[parenting is] an active, dynamic process; and one of the parents must be in charge of it, because the child can't be. You can't just be reacting to what a child is doing. You have to be extremely proactive. And I

felt that no matter how much you modeled 10 skills, there's 50 others that [Mother and Father were] not going to grasp, that they can't grasp..." *Id.* at 233. The record was replete with additional testimony of parents' failure to understand even after repeated instruction how Child was developing and what her needs were physically and emotionally.

After review of the record and examination of the evidence, we conclude that the trial court correctly found the Agency proved by clear and convincing evidence that termination of Mother's and Father's parental rights was proper pursuant to Section 2511(a)(8).

Finally, Jennifer P. Wilson, Esquire, Guardian ad litem, supports the finding of the trial court that it was in the best interest of S.L.M. to terminate Mother's and Father's parental rights.

Orders affirmed.