NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: ADOPTION OF B.M.F.	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: S.F., BIOLOGICAL MOTHER	No. 1187 WDA 2012

Appeal from the Order Entered July 3, 2012
In the Court of Common Pleas of Blair County
Orphans' Court at No(s): No. 2012 AD 8

BEFORE: STEVENS, P.J., MUNDY, J., and FITZGERALD, J.*

MEMORANDUM BY STEVENS, P.J. Filed: January 24, 2013

S.F. ("Mother") appeals from the order dated June 29, 2012, and entered on July 3, 2012, granting the petition filed by K.S.C. ("Paternal Grandmother") to terminate Mother's parental rights to her male child, B.M.F. ("Child") (born in June of 2007), pursuant to 23 Pa.C.S.A. § 2511(a)(1) and (b). We affirm.

On July 2, 2009, the trial court entered an order directing that Paternal Grandmother, M.C. ("Father"), and Mother would share legal and physical custody of Child. Under the order, Child would reside with Paternal Grandmother, and Mother would have custody of Child at Paternal Grandmother's home unless otherwise agreed, at dates and times as

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* Former Justice specially assigned to the Superior Court.

mutually agreed. Moreover, Father would have custody of Child at any dates and times as mutually agreed.

On February 10, 2012, Paternal Grandmother filed a Petition for Involuntary Termination, seeking for the trial court to terminate Mother's parental rights to Child pursuant to section 2511(a)(1) and (b). On February 10, 2012, Paternal Grandmother also filed a Petition for Adoption with regard to Child. On that same date, Father filed a Consent of Natural Parent to Adoption. On March 27, 2012, Paternal Grandmother filed an Amended Petition for Involuntary Termination of Mother's parental rights to Child. On that same date, Father filed an Amended Consent of Natural Parent of an Adoptee with regard to Child.

On March 28, 2012, the trial court issued a Rule Returnable to Mother directing her to show cause why the trial court should not grant Paternal Grandmother the relief she requested in her termination petition, and scheduling a hearing on the amended termination petition for May 30, 2012, at 1:30 p.m. In the Rule, the trial court appointed separate counsel for Mother and Child.

On May 24, 2012, the trial court again issued a Rule Returnable to Mother, directing her to show cause why the trial court should not grant Paternal Grandmother the relief she requested in her termination petition, and scheduling a hearing on the amended termination petition for June 29,

2012, at 8:30 a.m. On May 25, 2012, Paternal Grandmother filed a "Petition to Confirm [Father's] Consent to Adoption."

On May 25, 2012, Mother's appointed counsel filed a request for a continuance of the hearing, stating Mother lived in New York, her car had broken down, and she lacked transportation to the hearing. In an order dated May 30, 2012, and entered on June 4, 2012, the trial court, observing Mother was unable to attend the hearing because of vehicle problems, directed a continuance of the matter to June 29, 2012, so that Mother could appear either in person or by telephone. The trial court noted Mother could appear by telephone only if she properly executed a waiver of her right to be physically present, as provided to her by her counsel, and duly executed and notarized according to the requirements of Pennsylvania law.

The trial court further stated:

> We do note that there is also an outstanding petition in this case to confirm the consent to the termination of parental rights of the biological [f]ather. We **DIRECT** the Court Administrator of Blair County to schedule those two (2) matters together so we are not having two (2) additional hearings, but rather only one (1).
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> The [c]ourt notes that the initial continuance was filed two (2) days before the proceeding. The [c]ourt notes that it will not entertain further continuances unless they would be filed well in advance of the scheduled date and be for a valid medical reason. The [c]ourt will not accept lack of transportation by the [m]other as a reason to continue the matter in the future.
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> The next date for hearing in this matter is **Friday, June 29, 2012, at 8:30 a.m. in front of the Honorable Elizabeth A. Doyle in Courtroom #1.**

Trial Court Order, 6/4/12, at 1-2. The order reflects the trial court's service on all counsel of record. On June 14, 2012, the trial court scheduled a hearing on Paternal Grandmother's Petition to Confirm Consent to Adoption to occur on June 29, 2012, at 8:30 a.m., as well.

On June 29, 2012, the trial court convened the hearing. Mother's counsel, Attorney Joel C. Seelye, was present, but Mother was not present. After engaging in a lengthy colloquy, the trial court proceeded in Mother's absence, ultimately excusing Attorney Seelye from being present. The following exchange occurred between the trial court and Attorney Seelye.

> **BY THE COURT:** Thank you. Turning to Attorney Seelye, who is court-appointed counsel for the biological mother, [Mother], we do note that on May 30th 2012, the matter previously came before the [c]ourt and the [c]ourt noted through presentation of Attorney Seelye on that date and time that the biological mother asserted that she was unable to attend due to vehicle problems. It is clear that she lives outside the Commonwealth of Pennsylvania, specifically it was represented to the [c]ourt, Jamestown, New York. Attorney Seelye, advocating for his client at that time, asked for a continuance. The [c]ourt granted the continuance so that the biological mother could appear either in person or by telephone. There were conditions placed on her appearance by telephone. So, now, we turn to Attorney Seelye first to place on the record your understanding of whether [Mother] is present here today or not and then any other description of efforts made.
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> **ATTORNEY SEELYE:** Yes, Your Honor. My understanding – first of all, I do represent [Mother] pursuant to court appointment under her rights under the Adoption Act as an involuntary termination. Your Honor, at first when I had represented her, I did file a continuance just as a matter of clarity on the procedural posture but the initial continuance was denied. We appeared here at the hearing. I was advised at that time that she was unable to be here because of vehicle problems but that she would be able to attend. In addition to that, she

had expressed potential interest to appear via telephone so that in case she couldn't get a ride. I told her that that was possible but that she would need to sign just an affidavit noting that she has the right to be physically present at a termination of parental rights hearing and a waiver of that appearance in person. I prepared an affidavit and waiver of appearance at my office and mailed it to her after the hearing that the continuance was granted indicating to her that I would request that she sign it and return it irrelevant of whether or not she intends to appear in person so that if something happens and she at the last minute, the night before, gets stranded that it will be of record and I can submit that that happened. We did send that to her along with the [c]ourt notice and [c]ourt Order indicating that it would be the last time, there would be no further continuances. She did contact my office and say that she received the paperwork and then she contacted my office and requested it again. We forwarded it to her again and then she contacted my office and said she would not be sending it back because she intends to be here in person and despite my request and best efforts, we never received a copy of that. I'd also indicate that since then I did send three different letters to her advising her of today's hearing, the time of the hearing, the Courtroom, the location and that the hearing would continue in her absence and would not be continued. I did have a number of phone conversations with her; two that I can recall since the last hearing just talking about the case. She always indicated to me that she would be attending. As of yesterday, my staff contacted her in our normal office procedures letting her know of the [c]ourt hearing today. My staff did indicate that they were able to get in touch with her and she said she'd be here. It is now 9:00 and the hearing was scheduled for 8:30. At approximately 8:45, I had my staff try to attempt to call her on the numbers that we had that were available which they believe to be cell phones but they're not sure and the phone was turned off. They weren't able to reach anybody at that phone. We have not heard any information relative to her, any transportation problems or any reasons why she would not be present. In addition to that, it was our understanding that she would be present but with it now being 9:00 and nobody is here, I would probably just request in an overabundance of caution that the tipstaff be directed to just cry in the halls to see if anybody is available under that name, although, I did just ten minutes ago walk around and try to locate her and I wasn't able to. Your Honor, while she has indicated to me consistently that

she wishes to defend her position and not voluntarily relinquish her parental rights, she's not here which certainly handcuffs my ability to represent a non-present party in this litigation. I think, in an overabundance of caution, I should request a continuance today on her behalf as she's not present and I'm not sure why and I don't know if something happened or not. We have no information and are unable to get in touch with her. If Your Honor denies that continuance, then I'm certainly available all morning to sit here throughout the proceeding but being that I'm court-appointed, I would request the [c]ourt's permission to be excused with the guardian ad litem's permission and opposing counsel's permission seeing that I don't really know what my role would be. I mean, I could sit here and listen but my ability to advocate for a non-present party, particularly one that I've never even had the opportunity to meet, other than phone conversations, I don't know how effective that I would be able to be and I don't know that her right to counsel extends beyond her being present and deciding to defend the charges. So, we would make, first, a continuance request and then second, if that is denied, we would request to be excused from being present.

BY THE COURT: Thank you.

BY THE TIPSTAFF: Your Honor, I went the whole way down the second floor and nobody is present by that name. I even checked with Court Administration to see if they received any phone calls from [Mother]; they have not received any phone calls either.

BY THE COURT: Thank you. Attorney Seelye, do you have an objection to a photocopy of one of the letters you sent [Mother] giving the date and time of the hearing and the opinion that the matter would continue in her absence being placed – being made an exhibit to today's proceeding?

ATTORNEY SEELYE: I wouldn't, Your Honor, if the [c]ourt is directing me to do so. I would just ask permission to be able to make a copy and possibly redact any attorney-client privilege type information beyond notifying her of the date; if I maybe advised her of certain things, I don't necessarily want to disclose that out of my own protection but I would be happy to do that if I could just maybe have one copy of this and a Sharpie, I'm sure I could do that.

BY THE COURT: Sure. That was part of my concern, you know, in asking but certainly that would be appropriate and that would accomplish – the only aim of the [c]ourt would be to have it as an exhibit of record, the letter existed and was sent as you represented in your presentation.

ATTORNEY SEELYE: Yes, Your Honor. Sure. And, Your Honor, I would indicate that on the letter, you will see a couple different manners of mailing because - - or a couple of different addresses that we would be updated on to send it. Apparently, she's pretty mobile.

BY THE COURT: Okay.

ATTORNEY SEELYE: But we did consistently send it to her but sometimes it was in care of another person because of that particular – but I can – Your Honor, I can indicate that she was well aware of the hearing. My staff spoke to her on a number of occasions and she did contact my office on various occasions because we were obviously in communication trying to get the phone – or, I believe, the consent to participate via phone back. So, you know, this isn't a situation where we're not sure that she had notice. My staff indicated as of this morning that they spoke to her yesterday approximately sometime in the afternoon, 3:00, 4:00 and that she indicated she would be present. So, in addition to the letters, we know that she was aware of it through that method as well.

BY THE COURT: All right. So, Attorney Seelye, in regards to your continuing role if [Mother] continues to be absent, have you had an opportunity to review the petition for involuntary termination?

ATTORNEY SEELYE: Yes, I have, Your Honor.

BY THE COURT: And generally the allegations contained therein, are you able to cross examine the witnesses for the Petitioner without the assistance of [Mother]?

ATTORNEY SEELYE: Very minimally, Your Honor. . . . [M]y ability, obviously, to defend this case is primarily rooted in my ability to discuss with my client certain aspects and facts that are presented and unfortunately, I don't have that assistance today, nor have I had assistance up until this point.

N.T., 6/29/12, at 3-10.

The following exchange occurred between the trial court, Attorney Traci L. Naugle, the Guardian *Ad Litem*, and Attorney Seelye.

> **BY THE COURT:** Thank you. The guardian ad litem, any position, any record you want to make today, Attorney Naugle?
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> **ATTORNEY NAUGLE:** Well, Your Honor, I would just indicate that at the last hearing back on May 30th, I had told the [c]ourt that in the best interests of the child, I was concerned about hearing all of the evidence and so then Your Honor had issued that Order essentially telling the biological mother, look, I'm giving you one more chance but you either have to show up or have a darn good reason for not showing up. I think her absence today, I feel comfortable, is evidence enough of her lack of participation in this child's life. I mean, if she's not even concerned enough to show up to the hearing terminating her parental rights, I'm satisfied, you know, pending actual testimony from the caregiver of the child[,] that it would be in the best interests of the child to terminate parental rights. So, I would be fine with proceeding today, Your Honor.
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> **BY THE COURT:** Thank you. And do you have any position specifically in regards to whether Attorney Seelye should stay in the absence of [Mother?] Certainly the [c]ourt is not trying to set Attorney Seelye up for any accusation of ineffectiveness when the [c]ourt shares his view that it would be practically impossible for him to be effective without the aid of [Mother]. But do you have any separate thoughts?
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> **ATTORNEY NAUGLE:** I agree with the [c]ourt and with Attorney Seelye. I mean, without [Mother] being present, he essentially has nothing to go on, other than just, you know, standard trying to find inconsistencies in testimony which part of my role covers that part as well. So, I don't see that his being present would aid in [Mother's] defense in any way.
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> **BY THE COURT:** All right. So, what we're going to do now is, Attorney Seelye, we're going to release you from sitting here in the absence of your client. We will request that you remain available as you've represented to the [c]ourt in the event that

> [Mother] arrives late. We note that now it is 9:10 and the matter was scheduled for 8:30. So, we'll let you not have to sit here with essentially no role.
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> **ATTORNEY SEELYE:** And, Your Honor, while I'm redacting, I'll be happy to sit here and –
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> **BY THE COURT:** Okay.
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> **ATTORNEY SEELYE:** The only thing, Your Honor, I think procedurally you may want to rule on the motion for continuance just for clarity of the record.
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> **BY THE COURT:** Oh, yeah, the motion for continuance is denied based on the [c]ourt's prior ruling of the 30th day of May of 2012 which essentially that day and time was a continuance and in that Order, the [c]ourt noted that it would not entertain further continuances unless they were filed well in advance of the scheduled date and be for a valid medical – and I would have entertained other than medical reasons – but I specifically noted that the [c]ourt would not accept lack of transportation by the mother as a reason to continue the matter in the future. The date and time was clearly set forth in that Order and we accept Attorney Seelye's presentation that the mother does have actual notice of today's proceeding. All right. So, Attorney Gieg, you may call your first witness and you're proceeding – do you want to – we better proceed first on the petition for involuntary termination.

N.T., 6/29/12, at 10-12.

The following exchange occurred between the trial court and Attorney Matthew P. Gieg, the counsel for Paternal Grandmother.

> **ATTORNEY GIEG:** Just a few preliminary things; just for the record, I did want to note my strong objection to the continuance request. I know you already granted it --
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> **BY THE COURT:** You mean, I already --
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> **ATTORNEY GIEG**: I know –
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> **BY THE COURT:** I did not grant the continuance for today.

ATTORNEY GIEG: No, no, no. I'm just kind of –

BY THE COURT: I already denied it. That's what you meant to say.

ATTORNEY GIEG: I know you already denied it but as far as her being available, here we are at 9:10, this was scheduled for 8:30, so, I'm ready to proceed.

BY THE COURT: All right.

N.T., 6/29/12, at 13.

Subsequently, at the hearing, Paternal Grandmother presented the testimony of Lindsay McCaulley, a behavioral specialist consultant at Alternative Community Resource Program, who works with Child. N.T., 6/29/12, at 14-15. Paternal Grandmother also testified on her own behalf. At the close of the hearing, the trial court issued its order, entered on July 3, 2012, terminating Mother's parental rights pursuant to section 2511(a)(1), and awarding custody of Child to Paternal Grandmother, providing that Mother would have no right to object to or receive notice of adoption proceedings with respect to Child. The trial court specifically found that the termination of Mother's parental rights was in Child's best interests, and that there was no bond between Child and Mother. Trial Court Order, 7/3/12, at 1-2. The trial court also stated, "[Mother] absented herself from today's

proceedings with notice given and the matter having been continued from the previous date so that she might be present." ***Id.*** at 2.[1]

Moreover, in another separate order dated June 29, 2012, and entered on July 3, 2012, the trial court granted Paternal Grandmother's Petition for Adoption, and provided that Child was adopted by Paternal Grandmother, and his name changed to B.M.C.

On July 11, 2012, Mother, through Attorney Seelye, filed a Petition to Vacate Termination Order. On July 13, 2012, the trial court entered an order dated July 12, 2012, denying the Petition to Vacate Termination Order.

On July 27, 2012, Mother filed a notice of appeal from the order terminating her parental rights to Child, including a Concise Statement of Errors Complained of on Appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b).

On appeal, Mother raises two issues, as follows.

> I. Did the [trial] court err or abuse its discretion when it found that it was in the best interests of the child to terminate Appellant's parental rights where the trial court made no specific findings of fact as to whether a bond existed between Appellant and Child?

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[1] In a separate order dated June 29, 2012, and entered on July 3, 2012, the trial court confirmed Father's Amended Consent of Natural Parent of Adoptee, and terminated Father's parental rights to Child, awarding custody of Child to Paternal Grandmother, and providing that Father had no right to object or receive notice of adoption proceedings with respect to Child. Father has not filed an appeal from the confirmation of his consent, nor is he a party to the present appeal.

> II. Did the [trial] court err or abuse its discretion when it denied Appellant's petition to vacate the termination order where she did not have actual notice of the date and time of the hearing?

Mother's Brief, at 5.[2]

We first will address Mother's second issue. Mother asserts that the trial court erred in denying her petition to vacate the termination order and to re-schedule a hearing allowing her to testify. In her petition to vacate, Mother claimed, "she was absent from these proceedings due to circumstances beyond her control;" she "never received actual notice of the hearing as her mail and personal possessions have been stolen over a course of time;" and her "destitute conditions have made it difficult for her to travel to Blair County and this newest calamity has only exacerbated her situation." Petition to Vacate, 7/11/12, at 2, ¶¶ 3 and 4. Further, in her petition to vacate, Mother asserted that the trial court deprived her of notice and an opportunity to be heard, and, as such denied her guaranteed due

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[2] Mother failed to include a specific challenge to the sufficiency of the evidence to support the trial court's determination under subsections 2511(a) or (b), in her Statement of Questions Involved, but she did challenge the trial court's ability to conduct a bond analysis in her absence, which implicates section 2511(b). We observe that, if subsection (a) was not satisfied, then there is no need to proceed to a review of the trial court's bond analysis under subsection (b). Thus, we shall review the sufficiency of the evidence under both subsections 2511(a) and (b), pursuant to our case law. ***In re Adoption of S.P.***, ___ Pa. ___, ___, 47 A.3d 817, 830-31 (2012); ***In re Adoption of C.L.G.***, 956 A.2d 999, 1009 (Pa. Super. 2008) (*en banc*).

process under the Fourteenth Amendment to the United States Constitution. ***Id.*** at ¶ 5.

In her brief on appeal, Mother alleges that the trial court should have considered the averments in her petition to vacate that she was unaware of the date and time of the hearing due to circumstances beyond her control. ***See*** Mother's Brief, at 12. She claims that the trial court denied her any actual notice and an opportunity to be heard at the termination hearing. ***Id.*** Thus, she contends that the trial court deprived her of her guarantee to due process of law under the Fourteenth Amendment to the United States Constitution. ***Id.*** at 11-12.

In her related second issue, Mother argues that, without the ability to testify or offer evidence on her own behalf, the trial court could not have made a determination as to whether there was a bond between her and Child. She complains that Paternal Grandmother's witness, Child's behavioral specialist consultant, Lindsay McCaulley, could not testify to the lack of a bond between Mother and Child, as Ms. McCaulley never observed Mother with Child. ***See*** Mother's Brief, at 10.

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.***, [___ Pa. ___], 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., ___ Pa. ___, ___, 47 A.3d 817, 826-27 (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 that:

> [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)).

Section 2513 of the Adoption Act provides as follows.

§ 2513. Hearing

(a) Time.—The court shall fix a time for hearing on a petition filed under section 2512 (relating to petition for involuntary termination) which shall be not less than ten days after filing of the petition.

(b) Notice.—At least ten days' notice shall be given to the parent or parents, putative father, or parent of a minor parent whose rights are to be terminated, by personal service or by registered mail to his or their last known address or by such other means as the court may require. A copy of the notice shall be given in the same manner to the other parent, putative father or parent or guardian of a minor parent whose rights are to be terminated. A putative father shall include one who has filed a claim of paternity as provided in section 5103 (relating to acknowledgment and claim of paternity) prior to the institution of proceedings. The notice shall state the following:

> A petition has been filed asking the court to put an end to all rights you have to your child (insert name of child). The court has set a hearing to consider ending your rights to your child. That hearing will be held in (insert place, giving reference to exact room and building number or designation) on (insert date) at (insert time). You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you and your rights to your child may be ended by the court without your being present. You have a right to be represented at the hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.
>
> (Name)
> (Address)
> (Telephone number)

* * *

> **(d) Decree.—**After a hearing, which may be private, the court shall make a finding relative to the pertinent provisions of section 2511 (relating to grounds for involuntary termination) and upon such finding may enter a decree of termination of parental rights.

23 Pa.C.S.A. § 2513.

On May 25, 2012, Attorney Matthey P. Gieg, counsel for Paternal Grandmother, filed an Affidavit of Service, stating that service of the Amended Petition for Involuntary Termination of Parental Rights was made, and notice was given, to Mother pursuant to section 2513(b) at her last known address in Jamestown, New York, via First Class United States Mail and Certified Mail. In the Affidavit of Service, Attorney Gieg stated that the Certified Mail was returned to him as "Unclaimed." Further, in the Affidavit of Service, Attorney Gieg stated he made personal service of the petition on Attorney Seelye on behalf of Mother, via hand-delivery, on May 18, 2012.

Additionally, the trial court's order entered on June 4, 2012, continuing the hearing on the termination petition to June 29, 2012, reflects that it was served on all counsel of record. Likewise, the trial court's order dated and entered June 18, 2012, reflects that the trial court gave all counsel notice of the hearing on Paternal Grandmother's petition for adoption scheduled to occur on June 29, 2012.

In ***In re G.P.-R.***, 851 A.2d 967 (Pa. Super. 2004), this Court stated that, in termination of parental rights proceedings, the subject parent must be afforded the guarantees imposed by the Fourteenth Amendment of the

United States Constitution regarding procedural due process of law. ***Id.*** at 975 (citing ***Santosky v. Kramer***, 455 U.S. 745 (1982), and ***In re Adoption of A.M.B.***, 812 A.2d 659, 670 (Pa. Super. 2002)). It is well-settled that "[p]rocedural due process requires, at its core, adequate notice, opportunity to be heard, and the chance to defend oneself before a fair and impartial tribunal having jurisdiction over the case." ***Garr v. Peters***, 773 A.2d 183, 191 (Pa. Super. 2001) (internal quotation marks and citations omitted). "Due process is flexible and calls for such procedural protections as the situation demands." ***In re Adoption of Dale A., II***, 683 A.2d 297, 300 (Pa. Super. 1996) (citing ***Mathews v. Eldridge***, 424 U.S. 319, 334, (1976)). Further, this Court, in ***In re G.P.-R.***, instructed the law is clear that the mandates of procedural due process require that the petitioner must satisfy its burden with clear and convincing evidence. ***In re G.P.-R.***, 851 A.2d at 974.

In ***In re G.P.-R.***, the appellant was a father who had appealed from the orders entered in June of 2003, changing the placement goal for the subject child to adoption and granting the agency's petition to terminate the father's parental rights. Initially, the father was incarcerated, but he was released to a half-way house in November of 2002 and was eventually released on parole from the half-way house in January of 2003. While the father was incarcerated, he was unable to attend the adjudication hearing on the agency's dependency petition, which was scheduled to occur in July of

2001. The trial court appointed counsel for the father, and the counsel stated that he would arrange for the father to attend the hearing if the father contacted him. The agency advised the father he should contact his counsel if he wished to attend the adjudication hearing scheduled to occur in October of 2001. The father, however, did not contact his counsel, and he did not attend the adjudication hearing. The father's counsel withdrew his appearance at that time. Thereafter, the matter proceeded with further review hearings until the termination and goal change hearing occurred.

In rejecting the father's constitutional challenge to the termination of his parental rights, the panel of this Court stated:

> [The father's] due process rights were protected in that he was afforded the adjudication hearing, regular review hearings, [and] a hearing on his exceptions to the goal change and on the petition to terminate his parental rights. [The father] was also represented by counsel and had the opportunity to present evidence.

In re G.P.-R., 851 A.2d at 975.

Here, in a statement in lieu of opinion, the trial court provided its reasoning for rejecting Mother's arguments as follows.

> . . . [I]n this case[,] rather than filing an Opinion, I will be relying on the record, specifically the following:
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> 1. The record of the [m]other having notice of the proceedings and failing to appear, found in the Order of Court dated May 30, 2012;
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> 2. The record of the transcript from the hearing held June 29, 2012; and

> 3. The letter from the Guardian Ad Litem, Traci Naugle, Esquire dated August 13, 2012.
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> In particular, the presentation of Attorney Seelye on pages five through seven of the June 29, 2012 transcript convinced the [c]ourt that the [m]other had actual notice of the proceedings but failed to appear. She had previously failed to appear despite having notice of the proceedings on May 30, 2012. Also, Attorney Naugle, as the Guardian Ad Litem, on page eleven of the June 29, 2012 transcript characterized the [m]other's absence at both hearings as evidence of her lack of participation in the child's life. The totality of the testimony convinced the [c]ourt that the Guardian Ad Litem was correct. Therefore, nothing further will be forthcoming from this court.

Trial Court Statement in Lieu of Opinion, 8/30/12, at 1.

In a letter to the trial court, dated August 13, 2012, the Guardian *ad Litem*, Attorney Traci L. Naugle, stated her position that the record lacks any evidence that Mother made any attempt to appear at, or learn of the date and time for, the hearing, or to present any witnesses or evidence to challenge the allegations made in the Petition for Involuntary Termination of Parental Rights or Petition for Adoption. The Guardian *ad Litem* stated her position that the termination of Mother's parental rights, and the grant of Paternal Grandmother's adoption petition, was in the best interests of Child. The Guardian *ad Litem* restates that position in her brief on appeal.

In view of the extensive colloquy regarding Mother's failure to appear on the record at the commencement of the hearing on June 29, 2012, and the previous continuance of the hearing, we find that there was ample evidence in the record to support the trial court's finding that Mother had notice and an opportunity to be heard at the hearing on the termination

petition on June 29, 2012, but she voluntarily chose not to appear. Thus, on the basis of the decision in ***G.P.-R.***, we reject Mother's claim that the termination of her parental rights, and the refusal of the trial court to vacate that termination order, infringed on her due process guarantee.

With regard to Mother's remaining issue, we observe that 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*). Here, the trial court granted the petition to terminate Mother's parental rights under section 2511(a)(1) and (b).

In beginning our analysis of Mother's issues, we focus on section 2511(a)(1), which provides:

> **§ 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:
>
> > 1) The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.

23 Pa.C.S.A. § 2511(a)(1).

We have explained this Court's review of a challenge to the sufficiency of the evidence to support the involuntary termination of a parent's rights pursuant to section 2511(a)(1) as follows:

> To satisfy the requirements of section 2511(a)(1), the moving party must produce clear and convincing evidence of conduct, sustained for at least the six months prior to the filing of the termination petition, which reveals a settled intent to relinquish parental claim to a child or a refusal or failure to perform parental duties. ***In re Adoption of R.J.S.***, 901 A.2d 502, 510 (Pa. Super. 2006). In addition,
>
> > Section 2511 does not require that the parent demonstrate both a settled purpose of relinquishing parental claim to a child and refusal or failure to perform parental duties. Accordingly, parental rights may be terminated pursuant to [s]ection 2511(a)(1) if the parent either demonstrates a settled purpose of relinquishing parental claim to a child or fails to perform parental duties.
>
> ***In re Adoption of Charles E.D.M.***, 550 Pa. 595, 708 A.2d 88, 91 (1998).
>
> > Once the evidence establishes a failure to perform parental duties or a settled purpose of relinquishing parental rights, the court must engage in three lines of inquiry: (1) the parent's explanation for his or her conduct; (2) the post-abandonment contact between parent and child; and (3) consideration of the effect of termination of parental rights on the child pursuant to [s]ection 2511(b).
>
> ***Id.*** at 92 (citation omitted).

In re Z.S.W., 946 A.2d 726, 730 (Pa. Super. 2008).

Regarding the definition of "parental duties," this Court has stated as follows:

> There is no simple or easy definition of parental duties. Parental duty is best understood in relation to the needs of a child. A child needs love, protection, guidance, and support. These needs, physical and emotional, cannot be met by a merely passive interest in the development of the child. Thus, this court has held that the parental obligation is a positive duty which requires affirmative performance.

> This affirmative duty encompasses more than a financial obligation; it requires continuing interest in the child and a genuine effort to maintain communication and association with the child.
>
> Because a child needs more than a benefactor, parental 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. Parental rights are not preserved by waiting for a more suitable or convenient time to perform one's parental responsibilities while others provide the child with . . . her physical and emotional needs.

In re B., N.M., 856 A.2d 847, 855 (Pa. Super. 2004), *appeal denied*, 582 Pa. 718, 872 A.2d 1200 (2005) (internal citations omitted).

Further, in ***In re Z.P.***, 994 A.2d 1108 (Pa. Super. 2010), this Court instructed:

> [t]o be legally significant, the [post-abandonment] contact must be steady and consistent over a period of time, contribute to the psychological health of the child, and must demonstrate a serious intent on the part of the parent to recultivate a parent-child relationship and must also demonstrate a willingness and capacity to undertake the parental role. The parent wishing to reestablish his parental responsibilities bears the burden of proof on this question.

Id. at 1119 (quoting ***In re D.J.S.***, 737 A.2d 283, 286 (Pa. Super. 1999)).

The trial court thoroughly considered the facts and determined that Mother had failed to perform her parental duties for the requisite six-month period. The trial court considered Mother's lack of explanations for her failure to perform her parental duties and for her post-abandonment conduct, and properly determined that she had failed to sustain her burden of proof. We have stated:

> a "parent's basic constitutional right to the custody and rearing of his child is converted, upon the failure to fulfill 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 N.M.B.***, 856 A.2d 847, 856 (Pa. Super. 2004), *appeal denied,* 582 Pa. 718, 872 A.2d 1200 (2005). Moreover, "the parent wishing to reestablish [his or her] parental responsibilities bears the burden of proof relative to post-abandonment contact." ***See In re K.Z.S.***, 946 A.2d 753, 759 (Pa. Super. 2008).

In re Adoption of C.L.G., 956 A.2d 999, 1006 (Pa. Super. 2008) (*en banc*). We find that competent evidence exists in the record which supports the trial court's determination as to section 2511(a)(1).

Next, we review the third requirement stated in ***In re Z.S.W.***, *i.e.*, section 2511(b). In reviewing the evidence in support of termination under section 2511(b), we consider whether termination of parental rights would best serve the developmental, physical and emotional needs and welfare of the child. ***See In Re C.M.S.***, 884 A.2d 1284, 1286-1287 (Pa. Super. 2005). "Intangibles such as love, comfort, security, and stability are involved in the inquiry into the needs and welfare of the child." ***Id.*** at 1287 (citation omitted). The court must also discern the nature and status of the parent-

child bond, with utmost attention to the effect of permanently severing that bond on the child. ***Id.***

With regard to section 2511(b), the trial court found Mother had absolutely no contact with Child and made no effort to be involved in his life. The trial court, therefore, determined it was in the best interests of Child to terminate Mother's parental rights, and the termination would serve Child's well-being by not further delaying Child's permanency through adoption by Paternal Grandmother.

The trial court specifically found there is no bond between Child and Mother that would be harmed by the termination. We conclude the trial court appropriately made such a factual finding. 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 is attenuated. ***In re K.Z.S.***, 946 A.2d 753, 764 (Pa. Super. 2008). In fact, at the termination hearing, Lindsay McCaulley, Child's behavioral specialist consultant, testified Mother had not been present during Child's treatments at Paternal Grandmother's home, and Child has a strong bond with Paternal Grandmother. N.T., 6/29/12, at 20-22.

This Court has instructed:

> It is incumbent upon a parent when separated from his child to maintain communication and association with the child. This requires an affirmative demonstration of parental devotion, imposing upon the parent the duty to exert himself, to take and maintain a place of importance in the child's life.

In re G.P.–R., 851 A.2d at 976.

There was sufficient and competent evidence to support the trial court's findings with regard to the three-pronged test set forth in ***In re Z.S.W.***, 946 A.2d at 730. The trial court did not abuse its discretion in terminating Mother's parental rights to Child on the basis of section 2511(a)(1) and (b). To the extent Mother contends she should have been afforded more time to have another scheduled termination hearing, we will not toll the well-being and permanency of Child indefinitely in the hope that Mother will summon the ability to handle the responsibilities of parenting him. ***In re Adoption of C.L.G.***, 956 A.2d at 1007-1008. Accordingly, we affirm the order terminating Mother's parental rights to Child so that Paternal Grandmother may adopt him.

Order affirmed.