

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN THE INTEREST OF: S.R.Q.

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: C.R., FATHER

No. 1188 MDA 2013

Appeal from the Decree June 10, 2013  
In the Court of Common Pleas of York County  
Orphans' Court at No(s): 2012-0111

BEFORE: DONOHUE, J., OTT, J., and PLATT, J.\*

MEMORANDUM BY OTT, J.:

**FILED DECEMBER 24, 2013**

C.R. ("Father") appeals from the decree entered June 10, 2013, in the York County Court of Common Pleas, granting the petition of M.L. and A.L. ("prospective adoptive parents") to involuntarily terminate his parental rights to his son, S.R.Q. ("Child"), born in November of 2012.<sup>1</sup> On appeal, Father argues the trial court erred in finding that the prospective adoptive parents met their burden of proving termination was warranted under 23 Pa.C.S. § 2511(a)(6). For the reasons that follow, we affirm.

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> We note that prospective adoptive parents currently have custody of Child and filed an intention to adopt Child on December 3, 2012. Therefore, they have standing to seek the involuntary termination of Father's parental rights. 23 Pa.C.S. § 2512(a)(3). Furthermore, the same day the trial court entered the termination decree, it entered a second decree confirming B.Q.'s ("Mother") voluntary consent to the adoption.

The testimony at the termination hearing revealed the following. Father and Mother met in December of 2011, and began living together in January of 2012. At the end of February or beginning of March, the couple moved to Louisiana. Shortly thereafter, they learned that Mother was pregnant with Child. Father testified that although Mother wanted to place Child for adoption, he disagreed, and told her that either he or his family would raise Child. Their relationship quickly dissolved, and on May 14, 2012, both Mother and Father returned, separately, to York County, Pennsylvania. Approximately one week later, they had a "major blowout" and "contact [between them] started to cease." N.T., 5/28/2013, at 78. Father testified he tried to contact Mother by text and cell phone calls, but she never responded to him. He also tried to contact Mother's best friend through Facebook, but the friend did not respond to him either.<sup>2</sup>

On August 28, 2012, Father was incarcerated on a probation violation, and remained imprisoned until April 30, 2013. Father testified that, while he was in jail, he again tried to call Mother on her cell phone, but she refused to take his calls.<sup>3</sup> He explained, "There wasn't much I could do. I was in jail. I

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<sup>2</sup> Father testified he contacted Mother's friend "because [Mother] had some of [his] stuff" that he wanted returned. N.T., 5/28/2013, at 82. He did not testify that he tried to contact the friend to learn more about Mother's pregnancy or the baby.

<sup>3</sup> Father explained Mother would have had to set up an account with a credit card number to accept his phone calls from prison, but that she refused to do so. *Id.* at 13.

tried calling her a couple of times. That was about it.” **Id.** at 12. He testified he did not know where Mother was living, and did not know how to contact her except through her cell phone. Father also did not try to contact maternal grandmother because, although he knew the house that she lived in, he did not know her actual address, and he knew that she did not like him.

In October of 2012, Father received correspondence from the attorney for the prospective adoptive parents, requesting that he voluntarily consent to the adoption of Child after the birth. On November 3, 2012, Father sent a letter to the attorney refusing to voluntarily relinquish his parental rights. Shortly thereafter Child, a boy, was born. On November 14, 2012, Mother signed a voluntary consent to the adoption. Sometime thereafter, Father received notice from the prospective adoptive parents’ attorney that Child was born. On January 1, 2013, and again on February 28, 2013, Father sent a letter to the attorney with a list of questions regarding his rights as father of Child. The attorney responded to Father that “she would not be able to help [him], and [he] should seek an attorney.” **Id.** at 86. He claimed he wrote letters to several attorneys asking them to take his case, but none agreed to do so. Father also testified that if he were granted custody of

Child, Child would live with his mother, since Father does not have a place of his own,<sup>4</sup> and that he would see Child “[a]s much as [he] could.” *Id.* at 21.

On April 4, 2013, the prospective adoptive parents filed three petitions: (1) a petition for the involuntary termination of Father’s parental rights; (2) a petition to confirm Mother’s consent to adoption; and (3) a petition for adoption. On May 2, 2013, the trial court appointed Bernard Ilkhanoff, Esq. to represent Father, and Heather Reynosa, Esq. as Guardian *Ad Litem* for Child. The termination and adoption hearing was conducted on May 28, 2013. On June 10, 2013, the trial court entered the following two decrees: (1) a decree confirming the consent of Mother to the adoption of Child, and terminating her parental rights, and (2) a decree involuntarily terminating Father’s parental rights to Child.<sup>5</sup> Custody of Child was awarded to the prospective adoptive parents. This timely appeal by Father follows.

In his sole argument, Father asserts trial court abused its discretion in finding that the prospective adoptive parents met their burden of proving termination of his parental rights was warranted pursuant to 23 Pa.C.S. § 2511(a)(6). Specifically, he contends the record does not support a finding

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<sup>4</sup> Since his release from prison, Father has been living with a family friend who has a criminal record. Significantly, Father’s mother was not present at the termination hearing, and did not testify regarding her ability or willingness to assist Father in raising Child.

<sup>5</sup> The trial court stated its decision in open court on June 5, 2013, (N.T., 6/5/2013, at 1-9), but filed the decrees on June 10, 2013.

that he knew of Child's birth and that he failed to make reasonable efforts to maintain substantial and continuing contact with Child.

We review an appeal from the termination of parental rights 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.***, [36 A.3d 567, 572 (Pa. 2011) (plurality opinion)]. As has been often stated, an abuse of discretion does not result merely because the reviewing court might have reached a different conclusion. ***Id.***; ***see also Samuel Bassett v. Kia Motors America, Inc.***, 34 A.3d 1, 51 (Pa. 2011); ***Christianson v. Ely***, 838 A.2d 630, 634 (Pa. 2003). Instead, a decision may be reversed for an abuse of discretion only upon demonstration of manifest unreasonableness, partiality, prejudice, bias, or ill-will. ***Id.***

As we discussed in ***R.J.T.***, there are clear reasons for applying an abuse of discretion standard of review in these cases. We observed that, unlike trial courts, appellate courts are not equipped to make the fact-specific determinations on a cold record, where the trial judges are observing the parties during the relevant hearing and often presiding over numerous other hearings regarding the child and parents. ***R.J.T.***, 9 A.3d at 1190. Therefore, even where the facts could support an opposite result, as is often the case in dependency and termination cases, an appellate court must resist the urge to second guess the trial court and impose its own credibility determinations and judgment; instead we must defer to the trial judges so long as the factual findings are supported by the record and the court's legal conclusions are not the result of an error of law or an abuse of discretion. ***In re Adoption of Atencio***, 650 A.2d 1064, 1066 (Pa. 1994).

***In re Adoption of S.P.***, 47 A.3d 817, 826-827 (Pa. 2012).

The termination of parental rights involves a bifurcated analysis, governed by Section 2511 of the Adoption Act. This Court has explained:

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.

***In re L.M.***, 923 A.2d 505, 511 (Pa. Super. 2007), *citing* 23 Pa.C.S.A. § 2511. As stated above, the burden is on the party seeking termination, here the prospective adoptive parents, to establish the statutory grounds for termination by clear and convincing evidence. ***In re C.M.S.***, 832 A.2d 457, 461 (Pa. Super. 2003), *appeal denied*, 859 A.2d 767 (Pa. 2004).

In the present case, the prospective adoptive parents sought to terminate Father's parental rights under Section 2511(a)(6) and (b):

**§ 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:

\* \* \*

(6) In the case of a newborn child, the parent knows or has reason to know of the child's birth, does not reside with the child, has not married the child's other parent, has failed for a period of four months immediately preceding the filing of the petition to make reasonable efforts to maintain substantial and continuing contact with the child and has failed during the same

four-month period to provide substantial financial support for the child.

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**(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. § 2511(a)(6), (b).

Therefore, to satisfy the requirements of Section 2511(a)(6), the prospective adoptive parents were required to demonstrate, by clear and convincing evidence: (1) Child is a newborn child; (2) Father knew or had reason to know of his birth; (3) Father does not reside with Child; (4) Father is not married to Mother; (5) Father failed for a period of four months prior to the filing of the petition (December 4, 2012, to April 4, 2013) to make "reasonable efforts to maintain substantial and continuing contact" with Child; and (6) during that same time period, Father failed to provide "substantial financial support" for Child.

Here, Father does not dispute that Child is a newborn, that he does not reside with Child, that he is not married to Mother, and that he has failed to provide any financial support to Child. Rather, on appeal, he challenges the trial court's determinations that he knew or should have known of Child's

birth, and that he failed to make “reasonable efforts to maintain substantial and continuing contact with [C]hild.” 23 Pa.C.S. § 2511(b)(6).

Father first argues that he “would have been hard pressed to ‘have reason to know’ of [C]hild’s birth because Mother essentially blocked all attempts to communicate with [him] after they returned from Louisiana.” Father’s Brief at 12. He claims he attempted both prior to and during his incarceration to keep in contact with Mother about the pregnancy but that she refused to communicate with him. Moreover, he states Mother would not accept his cell phone calls or respond to his text messages, and she moved three times since her return from Louisiana. Therefore, he asserts he had no way to contact her.

However, Father acknowledges that he received notice of Child’s birth from the prospective adoptive parents’ counsel “[s]ometime [in the] middle of November, end of November.” N.T., 5/28/2013, at 91. Moreover, he testified that at the time they learned of Mother’s pregnancy, they knew she was “estimated” to be “six to ten weeks” pregnant. N.T., 5/28/2013, at 76. Therefore, he had reason to know of the expected time of child’s birth, and had **actual knowledge** shortly after the child was born. ***See In re Adoption of M.R.B.***, 25 A.3d 1247, 1252 (Pa. Super. 2011) (finding father had reason to know of child’s birth despite the fact that adoption agency failed to contact him after the child was born as promised; father, however, had attended one ultrasound examination and was aware of child’s due date). Accordingly, this argument fails.



Father also contends the trial court abused its discretion in finding that he failed to make “reasonable efforts to maintain substantial and continuing contact” with Child. Specifically, he argues that “[d]espite [his] numerous attempts to keep abreast of the pregnancy, Mother was not sharing information about [C]hild with [him].” Father’s Brief at 10. He did not know where Mother was living, and had no other means to contact her while he was in prison.<sup>6</sup> He contends that he objected to the proposed adoption and wrote to prospective adoptive parents’ counsel three times “never wavering about his intentions to keep his son.” *Id.* at 11. He also claims that that he wrote to other lawyers while he was in prison, but none offered their assistance. Father concludes that “[t]he record is replete with instances where he genuinely tried to reach Mother to establish contact with his son.” *Id.* at 13.

The trial court, however, found that Father’s efforts to contact Child were minimal, at best. The court opined:

During the time that the child was born, the father undertook no legal action whatsoever to claim any rights of custody, and he had not provided any support. He also testified that he did not know how to reach the mother, and yet he did have knowledge of a friend by the name of [L.M.], who was acquainted with both the father and the mother.

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<sup>6</sup> Mother testified that she lived with a friend when she returned from Louisiana in May 2012 until September 2012. *Id.* at 48. She then lived with maternal grandmother from September 2012 until early April 2013. *Id.* at 24. Therefore, during the relevant four month statutory period, Mother was living with maternal grandmother.

The father testified that [L.M.] had been asked by him to contact the natural mother so as to get some of his own items back. There was no testimony that he asked [her] to contact the mother to see how the child was doing and/or what the status of the mother and the child was.

Father did testify that when they separated in May of 2012, he disagreed with the mother of having the child placed for adoption, yet at no time did he come forth to claim any rights of custody. He is also an individual who did not seek any rights of custody, and he did not come forth to contact the mother as to assist her during the time of her pregnancy as well as after the child was born.

Father stated that he went to parenting classes while incarcerated and indicated he got two certificates for completion over an eight-week period. Once again, even despite this parenting class situation that he went through, he did not follow through with contacting any of the counselors at the prison to assist him in contacting the natural mother.<sup>[7]</sup>

... He also stated, and this is very concerning to the Court, that if he received custody of his child, he essentially would turn the child over to his mother.

His mother was not presented as a witness, and it is clear to the Court that he has made no efforts whatsoever to be involved in this young child's life.

The mother testified that the father had been physically and verbally abusive toward her after she got pregnant and that the father knew where her mother lived and there was no contact by him to that address.

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<sup>7</sup> Although Father testified the counselors in jail "don't do anything" except to "make sure you're okay[,]," the trial court, as fact finder, apparently found this testimony not credible. *Id.* at 89. *See S.P., supra.* Further, Father did not testify that he even tried to elicit the help of his counselor or parenting class instructor.

This father has never seen his child. This father failed to contact the mother so as to be able to see his child and/or supply any emotional or financial support.

The father was aware that the mother wanted to place the child for adoption, yet he never came forth to take any steps by which to involve himself in the child's life.

There was never a petition filed to the Court's knowledge to contest any paternity, and the Court assumes he admits by his testimony that he is the father.

The father did have the ability to contact the mother's mother and failed to do so.

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The father in this instance has not shown any reasonable firmness in overcoming any obstacles that he perceived to exist as to being able to be involved in his child's life. He failed to even contact the mother after the child was born despite knowing the child had been born.

N.T., 6/5/2013, at 3-7.

Our review of the record reveals no abuse of discretion on the part of the trial court. It is well-established that a parent "must use all available resources to preserve the parental relationship and must exercise 'reasonable firmness' in resisting obstacle placed in the path of maintaining the parent-child relationship." **C.M.S.**, 832 A.2d at 462, quoting **In re Shives**, 525 A.2d 801 (Pa. Super. 1987). Although Mother, by refusing Father's telephone calls, arguably placed obstacles in Father's path to developing a relationship with Child, the record reveals that Father did not "use all available resources" to overcome those obstacles. He simply stopped trying to call Mother. Significantly, he did not try to reach Mother through maternal grandmother, nor did he enlist the help of his family, or

mutual friends, to assist him in asserting his custodial rights.<sup>8</sup> While he states in his brief that his mother “was not in a position to help[,]” he testified at the termination hearing that Child would live with his mother if he were to gain custody. Further, he also claims he was unable to provide financial support to Mother and Child because he was incarcerated. However, he admitted that his mother put \$20.00 each month in his prison account, but that he never asked her to send the money to Mother for Child because he did not “see it as her responsibility.” N.T., 5/28/2013, at 93.

We emphasize “[a] parent cannot protect his parental rights by merely stating that he does not wish to have his parental rights terminated.” **C.M.S.**, 832 A.2d at 464. Although Father contends in his brief that “[t]he record is replete with instances where he genuinely tried to reach Mother to establish contact with his son,”<sup>9</sup> we disagree. Indeed, most telling is his own testimony: “There wasn’t much I could do. I was in jail. I tried calling her phone a couple times. That was about it.” N.T., 5/28/2013 at 12. Those “couple” of phone calls,<sup>10</sup> his two letters to the attorney for the prospective

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<sup>8</sup> Mother testified that “numerous times” since Child’s birth, she has seen the family friend with whom Father is currently living. **Id.** at 27-28. Significantly, Father never tried to enlist his help to contact Mother.

<sup>9</sup> Father’s Brief at 13.

<sup>10</sup> Although Mother acknowledged that Father tried to call her several from prison, she testified that she “might have gotten maybe one [call] **after** [Child] was born.” N.T., 5/28/2013, at 40 (emphasis supplied).

adoptive parents, and his purported letters to unnamed attorneys seeking their representation, denote the only efforts he took to assert his custodial rights to Child. Further, it bears remarking Father testified that even if he were granted custody, he would turn over daily care of Child to his mother, a woman who was “not in a position” to help him assert his rights before his release,<sup>11</sup> and who did not appear at the termination hearing. Therefore, we agree with the finding of the trial court that Father failed to make “**reasonable efforts** to maintain **substantial and continuing** contact with [C]hild.” 23 Pa.C.S. § 2511(a)(6) (emphasis supplied). Accordingly, Father’s claim fails.

Although Father does not challenge the decree with respect to Section 2511(b), in light of the requisite bifurcated analysis, we must review it. We have explained that:

Subsection 2511(b) focuses on whether termination of parental rights would best serve the developmental, physical, and emotional needs and welfare of the child. In *In re C.M.S.*, 884 A.2d 1284, 1287 (Pa. Super. 2005), this Court stated, “Intangibles such as love, comfort, security, and stability are involved in the inquiry into the needs and welfare of the child.” In addition, we instructed that the trial court must also discern the nature and status of the parent-child bond, with utmost attention to the effect on the child of permanently severing that bond. *Id.* However, in cases where there is no evidence of a bond between a parent and child, it is reasonable to infer that no bond exists. *In re K.Z.S.*, 946 A.2d 753, 762-63 (Pa. Super. 2008). Accordingly, the extent of the bond-effect analysis

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<sup>11</sup> Father’s Brief at 12.

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).

The trial court concluded that termination of Father's parental rights would best serve the developmental, physical, and emotional needs and welfare of Child. The court opined:

The Court finds that as to the needs and welfare of the child, [the prospective adoptive parents] have been providing appropriate care and custody for the child and that the child has bonded to them.

The natural mother is quite satisfied with how her child is progressing within the care of the adopting family. To sever that bond, the Court suspects, would be very detrimental to this minor child.

N.T., 6/5/2013, at 8.

Here, Father has never met Child and, therefore, has no bond with him. Child has been living with prospective adoptive parents since his birth more than one year ago. Mother testified she has had the opportunity to visit with Child six or seven times since he has been placed with the prospective adoptive parents and has no concerns about their care of her son.<sup>12</sup> N.T., 5/28/2013, at 54. She also testified that based on her

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<sup>12</sup> Mother knew the prospective adoptive parents before she agreed to allow them to adopt her Child. She testified: "I knew their situation, and I knew they would be very good parents and they could offer [Child] more than what me or [Father] could." **Id.** at 26. Prospective adoptive mother has a heart condition that would make it difficult, if not impossible, for her to carry a baby. **Id.** at 62-63.

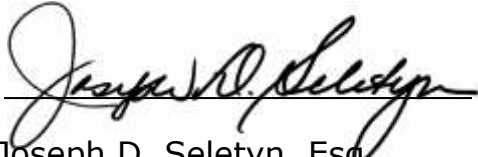
observations, Child has bonded with the prospective adoptive parents. **Id.** at 54-55. Moreover, Father, himself, testified he believed there would be no impact on Child if his parental rights were terminated because Child is “[t]oo young to understand the whole situation.” **Id.** at 22. Both prospective adoptive parents testified that Child is healthy and developing on schedule, and that they are in a position to provide him with a “loving, stable home” and “[e]verything he really is ever going to need.” **Id.** at 65, 67-68, 72-73. Furthermore, we note that the Guardian *ad Litem* filed a Memorandum of Law in the trial court, recommending that Father’s rights be involuntarily terminated, and has joined in the appellee brief filed by the prospective adoptive parents, requesting that this Court affirm the termination order on appeal. Accordingly, we detect no basis to disturb the trial court’s finding that termination of Father’s parental rights is in the best interests of Child pursuant to Section 2511(b).

Because we conclude that the trial court did not abuse its discretion in involuntarily terminating Father’s parental rights under Section 2511(a)(6) and (b), we affirm the decree entered on June 10, 2013.

Decree affirmed.

J-A32027-13

Judgment Entered.

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

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 12/24/2013