

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN RE: ADOPTION OF: T.S., A MINOR

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: G.S., NATURAL FATHER

No. 1189 WDA 2013

Appeal from the Order entered July 3, 2013,  
in the Court of Common Pleas of Fayette County,  
Orphans' Court, at No(s): 3 ADOPT 2012.

BEFORE: BOWES, ALLEN, and LAZARUS, JJ.

MEMORANDUM BY ALLEN, J.:

**FILED DECEMBER 13, 2013**

Appellant, G.S. ("Father"), appeals from the order involuntarily terminating his parental rights to T.S., ("Child") (d.o.b. 11/18/10).<sup>1</sup> We affirm.

Father was incarcerated prior to Child's birth and remained incarcerated when, on February 15, 2012, CYS filed a petition for the involuntary termination of Father's parental rights. Following a hearing on July 12, 2012, the trial court denied CYS's petition on the basis that, despite being incarcerated, Father had attended parental education classes, worked to obtain his Graduate Equivalent Diploma (G.E.D.), and attempted to maintain contact with Child. The trial court noted that Father's earliest release date was December 6, 2012, and if released, Father would have to find and maintain suitable safe housing for a minimum of six months. On

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<sup>1</sup> B.A.S. ("Mother") voluntarily relinquished her parental rights to Child. Mother is not a party to this appeal, nor has she separately appealed her voluntary relinquishment of parental rights.

January 11, 2013, this Court affirmed the trial court's decision. ***See In re: T.S.***, 1071 WDA 2012 (Pa. Super. 2011) (unpublished memorandum).

The trial court required Father to complete a Family Service Plan ("FSP"). Father's objectives for the FSP were: (1) visit Child; (2) complete treatment for drug and alcohol and mental health issues; (3) attend parenting classes; and (4) obtain appropriate housing. N.T., 7/3/13, at 19-26.

On February 1, 2013, CYS filed another petition to involuntarily terminate Father's parental rights, and change the Child's goal to adoption. On July 3, 2013, the trial court held a hearing on the petition. That same day, the trial court entered its order terminating Father's parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(1), (2), (5), (8) and (b).

Father timely filed a notice of appeal, along with a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b). Father raises the following issues.

1. Did the [t]rial [c]ourt err by abusing its discretion in terminating [Father's] rights as petitioner failed to sustain its burden of proof by clear and convincing evidence to show that [Father] evidenced a settled purpose of relinquishing a settled claim on the child or refused to perform parental duties[?]
2. Did the [t]rial [c]ourt err by abusing its discretion in terminating [Father's] rights as petitioner, [Father], completed the parenting plan to the best of his ability while incarcerated[?]

Father's Brief at 6.

We review appeals from the involuntary termination of parental rights according to 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.*; [*In re*] *R.I.S.*, 613 Pa. 275, 283-284, 36 A.3d 567, 572 (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.*, 613 Pa. 371, 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.*

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. 9, 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, 650 A.2d 1064, 1066 (Pa. 1994).

*In re Adoption of S.P.*, 47 A.3d 817, 826-27 (Pa. 2012).

Section 2511 of the Adoption Act provides in pertinent part:

**(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.

\* \* \*

**(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(a)(1), (b). Although the trial court in this case entered its order terminating Father's parental rights under section 2511(a)(1), (2), (5) and (8), "we need only agree with [a trial court's] decision as to any one subsection [of 2511(a), along with 2511(b),] in order to affirm the termination of parental rights." *In re B.L.W.*, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*).

We have interpreted 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 Z.S.W.*, 946 A.2d 726, 730 (Pa. Super. 2008).

Regarding the definition of “parental duties,” this Court has stated the following:

[Our] Supreme Court has defined parental duty 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 his or her physical and emotional needs.

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Although a parent is not required to perform the impossible, he must act affirmatively to maintain his relationship with his child, even in difficult circumstances. A parent has the duty to exert

himself, to take and maintain a place of importance in the child's life.

Thus, a parent's basic constitutional right to the custody and rearing of his or her child is converted, upon the failure to fulfill his or her parental duties, to the child's right to have proper parenting and fulfillment of his or her potential in a permanent, healthy, safe environment. A parent cannot protect his parental rights by merely stating that he does not wish to have his rights terminated.

***In re: B., N.M.***, 856 A.2d 847, 855 (Pa. Super. 2004) (quotation marks and citations omitted).

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 Section 2511(b).

***In the Matter of the Adoption of Charles E.D.M., II***, 708 A.2d at 91-92 (Pa. 1998).

Father argues that the trial court abused its discretion in terminating his parental rights because the evidence was insufficient to warrant termination under Section 2511(a)(1). Specifically, Father argues that he cannot fulfill his FSP goals while he is incarcerated, and that his incarceration is the only ground upon which the trial court based its decision. We disagree. Although Father's incarceration was a predominant factor in this case, the trial court completed a holistic analysis consistent with settled law.

The trial court found:

While [Father] was granted parole on May 31, 2013, it is uncontested that he was still incarcerated at the time of the hearing due to his inability to find a safe and suitable place to live. At the time of the hearing[,] he had not been able to secure a job or arrange for dependable transportation. His situation on the day of the hearing was a continuation of the circumstances which led to [C]hild's placement in foster care on the day of his birth. [Father] has had a long and continuing incapacity to parent [C]hild before [C]hild was born, and has never provided basic and essential care to him. Even when [Father] is released from prison, he will reside in a half-way house while he obtains adequate housing, employment, and transportation. In addition, [Father] would have to acquire hands-on parenting skills to properly meet the needs of a pre-school-age toddler. Moreover, while [Father] is attempting to do all of these things, [C]hild is not static, but is continuing to grow physically, mentally and emotionally.

Trial Court Opinion, 8/16/13, at 3-4.

The trial court's reasoning was supported by the testimony of Ms. Colleen Zielinsky, a CYD caseworker, who explained that Father did not complete his FSP goals. Ms. Zielinsky testified that Father did not complete his goal of visitation, or suitably address his drug and alcohol and mental health issues. N.T., 7/3/13, at 20-22. Ms. Zielinsky further stated that Father's completion of parenting classes while incarcerated would not satisfy his FSP goal because Father still needed to demonstrate his parenting skills through visits with Child. *Id.* at 31. Furthermore, Ms. Zielinsky concluded that Father's goal to maintain appropriate housing was unmet because Father had not demonstrated an ability to maintain housing for a minimum of six months, including paying for utilities. *Id.* at 25. *See In re K.Z.S.,*

946 A.2d 753, 758 (Pa. Super. 2008) (“A parent’s vow to cooperate, after a long period of uncooperativeness regarding the necessity or availability of services, may properly be rejected as untimely or disingenuous.”).

Our review of the record confirms that the trial court’s determinations regarding Father’s failure to perform parental duties pursuant to section 2511(a) are supported by competent evidence. ***In re Adoption of S.P.***, 47 A.3d at 826-27.

We next recognize that the trial court must also consider how termination affects the needs and welfare of the Child pursuant to 23 Pa.C.S.A. § 2511(b). Under section 2511(b), the trial court’s inquiry is specifically directed to whether termination would best serve the developmental, physical and emotional needs of the child. ***See In re C.M.S.***, 884 A.2d 1284, 1286-87 (Pa. Super. 2005), *appeal denied*, 587 Pa. 705, 897 A.2d 1183 (2006). “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). We have 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. ***See id.***

Here, the trial court found that the Child’s best interests were served by termination of Father’s parental rights “by allowing [Child] to enjoy stability and parental nurturing with the foster family ... with whom [Child]



has lived since April 4, 2011.” Trial Court Opinion, 8/16/13, at 4. This determination was supported by the testimony of the licensed psychologist, Carol Patterson, who completed a bonding assessment, and thereafter offered her expert opinion that termination of Father’s parental rights was in the Child’s best interests. N.T., 7/3/13, at 12. Ms. Patterson explained that Child demonstrated a very strong bond and attachment with the foster parents, and that he has been very well cared for and responds well to the consistent nurturing environment. *Id.* at 11.

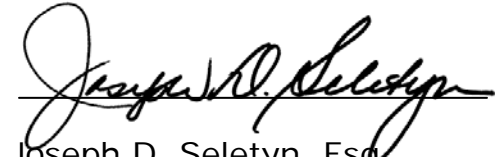
The trial court observed, “[Father] has had a long and continuing incapacity to parent [C]hild since before [C]hild was born, and has never provided basic and essential care to him.” Trial Court Opinion, 8/16/13, at 4. The trial court further credited Ms. Zielinsky’s testimony that the Child “cannot be bonded to a parent whom he has never seen or interacted with physically.” *Id.* at 2. ***See In re K.Z.S.***, 946 A.2d at 762-63 (“In cases where there is no evidence of any bond between the parent and child, it is reasonable to infer that no bond exists. The extent of any bond analysis, therefore, necessarily depends on the circumstances of the particular case.”).

Based on our review of the record, we conclude that the trial court did not abuse its discretion in terminating Father’s parental rights to Child pursuant to section 2511 (b). We therefore affirm the termination of Father’s parental rights.

J-S69015-13

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 12/13/2013