J-S78038-12

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: D.Y.T.N., MINOR	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
	:	
APPEAL OF: V.I.N., MOTHER	:	
	:	No. 1252 MDA 2012

Appeal from the Decree entered June 8, 2012,
in the Court of Common Pleas of Berks County,
Orphans' Court at No.: 82073

IN RE: M.Y.T.-N., MINOR	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
	:	
APPEAL OF: V.I.N., MOTHER	:	
	:	No. 1253 MDA 2012

Appeal from the Decree entered June 8, 2012,
in the Court of Common Pleas of Berks County,
Orphans' Court at No.: 82074

IN RE: S.R.N., MINOR	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
	:	
APPEAL OF: V.I.N., MOTHER	:	
	:	No. 1254 MDA 2012

Appeal from the Decree entered June 8, 2012,
in the Court of Common Pleas of Berks County,
Orphans' Court at No.: 82075

BEFORE: FORD ELLIOTT, P.J.E., PANELLA, and ALLEN, JJ.

MEMORANDUM BY ALLEN, J.: Filed: January 31, 2013

V.I.N. ("Mother") appeals from the decrees entered on June 8, 2012 in the Court of Common Pleas of Berks County, terminating her parental rights

to her son, D.Y.T.N., born in December of 2003; her son M.Y.T.-N., born in July of 2005; and her daughter, S.R.N., born in February of 2009 (collectively "the children"), pursuant to 23 Pa.C.S.A. § 2511.[1] We affirm and grant counsel's petition to withdraw.

The trial court related the following factual history:

> Mother's involvement with [Berks County Children and Youth Services ("BCCYS")] began on March 1, 2010, when Mother's youngest child, S.R.N., who at the time was thirteen (13) months old, was treated at the hospital for a skin infection to her buttocks and vaginal area, which had been caused by an untreated abscess. While being treated at the hospital, the medical staff also noticed multiple black and blue marks on the toddler's face, forearm, and thigh, and contacted BCCYS to report a case of suspected child abuse. The child was released from the hospital into the care of Mother and her paramour with intensive casework sessions in place. Less than two (2) weeks later, S.R.N. was again admitted to the hospital. The toddler's injuries this time were much more serious. A CT scan revealed that S.R.N.'s head was bleeding. Child was unresponsive, having seizures and was placed on a ventilator. The child's treating physician concluded that she believed, to a high degree of medical certainty, that S.R.N.'s injuries were caused by non-accidental trauma. (Exhibit 11 — Final Report of Dr. L. Duda). S.R.N., who suffered from left frontal lobe contusions, multiple bilateral rib fractures (seven on the right and nine on the left), spelenic and adrenal hemorrhages, and bilateral retinal hemorrhages, was determined to be a victim of "Shaken Baby Syndrome." (Exhibit 11 — Final Report of Dr. L. Duda). (Notes of Testimony, hereinafter N.T., 6/4/12, 66-67). Both Mother and her paramour, who were the child's primary caregivers, denied causing or having knowledge of the cause of S.R.N.'s injuries. Mother and her paramour were indicated as perpetrators of child abuse regarding S.R.N. on April 16, 2010. As of the date of the termination hearing, Mother continued to deny causing S.R.N.'s

[1] On the same day, the trial court also entered decrees for the involuntary termination of parental rights of J.R.R. to S.R.N. and the parental rights of D.T.-T., to D.Y.T.N. and M.Y.T.-N. Neither J.R.R. nor D.T.-T. appealed.

> injuries and provided no reasonable explanation for how S.R.N. was so severely injured while in her care without her knowledge. (N.T., 6/4/12, 124-25).
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> Following S.R.N.'s medical emergency, the children were placed in the care of a maternal aunt. Mother was offered daily, supervised visits with the children. Mother was also informed of the children's upcoming medical appointments and encouraged to attend. During this time, there were issues with Mother's attendance at both her visits and the children's medical appointments. On May 13, 2010, upon agreement of Mother, the children were placed in the temporary legal custody of BCCYS. Mother was ordered, in relevant part, to: (1) cooperate with parenting education; (2) establish and maintain appropriate housing and income; (3) cooperate with casework sessions and any recommended treatment; (4) visit and interact with the children in an appropriate manner; and (5) cooperate with mental health evaluation and any recommended treatment. On October 19, 2010, at a later dependency hearing, Mother was further ordered to cooperate with (6) domestic violence counseling and (7) random urinalysis screening.

Trial Court Opinion, 8/1/12, at 4-6.

On June 6, 2011, BCCYS filed its petition for the involuntary termination of Mother's parental rights, pursuant to 23 Pa.C.S.A. § 2511(a)(1), (2), (5), and (8). The trial court held a hearing on the petition on June 4, 2012.

At the hearing, Jeni Dudash, a BCCYS caseworker; J.R.R., putative father of S.R.N.; D.T.-T., presumptive father of D.Y.T.N. and M.Y.T.-N.; and Mother testified. Ms. Dudash testified to the factual history outlined above. N.T., 6/4/12, 65-68. Ms. Dudash also addressed Mother's compliance with the services she was directed to complete, but testified that Mother failed to complete those services. ***Id.*** at 68. With regard to establishing and maintaining appropriate housing and income, she testified that Mother has

successfully maintained a stable residence with her paramour, and that she is employed on a full-time basis. ***Id.*** at 69. She also testified that Mother regularly participated in casework with the placement caseworker on a monthly basis. ***Id.*** Ms. Dudash testified that Mother participated in a parenting evaluation on September 13, 2010, which resulted in a recommendation that she participate in substance abuse testing, participate in a psychological evaluation, and participate in domestic violence counseling. ***Id.***

Ms. Dudash, however, testified that Mother's participation in mental health treatment was irregular, and that Mother attended only eleven out of twenty-three scheduled appointments. Moreover, she testified that Mother's therapist reported, "[M]other did not appear to be invested in her treatment and did not accept responsibility for [S.R.N.'s] injuries." ***Id.*** Mother's participation in domestic violence treatment was also inconsistent, and she failed to complete the program. ***Id.*** at 70. When asked whether Mother remedied any of the circumstances that necessitated placement of the children, Ms. Dudash testified:

> Well, [M]other just says that these injuries mysteriously happened to [S.R.N.]. She does not have any clue how they happened. She does not believe that her paramour caused the injuries. She just has no explanation. And she's had a flat affect numerous times when she's been confronted about [S.R.N.]'s injuries. She has just this nonchalant type of approach with the children. She hasn't been proactive in saying I want my children back, I'll do anything it takes, I'll separate from [her paramour]. She's understood that we were trying to figure out why she doesn't know what happened to her daughter through the mental health treatment, through screens, you know, the urinalysis screens, to see if it was drug related. But she just has not been proactive and actively seeking domestic violence

> treatment and participating in mental health treatment. She seems to be happy just having the biweekly visits with her children and going on about her life without raising them. She doesn't even have pictures of the children displayed in her home.

Id. at 74.

On June 8, 2012, the trial court entered its decrees terminating Mother's parental rights to the children. On July 6, 2012, Mother timely filed this notice of appeal and concise statement of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b).

As a preliminary matter, Mother's counsel seeks to withdraw representation pursuant to ***Anders v. California***, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), and ***Commonwealth v. Santiago***, 602 Pa. 159, 978 A.2d 349 (2009). ***Anders*** principles apply to appeals involving termination of parental rights. ***See In re S.M.B.***, 856 A.2d 1235 (Pa. Super. 2004). ***Anders*** and ***Santiago*** require counsel to: 1) petition the Court for leave to withdraw, certifying that after a thorough review of the record, counsel has concluded the issues to be raised are wholly frivolous; 2) file a brief referring to anything in the record that might arguably support the appeal; and 3) furnish a copy of the brief to the appellant and advise him or her of the right to obtain new counsel or file a *pro se* brief to raise any additional points the appellant deems worthy of review. ***Santiago***, 602 Pa. at 173-79, 978 A.2d at 358-61; ***In re Adoption of V.G.***, 751 A.2d 1174, 1176 (Pa. Super. 2000). Substantial compliance with these

requirements is sufficient. ***Commonwealth v. Wrecks***, 934 A.2d 1287, 1290 (Pa. Super. 2007). "After establishing that the antecedent requirements have been met, this Court must then make an independent evaluation of the record to determine whether the appeal is, in fact, wholly frivolous." ***Commonwealth v. Palm***, 903 A.2d 1244, 1246 (Pa. Super. 2006) (*quoting* ***Commonwealth v. Townsend***, 693 A.2d 980, 982 (Pa. Super. 1997)).

In ***Santiago***, our Supreme Court addressed the briefing requirements where court-appointed counsel seeks to withdraw representation on appeal:

> Neither ***Anders*** nor [***Commonwealth v.***] ***McClendon***[, 495 Pa. 457, 434 A.2d 1185 (1981)] requires that counsel's brief provide an argument of any sort, let alone the type of argument that counsel develops in a merits brief. To repeat, what the brief must provide under ***Anders*** are references to anything in the record that might arguably support the appeal.
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> Under ***Anders***, the right to counsel is vindicated by counsel's examination and assessment of the record and counsel's references to anything in the record that arguably supports the appeal.

Santiago, 602 Pa. at 176-177, 978 A.2d at 359-360. Thus, the Court held:

> [I]n the ***Anders*** brief that accompanies court-appointed counsel's petition to withdraw, counsel must: (1) provide a summary of the procedural history and facts, with citations to the record; (2) refer to anything in the record that counsel believes arguably supports the appeal; (3) set forth counsel's conclusion that the appeal is frivolous; and (4) state counsel's reasons for concluding that the appeal is frivolous. Counsel should articulate the relevant facts of

> record, controlling case law, and/or statutes on point that have led to the conclusion that the appeal is frivolous.

Id. at 178-79, 978 A.2d at 361.

Instantly, counsel filed a petition to withdraw representation. The petition states that counsel conscientiously and thoroughly reviewed the record of the proceedings, and concluded that the appeal is frivolous. The petition also states that counsel informed Mother, by United States mail, of her appellate rights. Application/Petition for Leave to Withdraw Appearance, filed 9/7/12, at 2. The letter itself, attached to the petition, advises Mother of her right to raise questions about the jurisdiction of the court and to question the legality of the trial court's decision, and of her right to retain new counsel, proceed *pro se*, or to raise any additional points that she may deem worthy of consideration.

In his ***Anders*** brief, counsel provides reasons for his conclusion that the appeal is wholly frivolous. Mother's Brief at 33-38. Counsel also refers to items in the record that arguably support the appeal. Mother's Brief at 29-32. Additionally, counsel provides a well-written and detailed summary of the facts and procedural history of the case, with citation to the record and relevant law. Mother's Brief at 5-38. Thus, counsel has substantially complied with the requirements of ***Anders*** and ***Santiago***.

As Mother has filed neither a *pro se* brief nor a counseled brief with new privately retained counsel, we review this appeal based on the issues raised in the ***Anders*** brief:

> A. Did the trial court err in terminating the [Mother's] parental rights because the evidence presented by the Appellee, Berks County Children and Youth Services, was insufficient to support the trial court's decision?
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> B. Did the trial court err in terminating the [Mother's] parental rights because the decree entered by the trial court constituted abuse of discretion or error of law?

Mother's Brief at 3.

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.***, [___ Pa. ___, ___, 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.***, [___ 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. 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 (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:
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> * * *
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> (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.
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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.

23 Pa.C.S.A. § 2511(a)(8), (b).

> [U]nder Section 2511, the court must engage in a bifurcated process prior to terminating parental rights. 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 after determining that the parent's conduct warrants termination of his or her parental rights must the court engage in the second part of the analysis: determination of the needs and welfare of the child under the standard of best interests of the child. Although a needs and welfare analysis is mandated by the statute, it is distinct from and not relevant to a determination of whether the parent's conduct justifies termination of parental rights under the statute. One major aspect of the needs and welfare analysis concerns the nature and status of the emotional bond between parent and child.

In re Adoption of R.J.S., 901 A.2d 502, 508 (Pa. Super. 2006). "[W]e 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*).

> To terminate parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(8), the following factors must be demonstrated: (1) the child has been removed from parental care for 12 months or more from the date of removal; (2) the conditions which led to the removal or placement of the child continue to exist; and (3) termination of parental rights would best serve the needs and welfare of the child. Section [2511] (a)(8) sets a 12-month time frame for a parent to remedy the conditions that led to the children's removal by the court. Once the 12-month period has been established, the court must next determine whether the conditions that led to the child's removal continue to exist, despite the reasonable good faith efforts of [the child welfare agency] supplied over a realistic time period. 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 child welfare agency] services.

In re K.Z.S., 946 A.2d 753, 758-759 (Pa. Super. 2008) (internal citations omitted).

As noted above, the children were placed, with Mother's consent, on May 13, 2010. At the time the termination petition was filed, on June 6, 2011, the children had been in placement for nearly thirteen months.

In its opinion pursuant to Pa.R.A.P. 1925(a), the trial court explained that the serious safety concerns that led to the children's placement continue to exist. Trial Court Opinion, 8/1/12, at 7. The court noted that Mother denies any involvement in S.R.N.'s severe injuries, and fails to offer any explanation of how the child was injured while in her care, without her knowledge. ***Id.*** The court noted, in sum, that Mother's failure to cooperate with the ordered services "leaves this [c]ourt with no assurance that mother can, within a reasonable time period, remedy the conditions which led to placement." ***Id.***

The trial court heard testimony that Mother refused to acknowledge the conditions that gave rise to the children's placement, namely the physical abuse of her child. Moreover, the court heard testimony that Mother failed to complete BCCYS's prescribed services targeted towards remedying the condition that gave rise to placement, namely domestic violence treatment and mental health treatment. As such, the trial court's findings on this issue are supported by the record.

Finally, the trial court found that termination of parental rights would best serve the needs and welfare of the children. The court explained:

> To date, Mother has not provided any indication or assurance that returning the children to her care would be a safe solution. While this [c]ourt acknowledges that Mother has attempted to participate in ***some*** of the ordered services, her failure to fully

> cooperate only lends to this [c]ourt's conclusion that Mother cannot provide a safe home for her children.

Id. at 8 (emphasis in original). After review of the certified record, the trial court opinion, and the briefs on appeal, we conclude that the trial court's findings are supported by the record, and that it reasonably concluded that the elements of section 2511(a)(8) were met by the facts before it. We discern no abuse of discretion or error of law on this issue. ***See In re Adoption of S.P.***, 47 A.3d at 826-27.

We proceed to section 2511(b). This Court has stated:

> Once the statutory requirement for involuntary termination of parental rights has been established under subsection (a), the court must consider whether the child's needs and welfare will be met by termination pursuant to subsection (b). In this context, the court must take into account whether a bond exists between child and parent, and whether termination would destroy an existing, necessary and beneficial relationship.
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> * * *
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> Above all else[,] adequate consideration must be given to the needs and welfare of the child. A parent's own feelings of love and affection for a child, alone, do not prevent termination of parental rights.

In re Z.P., 994 A.2d 1108, 1121 (Pa. Super. 2010) (internal citations, quotations, and corrections omitted).

On this issue, the trial court found that terminating Mother's parental rights would serve the emotional, physical, and developmental needs of the children. As described above, the court expressed considerable skepticism concerning Mother's ability to provide a safe home to the children, and found

that Mother's actions, including her failure to participate in services, evinced little desire to provide such a home. ***See*** Trial Court Opinion, 8/1/12, at 7-9; N.T., 6/4/12, at 69. The court also heard testimony that the children are doing well in their foster home, and that the older children do not ask about Mother and wish to remain with their foster family. N.T., 6/4/12, at 76-78. Based upon this evidence, the trial court concluded that no bond exists and that termination of Mother's parental rights would not destroy an existing, necessary and beneficial relationship. Our review of the record reveals that competent evidence supports the trial court's conclusion. In light of the applicable standard of review, we find no merit in Mother's final issue on appeal. ***See In re Adoption of S.P.***, 47 A.3d at 826-27.

Accordingly, for the reasons stated above, we affirm the trial court's decrees, terminating Mother's parental rights to the children, pursuant to 23 Pa.C.S.A. § 2511(a)(8) and (b).

Decrees affirmed; counsel's petition to withdraw granted.