NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: D.L.H., A MINOR, Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: L.H., NATURAL MOTHER, Appellant	No. 1302 WDA 2012

Appeal from the Order Dated July 20, 2012
In the Court of Common Pleas of Blair County
Orphans' Court at No(s): Docket No. 2012 AD 34

BEFORE: FORD ELLIOTT, P.J.E., BOWES, & DONOHUE, JJ.

MEMORANDUM BY BOWES, J.: Filed: March 13, 2013

L.H. ("Mother") appeals from the July 20, 2012 order terminating her parental rights to D.L.H. After presenting a brief, Mother's counsel filed a petition to withdraw pursuant to ***Anders v. California***, 386 U.S. 738 (1967). We grant counsel's petition and affirm the order.

On June 15, 2012, Blair County Children, Youth & Families ("CYF") filed this action by petition for involuntary termination of the parental rights of Mother to her son, D.L.H., who was born on April 27, 2006. CYF also sought the involuntary termination of the parental rights of the child's father, C.J.S., but he subsequently agreed to voluntarily relinquish his parental rights to the boy. The record of the dependency proceedings, which were incorporated herein at the hearing on the involuntary termination, indicate the following. On January 11, 2011, D.L.H. was adjudicated a

dependent child after CYF's reasonable efforts to avoid a declaration of dependency proved fruitless. At the dependency hearing, Mother stipulated that CYF could establish by clear and convincing evidence that D.L.H. was a dependent child. The conditions leading to the dependency included Mother's drug and alcohol problems, mental health issues, and inability to provide suitable housing for her son. Mother was permitted to retain physical and legal custody of her son, and her service plan included: 1) undergo a drug and alcohol evaluation, follow the ensuing treatment recommendation, and comply with random drug testing; 2) submit to a mental health evaluation and comply with recommendations resulting from that evaluation; 3) maintain suitable housing; and 4) cooperate with service providers, including parenting and family-based counselors and CYF.

In February 2011, CYF placed the child with Mother's brother, J.H. This development was premised upon its conclusion that Mother was involved with criminal activities, had unresolved drug and alcohol addiction issues, neglected her mental health problems, and was unable to provide suitable housing for D.L.H. The dependency court conducted an interim review hearing on April 6, 2011, and issued the following findings on April 14, 2011. Mother had only minimally complied with her service plan and refused to cooperate with CYF and other service providers.

After the April 6, 2011 hearing, the court concluded that CYF's concerns about D.L.H.'s safety in Mother's care were well-founded, and it

continued physical custody with J.H. based upon J.H.'s testimony that he was providing appropriate care for his nephew. J.H., however, was not fully cooperating with CYF when it went to his residence to ascertain D.L.H.'s status. The court instructed J.H. to cooperate with CYF and other service agencies. The court also instructed CYF to visit J.H.'s home to ensure the adequacy of J.H.'s care. It further stated that if J.H. did not cooperate, that CYF was to immediately seek a transfer of custody. The court permitted Mother to retain legal custody and allowed her visitation at J.H.'s home. Mother was ordered to obtain housing, begin cooperation with all service providers, undergo and complete drug and alcohol counseling, refrain from any criminal behavior, comply with all recommended mental health treatment, and successfully complete a parenting program. At that time, the court implemented concurrent goals of adoption and reunification with Mother.

On October 12, 2011, the matter proceeded to a status conference before a dependency master. By that point, physical custody of D.L.H. had been transferred to the maternal grandmother because J.H. informed CYF that he was no longer capable of caring for his nephew. The master concluded that the maternal grandmother's home was suitable for the boy. Mother had obtained housing and was searching for a home that was large enough to accommodate her, D.L.H., his half sibling, and that sibling's father. She also had completed drug and alcohol counseling.

In October 2011, Mother remained deficient in connection with two family service plan goals. First, she had discontinued mental health treatment due to her disagreement over diagnosis, treatment, and medication recommendations. Mother also continued to categorically refuse to cooperate with CYF. Mother and maternal grandmother also engaged in significant interpersonal conflict. The master opined that Mother's "overwhelming lack of trust borders on paranoia," she persistently shifted blame, and she appeared to suffer from a narcissistic personality type disorder. Status Report, 10/12/11, at 3.

The next permanency review proceeding occurred in January 2012, and on January 12, 2012, the trial court adopted a permanency review order entered by a master. By that time, Mother had started family therapy, had become less resistant to CYF's efforts to help her, and was beginning to establish some mental health stability by taking her medications. However, the record of the January 2012 proceeding, for the first time, outlined psychological problems on the part of D.L.H. Specifically, before 2012, D.L.H. underwent more than one psychiatric hospitalization due to highly sexualized behavior. By the time of the January 12, 2012 permanency review, this behavior had decreased significantly. However, D.L.H. had been diagnosed with reactive attachment disorder and disruptive behavior disorder. He also fought with Mother. Further, Mother and maternal grandmother's relationship continued to be marked by intense conflicts.

On January 12, 2012, the trial court found that Mother had begun to cooperate with CYF's reunification services. It concluded that D.L.H. remained dependent, and it ordered Mother and maternal grandmother to seek counseling to resolve their animosity. It implemented the concurrent goals of reunification and permanent legal custodianship with grandmother, and ordered Mother to maintain her housing and continue to avoid criminal behavior.

The rebutted allegations in the June 15, 2012 petition for termination of Mother's parental rights established the following. On January 27, 2012, two weeks after the January 12, 2012 permanency review in the dependency matter, Mother was charged with four counts of possession of a controlled substance (heroin and/or cocaine), four counts of delivery of those drugs, three counts of criminal use of a community facility, two counts of conspiracy, and one count of possession of drug paraphernalia. After the charges were filed, Mother fled from law enforcement officials and did not contact CYF about her son after January 27, 2012, a period of four and one-half months. Additionally, after January 12, 2012, school authorities discovered that maternal grandmother had physically abused D.L.H., and she was criminally charged in connection with those actions. Thus, by June 15, 2012, D.L.H. had been placed with a foster family. Since his foster care placement, D.L.H. no longer needed any psychiatric medications nor did he exhibit any problematic behaviors that led to his prior institutionalizations.

His foster caregivers provided these tangible and intangible benefits to the child previously absent from his life: regular meals, stability, structure, and kindness.

The same day that it filed for involuntary termination, CYF moved that Mother be notified of the involuntary termination proceedings by publication, as permitted by 23 Pa.C.S. § 2513(b) (emphasis added) ("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**."). It submitted the affidavit of Brandy Portonova, a paralegal for CYF, detailing CYF's extensive efforts to locate Mother to notify her of the termination proceedings. The affidavit substantiated the following.

As of January 27, 2012, Mother's address was on 7th Avenue in Altoona. On February 3, 2012, Ms. Portonova went to that location, and it was vacant. A copy of the petition to terminate Mother's parental rights was sent to the 7th Avenue address but was returned to CYF. Ms. Portonova contacted maternal grandmother three times, and maternal grandmother continually represented that she did not know where Mother was hiding. On March 15, 2012, maternal grandmother told the police that she was unaware of Mother's whereabouts. Ten days before the termination petition was filed, Ms. Portonova tried to find Mother by searching online, with no results. The

Unified Judicial System online portal showed Mother as having no recent activity. The Pennsylvania Department of Corrections online inmate locater had no record of Mother being incarcerated. The County Assistance Office still listed Mother as living at the 7th Avenue address. Use of a people finder website produced no results.

The trial court thereafter approved of notice by publication, and on June 21, 2012, CYF published notice to Mother of the proposed termination in two newspapers in circulation in the area, the Altoona Mirror and the Blair County Legal Bulletin. The termination matter proceeded to a hearing held on July 3, 2012, and while Mother failed to appear, her appointed counsel did attend.[1] At the hearing, CYF established the existence of a pre-adoptive family available for the child. By order dated July 20, 2012, and filed on July 23, 2012, Mother's parental rights were terminated. Notice of termination was published in the two newspapers utilized to notify Mother of the initiation of the termination proceedings.

On appeal, counsel for Mother represents that after July 20, 2012, Mother was taken into custody. ***See*** Appellant's brief at 20; Petition to Withdraw as Counsel, 11/7/12, at ¶ 9. On August 18, 2012, five and one-half months after her January 27, 2012 flight, Mother wrote to counsel

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[1] Counsel had been appointed for purpose of the dependency matter.

asking about her son. Therefore, counsel filed the present appeal on August 22, 2012.

We first address counsel's request to withdraw. In the decision entitled ***In re Adoption of R.I.***, 312 A.2d 601 (Pa. 1973), the Court held that an indigent parent in a termination of parental rights case has a constitutional right to counsel.[2] In the case of ***In re V.E.***, 611 A.2d 1267 (Pa.Super. 1992), we held that counsel in an involuntary termination case is permitted to withdraw from representation on appeal pursuant to the procedures outlined in ***Anders***, ***supra***, if counsel, after a conscientious review of the record, concludes that the appeal is wholly frivolous. ***See In re J.T.***, 983 A.2d 771 (Pa.Super. 2009) (***In re V.E.*** permits counsel in an involuntary termination case to withdraw under ***Anders***). ***Anders*** contains procedural requirements for proper withdrawal and briefing mandates.

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[2] This decision rested on due process grounds. The United States Supreme Court subsequently ruled that the federal due process clause does not automatically require state-provided counsel for indigent parents in termination proceedings; it left such a decision to the state courts, which were tasked with rendering the decision by balancing the private and government interests at stake as well as any risk that there may be an improper decision in the matter. ***Lassiter v. Department of Social Services of Durham County, N.C.***, 452 U.S. 18 (1981). However, we have observed that it is unclear whether ***In Re Adoption of R.I.*** rested on federal or state due process grounds and that it might retain precedential value despite the ***Lassister*** decision. ***Corra v. Coll***, 451 A.2d 480, 485 n.7 (Pa.Super. 1982). Our Supreme Court subsequently reaffirmed the validity of ***In re Adoption of R.I.*** where it issued its ruling in ***In re Adoption of L.J.B.***, 995 A.2d 1182 (Pa. 2010). Additionally, Pennsylvania law permits a person to ask for counsel in a termination proceeding. ***See*** 23 Pa.C.S. § 2313(a.1).

There is no question that the procedural requirements for withdrawal include a petition by counsel for leave to withdraw. The petition must contain averments that, after conscientious review of the record, counsel has determined that the appeal is frivolous, that a copy of the brief and petition to withdraw was provided to the appealing party, and that counsel advised the client that the client has the right to retain new counsel or proceed *pro se* and raise any additional points that the client deems worthy of this Court's consideration. ***In re J.T.***, ***supra***; ***see also In re S.M.B.***, 856 A.2d 1235, 1237 (Pa.Super. 2004). However, the nature of the brief that counsel must file in an involuntary termination matter has been subject to different interpretations. In our decision of ***In re V.E.***, ***supra*** at 1275, we indicated that, even when counsel has concluded that an appeal is frivolous, counsel must file an advocate's brief. On the other hand, in ***In re S.M.B.***, ***supra***, we stated that counsel should file a brief that refers to anything that might support an appeal but does not resemble a no-merit letter or *amicus* brief, which was the traditional brief filed in the ***Anders*** setting.

In ***Commonwealth v. Santiago***, 978 A.2d 349 (Pa. 2009), our Supreme Court updated the ***Anders*** briefing requirements so that they are more compatible with the concept of withdrawal. In other words, if counsel has concluded, after proper review, that an appeal is frivolous, it is logical that the brief that counsel files should support this conclusion rather than neutral argument. Hence, in ***Santiago***, our Supreme Court ruled that when

defense counsel, on direct appeal, seeks to withdraw, the accompanying brief must cogently establish why any potential issues are frivolous. It stated:

> [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 361.

In the case of ***In re J.T.***, ***supra*** at 775 n.5, we adopted this standard for purposes of withdrawal in the involuntary termination setting. Therein, we stated that counsel withdrawing in an involuntary termination case properly followed the briefing requirements for withdrawal when counsel's brief complied with the mandates of ***Santiago***.[3] Thus, herein, counsel's brief must satisfy the mandates of ***Santiago***.

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[3] It is of interest that in both ***In re V.E.***, 611 A.2d 1267 (Pa.Super. 1992) and ***In re Adoption of V.G.***, 751 A.2d 1174 (Pa.Super. 2000), we ruled that counsel's brief was non-compliant with the requirements for proper withdrawal in an involuntary-termination-of-parental-rights case. Despite the fact that counsel presented defective briefs in both of those cases, we conducted an independent review of the record, concluded that there were no issues of arguable merit, and allowed counsel to withdrawal. This procedure was followed due to concerns over speedy resolution of family matters.

With this background in mind, we turn to the present matter. Counsel herein filed a petition to withdraw outlining that she was appointed as counsel for Mother and attended all hearings in connection with both the dependency and termination matters. Thus, counsel had first-hand knowledge of the entire proceedings. Furthermore, counsel averred that she visited Mother after filing the present appeal. In the petition, counsel indicated that, in her professional opinion, there was no viable challenge to the termination and that notice by publication was proper.

Counsel provided to this Court a copy of a letter addressed to Mother. Counsel certified that the letter, the brief, and the petition to withdraw were sent to Mother. In that letter, counsel told Mother that she had the right to obtain private counsel or proceed *pro se* and raise any additional points Mother thought worthy of this Court's consideration. We therefore conclude that counsel complied with the procedural requirements for withdrawal.

The brief presented on appeal delineates the procedure and facts of this case with citations to the record. It outlines the applicable statutes under which Mother's rights were terminated and inherently establishes that Mother's parental rights were properly terminated and, therefore, the frivolity of this appeal. It outlines two issues of arguable merit, whether notice and termination were proper, and indicates why Mother cannot obtain relief on appeal. Therefore, we accept the brief filed by counsel herein as consistent with the briefing mandates of ***Santiago***.

We now must proceed to examine the merits of the appeal and independently verify the lack of merit in what we conclude are the only viable issues that can be presented herein, which are the ones outlined in the brief: "A. Whether or not the trial court erred in terminating the parental rights of the mother? B. Whether or not the trial court erred [in] terminating the parental rights of the mother after service by publication?" Appellant's brief at 5.

The pertinent scope and standard of review of an order terminating parental rights is as follows:

> When reviewing an appeal from a decree terminating parental rights, we are limited to determining whether the decision of the trial court is supported by competent evidence. Absent an abuse of discretion, an error of law, or insufficient evidentiary support for the trial court's decision, the decree must stand. Where a trial court has granted a petition to involuntarily terminate parental rights, this Court must accord the hearing judge's decision the same deference that we would give to a jury verdict. We must employ a broad, comprehensive review of the record in order to determine whether the trial court's decision is supported by competent evidence.
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> ***In re S.H.***, 879 A.2d 802, 805 (Pa.Super. 2005). In termination cases, the burden is upon the petitioner to prove by clear and convincing evidence that its asserted grounds for seeking the termination of parental rights are valid. ***Id***. at 806.
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> The standard of clear and convincing evidence is defined as testimony that is so "clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conviction, without hesitance, of the truth of the precise facts in issue." ***In re J.L.C. & J.R.C.***, 837 A.2d 1247, 125 (Pa.Super. 2003). The trial court is free to believe all, part, or none of the evidence presented and is likewise free to make all credibility determinations and resolve conflicts in the evidence. ***In re M.G.***, 855 A.2d 68, 73–74 (Pa.Super. 2004). If competent evidence supports the trial

> court's findings, we will affirm even if the record could also support the opposite result. ***In re Adoption of T.B.B.***, 835 A.2d 387, 394 (Pa.Super. 2003).

In re Adoption of M.R.B., 25 A.3d 1247, 1251 (Pa.Super. 2011).

Grounds for termination of a biological parent's parental rights are governed by 23 Pa.C.S. § 2511, which provides in pertinent part as follows:

> (a) General rule.--The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds:
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> (2) The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.
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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. 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.

The test for terminating parental rights consists of two parts. In ***In re L.M.***, 923 A.2d 505, 511 (Pa.Super. 2007), we 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. One major aspect of the needs and welfare analysis concerns the nature and status of the emotional bond between parent and child, with close attention paid to the effect on the child of permanently severing any such bond.

Herein, the court terminated Mother's parental rights under both § 2511(a)(2) and (8). ***See*** Order of Court, 7/20/12, at ¶ 4. We find that the dictates of § 2511(a)(8) were satisfied. D.L.H. was removed from Mother's care for over twelve months prior to termination, from February 2011, until July 20, 2012. The record substantiates that as of July 20, 2012, Mother could not be located, was fleeing police, and was charged with numerous drug-related felony offenses involving the sale of heroin and cocaine. The original conditions that led to placement included Mother's drug problems, possible involvement in crime, mental health issues, inability to provide stable housing, and refusal to cooperate with service providers. Three conditions which led to the removal and placement of the child continued to exist as Mother is now jailed for criminal activity involving

drugs. She therefore cannot provide housing, is involved in criminal activity, and is involved with drugs.

It is true that by January 12, 2012, Mother had obtained housing and supposed drug rehabilitation. She also had, for the first time, started to cooperate with CYF and comply with mental health recommendations. However, her attempts at full compliance with her family service goals were transitory. Two weeks later, she was fleeing the law. Given the charges leveled against her, it is apparent that Mother had re-engaged in drug-related criminal activities, thus defeating any finding of compliance with her service plan goals.

Additionally, the best interests of D.L.H. are served by termination. Based upon evidence adduced at the dependency proceedings, the court specifically found that D.L.H. "had no bond to his Mother," and it reaffirmed that the boy still suffered from reactive attachment disorder. Trial Court Opinion, 9/28/12, at 2. Given the lack of a bond, permanently severing Mother's rights to him will not have an adverse effect on the child. Moreover, the record substantiates that mother's brother was incapable of caring for the boy and his maternal grandmother physically abused him. He thrived in foster care, where the need for medication as well as all the behavior that led to institutionalization were eliminated.

Further, the record of the termination proceeding established the existence of a pre-adoptive family suited to alleviate D.L.H.'s reactive

attachment disorder because the parents are willing to adopt D.L.H. as an only child. This family dynamic will significantly aid D.L.H. in overcoming the disorder because its primary symptom is the overriding need to be the sole focus of any parental figure. In sum, the record substantiates that termination is in the boy's best interests and serves his needs and welfare. Hence, the order terminating Mother's parental rights is unassailable.

The only other issue that could be raised herein concerns notice. Mother claims she should have been served personally or by certified mail with the petition to terminate her parental rights. This argument cannot be sustained since, on January 27, 2012, Mother deliberately secreted herself to avoid apprehension by police and was unavailable for personal service or service through the mail. As outlined *infra*, CYF conducted extensive efforts to ascertain Mother's whereabouts. Notice sent to Mother's last known address was returned, and CYF also ascertained that the residence was vacant. CYF visited the maternal grandmother three times and conducted extensive internet searches for her. Pursuant to court approval, CYF notified Mother by publication in two newspapers in general circulation in the area. As CYF was incapable of providing Mother with personal service or service by certified mail due solely to Mother's own actions, we conclude that the court correctly permitted notice by publication.

Petition of Suzanne Bigelow-Cherry to withdraw is granted. Order affirmed.