

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: ADOPTION OF L.I.M., A MINOR : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
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:
:
APPEAL OF: B.L.M.O., Father : No. 1377 MDA 2013

Appeal from the Decree entered June 21, 2012
in the Court of Common Pleas of Luzerne County
Orphans' Court Division, No. A-7743

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

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

B.L.M.O. ("Father") appeals from the decree in the Court of Common Pleas of Luzerne County granting the petition for the involuntary termination of his parental rights filed by C.B. ("Mother") and M.C.B. ("Stepfather"), with respect to the female child, L.I.M. ("Child"), born out-of-wedlock in March of 2009. We affirm.

The trial court has ably recounted both the procedural and factual history of this case, and we adopt them herein. **See** Trial Court Opinion, 8/21/12. We reiterate the history of this case insofar as it is necessary for this disposition.

Father and Mother are the natural parents of Child. On March 11, 2011, Mother and Stepfather, her husband, filed the subject petition pursuant to 23 Pa.C.S.A. §§ 2511(a)(1) and (b). In the petition, Mother and Stepfather alleged Father has not contacted Child since June of 2009, when

Child was three months old. **See** Petition, 3/11/11, at ¶ 7. The trial court held a hearing on the termination petition on June 21, 2012, during which the following witnesses testified: Father; Stepfather; Mother; and L.F., Father's mother. By decree dated June 21, 2012, and entered on the same date, the trial court granted Mother's and Stepfather's petition. Father filed a timely notice of appeal and concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b).

On appeal, Father presents the following questions:

Whether the trial court committed reversible error by terminating the parental rights of the biological Father, where such determination was not supported by clear and convincing evidence establishing grounds for such?

Whether refusal by the natural mother of any contact for the natural Father can explain, excuse and justify the Father's failure to maintain contact with the child?

Father's Brief, at 5.

We review this appeal according to the following standard:

Appellate 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.*

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, 826-827 (2012).

Termination of parental rights is controlled by Section 2511 of the Adoption Act, which requires a bifurcated analysis.

Our case law has made clear that under 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 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.

In re L.M., 923 A.2d 505, 511 (Pa. Super. 2007) (citing 23 Pa.C.S.A. § 2511). The burden is upon the petitioner to prove by clear and convincing evidence that the asserted statutory grounds for seeking the termination of parental rights are valid. *In re R.N.J.*, 985 A.2d 273, 276 (Pa. Super. 2009).

Instantly, the trial court terminated Father's parental rights pursuant to Section 2511(a)(1) and (b), which provide as follows:

§ 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.

...

(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.A. § 2511(a)(1), (b).

With respect to Section 2511(a)(1), our Supreme Court has held,

[o]nce 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 re Adoption of Charles E.D.M., 550 Pa. 595, 602, 708 A.2d 88, 92

(1988). This Court has explained that

[a] court may terminate parental rights under Section 2511(a)(1) where the parent demonstrates a settled purpose to relinquish parental claim to a child or fails to perform parental duties for at least the six months prior to the filing of the termination petition. The court should consider the entire background of the case and not simply:

. . . mechanically apply the six-month statutory provision. The court must examine the individual circumstances of each case and consider all explanations offered by the parent facing termination of his . . . parental rights, to determine if the evidence, in light of the totality of the circumstances, clearly warrants the involuntary termination.

In re A.S., 11 A.3d 473, 482 (Pa. Super. 2010) (citations omitted).

Regarding the definition of "parental duties," we have stated,

[t]here 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).

In addition, with respect to Section 2511(b), this Court has explained the requisite analysis as follows:

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 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).

Upon a comprehensive review of the record, the controlling case law,

and the opinion of the Honorable Chester Muroski, Senior Judge, we conclude the trial court's decision to terminate Father's parental rights pursuant to Section 2511(a)(1) and (b) is supported by competent evidence. Thus, we discern no abuse of discretion by the trial court. Accordingly, we adopt the opinion of the trial court pursuant to Pa.R.A.P. 1925(a) as dispositive of Father's issues on appeal.

The parties are directed to attach a redacted copy¹ of the trial court's opinion in the event of further proceedings.

Decree affirmed.

¹ The copy shall include the redacted names of Mother, Father, Stepfather, and Child.

IN THE INTEREST OF:

L.I.M.,

Minor

: IN THE COURT OF COMMON PLEAS
: OF LUZERNE COUNTY

:
: ORPHANS' COURT DIVISION

:
: NO. A-7743

MEMORANDUM ISSUED PURSUANT TO PA.R.A.P. 1925(a)

I. PROCEDURAL HISTORY

On March 11, 2011, the Petitioners, Catina Nadine Boyle and Michael Charles Boyle, filed a Petition for the Involuntary Termination of Parental Rights (hereinafter "Petition") of natural father, B.L.M., to the minor child, L.I.M. Petitioner Catina Nadine Boyle is the natural mother of minor child, L.I.M. and Petitioner Michael Charles Boyle is the adoptive stepfather. On June 21, 2012, a termination hearing was held before this Court. Testimony was heard on the Petition and the Court issued a decree terminating the parental rights of B.L.M. to the minor child, L.I.M.

On July 23, 2012, natural father, B.L.M., by and through Court-Appointed Counsel, filed a Notice of Appeal to the Superior Court. On July 25, 2012, natural father filed his application for leave to proceed *In Forma Pauperis* on Appeal together with a Motion for Order to Transcribe Record. On or about July 23, 2012, B.L.M. filed his requisite statement of matters complained of on appeal wherein he alleged:

- There was insufficient evidence presented to prove that the father had evidenced, through conduct for a period of at least six months immediately preceding the filing of the Petition for Involuntary Termination of Parental Rights, a settled intent to relinquish parental rights to the minor child, or alternatively, that father had refused or failed to perform parental duties within said time period; and;

- Insufficient evidence had been presented to prove that termination of the parental rights of father would best serve the needs and welfare of the minor child.

II. FINDINGS OF FACT

B.L.M. is the natural father of minor child L.I.M. whom was born on March 17, 2009. This case involves the proposed termination of the parental rights of the natural father to the minor child.

The involuntary termination hearing commenced and concluded on June 21, 2012. Father B.L.M. conceded that he has not had contact with minor child L.I.M. since June, 2009. (Notes of Testimony, hereinafter "N.T." at p.8.)

The date of the filing of the Petition leading to termination was March 11, 2011. Thus, for a period well in excess of six (6) months preceding the filing of the Petition, B.L.M. has not had any contact with his minor child. In fact, more than twenty (20) months had elapsed from B.L.M.'s last contact with minor L.I.M. Moreover, B.L.M. did not request any visits, did not initiate a custody action and unfortunately, expressly agrees that he knows nothing about L.I.M. (N.T. at 9-11.)

Upon termination of B.L.M.'s parental rights, L.I.M. stands to be adopted by Michael Charles Boyle, whom has known L.I.M. since she was two (2) months old and has resided with him since August, 2009. (N.T. at 37, 41.) Moreover, Mr. Boyle is married to L.I.M.'s natural mother, Catina Boyle, whom has had physical custody of minor child L.I.M. since birth.

III. CONCLUSIONS OF LAW

After consideration of credible evidence summarized above, and discussed in greater detail below, the Court concludes:

- (1) The Petitioners have shown by clear and convincing evidence that the parental rights of natural father, B.L.M. to minor child L.I.M. may be terminated pursuant to 23 Pa. C.S.A. §2511(a)(1).
- (2) The Petitioners have shown by clear and convincing evidence the termination of the rights of the father, B.L.M. to minor child L.I.M. best serves the needs and welfare of the child.

IV. DISCUSSION: GROUNDS FOR TERMINATION

A court may terminate parental rights under §2511(a)(1) when:

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

Parental duties are multifaceted. The Pennsylvania Superior Court has addressed the issue in In re Shives, 363 Pa. Super. 225, 525 A.2d. 801, 802 (1987) in citing In re Burns, 474 Pa. 615, 379 A.2d 535 (1977):

There is no simple or easy definition of parental duties. Parental duty is best understood in relation to the needs of a child . . . These needs, physical and emotional, cannot be met by a merely passive interest in the development of the child . . . 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.'

A parent must demonstrate a continuing interest in the child and make a genuine effort to maintain communication and association with the child. In re Adoption of McCray, 460 Pa. 210, 331, A.2d 652 (1975). Appellate courts have set forth a very strict standard for measuring a parent's performance of parental duties; a parent must exert himself to take and maintain a place of importance in a child's life and a continuing duty to love, protect and support his child and to maintain communication and association with the child even after separation and he must pursue a course of conduct consistently aimed at maintaining the parental relationship. In re Adoption of M.J.H., 501 A.2d 648 (Pa. Super. 1985); In re V.E. 611 A. 2d 1267 (Pa. Super. 1992); and Adoption of S.H., 383 A.2d. 529 (Pa. 1978). Applying the above law to the facts of this case, and though this Court could find based on the testimony presented that B.L.M. evidenced a settled purpose of relinquishing his parental claim to minor child, L.I.M.; this Court's rationale for termination was based solely on the legal notion that B.L.M. has failed to perform his parental duties for a period in excess of six months.

Once a court has found grounds exist for termination under §2511(a)(1), the court must then 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 on the child's needs and welfare. In re: C.M.S., 2003 Pa. Super. 292, 832 A.2d 457, 464-65 (2003), *appeal denied*, 2004 Pa.

Lexis 458 (Pa., March 9, 2004). These three lines of inquiry are addressed and discussed below.

With grounds for termination under §2511(a)(1) clearly existing, the first line of inquiry as aforementioned is the parent's explanation for his conduct. B.L.M. testified before the Court on June 21, 2012.

B.L.M. testified that he has not seen his daughter, L.I.M. since June, 2009. (N.T. at 8.) B.L.M. was credible when answering questions that he did not know precise things and attributes about his daughter, including shoe size and shirt size and even admitted he basically knows nothing about her. (N.T. at 11.) Upon the germane questioning regarding his maintaining some kind of connection with his daughter, B.L.M. was unable to articulate any salient fact so as to demonstrate an explanation for his conduct. The substantive answer by B.L.M. for not seeing or knowing his daughter always reverts back to the deteriorating relationship with L.I.M.'s mother, which amounts to no explanation. (N.T. at 16-19.)

B.L.M. testified a second time on June 21, 2012 and explained that natural mother would keep him from minor, L.I.M. because he did not want to be in a relationship with natural mother any longer. B.L.M. appeared credible; however, this explanation depicts no proactive effort on B.L.M.'s part to maintain an independent relationship with minor child, irrespective of his relationship with natural mother. (N.T. at 75.)

Upon questioning from the Guardian *ad Litem*, B.L.M. testified that he never attempted to file any paperwork, by counsel or *pro-se*, to see his daughter. When

queried frankly that the Guardian *ad Litem* was at a loss as to why B.L.M. did not do more to see L.I.M., his answer centered on money, not having a lawyer, not knowing he could proceed on his own, he was scared to go up against natural mother, and he felt threatened. (N.T. at 78-80.)

B.L.M. credibly testified that he did not voluntarily relinquish parental rights because he desires to see L.I.M. B.L.M. further testified that L.I.M. means everything to him; it is all that he thinks about. (N.T. at 74.) In this regard, the Guardian *ad Litem's* summation was poignant.

"I believe that statutorily the grounds for termination have been met in that B.L.M. has not had contact with this child. I would like to say that I found him - - in meeting with him that his feelings are sincere, and he's regretful of the situation. And I think he's honest when he says he may have been scared, he may have had concerns, he may not have known what he needed to do. But he didn't take the extra step to find out." (N.T. at 83.)

B.L.M.'s mother L.F. testified on her son's behalf via telephone on June 21, 2012. Essentially, L.F. had nothing probative or relevant to offer with respect to the line of inquiry centering on B.L.M.'s explanation for his conduct. Rather and instead, it was elicited, thereby bolstering an already clear record, that neither she nor her son had contact with L.I.M. since June of 2009.

As cited above, precedent has set forth very strict standards for measuring a parent's performance of parental duties in that a parent must exert himself to take and maintain a place of importance in a child's life and a continuing duty to love, protect and support his child and to maintain communication and association with the child even after separation and he must pursue a course of conduct consistently aimed at

maintaining the parental relationship. In short, B.L.M.'s explanation for his conduct is woefully insufficient and does little to counter the Petitioners' showing by clear and convincing evidence that the termination of his parental rights best serves the needs and welfare of the child.

The second line of inquiry is the post-abandonment contact between parent and child. It was established on the record and un-rebutted that the last contact father B.L.M. had with his minor daughter, L.I.M. was June, 2009. The date of the filing of the Petition leading to termination was March 11, 2011. Thus, for a period well in excess of six (6) months preceding the filing of the Petition, B.L.M. has not had any contact with the minor child. In fact, the credible evidence depicts that it has been more than twenty (20) months since B.L.M. had any contact with his minor child.

The third line of inquiry is the effect of termination on the child's needs and welfare. In taking into consideration the effect of termination as it relates to L.I.M.'s needs and welfare, the Court heard testimony from the Petitioners, Michael Boyle and Catina Boyle.

Adoptive stepfather Michael Boyle testified on June 21, 2012. Mr. Boyle testified that he lives with his wife, his daughter (L.I.M.) and his son. He has known L.I.M. since she was two months old. Mr. Boyle stated he does everything with L.I.M. from the second she wakes until he puts her to sleep. She calls him "Daddy" and Mr. Boyle emphatically and credibly testified that it would be in L.I.M.'s best interest for the Court to terminate natural father, B.L.M.'s parental rights. (N.T. at 36-38.) Mr. Boyle considers L.I.M. his own and it is his intent to adopt her as his own. (N.T. at 41.)

Petitioner and Natural mother of L.I.M., Catina Boyle testified before the Court on June 21, 2012. Mrs. Boyle testified that L.I.M. knows no one other than Mr. Boyle as her father. (N.T. at 55.) Mrs. Boyle also stated on the record that it would be in L.I.M.'s best interest for her husband Mr. Boyle to formally adopt L.I.M. as he (Mr. Boyle) has not left L.I.M.'s side since he met her. Mr. Boyle is actually the day-to-day primary caretaker of their children including L.I.M. (N.T. at 56-57.) Mrs. Boyle has observed L.I.M. with Mr. Boyle and describes the relationship as "so loving." From the moment L.I.M. opens her eyes she is very expressive with Mr. Boyle, whom she refers to as "Daddy" with many hugs, kisses and "I love you's." (N.T. at 57.)

Mrs. Boyle has also observed L.I.M. with Mr. Boyle's extended family. L.I.M. considers Mr. Boyle's family - her family. She calls Mr. Boyle's mother "Grandma Gigi" and Mr. Boyle's father, "Pop" and Mr. Boyle's grandmother, "Nan." L.I.M. also loves her cousins and aunts and uncles. (N.T. at 59.)

In summary regarding the third line of inquiry, the bond that exists between L.I.M. and her natural father, B.L.M. is nonexistent. However, the bond of the Petitioners, which is reciprocated by L.I.M. is omnipresent and superior. Additionally, credible testimony was received that the termination and subsequent adoption would have a very positive effect upon the needs and welfare of L.I.M. because it would provide her with the permanency that she needs. (N.T. at 38, 56, 59.)

V. ADDITIONAL CONSIDERATIONS UNDER 23 P.A.C.S.A. §2511(b)

A. ENVIRONMENTAL FACTORS

23 Pa. C.S.A. §2511(b) specifies that a court may not terminate the parental rights "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."

As "environmental factors beyond the control of B.L.M." was not the linchpin in the allegations contained in the involuntary termination petition, nor the underlying rationale for the Court in terminating his parental rights, and because of the presence of other independent factors utilized, this consideration does not apply and will not be addressed.

B. NEEDS AND WELFARE OF THE CHILDREN

Once the Court has found that involuntary termination of parental rights is warranted under the Act, the court must then "give primary consideration to the developmental, physical and emotional needs and welfare of the child." This is to be a separate inquiry and even where the court has already considered the needs and the welfare of the child under one of the grounds of termination, the court must do so again. In re Matsock, 611 A.2d 738 (1992).

The Court has done this and finds the same considerations apply that have already been discussed extensively in this memorandum. Furthermore, the Court applies the same reasoning for concluding that the needs of minor child L.I.M. will best be served by the termination of B.L.M.'s parental rights.

VI. CONCLUSION

The Court notes that the Guardian *ad Litem* expressed on the record, after having been present for all the testimony and evidence, her belief that Petitioners have sustained their burden of proof by clear and convincing evidence that the parental rights of natural father, B.L.M. be terminated as it is in the minor child's best interest to be freed for adoption. (N.T. at 83.)

L.I.M. needs and deserves a permanent home with loving capable parents. The only way to provide this to the child is to terminate the rights of natural father, B.L.M. Termination of parental rights in this particular instance, clearly serves the child's best interest.

END OF OPINION
(Order follows on page 11)