

J-S59030-13

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

IN RE: A.J.R. : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
:
APPEAL OF: F.R., FATHER : No. 1478 EDA 2013

Appeal from the Order entered May 10, 2013
In the Court of Common Pleas of Montgomery County
Orphans' Court Division, at No. 2012-A0193

BEFORE: BOWES, PANELLA, and FITZGERALD*, JJ.

MEMORANDUM BY PANELLA, J.:

FILED DECEMBER 12, 2013

F.R. (Father) appeals from the order of the Court of Common Pleas of Montgomery County, entered May 10, 2013, that granted the petition to terminate his parental rights to his son, A.J.R. (Child), filed by the Montgomery County Office of Children and Youth (OCY) on November 20, 2012. We affirm.¹

Child's mother, S.W. (Mother), relapsed on cocaine and opiates and was admitted to Montgomery Hospital in Norristown, Pennsylvania, on September 27, 2011. *N.T.*, 2/27/13, at 11. The hospital contacted OCY after Mother acknowledged she was homeless and could not care for Child. *Id.*, at 97. OCY took emergency protective custody of Child and placed him in foster care. *Id.*, at 11-12. OCY was unable to contact Father at that time because the agency did not have any contact information for him. *Id.*, at 12. OCY located Father approximately three months later in early January of

* Former Justice specially assigned to the Superior Court.

2012. *Id.*, at 12. At the time of the hearing, Father resided in Allentown, Pennsylvania with his mother and younger brother. N.T., 5/10/13, at 76.

Child has special needs. He is diagnosed with Down Syndrome, has an IQ of 45, which indicates mild mental retardation, and has an adjustment disorder. N.T., 2/27/13, at 24. OCY placed Child in a foster home that provides a higher level of care for children with special needs. *Id.*, at 39-40. He receives services designed to help him and his foster family work on his aggressive behavior and to teach those caring for him how to cope with that behavior. *Id.*, at 24, 48. Physical and behavioral therapists visit Child to provide a total of four to six hours of combined therapy each week. *Id.*, at 24, 46. Child also receives services from PA Child to help him locate an adoptive family. N.T., 5/10/13, at 5.

Any person who becomes a caregiver for Child must keep his schooling program, in-home services, and insurance/medical assistance up-to-date, as well as have the patience to work with and understand Child and his behaviors. N.T., 2/27/13, at 25. Child's caregiver must be able to manage Child's appointment schedule and follow through with his treatment plan. *Id.*, at 47. Coping and behavioral strategies must be employed to manage Child's behaviors, and knowing and implementing these strategies takes

¹ The trial court terminated the parental rights of Child's mother, S.W., on the same date. Mother did not file an appeal.

training on the part of the caregiver. Patience, tolerance, and understanding of the Child's needs and point of view are critical. *Id.*, at 48-49.

OCY located Father early in January of 2012, and developed a Family Service Plan (FSP) for him that required him to 1) secure and maintain safe, healthy living conditions for Child; 2) show an understanding of age-appropriate behavior; 3) achieve and maintain recovery from substance abuse; 4) address his mental health needs; 5) cooperate with OCY; and 6) maintain the parent-child bond. *Id.*, at 30.

OCY filed its petition to terminate Father's parental rights on November 20, 2012. The trial court held hearings on that petition on February 27, 2013, and May 10, 2013. Among those testifying at the hearings, in addition to Father, were OCY caseworker, Jennifer Bell, and Child's foster care coordinator, Jennifer Yeakel.

The family's caseworker, Jennifer Bell, testified that Father complied only minimally with the requirements of his FSP. *Id.*, at 66. Father did clean up the apartment where he intended to live with Child, but he failed to provide a copy of the lease, proof that he was paying the utilities, or the names, dates of birth, and social security numbers of the other persons living in the home. *Id.*, at 66-67, 121. Father also failed to produce documentation of his income. *Id.*

Father was required to complete a parenting class geared toward children with special needs. *Id.*, at 80. Father completed a parenting class,

but, by his own admission, it was not for special needs children. Father never obtained the mental health evaluation requested by OCY even though he acknowledged he was aware of that FSP goal. N.T., 5/10/13, at 87, 106. OCY requested a mental evaluation after learning that Father physically attacked Mother during an argument late in 2011. N.T., 2/27/13, at 32-33. Mother and Father confirmed the incident; their caseworker reviewed a copy of the police report. **Id.** Father admitted that he did not undergo the evaluation, but claimed that none of the providers OCY referred him to would give him one. **Id.**, at 33. He also claimed the cost would be exorbitant, but never told his caseworker what the cost would be, or that he would have difficulty paying it. **Id.**, at 88.

Ms. Bell testified that Father's overall cooperation with OCY has been minimal. N.T., 2/27/13, at 34. According to her, he does not maintain contact with his caseworker, he failed to complete the majority of his FSP goals, and he attended few of the visits he was offered with Child. **Id.**, at 34-35.

Father has not worked to maintain a bond with Child during his placement. Father attended only 9 of 31 visits offered to him between September 27, 2011 and May 10, 2013. **Id.**, at 140; N.T., 5/10/13, at 65-66. Father had scheduled visits with the Child for one hour every other week. Ms. Bell testified that the scheduled visits were initially set up in Norristown, but Father asked her to move them to Bensalem because he had

difficulty traveling to Norristown. N.T., 2/27/13, at 35. Both Ms. Bell and Child's foster care coordinator, Jennifer Yeakel, testified that Father never requested any other location changes or any other assistance with visits. **Id.**, at 122, 142-143.

Father did not send any letters, pictures, or gifts to his son throughout Child's time in foster care despite being asked to do so. N.T., 5/10/13, at 111. Father only made a few telephone calls to Child during the time Child was in foster care. N.T., 2/27/13, at 43. Father did not ask to participate in any training to learn how to care for Child, and did not tell the OCY caseworker how he intended to care for the Child if he were awarded custody. **Id.**, at 60, 129. Father testified he was unaware of Child's educational and other needs and services, such as the school he attended, his grade level, education plan, his teacher's or therapist's names or therapy plans, or his counselor's or doctor's names. N.T., 5/10/13, at 112-114.

Ms. Bell testified that she believed that adoption was in Child's best interest because adoption would provide a stable, permanent home for him. N.T., 2/27/13, at 41-42. She based her opinion in part on concerns for Father's ability to care for a child with Child's significant special needs. According to Ms. Bell, Father demonstrated he was unable to access services for himself, which led her to question whether he could provide the necessary services for Child. **Id.**, at 42.

Ms. Bell testified that Child has bonded with his foster parents, his caseworker, therapists and school staff, and that she believed that he could create similar bonds again with adoptive parents. *Id.*, at 43, 70. According to Ms. Bell, Child would not suffer irreparable harm if Father's rights were terminated, noting that Father has never been a primary caretaker for Child and seemed to play only a limited role in Child's life. *Id.*, at 41-42. Father admitted he had not seen Child for about two years prior to February of 2012. N.T., 5/10/13, at 117. Ms. Bell also indicated she did not believe termination of Father's parental rights would cause harm to Child because of the limited contact Father has had with Child while he has been in foster care. N.T., 2/27/13, at 42-43.

Ms. Yeakel observed that even though a relationship exists between Father and Child, Child did not have trouble separating from Father after scheduled visits and experienced no negative effects from not seeing Father for long stretches of time. *Id.*, at 141, 156. Ms. Yeakel also noted Child speaks more freely with his foster family by using three or four word sentences, whereas his communications with Father are limited to one-word replies. *Id.*, at 136, 141.

The trial court and entered its order terminating Father's parental rights and authorizing Child's adoption on May 10, 2013. Father filed his notice of appeal and statement of errors complained of on appeal on May 21, 2013.

Father raises the following questions on appeal:

A. Did the trial court commit an error of law and/or abuse its discretion when it terminated parental rights of [Father] on grounds that he failed or refused to perform parental duties when his child is placed in foster care out of county and more than one and half hours away and who testified that to visit [Child], it required a train from Allentown to Philadelphia and at least two buses to reach Tulleytown in Bucks County, for a parent with limited financial means and who was also required to pay for his own mental health evaluation and the failure to do so caused him to have his parental rights terminated[?]

B. Did the trial court commit an error of law and/or abuse its discretion when it terminated [F]ather's parental rights pursuant to 23 [P]a.[C.S.A.] 2511(a)(8) because [OCY] failed to satisfy 2511(a)(8) that the child has been removed from the care of the parent who did not have care of the child for a period of at least six months?

C. Did the trial court commit an error of law and/or abuse its discretion in determining that [OCY] had met its burden pursuant to § 2511(b) in establishing by clear and convincing evidence that termination of [F]ather's parental rights would best serve the needs and welfare of [Child] when direct testimony of the case worker established that a bond existed between Father and [Child]?

Father's Brief, at 9.

We review the present appeal in accordance with 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.***; ***[In re:] R.I.S.***, [___ Pa. ___,] 36 A.3d [567, 572] (Pa. 2011)]. 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., 616 Pa. 309, 325-26, 47 A.3d 817, 826-27 (2012).

Where the hearing court's findings are supported by competent evidence of record, we must affirm the hearing court even though the record could support an opposite result.

We are bound by the findings of the trial court which have adequate support in the record so long as the findings do not evidence capricious disregard for competent and credible evidence. 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. Though we are not bound by the trial court's inferences and deductions, we may reject its conclusions only if they involve errors of law or are clearly unreasonable in light of the trial court's sustainable findings.

In re M.G., 855 A.2d 68, 73-74 (Pa. Super. 2004) (citations omitted).

Requests by an agency to have a natural parent's parental rights terminated are governed by 23 Pa.C.S.A. § 2511. In order to affirm the termination of parental rights, this Court need only agree with any one subsection of Section 2511(a). **See *In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*), *appeal denied*, 863 A.2d 1141 (Pa. 2004). Here, we conclude that the trial court properly terminated Father's parental rights pursuant to subsection 2511(a)(1), which provides, in pertinent part:²

§ 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

² The Adoption and Safe Families Act, 42 U.S.C. §§ 671-675, imposes upon states the requirement to focus on the child's needs for permanency rather than the parent's actions and inactions. The amendments to the Juvenile Act, 42 Pa.C.S.A. § 6301-65 provide that a court shall determine certain matters at the permanency hearing, including whether the child has been placed into foster care for 15 out of the last 22 months. **See** 42 Pa.C.S.A. § 6351(f)(9). With regard to permanency planning, the Legislature contemplated that, after reasonable efforts have been made to reestablish the biological relationship, the process of the Agency working with foster care institutions to terminate parental rights should be completed within eighteen months. **See *In re N.W.***, 859 A.2d 501, 508 (Pa. Super. 2004) (citation omitted).

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.

It is well settled that a party seeking termination of a parent's rights bears the burden of proving the grounds to so do by "clear and convincing evidence," a standard which requires evidence 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 T.F.***, 847 A.2d 738, 742 (Pa. Super. 2004). Further,

The statute permitting the termination of parental rights outlines certain irreducible minimum requirements of care that parents must provide for their child, and a parent who cannot or will not meet the requirements within a reasonable time following intervention by the state may properly be considered unfit and have [his] parental rights terminated.

. . .

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.

In the Interest of K.Z.S., 946 A.2d 753, 759 (Pa. Super. 2008) (internal citations omitted).

To terminate parental rights pursuant to section 2511(a)(1), the person or agency seeking termination must prove through clear and convincing evidence that, for a period of at least six months prior to the filing of the petition, the parent's conduct demonstrates a settled purpose to relinquish parental rights or that the parent has refused or failed to perform parental duties. ***In re Adoption of M.E.P.***, 825 A.2d 1266, 1272 (Pa. Super. 2003).

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

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 re Adoption of Charles E.D.M., 550 Pa. 595, 602, 708 A.2d 88, 92 (Pa. 1988). Further,

the trial court must consider the whole history of a given case and not 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 or her parental rights, to determine if the evidence, in light of the totality of the circumstances, clearly warrants the involuntary termination.

In re N.M.B., 856 A.2d 847, 854-855 (Pa. Super. 2004) (citations omitted).

The Adoption Act provides that a trial court "shall give primary consideration to the developmental, physical and emotional needs and welfare of the child." 23 Pa.C.S.A. § 2511(b). The Act does not make

specific reference to an evaluation of the bond between parent and child but our case law requires the evaluation of any such bond. **See *In re E.M.***, 533 Pa. 115, 620 A.2d 481 (1993). However, this Court has held that the trial court is not required by statute or precedent to order a formal bonding evaluation performed by an expert. ***In re K.K.R.-S.***, 958 A.2d 529, 533 (Pa. Super. 2008).

We begin by addressing Father's second issue, in which he claims that the trial court erred in terminating his parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(8). The trial court terminated Father's parental rights pursuant to subsections 2511(a)(1), (a)(2), and (a)(8). Father does not question the trial court's termination of his parental rights pursuant to subsection (a)(1) and (a)(2). We choose to address the trial court's termination pursuant to subsection (a)(1). ***In re B.L.W., supra.***

Our examination of the record reveals that it supports the termination of Father's parental rights pursuant to subsection (a)(1) in that Father demonstrated a settled purpose of relinquishing his parental claim to Child or refused or failed to perform his parental duties in the six months immediately preceding the filing of OCY's petition. Ms. Bell testified that Father cooperated only minimally with OCY. N.T., 2/27/13, at 34. According to her, he does not maintain contact with his caseworker, he failed to complete the majority of his FSP goals, and he attended few of the visits OCY offered with Child. ***Id.***, at 34-35. Father never obtained the mental

health evaluation requested by OCY even though he acknowledged he was aware of that FSP goal. N.T., 5/10/13, at 87, 106. Father admitted that he never took a parenting class that would permit him to deal with Child's special needs. **Id.** In addition, Father testified he was unaware of Child's educational and other needs and services, such as the school he attended, his grade level, education plan, his teacher's or therapist's names or therapy plans, or his counselor's or doctor's names. **Id.**, at 112-114.

Father's first issue is relevant to our discussion of subsection (a)(1). In that issue, he complains that the trial court committed an error of law or abused its discretion in terminating his parental rights because Child resided too far from him to make visits with Child practical. Ms. Bell, however, testified that OCY changed the location of Father's visits with Child at Father's request, and she and Ms. Yeakel testified that that Father never made any additional requests for assistance in visiting Child. N.T., 2/27/13, at 35, 122, 142-143. In addressing Father's transportation, the trial court found:

[Father]'s transportation was difficult, but [OCY] had demonstrated that they were willing to move the visits to a location in an attempt to accommodate him, and no doubt, if he had been able to work with them, they might have moved them again to an even more convenient location. Simply put, despite all the difficulties in scheduling, transportation and finances, [Father] was -- has been unable in the period the [Child] has been in care to maintain a meaningful place in [Child]'s life and to visit him more frequently than merely occasionally for very brief visits.

N.T. 5/10/13, at 129-130. We defer to the trial court on questions of credibility. ***In re Adoption of S.P., supra.*** Father's claim that transportation difficulties were the reason that he missed visits with Child is without merit.

When the trial court considered the evidence presented in the light of subsection (a)(1) it concluded:

Focusing on the last phrase of Section 2511(a)(1), failure to perform parental duties, this [c]ourt finds that there is clear and convincing evidence that both [Mother] and [Father] have, despite their love and affection for [Child], failed to perform parental duties during the period he's been in foster care.

N.T. 5/10/13, at 31-132.

The trial court did not abuse its discretion in terminating Father's parental rights pursuant to subsection (a)(1).

In his final issue, Father claims that the trial court abused its discretion in terminating his parental rights pursuant to subsection (b). We disagree.

Ms. Bell testified that, even though some type of bond existed between them, Child would not suffer irreparable harm if the trial court were to terminate Father's parental rights. She stated that Father was never a primary caretaker for Child and seemed to play only a limited role in Child's life. N.T. 2/27/13. at 41-42. Father admitted he had not seen Child for about two years prior to February of 2012. N.T., 5/10/13, at 117.

Ms. Yeakel testified that Child did not have trouble separating from Father after scheduled visits and experienced no negative effects from not seeing Father for long stretches of time. N.T. 2/27/13, at 141, 156.

Upon consideration of the testimony regarding Child's best interests pursuant to subsection (b), the trial court found:

Given the circumstances taken in their totality, the [c]ourt finds that there will not be a detriment to [Child] from terminating the parental rights of his two birth parents and that it will best serve his needs and welfare for the [c]ourt to terminate his parental rights and the parental rights of each of the parents to him so that he may be freed for adoption in an adoptive home.

Id., at 133-134. Father's final claim of error is without merit.

Accordingly, for the reasons stated, we affirm the trial court's order that terminates Father's parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(1) and (b), and authorizes OCY to proceed with Child's adoption.

Order affirmed.

Judgment Entered.

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

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/12/2013