**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

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| IN THE INTEREST OF: T.M., | IN THE SUPERIOR COURT OF PENNSYLVANIA |
| APPEAL OF: T.S., | |
| Appellant | No. 1509 EDA 2013 |

Appeal from the Order April 30, 2013
In the Court of Common Pleas of Philadelphia County
Family Court at No(s): CP-51-DP-0000548-2011

BEFORE: BOWES, LAZARUS, and WECHT, JJ.

MEMORANDUM BY BOWES, J.: **FILED NOVEMBER 25, 2013**

T.S. ("Father") appeals from the April 30, 2013 order terminating his parental rights to his daughter, T.M. The Philadelphia Department of Human Services ("DHS") filed a motion to dismiss/quash the appeal. We deny DHS's motion and remand the matter for the appointment of counsel.

T.M. was born during 2008. DHS has been involved with T.M.'s mother, T.T.M.[1] ("Mother"), since June 2010. Mother had a history of untreated mental health issues and substance abuse. ***See*** DHS Application for Protective Custody, 3/18/11, at 1. The agency placed T.M. in protective custody during March 2011 based upon a General Protective Service report

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[1] At the onset of the hearing on DHS's petition to involuntarily terminate parental rights, Mother voluntarily relinquished her parental rights to T.M. and her half-sister Ty.M. N.T., 4/30/13, at 4-7.

that Mother was under the influence of illicit drugs, behaving irrational, and was incoherent. N.T., 4/30/13, at 8; DHS Application for Protective Custody, 3/18/11, at 1. T.M. was adjudicated dependent on March 28, 2011. N.T., 4/30/13, at 17. The goal of the initial permanency plan was reunification.

T.M. currently resides with her half-sister, Ty.M., in a pre-adoptive foster home that DHS considers safe and appropriate. N.T., 4/30/13, at 10-12, 33. T.M. is flourishing in foster care and, during the year preceding the termination hearing, she fashioned a parent-child bond with her pre-adoptive foster parents, whom she relies upon for love, comfort, and stability. ***Id***. at 12, 14, 33. T.M. refers to her foster mother as "Mom-Mom" and identifies her as mother. ***Id***. at 33.

In contrast to the nurturing bonds that she enjoys in her foster home, T.M. has had no contact with Father. She does not know him and has not had any opportunity to establish a bond with him. ***Id***. at 32-33. T.M. had no physical contact with Father during her placement. ***Id***. at 40. Throughout its involvement with T.M., DHS was aware that Father was the the child's birth father. ***Id***. at 8. The agency attempted to locate Father using a parent locator search and by sending documentation to various addresses that it had obtained. Similarly, Wordsworth, the organization that administers T.M.'s foster care, attempted to contact Father by mail at six-month intervals. ***Id***. at 30-31. Although Father knew of T.M.'s involvement with DHS, he failed to contact the agency about his daughter or

communicate with Wordsworth until two or three weeks before the evidentiary hearing. ***Id***. at 8-9, 31. Throughout DHS's intervention, Father neglected to provide his daughter direct financial support or gifts, and he failed to attend any of her medical appointments or make any other attempts to satisfy her daily needs. ***Id***. at 13-14. Those responsibilities fell upon the foster parents. ***Id***. at 14. Moreover, Father failed to attend the only visitation with T.M. that DHS and Wordsworth were able to schedule in the three-week period following his emergence. ***Id***. at 9, 32. While Father advised the agency of his potential transportation issues, he did not contact DHS to confirm whether he obtained transportation or needed to reschedule. ***Id***. at 32.

On April 11, 2013, DHS filed petitions to terminate Mother's and Father's parental rights to T.M. pursuant to 23 Pa.C.S. § 2511(a)(1), (2), (5), (8), and (b). In addition, the agency filed a concomitant petition to change T.M.'s permanency goal to adoption. Appointed counsel zealously represented Father during the consolidated termination/goal change proceedings.[2] Following the portion of the hearing pertaining to Father, the

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[2] The order appointing counsel was entered under the juvenile court docket number associated with T.M.'s dependency rather than the family court's docket for the involuntary termination proceedings. Pursuant to 42 Pa.C.S. § 6337, "a party is entitled to representation by legal counsel at all stages of any proceedings under [the Juvenile Act] and if he is without financial resources or otherwise unable to employ counsel, to have the court provide counsel for him."

trial court issued from the bench its determination that DHS established by clear and convincing evidence the statutory grounds to involuntarily terminate Father's parental rights to T.M. pursuant to § 2511(a)(1), (2), (5), (8), and (b). Prior to the close of the hearing, counsel informed the trial court that Father intended to appeal and that counsel would not be able to represent him in those proceedings. N.T., 4/30/13, at 54-55. Accordingly, the trial court directed that it would administratively appoint substitute counsel to represent Father on appeal. ***Id***. at 55. On the same date, the trial court entered a decree involuntarily terminating Father's parental rights to his daughter. In addition, the trial court appointed Craig B. Sokolow, Esquire, to represent Father during the ensuing appeal.[3]

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[3] We observe that the trial court opinion states in its summarization of facts and procedural history that it "held it was in the best interest of the child that the goal be changed to adoption." ***See*** Trial Court Opinion, at 6/28/13, at 2. However, the trial court never issued a goal change directive from the bench during the evidentiary hearing, nor did it enter an order on the docket to that effect. Indeed, the list of docket entries that was certified and transmitted to this Court reveals that as of July 3, 2013, T.M.'s placement goal remained reunification and that a goal change hearing was scheduled for July 10, 2013. Similarly, the order appointing Attorney Sokolow refers to the then-pending goal change proceeding. As the trial court did not transmit a supplemental record indicating that it actually entered an order changing T.M.'s goal to adoption, upon remand, we direct the court to address that matter formally. While we are cognizant that the trial court can terminate Father's parental rights pursuant to 23 Pa.C.S. § 2511(a) and (b), even if the permanency goal has not been changed to adoption, in the case at bar, the trial court indicated that it changed the permanency goal and Father purports to appeal that determination. Stated simply, if the trial court has not actually entered an order changing T.M.'s permanency goal to adoption, the portion of Father's appeal purporting to challenge that order is premature.

Attorney Sokolow filed a timely appeal from the order terminating parental rights and complied with Pa.R.A.P. 1925(a)(2)(i) by filing a statement of errors complained of on appeal concurrent with Father's notice of appeal. However, the Rule 1925(b) statement listed issues that were largely immaterial to the trial court's decisions to terminate Father's parental rights and to change T.M.'s permanency goal from reunification to adoption. The only complaints that were marginally relevant to the termination/goal change proceedings were,

> 1. There was no clear and convincing evidence that proper parental care and control was not available to support adjudication of dependency and or goal change to adoption.
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> 3. The trial court erred by admitting hearsay evidence, over appellant's objection, as to the father's background and suitability to parent.

Pa.R.A.P. 1925(b) Statement, 5/21/13. The remaining issues challenged the juvenile court's adjudication of dependency.

At the outset, we address DHS's motion to dismiss or quash Father's appeal for failure to preserve any issues for our review. Essentially, the agency contends that Father's appellate brief is so utterly defective that it impedes our ability to perform appellate review. We agree with DHS's characterization of Father's brief; however, for the reasons we discuss *infra*, we decline to dismiss Father's appeal.

Our rules of appellate procedure provide that where the defects in a brief are so substantial as to preclude meaningful judicial review, the appeal may be quashed or dismissed.[4] ***See*** Pa.R.A.P. 2101. Herein, the counseled brief submitted by Attorney Sokolow on Appellant's behalf fails to comply with any of the sections outlined in Pa.R.A.P. 2111. The brief lacks a table of contents; statement of jurisdiction; statement of the scope and standard of review; statement of the questions involved; statement of the case; summary of argument; and argument section. In addition, Attorney Sokolow failed to append either Father's Rule 1925(b) statement or the trial court opinion to the brief pursuant to Pa.R.A.P. 2119(b) and (d). Indeed, the one-page submission is more accurately characterized as a letter than a legal brief.

Moreover, to the extent that Attorney Sokolow leveled any argument in Father's brief, those arguments are undeveloped, incomplete, and unreservedly useless. Pursuant to Pa.R.A.P. 2119 (a), "The argument shall be divided into as many parts as there are questions to be argued . . . followed by such discussion and citation of authorities as are deemed

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[4] Pa.R.A.P. 2101 provides that an appeal may be quashed or dismissed due to a brief's substantial defects. While this Court has not consistently distinguished between the Rule's two dispositions, our Supreme Court has clarified, albeit in a different context, that "Quashal is usually appropriate where the order below was unappealable or the Court otherwise lacked jurisdiction." ***Sahutsky v. H.H. Knoebel Sons***, 782 A.2d 996 (Pa. 2001) (internal citations omitted).

pertinent." In addition, Rule 2119(b) provides, "Citations of authorities must set forth the principle for which they are cited." "Appellate arguments which fail to adhere to these rules may be considered waived, and arguments which are not appropriately developed are waived. Arguments not appropriately developed include those where the party has failed to cite any authority in support of a contention." ***Lackner v. Glosser***, 892 A.2d 21, 29-30 (Pa. Super. 2006) (citations omitted).

Instantly, Attorney Sokolow failed to level any cogent argument with citation to legal authorities. ***See*** Father's brief at 1. He simply complains that DHS failed to adequately search for Father during the dependency proceedings and asserts that, in its haste to terminate Father's parental rights, DHS neglected to provide Father a sufficient opportunity to communicate with T.M. ***Id***. In sum, Attorney Sokolow reasoned, "[F]ather should be given the right to establish that he can be a proper father and that he can bond with the child." He continues, "[F]ather should not lose his rights until at least one year has passed after he was found." ***Id***. These arguments are not only wholly unsupported by citation to relevant legal authorities, but the nonsensical assertions also belie Attorney Sokolow's meager understanding of the statutory bases to involuntarily terminate parental rights pursuant to 23 Pa.C.S.§ 2511(a) and (b).

As noted *supra*, however, notwithstanding the substantial defects that impede our ability to perform appellate review, we decline to dismiss

Father's appeal. Instead, mindful of Father's statutory right to effective counsel, we remand the matter to the trial court for the appointment of substitute counsel and the preparation of a cogent appellate brief.

Pennsylvania jurisprudence deems parents to have a constitutional right to representation during termination proceedings. ***See In re J.T.***, 983 A.2d 771, 774 (Pa.Super. 2009) (citing ***In re Adoption of R.I.***, 312 A.2d 601 (Pa. 1973) ("an indigent parent in a termination of parental rights case has a constitutional right to counsel.")). Moreover, the Adoption Act requires the appointment of counsel to an indigent parent, upon petition. The pertinent section provides as follows:

> (a.1) Parent.--The court shall appoint counsel for a parent whose rights are subject to termination in an involuntary termination proceeding if, upon petition of the parent, the court determines that the parent is unable to pay for counsel or if payment would result in substantial financial hardship.

23 Pa.C.S. § 2313 (a.1).

In ***In re J.T.***, ***supra***, we reiterated that the right to appointed counsel in proceedings to terminate parental rights presupposes that counsel will provide effective assistance. ***See also In re Adoption of T.M.F.***, 573 A.2d 1035, 1040 (Pa.Super. 1990) (*en banc*) ("flowing from this [right to counsel in termination proceedings] it is presumed that counsel would and should be effective"). We also acknowledged, albeit implicitly, that the entitlement to counsel during the termination proceedings extends to appeals from the order terminating parental rights. ***In re J.T.***, ***supra*** at 775. The ***In re J.T.***

Court reasoned that appellate counsel's failure to file a timely Rule 1925(b) statement would be tantamount to ineffective assistance of counsel *per se* if the late filing resulted in the waiver of the parent's appellate rights. ***Id***. However, we ultimately concluded that, pursuant to ***Commonwealth v. Burton***, 973 A.2d 428 (Pa.Super. 2009) (*en banc*), counsel's untimely compliance with Rule 1925(b) in that case did not mandate a finding of waiver. ***Id***. As we declined to find waiver, we did not hold that counsel was *per se* ineffective.

Unlike the Court in ***In re J.T.***, which failed to find that counsel's misstep warranted waiving of his client's appellate rights, herein, we conclude that Attorney Sokolow's patently-defective brief so completely foreclosed appellate review that it is the functional equivalent of an unqualified denial of representation. ***See Commonwealth v. Franklin***, 823 A.2d 906, 910 (Pa.Super. 2003) (appellate counsel presumed ineffective because brief was so flawed as to require this Court to quash appeal); ***United States v. Cronic***, 466 U.S. 648 (1984) (prejudice presumed where circumstances of counsel's ineffectiveness was tantamount to complete denial of representation). ***Compare Commonwealth v. Reed***, 971 A.2d 1216, 1226 (Pa. 2009) ("filing of an appellate brief, deficient in some aspect or another, does not constitute a complete failure to function as a client's advocate so as to warrant a presumption of prejudice under ***Cronic***") ***and Commonwealth v. Fink***, 24 A.3d 426, 433 (Pa.Super. 2011)

(distinguishing ***Reed***, ***supra***, in order to apply ***Cronic*** presumption of prejudice, "Counsel's failure to offer the citation and discussion necessary to this Court's consideration of [the defendant's] claims on direct appeal precluded analysis of their merits and directly foreclosed [the defendant's] right to appellate review with the aid of effective counsel.").

Having appointed counsel to represent Appellant during the termination proceedings in the case *sub judice*, the trial court implicitly determined that Father was indigent or otherwise unable to pay to retain counsel on his own behalf pursuant to 23 Pa.C.S. § 2313(a.1). As Father's right to counsel during the termination proceedings extends to his appeal from the order terminating his parental rights, he is entitled to competent appellate counsel in this appeal. As evidenced by Attorney Sokolow's wholly defective brief, Father was denied the assistance of counsel. Thus, we remand the matter to the trial court for the appointment of new counsel to represent Father on appeal.

For the foregoing reasons, we deny DHS's motion to dismiss/quash the appeal, and we remand the matter to the trial court for the appointment of competent appellate counsel within fifteen days of the date of this memorandum. Following his or her appointment, new counsel shall have thirty days to file with this Court a cogent advocate's brief or a motion to withdraw from representation pursuant to the dictates of ***Anders v.***

***California***, 386 U.S. 738 (1967) and ***Commonwealth v. Santiago***, 978 A.2d 349 (Pa. 2009).[5] DHS will have an additional thirty days to respond.

We direct the trial court to withhold compensation from Attorney Craig Sokolow for his appointment and representation in this matter. In addition, we direct the court to formally address DHS's petition to change T.M.'s permanency goal to adoption and transmit the resulting order to this Court in a supplemental certified record.

Motion to quash/dismiss Appellant's appeal is denied. Case remanded with instructions. Panel jurisdiction retained.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 11/25/2013

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[5] In ***In re V.E.***, 611 A.2d 1267, 1275 (Pa.Super. 1992), this Court expressly extended the principles of ***Anders v. California***, 386 U.S. 738, (1967), to appeals involving the termination of parental rights. Specifically, the Court espoused, "we now hold that counsel appointed to represent an indigent parent on a first appeal from a decree involuntarily terminating his or her parental rights, may, after a conscientious and thorough review of the record, petition this court for leave to withdraw representation if he or she can find no issues of arguable merit on which to base the appeal." ***Id***.