

IN RE: A.K. : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

APPEAL OF: L.K. (N) : No. 1531 WDA 2012

Appeal from the Order Dated November 1, 2010
In the Court of Common Pleas of Somerset County
Orphans' Court at No. 12 Adoption 2008

BEFORE: BENDER, J., MUNDY, J. AND STRASSBURGER*, J.

MEMORANDUM BY BENDER, J.:

Filed: April 29, 2013

L.K. (N.) (Mother) appeals from the order dated November 1, 2010, which granted the petition filed by the Somerset County Children and Youth Services (SCCYS) terminating Mother's parental rights to her minor child, A.K., who was born in July of 2006. We affirm.

On appeal, Mother's brief provides the following question for our review:

Whether the trial court abused its discretion by granting the petition to involuntarily terminate Mother's parental rights under 23 [Pa.C.S.] § 2511(a)(1) when the evidence did not establish a "settled purpose to relinquish parental rights" because she was gainfully employed, making progress with her goals, drug free, in compliance with the family service plan, and missed visits as a result of the agency's miscommunication and refusal to work with Mother?

Mother's brief at 4.

We review an order terminating parental rights in accordance with the following standard:

When reviewing an appeal from a decree terminating parental rights, we are limited to determining whether the

*Retired Senior Judge assigned to the Superior Court.

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.

In re R.N.J., 985 A.2d 273, 276 (Pa. Super. 2009) (quoting *In re S.H.*, 879 A.2d 802, 805 (Pa. Super. 2005)). 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. *R.N.J.*, 985 A.2d at 276.

Moreover, we have explained that:

[t]he 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."

Id. at 276 (quoting *In re J.L.C. & J.R.C.*, 837 A.2d 1247, 1251 (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).

We have reviewed the certified record, the briefs of the parties, the applicable law, and the comprehensive opinion authored by the Honorable David C. Klementik of the Court of Common Pleas of Somerset County, filed

J-S17015-13

on November 13, 2012. We conclude that Judge Klementik's thorough, well-reasoned opinion properly disposes of the issue raised by Mother. Accordingly, we adopt Judge Klementik's opinion as our own and affirm the decree appealed from on that basis.

Order affirmed.

IN RE:

A.K.

[REDACTED]

d.o.b. 7/2006

) IN THE COURT OF COMMON
) PLEAS OF SOMERSET COUNTY,
) PENNSYLVANIA
)
) ORPHANS' COURT DIVISION
)
) NO. 12 ADOPTION 2008
)

MEMORANDUM

This matter is before the court on a Petition For Involuntary Termination of the parental rights of ^{L.K. (N.)} [REDACTED] ["Mother"] in and to her son ^{A.K.} [REDACTED] ["the Child"] as filed by the Somerset County Children and Youth Services ["SCCYs"]. Following full hearing attended by Mother with appointed counsel on November 1, 2010, the court entered an order terminating the parental rights. At the same time, the parental rights of the natural father, ^{N.F.K.} [REDACTED] ["Father"] were also terminated; however, although he was represented by counsel at the hearing and failed to appear, no appeal was taken thereof. The case has a somewhat long and involved history which must be understood as background to the actions taken by the court.

Case Background

SCCYs became involved with Mother even prior to the birth of the subject child while she was living with her parents regarding truancy issues. When Mother became pregnant and moved in with Father, there were concerns regarding housing conditions with "excessive clutter" and "difficulty walking through the residence in a safe manner." A case was opened for the child

Appendix C

[dob 7-2006] when he was approximately one month old in August, 2006. Visits by SCCYS workers ensued on approximately 18 occasions up through April, 2007 at the mobile home occupied by the parents. The parents attended parenting classes on approximately 6 occasions between October 2006 and January 2007. The parents were in an apparent stage of poverty and had difficulty maintaining heat throughout the winter months. The agency raised concerns regarding the use of space heaters, and at one point in time in February, 2007 when the water pipes froze for a brief period, there was no water in the residence. The child was behind with his immunizations during those first nine months; however, some immunizations had been completed.

On April 9, 2007 the agency received a report that the Child has sustained a burn on his lower leg, and, upon her observing the burn, the agency worker recommended that a doctor appointment be scheduled. On the same day that the burn occurred, the agency received a Child Line report that the burn was caused in an abusive manner. The agency obtained an Emergency Order of the court to have the Child removed from the care and custody of the parents after the doctor visit. The "adjudication hearing" was conducted on April 25, 2007 resulting in the court finding the Child to be dependent and lacking proper parental care or control. The parents consented to the adjudication and placement of the Child in a foster home without the receipt of testimony by the court. On May 10, 2007 the parents and paternal grandmother were all "indicated" for "medical neglect" and grandmother, alone, was indicated for causing the burn. Although there was involvement by the Pennsylvania State Police, no charges were subsequently filed and the investigation was apparently closed.

On May 3, 2007 a "Permanency Addendum to Family Service Plan" was prepared by SCCYS and reviewed by the parents. Mother signed the plan thereby indicating that she agreed with the plan; however, Father refused to sign. While the Child was to be placed in a foster home in Johnstown, Cambria County, about 20 miles away, the parents were to visit the Child for one hour weekly, allow unannounced visits in their home, remove potential safety hazards in the home, remove clutter, baby-proof their home, and meet with the Family Support Specialist to learn ways to support and nurture the Child's growth and development. In the judgment of SCCYS, the Permanency Review Hearings of September 2007 and March 2008 did not show significant improvement or progress by the natural parents in pursuing their stated goals. As a result, SCCYS filed a Petition for Involuntary Termination against the natural parents on July 25, 2008. The petition alleged, pursuant to 23 Pa.C.S.A. §2511(a)(8) that the Child had been removed from the care of the parents by the court, that 12 months had elapsed from the date of removal, and that 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. Testimony was received by the court on September 11, 2008, September 19, 2008, and November 13, 2008. A Memorandum and Order issued by the court dated August 5, 2009 denied the Petition indicating that the SCCYS had failed to prove the elements of 23 Pa.C.S.A. §2511(a)(8) by clear and convincing evidence. This court had given the parents the benefit of the doubt as to various allegations assigned by SCCYS and was less than convinced by the Agency's expert, Dr. Neil Rosenblum, that no bond existed between Mother and the Child. We incorporate within this opinion the rationale and findings set forth in our Memorandum and Order filed August 5, 2009.

In January, 2009 the Agency assigned a new caseworker, Rebecca Van Dusen, to work with the parents and Child who, up to that point in time, had been in placement for 21 months. Mother had taken up pursuit of active duty military training in January, 2009, which caused her to be on duty until May 22, 2009. During the review period of January to May 2009, there were no visits between Mother and Child and only a phone call on Mother's Day. The first one hour supervised visitation between Mother and Child occurred on June 17, 2009; however, the next scheduled visit on June 24, 2009 did not occur with Mother having failed to call to advise that she would not be appearing. Of nine scheduled visits for July and August 2009, Mother attended seven. Beginning in September and October 2009 Mother's visitation with the child dropped off substantially, and of ten scheduled visits, Mother only attended one. No visits occurred in December, 2009 and it was noted that there were no calls, letters, or Christmas gifts.

At the time of the July 21, 2010 Dependency Review Hearing the Agency had requested that the court find aggravated circumstances and a change of goal from reunification to adoption, together with a cessation of Mother's scheduled visitation. From the testimony in that hearing the Dependency Judge specifically found that "between the months of October 2009 and May 2010, [Mother] missed 20 of the scheduled 24 visits with the child." [Findings of Fact and Order, 7/21/10, at 1]¹. Mother appealed the court's determination of aggravated circumstances and change of goal to adoption to the Superior Court on August 11, 2010. On December 21, 2010 the Superior Court issued its opinion in sustaining the Dependency Judge's decision as having acted

¹ At the request of SCCYS and without objection from counsel for Mother we incorporated the Dependency Court testimony in the record, and we further incorporate the Memorandum Opinion of that Juvenile proceeding.

within his discretion in concluding that adoption, rather than reunification, was best suited to the child's safety, protection and physical, mental and moral welfare. The Superior Court noted the following:

We further find that the trial court did not, as Mother argues, fail to properly consider her professional commitments and "miscommunications" with CYS. The trial court, in its discretion, found that the uncontroverted four of twenty-four visits between Mother and child from October 2009 through May 2010 was persuasive in its ultimate determination that Mother's "inaction in this case during the three plus year period that the child has been in placement has caused the child to no longer have the appropriate bond with [Mother]"... and that "if the child had proper parental care, he would have been out of placement a long time ago; but because he has been without proper parental care, he has languished in placement." Findings of Fact and Order, 7/21/10, at 2.

Superior Court Opinion at 15.

On July 20, 2010, one day before the Dependency Review Hearing at which the Dependency Court received testimony and made the findings of aggravated circumstances and goal change to adoption, the SCCYS had filed its second Petition for Involuntary Termination of Parental Rights. The Petition alleged conduct of the natural parents justifying termination pursuant to 23 Pa.C.S.A. §2511(a)(1) and §2511(a)(8)². At the scheduled hearing on November 1, 2010, following the receipt of testimony by the Agency's caseworkers and its expert witness, Dr. Neil Rosenblum, the court terminated the parental rights of both natural parents.

The Termination Hearing Testimony

The caseworker, Rebecca Van Dusen, testified regarding the sporadic visitation by Mother and the lack of interest by Father over the preceding 18 months. Throughout the period

² The count under 23 Pa.C.S.A. §2511(a)(8) was withdrawn at the time of the IVT hearing.

of time the Child had continued under the same foster care parents since the initial placement in April, 2007, and had maintained such a significant bond with the Child that he recognized the foster parents as his only parents.

Caseworker Van Dusen testified that there were no visits between January and May 2009. The caseworker learned that Mother was residing with a friend in Ohio but wanted to establish visitation. The first visitation in 2009 occurred on June 17, 2009. Throughout July and August 2009 the supervised visitations were steady; however, thereafter they became sporadic. There were few letters or phone calls. As Mother was ordered to report to Fort Dix on December 6, 2009 there were no visits in December as well as no calls, letters, or gifts at Christmas time. On January 19, 2010 Mother phoned indicating that she was in a shelter near Gettysburg, Pennsylvania with the Women's Help Center and wanted to schedule visitation with the Child. Only one visit was attended in January and February, 2010, being on February 24, 2010 followed by the next on March 24, 2010. In April 2010 the visitations were scheduled for two hours per week; however, none of the visits were attended, and it was revealed that Mother would not disclose her address. The two scheduled visits in June, 2010 were missed due to assignment at Fort Dix for the June 9, 2010 visit and miscommunication for the June 23, 2010 visit. One visit was attended by Mother on July 7, 2010 prior to the scheduled hearing for aggravated circumstances and change of goal to adoption. In essence, Caseworker Van Dusen testified that neither parent had performed any parental duties for the child since the beginning of her involvement in November, 2009 to the time that the case was turned over to a new caseworker, Jessica Fela; at the time of the seventh Permanency Review Hearing.

In 2009 it was reported that Mother's marital relationship with Father had become sufficiently dysfunctional that a divorce ensued. The Agency became aware of Mother's employment with Walmart as well as her National Guard activities. Mother's housing situation represented a significant challenge to the Agency because between Mother's refusal to advise them of her whereabouts and her continuing moves, the agency was unable to conduct an evaluation of her housing for the purpose of reunification with ^{A.K.} [REDACTED]

In conjunction with the termination petition a bonding study was requested of Dr. Neil Rosenblum in August, 2011. At that time it was noted that the child referred to the foster parents as his parents and did not identify natural mother as his Mother. The child exhibited no evidence of physical affection to Mother as the relationship was damaged by three years of minimal contacts. In observing that Mother lacked stability and maturity it was the opinion of Dr. Rosenblum that the best interests of the Child would be served by adoption through the foster parents. At the same time he opined that reunification would be harmful and possibly "psychologically damaging".

On behalf of Mother her counsel presented the testimony of the Cambria County Children and Youth Services [CCCYS] personnel who were involved with Mother and her other child, ^{I.K.} [REDACTED]. The CCCYS experience with Mother was reported to be contra to that of SCCYS in that Mother was making progress toward her goals and was actively involved in visitation with the second child. Throughout 2010, however, Mother was not in a position to obtain reunification with her child, ^{I.K.} [REDACTED], due to her work schedule. The Cambria County caseworkers both reported concerns over her mental health in that she appeared paranoid such

that people were out to get her. They also recognized that natural Father, ^{N.F.K.} [REDACTED], was mentally unstable and continued to be a source of difficulty for Mother's reunification with the children.

From her own testimony Mother reported that she had obtained housing at the Coopersdale Homes, a public housing project in Johnstown, Cambria County; however, she admitted that she did not notify SCCYS of her address. Also during the relevant time frame Mother had been housed with the Women's Help Center of Johnstown, Pennsylvania, for upwards of 30 days due to the violence occasioned upon her by Father, ^{N.K.} [REDACTED]. She had become divorced from him in March, 2010 and had retaken her maiden name, ^{L.N.} [REDACTED].

Analysis of Goals

Consistent with the testimony received by the Dependency Judge at the prior Permanency Review Hearing we find that the goal of visitation on a weekly basis for at least one hour with ^{A.K.} [REDACTED] has not been met by either parent. The failure to attend 20 of 24 scheduled visits represents not only a failure of the stated goal, but also provides substantiation for why there has been no improvement in the bonding relationship between Mother and Child. The June, 2010 Permanency Review Hearing, representing the seventh six-month review, demonstrates the extended period of time over which the parents have failed to adequately become a part of the Child's daily living.

Consistent with missing visitations the parents have failed to be involved in the Child's routine checkups and medical treatments. At this point in time the parents have lost all touch with the Child's medical needs and history.

An important goal placed upon the natural parents was to inform the agency of their living arrangements so that an evaluation of the living conditions can be made prior to reunification. This particular goal was especially important inasmuch as the original conditions in the mobile home occupied by the parents and child were a key factor in warranting the child's removal. While Mother has indicated her recent success in obtaining suitable housing, she has not communicated the same to the Agency so as to permit them to ensure their adequacy.

The goal to become self-sufficient with transportation has been completed as it has been reported by Mother that she has obtained an operating vehicle.

The goal to complete a psychological evaluation to aid in determining what additional services may be needed to assist in their ability to fully care and provide for the child has not been completed. Although scheduled to have an evaluation as part of the CCCYS case involving her daughter, ^{lik.} [REDACTED], the scheduled appointment for March 30, 2010 was not attended.

The goal to maintain financial stability appears to have been met by virtue of Mother's employment at Walmart. There was, however, no evidence provided as to the extent of her income or the extent of other public services she was receiving.

Discussion

The within action maintained by SCCYS in termination of Mother's parental rights is pursuant to the following statutory authorization:

§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 our first initiated subsequent to the giving of notice of the filing of the petition.

23 Pa.C.S.A. §2511(a)(1) and §2511(b).

In such a proceeding to involuntary terminate parental rights, the burden of proof is on the party seeking termination to establish the same by clear and convincing evidence of the existence of grounds for doing so. *In re Adoption of Dale A., II, 683 A.2d 297 (Pa.Super.1996)*. This burden requires 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 C.L.G., 956 A.2d 999 (Pa.Super.2008)*. The question of whether a parent has evinced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties for a period of six months, for purposes of an action to terminate such parents parental rights, must be analyzed in relation to particular circumstances of the case. *Lookabill v.*

Moreland, 485 A.2d 1204 (Pa.Super.1984). Clear and convincing evidence to establish that a parent's conduct reflected a settled intent to refuse or fail to perform parental duties for at least six months prior to a petition for termination of parental rights can be established by evidence that the parent failed to make a good faith effort to maintain the parent-child relationship. *In re C.S., 761 A.2d 1197 (Pa.Super.2000).*

In the instant case Mother has only maintained a sporadic schedule of contact with the Child since the adjudication of dependency in 2007 and up to the hearing for aggravated circumstances, goal change, and petition for termination. Although the agency had filed a prior Petition for Involuntary Termination of Parental Rights in 2008, after a contracted hearing and review by the court Mother was given the benefit of the doubt by the court in a renewed opportunity to prove herself in 2009. While mother can point to various aspects of her life which turned positively toward her ability to parent, including the maintenance of employment and suitable housing, the fact remains that she did not place the child in the forefront of her living through her visitation and continuing contacts. A separate Dependency Judge of this court received the testimony of mother and her witnesses in establishment that the goal of reunification should be changed to a goal of adoption. The testimony revealed that in the preceding nine months Mother had failed to attend 20 of 24 scheduled visitations. On appellate review of this determination the Superior Court sustained the Dependency Judge's finding based on the evidence.

We further note that at the time of this proceeding the Child had been in the care and custody of foster parents the majority of his life. The bonding study conducted by Dr. Neil

Rosenblum gave little indication of a relationship between Mother and the child as of the second hearing on Petition for Termination. Although there was little testimony regarding the progress of the child throughout both termination proceedings, the Permanency Review Hearing reports offered into evidence indicated that the child was thriving in the care and custody of the foster parents.

Mother argues that much of her failure to satisfy the goals and requirements established by SCCYS revolved around her poor relationship with the Somerset County case workers. Throughout the two termination proceedings Mother received services and liaison from three separate caseworkers, all who arrived at the same conclusions regarding Mother's efforts. As is true in any relationship, mutual trust is a function of the two way give-and-take between the parties. When a caseworker observes a parent who, on the one hand, verbally indicates her desire to visit her child and be a part of the child's life, but who on the other hand fails to appear for 20 of 24 scheduled visits, many without phone call or explanation, the relationship of trust cannot be supported. In the instant case while Mother testifies of her desire and efforts to be a parent, her actions did not give rise to the belief that the parent-child relationship would be promoted in the near future. Adequate parenting requires action as well as intent, and therefore, parents are required to make diligent efforts toward the reasonably prompt assumption of full parental responsibilities. *In re A.L.D.*, 797 A.2d 326 (Pa.Super.2002). The "reasonable time" requirement is intended to prevent children from growing up in indefinite state of limbo, without parents capable of caring for them, and at the same time unavailable for adoption by loving and willing foster families. *In re N.C.*, 763 A.2d 913 (Pa.Super.2000). The evidence of "settled

intent" in this case arises from the record of lackadaisical efforts by Mother to regain her role as the primary caregiver for the child.

We must conclude, therefore, that the Petitioner, SCCYS, has met its burden of proof in establishment that Mother has evidenced a settled purpose of relinquishing parental claim to the Child and that she has further failed to perform parental duties. The Child has flourished in the care and custody of his foster parents as the bonding study conclusively indicates that a strong bond has been established between them. At the same time, there is no evidence of harm to the child by the permanent detachment of the Mother-child relationship as the bonding study fails to give evidence of such bond.

BY THE COURT



David C. Klementik, J.

RECEIVED

2012 NOV 13 AM 10:55

CLERK OF DISTRICT COURT
SARASOTA COUNTY, FLA.