

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: R.J.S., III, A
MINOR

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: D.R., MOTHER

No. 1605 EDA 2013

Appeal from the Decree May 30, 2013
In the Court of Common Pleas of Philadelphia County
Family Court at No(s): 51-FN-340505-2009
CP-51-AP-0000188-2013
CP-51-DP-0000054-2012

BEFORE: ALLEN, J., MUNDY, J., and FITZGERALD, J.*

MEMORANDUM BY MUNDY, J.:

FILED DECEMBER 27, 2013

Appellant, D.R. (Mother), appeals from the May 30, 2013 decree of the Court of Common Pleas of Philadelphia County that terminated her parental rights to her son, R.J.S., and the May 30, 2013 order changing R.J.S.'s permanency goal to adoption. After careful review, we affirm.¹

Philadelphia's Department of Human Services (DHS) filed petitions to terminate Mother and Father's parental rights and to change R.J.S.'s goal to adoption on April 3, 2013. The trial court held a hearing on the petition

* Former Justice specially assigned to the Superior Court.

¹ The trial court terminated the parental rights of R.J.S.'s father, R.S., Jr. (Father), in a decree entered on April 18, 2013. He did not appeal that decree.

concerning Mother's parental rights on May 30, 2013. DHS presented the testimony of DHS social worker Vallav Shah, and Women's Christian Alliance agency social worker Ellie Sumptner. Mother testified on her own behalf. The testimony adduced at the hearing revealed the following factual and procedural background to the filing of the termination petition.

R.J.S. was born in September of 2011 and entered foster care on January 9, 2012, pursuant to an Order of Protective Custody (OPC) obtained by DHS. DHS became involved with R.J.S.'s family prior to his placement when it received a General Protective Services (GPS) report concerning one of R.J.S.'s siblings. N.T., 5/30/13, at 17. DHS provided In-Home Protective Services (IHPS) to the family from December 16, 2010, until December 22, 2010. DHS reinstated IHPS on December 12, 2011.

Mother has a history of drug and alcohol use, and Mother and Father have a history of domestic violence. The effects of this drug use and domestic violence on R.J.S.'s well-being were causes of concern for DHS. ***Id.*** at 20, 27. The trial court adjudicated R.J.S. dependent and committed him to DHS' custody on January 19, 2012. The trial court also ordered that Mother and Father be referred to the Achieving Reunification Center (ARC), and to the Clinical Evaluation Unit (CEU) for drug screens, dual diagnoses, and monitoring. Order of Adjudication and Disposition, 1/19/12.

Mother's Family Service Plan (FSP) objectives were to obtain appropriate housing, maintain contact with DHS, participate in drug and

alcohol treatment, participate in parenting training and domestic violence counseling, and visit with R.J.S. N.T., 5/30/13, at 18-19, 27. These objectives remained consistent throughout R.J.S.'s placement. **Id.** at 19. The Individual Service Plan (ISP) objectives that Woman's Christian Alliance established for Mother were to obtain housing and employment, participate in parenting classes, and maintain contact with R.J.S. **Id.** at 12-13. Mr. Shah testified that Mother made no effort to address these objectives during the first year of R.J.S.'s placement in spite of DHS' efforts. DHS referred Mother to the ARC program three times for parenting classes and domestic violence counseling, but Mother never attended either program. **Id.** at 21, 27-28.

Mother did not report to the CEU for drug screening or evaluation and she relapsed into drug use several times during 2012. **Id.** at 19-20. Mother failed to attend the visits with R.J.S. that DHS scheduled for her, never called the agency to inquire about R.J.S., and never sent R.J.S. a card or any other token of affection. **Id.** at 8, 11, 14-15. These circumstances led, *inter alia*, to the trial court involuntarily terminating Mother's rights to R.J.S.'s sibling, I.L.E., on October 4, 2012. At a permanency review hearing on November 26, 2012, the trial court found that Mother was not following her permanency plan, had not pursued her objectives, had not visited R.J.S., and had not made her whereabouts known to DHS. Permanency Review Order, 11/26/12.

Mother admits that she has "a drug problem." N.T., 5/30/13, at 33. Mr. Shah testified that Mother maintained a transient lifestyle and, despite the fact that it was a clearly identified objective, failed to stay in contact with DHS. **Id.** at 19-26. According to Mr. Shah, Mother was evicted from the residence she shared with Father in July of 2012 because of domestic violence. Mother then stayed with her mother, on the street, or back with Father, while also being intermittently incarcerated from July 2012 through February 2013. **Id.** at 15, 20-21, 23-24, 29. Mother remained incarcerated as of the date of the hearing. **Id.** at 22, 31.

Mr. Shah testified that he had no contact with Mother from January 2012 to June or July 2012. **Id.** at 26. He then had one contact with Mother, during which she signed paperwork that permitted R.J.S. to receive medical treatment. **Id.** at 25. Mother sent Mr. Shah a letter in February 2013, advising him of her incarceration. She called him from the prison, but Mr. Shah was unable to contact Mother when he returned the call. **Id.** at 23, 25.

Ms. Sumptner testified the agency mailed visitation schedules to Mother at two addresses she provided to DHS. **Id.** at 13, 15. DHS personnel also met in person with Mother to discuss her weekly visitation. Ms. Sumptner testified that Mother did not respond to her outreach and did not initiate any phone contact with DHS. **Id.** at 11, 15. Mother has only had two visits with R.J.S. since he entered placement. Mother had one visit

with R.J.S. prior to May 2012, and one on June 25, 2012, despite forty-six visits being made available by DHS between May 2012 and May 2013. **Id.** at 8-9, 14-15. Ms. Sumptner had no contact with Mother after the June 25, 2012 visit. **Id.** at 15-16. Mother offered no plausible excuses for missing visits with R.J.S. **Id.** p 9-10.

Ms. Sumptner testified that, during the June 25, 2012 visit, R.J.S. “barely knew [Mother]. He didn’t really know how to interact with her.” **Id.** at 9-10. R.J.S. separated easily from Mother at the end of that visit. **Id.** at 10. Ms. Sumptner testified that R.J.S. had clearly developed no bond with Mother. **Id.** at 10. Ms. Sumptner opined that R.J.S. will not sustain any harm from the termination of Mother’s parental rights because he does not know her as his mother, has only had limited contact with her, and has been in the care of his pre-adoptive mother for sixteen months. **Id.** at 11-12.

Ms. Sumptner testified that R.J.S., who has special medical needs, has resided in his pre-adoptive foster home since January 2012, and that his pre-adoptive foster mother provides excellent care for him. **Id.** at 6, 7, 12. R.J.S. has undergone neurological evaluations and treatment for a hernia. R.J.S. receives physical and occupational therapy for assistance with walking, and receives treatment for vision problems. **Id.** at 7. Mother has never participated in R.J.S.’s medical treatment or care. **Id.** at 8. At the hearing, Mother thanked R.J.S.’s foster mother for taking care of her son,

"I'm just so grateful that he has a good person in his life that is taking the responsibility that I couldn't do." *Id.* at 33.

The trial court entered its decree terminating Mother's parental rights on May 30, 2013. Mother filed her notice of appeal and her concise statement of errors complained of on appeal on June 6, 2013.² The trial court filed its rule 1925(a) opinion on June 28, 2013.

On appeal, Mother presents the following question for our review:

- A. Whether the trial court erred in involuntarily terminating [Mother's] parental rights where [DHS] failed to keep regular contact with [Mother] and notify her of her family service plan objectives even though the worker knew her location?

² Mother filed a notice of appeal at both CP-51-DP-000005402012 (dependency/goal change) and CP-51-AP-0000188-2013 (termination), attaching both the decree of termination and order changing the goal in the dependency case to adoption. Mother's Notice of Appeal, 6/6/13. However, Mother's statement filed pursuant to Pa.R.A.P. 1925(a)(2)(i), filed contemporaneously therewith, alleges error only with the trial court's termination decree. Mother's Pa.R.A.P. 1925(b) Statement. Similarly, Mother's appellate brief discusses only the issues challenging the termination decree as stated in her Rule 1925 statement. **See** Mother's Brief, generally. Accordingly, Mother has waived any challenge to the trial court's May 30, 2013 order changing R.J.S.'s permanency goal to adoption. **See In re C.M.**, 822 A.2d 507, 513 (Pa. Super 2005) (holding, "an order granting or denying a goal change request, in a case involving a dependent child, is an appealable order"); **see also In re R.I.S.**, 36 A.3d 567, 575 (Pa. 2011) (holding "[q]uestions regarding the propriety of an order granting or denying a goal change petition are, of course, discrete inquiries requiring an analysis of interests exquisitely separable from those interests reviewed in questions relating to the involuntary termination of parental rights"); Pa.R.A.P. 1925(b)(3)(vii) (providing, "[i]ssues not included in the Statement ... are waived").

Mother's Brief at 5.

When reviewing this issue, we are guided by the following principles.

In an appeal from an order terminating parental rights, our scope of review is comprehensive: we consider all the evidence presented as well as the trial court's factual findings and legal conclusions. However, our standard of review is narrow: we will reverse the trial court's order only if we conclude that the trial court abused its discretion, made an error of law, or lacked competent evidence to support its findings. The trial judge's decision is entitled to the same deference as a jury verdict.

In re L.M., 923 A.2d 505, 511 (Pa. Super. 2007) (citations omitted).

Further, we have clarified as follows.

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 to have a natural parent's parental rights terminated are governed by 23 Pa.C.S.A. § 2511, which provides, in pertinent part 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).

In order to affirm the termination of parental rights, this Court need only agree with any one subsection of section 2511(a) relied on by the trial court. **See *In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*), *appeal denied*, 863 A.2d 1141 (Pa. 2004).

It is well settled that a party seeking termination of a parent's rights bears the burden of proving the grounds relied upon, and to do so 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 hesitation, of the truth of the precise facts in issue." ***In re T.F.***, 847 A.2d 738, 742 (Pa. Super. 2004) (citation omitted).

Further,

[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) (citations omitted).

To terminate parental rights pursuant to section 2511(a)(1), the person or agency seeking termination must demonstrate 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 demonstrated 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 subsection 2511(a)(1), our Supreme Court has held as follows.

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., 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), *appeal denied*, ***In re Adoption of N.M.B.***, 872 A.2d 1200 (Pa. 2005).

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.***, 620 A.2d 481, 485 (Pa. 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, 533-534 (Pa. Super. 2008).³

In regard to incarcerated persons, our Supreme Court recently stated the following.

[I]ncarceration is a factor, and indeed can be a determinative factor, in a court's conclusion that grounds for termination exist under § 2511(a)(2) where the repeated and continued incapacity of a parent due to incarceration has caused the child to be without essential parental care, control or subsistence and that [sic] the causes of the incapacity cannot or will not be remedied.

In re Adoption of S.P., 47 A.3d 817, 828 (Pa. 2012).

...

[W]e now definitively hold that incarceration, while not a litmus test for termination, can be determinative of the question of whether a parent is incapable of providing "essential parental care, control or subsistence" and the length of the remaining confinement can be considered as highly relevant to whether "the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent," sufficient to provide grounds for termination pursuant to 23 Pa.C.S. § 2511(a)(2). ***See e.g. Adoption of J.J.***, [511 Pa. at 605], 515 A.2d at 891 ("[A] parent who is incapable of performing parental duties is just as parentally unfit as one who refuses to perform the duties."); ***[In re:] E.A.P.***, [944 A.2d 79, 85 (Pa. Super. 2008)] (holding termination under §

³ Our Supreme Court has held that a trial court may not rely on the "mere existence" of a bond between a parent and child to deny a petition to terminate parental rights where that bond has a negative influence on the child's wellbeing. ***In re T.S.M.***, 71 A.3d 251, 270-271 (Pa. 2013).

2511(a)(2) supported by mother's repeated incarcerations and failure to be present for child, which caused child to be without essential care and subsistence for most of her life and which cannot be remedied despite mother's compliance with various prison programs). If a court finds grounds for termination under subsection (a)(2), a court must determine whether termination is in the best interests of the child, considering the developmental, physical, and emotional needs and welfare of the child pursuant to § 2511(b). In this regard, trial courts must carefully review the individual circumstances for every child to determine, *inter alia*, how a parent's incarceration will factor into an assessment of the child's best interest.

Id. at 830-831.⁴

Mother's single complaint on appeal is that DHS failed to notify her of her FSP objectives, failed to maintain contact with her, and failed to assist her in achieving her goals. Mother's Brief at 12.

Many of the parents, including[Mother,] have histories of substance abuse, poverty and mental health problems and cannot locate resources to assist them independently. They rely upon the efforts of [DHS] to refer them to the appropriate programming and schedule visitation. In the instant case, the record is void of any significant efforts on behalf of DHS to assist [M]other.

Id. at 16.

Our examination of the record, however, reveals that DHS did make Mother aware of her FSP objectives and did attempt to provide Mother with

⁴ Even though ***S.P.*** discusses the effect of incarceration on parental rights in the context of subsection (2), it applies equally to subsection (1).

the resources to accomplish them. The record also reveals that Mother failed to maintain contact with DHS and made no effort to address her FSP goals. The trial court summarized the facts upon which it relied in determining that it was Mother and not DHS who was responsible for Mother's failure to make progress toward her goals, which we deem to be well supported by the record.

[The trial c]ourt found clear and convincing evidence to terminate Mother's parental rights pursuant to 23 Pa. C.S.A. §2511(a)(1), (2), (5) & (8).

Mother has failed to maintain contact with DHS and with [R.J.S.] and has failed to accomplish any of the FSP objectives established for her by DHS. Mother was offered supervised weekly visitation with [R.J.S.]; however, in the year prior to the termination of her parental rights, she attended one visit, which occurred on June 25, 2012, and she missed forty-five visits. The visitation schedule has remained the same throughout the life of the case, and Mother was informed both verbally and in writing of the schedule.

Mother has never completed a parenting course despite being referred to the Achieving Reunification Center (ARC) by DHS on three separate occasions, and she has not does not [sic] have stable housing or employment. There was testimony that after being kicked out of Father's house due to domestic violence, Mother split her time between maternal grandmother's home and the street. Despite being ordered at each hearing to report to the CEU for an evaluation and assessment, Mother never went and never completed a drug and alcohol program. The DHS social worker testified that Mother had participated in a methadone maintenance program at one time but stopped attending and had not rendered a drug screen

throughout the entire life of the case as ordered by the [c]ourt.

On appeal, Mother contends that the trial court erred by terminating her parental rights and changing R.J.S.'s goal to adoption because the DHS worker failed to maintain regular contact with her. However, one of Mother's FSP objectives was to make her whereabouts known to DHS by providing an address and telephone number. Given the testimony that Mother was transient — alternating living with a friend, with maternal grandmother, on the streets and at Riverside Correctional Facility — and that Mother had the contact information for DHS, and the visitation schedule with R.J.S. has remained the same throughout the life of the case, Mother certainly could have contacted DHS for assistance in completing her FSP objectives or to inquire about R.J.S., but she chose not to.

Even accepting Mother's testimony that she completed a parenting class, she has failed to take any significant steps to remedy the conditions that brought R.J.S. into care, namely her active drug use, and has failed to maintain contact with [R.J.S.], thus evidencing a settled purpose of relinquishing parental claims to R.J.S.. There was no evidence suggesting if or when Mother will be willing and able to provide parental care to R.J.S., and delaying permanency for R.J.S. would be detrimental to his well being.

...

Mother has failed to demonstrate even the most minimal interest in working with DHS for the return of [R.J.S.], and the conditions that brought [R.J.S.] into care continue to exist and arguably have gotten worse. Therefore, this Court found clear and convincing evidence to terminate Mother's parental rights pursuant to 23 Pa. C.S.A. § 2511(a)(1), (2), (5) & (8).

Trial Court Opinion, 6/28/13, at 8-11 (citations and footnotes omitted.)

We have also considered the effect of Mother's incarceration in this case. It is clear from the record that Mother made absolutely no effort to maintain contact with R.J.S. while she was incarcerated, and that her incarceration, therefore, did not prevent Mother from performing her parental duties. ***S.P., supra.*** For these reasons, we conclude the trial court did not abuse its discretion when it terminated Mother's parental rights pursuant to subsection (1).

Mother does not question the trial court's termination of her parental rights pursuant to subsection (b), but we find no error in the trial court's reasoning in support of that termination. Again, we deem the trial court's summary of the factors underlying its best-interest evaluation to be well supported.

In conducting the second half of its analysis, [the trial c]ourt concluded that termination of Mother's parental rights would be in the best interest of [R.J.S.] pursuant to 23 Pa. C.S.A. §2511(b).

The agency social worker assigned to the case testified that there is a loving bond between R.J.S. and his Foster Mother who has provided for his daily needs as well as his medical needs during the seventeen months the case has been open. The DHS social worker concurred that the Foster Mother attends to R.J.S.' every need. In addition to primary medical care, R.J.S. required early intervention and surgery for a hernia as well as treatment by an ophthalmologist and a neurologist.

In contrast, in the one visit Mother attended in the past year, the agency social worker observed that R.J.S. did not seem to know his Mother and exhibited no distress upon separating from her. In

addition, the agency social worker testified that R.J.S. did not exhibit any distress when the visits did not occur.

In the year prior to the termination of Mother's parental rights, the agency social worker testified that Mother never contacted her either by mail or by phone and had not made any efforts to be involved in [R.J.S.'s] life through letters, gifts or cards. The DHS social worker testified that Mother had attempted to contact her via telephone once in February of 2013 and had sent her a single letter. Based upon the minimal contact that R.J.S. has had with Mother and the bond that he shares with his Foster Mother, both the agency and DHS social workers concluded that R.J.S. would not suffer irreparable harm if Mother's rights were terminated by the [trial court] and that adoption by the Foster Mother would be in the best interest of R.J.S., and based upon the evidence presented, this [c]ourt agrees.

Trial Court Opinion, 6/28/13, at 11-12 (citations omitted).

We discern no abuse of discretion by the trial court when it decided that the termination of Mother's parental rights would serve R.J.S.'s best interests and welfare pursuant to subsection (b). Accordingly, for the reasons stated, we conclude that the trial court's decision to terminate Mother's parental rights under Section 2511(a)(1) and (b) is supported by clear and convincing evidence in the record, and that there was no abuse of the trial court's discretion in this case.

Decree affirmed.

J-S61029-13

Judgment Entered.

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

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/27/2013