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NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: D.M.T. : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
:
APPEAL OF: T.A., MOTHER :
: No. 1726 EDA 2012
:

Appeal from the Decree entered May 24, 2012
In the Court of Common Pleas of Philadelphia County
Family Court, Juvenile Division, at CP-51-AP-0000215-2012

IN THE INTEREST OF: L.T. : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
:
APPEAL OF: T.A., MOTHER :
: No. 1727 EDA 2012
:

Appeal from the Decree entered May 24, 2012
In the Court of Common Pleas of Philadelphia County
Family Court, Juvenile Division, at CP-51-AP-0000216-2012

IN THE INTEREST OF: Y.T. : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
:
APPEAL OF: T.A., MOTHER :
: No. 1728 EDA 2012
:

Appeal from the Decree entered May 24, 2012
In the Court of Common Pleas of Philadelphia County
Family Court, Juvenile Division, at CP-51-AP-0000217-2012

IN THE INTEREST OF: Y.T., L.T., AND : IN THE SUPERIOR COURT OF
D.T. : PENNSYLVANIA
:
APPEAL OF: D.T., FATHER :
: No. 1730 EDA 2012
:

Appeal from the Decrees entered May 24, 2012

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In the Court of Common Pleas of Philadelphia County
Family Court, Juvenile Division, at CP-51-AP-0000215-2012,
CP-51-AP-0000216-2012, and CP-51-AP-0000217-2012
BEFORE: PANELLA, LAZARUS, and WECHT, JJ.

MEMORANDUM: BY PANELLA, J.

Filed: January 14, 2013

In these consolidated and related cases¹, T.A. (Mother) and D.T. (Father) appeal the decrees of the Court of Common Pleas of Philadelphia County, entered May 24, 2012, that granted the petitions filed by Philadelphia's Department of Human Services (DHS) to terminate their parental rights to their children, D.T., L.T., and Y.T. (Children), and to change the Children's permanency goal to adoption. We affirm.

DHS first became aware of the Children in 2006 when the trial court adjudicated them dependent, and they spent 6 to 8 months in care before they were discharged in October of 2007. N.T. 5/24/12 (N.T.), at 24. In January of 2010, DHS received a General Protective Services report alleging that Mother was using controlled substances, that the home was dirty and cluttered, that the Children were not getting to school, and that the Children's basic needs were not being met. N.T., at 24.

DHS held an initial Family Service Plan (FSP) meeting on March 3, 2010, at which the following objectives were established for Mother and Father: 1) participate in substance abuse assessment and any recommended

¹ This Court consolidated Mother's appeals, *sua sponte*, in an order entered July 19, 2012. We discuss them with Father's appeal because the cases are related in that the parties are the same and, with only minor variations, the facts are identical.

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treatment; 2) participate in mental health assessment and any recommended treatment; 3) remove all clutter from the home that is deemed to be a potential fire hazard; 4) ensure that the Children attend school and complete all assignments; 5) ensure that the Children receive medical and dental care; 6) ensure that Children's behavioral needs are met, including any recommended counseling. N.T., at 25-26; Trial Court Opinion, 8/1/12 (TCO), at 2. DHS implemented In Home Protective Services (IHPS) to facilitate those objectives. N.T., at 26. DHS filed dependency petitions when Mother and Father failed to comply with these FSP goals and the trial court adjudicated the Children dependent again in October of 2010. N.T., at 26.

At a permanency review hearing held on November 22, 2010, the trial court ordered the Children removed from the home and committed to DHS for placement because of Mother's and Father's failure to follow through with their FSP objectives regarding mental health and substance abuse, and for failing to attend to the Children's educational and behavioral health. The trial court also referred Mother and Father to the Clinical Evaluation Unit (CEU), forthwith, for a drug screen and assessment. DRO 11/22/10; TCO, at 2.

At a permanency review hearing held on February 17, 2011, the trial court again found Mother noncompliant with her FSP objectives. DRO 2/7/11.

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At an FSP meeting held on February 27, 2011, Mother's and Father's goals were reviewed and re-established as: 1) ensure that Children attended school; 2) participate in substance abuse assessment and recommended treatment; 3) participate in mental health assessment and undergo recommended treatment; 4) remove all clutter from the home that is deemed a potential fire hazard; and 5) ensure that all of the Children's needs are met. TCO, at 2-3.

At a permanency review on April 25, 2011, the trial court found Mother and Father in minimal compliance with their FSP objectives, referred them for a parenting capacity evaluation, and again referred them to the CEU, forthwith, for a drug and alcohol screen. DRO 4/25/11; TCO, at 3.

At the permanency review on December 16, 2011, the trial court again found Mother and Father in minimal compliance with their FSP goals and again referred them to the CEU for a drug and alcohol screen and assessment. At this hearing, DHS announced its intention to file petitions to terminate Mother's and Father's parental rights prior to the next court date. DRO 12/16/11. DHS filed those petitions on May 10, 2012. The trial court held a hearing on the petitions to terminate Mother's and Father's parental rights on May 24, 2012. Testifying at that hearing were Children's Services, Inc., social worker, Lashawna Frager; DHS socialworker, Kyndalle Kouyate; Mother; and Father.

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Ms. Frager testified that a visitation schedule had already been set up for Mother and Father when she first became the Children's social worker in November of 2010. N.T., at 4. In January of 2011, she began to keep a log of visits offered and visits made. N.T., at 4. Mother and Father had supervised weekly visits for one hour at the agency until July of 2011 when visits changed to bi-weekly. N.T., at 4-5. According to Ms. Frager, Mother and Father only attended twenty-six of fifty-two visits offered to them after she began to keep her record. N.T., at 5. On at least six occasions, Mother and Father arrived between 15 and 40 minutes late and smelled of alcohol. N.T., at 6, 8-9. Mother and Father left early on two occasions. N.T., at 6. Ms. Frager testified that, based upon her observation of seventy-five percent of Mother's visits, Mother simply watched the Children play with each other. When the Children misbehaved, Mother would get frustrated and say, "It's not my responsibility." N.T., at 7-8. Father spent his time at the visits "sitting quietly," and would leave the room if the Children misbehaved. N.T., at 7-8.

Ms. Frager testified that neither Mother nor Father contacted her about the Children for over a year and a half except on one occasion when one of the Children was hospitalized. N.T., at 9. Father never sent any letters or cards to the Children, and Mother did not send any cards or letters to the Children after January of 2011. N.T., at 9. Mother's and Father's only contact with Children occurred during scheduled visits. Ms. Frager testified

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that she never observed any progress in the quality of those visits. N.T. 9-10. The trial court found Ms. Frager to be a credible witness.

Ms. Kouyate first became involved with the Children in May of 2011. N.T., at 46. Ms. Kouyate testified that neither Mother nor Father ever provided DHS with any documentation that they had completed, let alone enrolled, in any drug and alcohol or mental health treatment. N.T., at 29-30, 32. Mother tested positive for alcohol at her initial drug screen at the CEU, but she failed to provide DHS with any documentation that she followed the recommendation that she go to the detoxification center at Girard Medical Center. N.T., at 30-32. Father refused to go to the CEU for an initial drug and alcohol evaluation, and there is no evidence that he ever sought a mental health evaluation. N.T., at 37-38.

Ms. Kouyate testified that she contacted Mother and Father by mail and through phone calls to inform them that the trial court required a home assessment, but she never received a response from either of them. N.T., at 36. Neither Mother nor Father ever demonstrated to DHS that they were able to provide an appropriate home for the Children, and both of them failed to participate in a court-ordered parenting capacity evaluation. N.T., at 35, 37-38.

All of the Children receive individual and group therapy from a therapist who sees them in their home. N.T., at 12, 33-35. All of these services were arranged through the efforts of DHS and the Children's foster

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mother, J.M. (Foster Mother), because Mother and Father refused to sign authorizations for the Children's treatment. N.T. 12, 16, 33-35. All of the Children reside with Foster Mother. N.T., at 10. D.T. has lived with Foster Mother since July of 2011; the other Children have resided with her since April of 2012. N.T., at 17. Between July of 2011 and April of 2012, Foster Mother made sure that the Children maintained contact with each other by having weekend visits at her home. N.T., at 18, 41.

Foster Mother calls D.T. her baby. D.T. has a good relationship with Foster Mother, respects her and is happy where he is. N.T., at 10-11. Foster mother cares deeply for D.T. and his siblings. N.T., at 41-43. Ms. Kouyate testified that foster mother put D.T. in after-school programs and that his grades have stabilized as a result. She has also involved him in extracurricular programs such as football camp.

Ms. Frager testified that L.T. respects Foster Mother and knows he can count on her. L.T. states that he is happy where he is. N.T., at 11. Foster Mother has also included family members in the Children's lives by inviting them to her home. N.T., at 42. Ms. Kouyate testified that Foster Mother provides the consistency in his life that L.T. needs but that Mother and Father fail to provide. N.T., at 43.

Finally, Ms. Frager testified that Y.T. respects Foster Mother and knows he can count on her. She stated that he is happy where he is. N.T., at 11. Ms. Kouyate testified that he appreciates being in an environment where

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there is consistency and love. N.T., at 43. The trial court found that Ms. Kouyate was a credible witness.

Both Ms. Frager and Ms. Kouyate opined that the Children would not suffer any irreparable harm if the trial court terminated Mother's and Father's parental rights. They agreed that adoption would be in the best interests of the Children and that Foster Mother was meeting their needs. N.T., at 12-13, 42-43.

Mother testified that she had been getting mental health treatment at the Wedge, and claimed to have been in detox and been sober since that time, even though she tested positive for alcohol on April 26, 2012. When asked to explain how this could be possible, Mother stated, "I prefer not to say but I think - - corruption in this city." N.T., at 72. When Mother testified that she missed visits because of snow, the trial court took judicial notice that it had only snowed one day in the past winter season. N.T., at 71-73. The trial court did not find Mother to be a credible witness. TCO, at 6.

In his testimony, Father claimed to have been receiving mental health treatment at the Wedge for about a year, but could not produce any documentation to verify his claim. Father stated that he never received any correspondence from Ms. Kouyate informing him that he had to arrange to have his home inspected. Father also claimed that he went to the CEU for a drug screen in November of 2010, and denied that he missed twenty-six

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visits with the Children. N.T., at 58-59. The trial Court did not find Father to be a credible witness. TCO, at 6.

The trial court entered decrees terminating Mother's and Father's parental rights pursuant to 23 Pa.C.S.A. § 2511 (a)(1), (2), (5), (8), and (b) on May 24, 2012. Mother and Father filed their notices of appeal and concise statements of errors complained of on appeal on June 22, 2012.

Mother raises the following questions on appeal:

Whether the trial court erred and/or abused its discretion by involuntarily terminating [M]other's parental rights pursuant to 23 Pa. C.S.A. Sections 2511(a) (1), (a) (2), (a) (5) and (a) (8), where [DHS] failed to establish by clear and convincing evidence, supported by competent testimony and/or exhibits, that reasonable efforts to facilitate reunification was made by [DHS]; and whether the trial court erred and or/abused its discretion by failing to consider the developmental, physical and emotional needs and welfare of the [C]hildren as per 23 Pa. C.S.A. Section 2511(b), where [M]other visited with children and demonstrated a loving and affectionate relationship with them[?]

Mother's Brief, at 4.

Father raises the following questions on appeal:

1. Whether the lower court erred and/or abused its discretion by involuntarily terminating Father's parental rights pursuant to 23 Pa. C.S.A. §2511(a)(1), where Father had never evidenced a settled purpose of relinquishing his claim to [the Children], specifically that Father had attended the majority of his scheduled visits during the six months prior to the filing, on May 9, 2012, of the Petition to Terminate Parental Rights?

2. Whether the lower court erred and/or abused its discretion by terminating the parental rights of Father pursuant to 23 Pa. C.S.A. §2511(a)(5), where the testimony of [the DHS] social worker clearly showed that [DHS] did not timely provide to Father the services or assistance ordered by the [trial] court,

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thus making it more difficult for Father to take adequate measures to reunify with [the Children]?

3. Whether the lower court erred and/or abused its discretion by terminating the parental rights of Father pursuant to 23 Pa. C.S.A. §2511(b), where evidence was presented that Father had visited with [the Children], that there was mutual affection between the [C]hildren and their father, and that the [C]hildren had a bond with him?

Father's Brief, at 8.

Our standard of review is as follows:

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 stated:

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).

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*).

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

§ 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:

. . .

(2) The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.

. . .

(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.

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

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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). 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) (internal citations omitted).

The fundamental test in termination of parental rights under Section 2511(a)(2) was long ago stated in the case of ***In re Geiger***, 331 A.2d 172 (Pa. 1975). There the Pennsylvania Supreme Court announced, under what is now Section 2511(a)(2), that the petitioner for involuntary termination must prove "[t]he repeated and continued incapacity, abuse, neglect, or refusal of the parent has caused the child to be without essential parental care, control, or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect, or refusal cannot or will not be remedied by the parent." ***Id.***, at 173.

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

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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.***, 602 A.2d 481 (Pa. 1993). However, 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).

Mother and Father each challenge the sufficiency of the evidence presented by DHS. Our review of the record, however, reveals that sufficient evidence was presented to permit the trial court to terminate Mother's and Father's parental rights pursuant to subsection (a)(2).²

The evidence presented by DHS clearly establishes that Mother and Father did not complete their FSP objectives. Mother failed to follow through with the recommendations of the CEU after she tested positive for alcohol and Father refused to report to the CEU. Neither of them complied with the trial court's orders to seek mental health evaluations. N.T., at 29-32. The only contact between Mother and Father and the Children occurred at supervised visitations. The evidence presented clearly demonstrates that both Mother and Father attended just one half of the visits offered to them and that, when they did attend, they showed little interest in the Children. N.T., at 7-8. Mother and Father made no effort to demonstrate that they

² We note that Father does not challenge the termination of his parental rights pursuant to subsection (a)(2) and he has thus waived that issue on appeal. ***Yates v. Yates***, 963 A.2d 535, 542 (Pa. Super. 2008). Nonetheless, we will analyze Father's case as if he had made that claim.

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were able to provide a proper home and competent parenting for the Children. N.T., at 35, 37-38.

There is also competent evidence in the record to support the trial court's finding that the termination of Mother's and Father's parental rights will serve the Children's developmental, physical and emotional needs pursuant to subsection (b). Both agency workers expressed their professional opinions that adoption was in the Children's best interest, and testified that the Children would not suffer any harm if the trial court terminated Mother's and Father's parental rights. N.T., at 12-13, 42-43.

Accordingly, for the reasons stated, we find that the trial court's decisions to terminate Mother's and Father's parental rights under Sections 2511(a)(2) and (b) are supported by clear and convincing evidence in the record, and that there was no abuse of the trial court's discretion.

Decrees affirmed.

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