

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: D.L.E.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: K.F., MOTHER,

No. 1734 WDA 2012

Appeal from the Decree October 5, 2012
in the Court of Common Pleas of Beaver County,
Orphans' Court at No(s): 3021-2012

IN RE: P.M.E.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: K.F., MOTHER,

No. 1735 WDA 2012

Appeal from the Decree October 5, 2012
in the Court of Common Pleas of Beaver County,
Orphans' Court at No(s): 3022-2012

IN RE: M.A.E. JR.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: K.F., MOTHER,

No. 1736 WDA 2012

Appeal from the Decree October 5, 2012
in the Court of Common Pleas of Beaver County,
Orphans' Court at No(s): 3023-2012

BEFORE: ALLEN, WECHT, and STRASSBURGER*, JJ.

MEMORANDUM BY STRASSBURGER, J.:

Filed: March 4, 2013

K.F. (Mother) appeals from the decrees of October 5, 2012, which involuntarily terminated her parental rights to her children, M.A.E., Jr., and P.M.E. (twins born in 2008) and D.L.E. (born in 2010) (Children). After careful review, we affirm.

Mother¹ and M.A.E., Sr. (Father)² are the biological parents of Children. The trial court summarized the underlying facts and procedural history of this case as follows.

In May, 2011, [Beaver County Children and Youth Services (BCCYS)] received a referral on the family resulting from a report of poor living conditions in the residence of Mother and [C]hildren. No dependency petitions were filed; however, BCCYS offered to provide services to [M]other to alleviate the substandard situation in the home. On July 12, 2011, a BCCYS caseworker conducted an unannounced visit to the residence.

¹ Mother is also the biological parent of three older children, to whom she voluntarily relinquished her parental rights in 2006. Those three children were adopted by maternal grandmother, but do maintain contact with Mother.

² Father is currently incarcerated at SCI-Chester, having been convicted of several DUI-related charges. He contested the termination of his parental rights, but did not file a notice of appeal from that decision. Therefore, this memorandum will only address issues as they relate to Mother.

*Retired Senior Judge assigned to the Superior Court.

The [twins]...were seen naked below the waist at the door. The caseworker knocked on the door without receiving any response. No adult was observed to be present. The police were called and gained entry into the home where the youngest child...was found crying in a crib on the second floor wearing a soaked and sagging diaper and covered in feces. Mother's paramour, G.R., was also located on the second floor playing computer video games. Mother was not present in the home. The deplorable conditions of the residence included a foul smell resulting from trash and soiled diapers strewn about the home, medication in open view, feces on the walls, rotten food and dirty dishes in and about the kitchen, including knives on the kitchen floor, and no clean diapers in the residence. Medical personnel were called to the scene to examine the children and D.L.E. was found with a serious diaper rash. The circumstances found in the home on July 12, 2011, had further deteriorated from BCCYS's initial contact in May, 2011, during which time BCCYS had been encouraging Mother, without success, to clean the home to make it more appropriate for [C]hildren.

Both Mother and her paramour were arrested by police, charged with endangering the welfare of children, and incarcerated. [C]hildren were removed from the home by BCCYS and placed in emergency foster care for one night. The following day - July 13, 2011 - BCCYS located K.J., the paternal aunt of [C]hildren and a licensed foster parent, who agreed to accept [C]hildren for care, and where they have remained to the present. Following a hearing on August 22, 2011, the [C]hildren were adjudicated dependent. Mother subsequently entered a plea of nolo contendere to the criminal charge of endangering the welfare of children and was sentenced to a term of probation of five years for which she remains under supervision.

BCCYS developed a Family Service Plan with the goal of having the children return to Mother's care and by which Mother was to (1) undergo a parenting evaluation and comply with any recommendation; (2) obtain suitable housing for the family; (3) participate in a homemaker's program after housing was established; and (4) complete a parenting education program.

Mother submitted to a parenting evaluation on June 26, 2011, resulting in a recommendation for her to undergo a mental health evaluation and follow through with any recommended treatment. A mental health evaluation was

completed on September 22, 2011, following which Mother was diagnosed with post-traumatic stress disorder with underlying depression. Mother was prescribed medication, which was subsequently discontinued. She participated in mental health counseling at Staunton Clinic until March 12, 2012, when she was prematurely discharged for lack of consistent attendance after having missed appointments on January 16, February 6 and February 9, 2012. Mother testified that on one occasion she appeared on the wrong day for her scheduled appointment. She did not attend the other session due to being hospitalized for medication conditions. After being provided with numerous potential mental health providers by BCCYS, Mother claimed that she was unable to resume mental health treatment because, in her recent attempts to schedule appointments, the providers were not accepting new clients or her Medicare insurance would not provide coverage. Mother has not participated in any mental health treatment or taken any prescribed medication since her discharge in March, 2012.

Mother is currently residing in temporary housing with friends in Pitcarin, Allegheny County. During the 15 months that [C]hildren have been in foster care, Mother has been transient, having lived in eight different residences, six of which were located in Beaver County and two in Allegheny County, for periods ranging between one month and three months. None of the residences have been adequate to house [C]hildren. When moving from place to place, Mother has failed to keep BCCYS informed of her location. Because she did not have a suitable residence, the homemaker's program could not be implemented. Mother indicated she was unable to locate proper housing due to the criminal charges filed against her resulting from the initial placement of [C]hildren. She further related that she was not eligible for public housing, had previously been declared ineligible for subsidized housing for which she could not make application until the expiration of a one-year waiting period. At the time of the hearing, Mother was seeking appropriate housing in Beaver County and Allegheny County.

From the inception of the case, Mother was requested to participate in and complete a parenting education program. A referral for Mother was made by BCCYS in July, 2011. Mother commenced participation in the parenting education program on July 24, 2012, more than 12 months after the referral and 12 days after the petitions to terminate parental rights were filed.

As of the date of the hearing, Mother was required to attend six additional sessions to complete the parenting education program; however, the program specialist was agreeable to condensing the sessions into two days for the convenience of Mother. She failed to attend all of the parenting education sessions during the month of September, 2012. She claimed she was absent from these sessions because of illness in two instances and one cancellation by the therapist. The parenting education program report of October 4, 2012, indicated that due to Mother's mental health status, her ability to put proper parenting techniques into practice on a consistent basis was questionable, despite her knowledge of the proper parenting of children. When questioned as to the reason for a delay in over one year to commence the parenting education program, Mother replied that there was miscommunication and difficulty in scheduling the appointments. She appeared at the wrong location for the initial appointment.

Recently, Mother has been consistently attending supervised visitation with [C]hildren, although she failed to attend four visits since the previous hearing. The recent regular visitation is contrary to Mother's history of inconsistent visitation. Her conduct during visitation is appropriate and indicates that there remains a bond between Mother and [C]hildren, although concern continues to exist because of Mother's inability to sustain consistent boundaries and enforce rules with [C]hildren, who are very active. Following the visits, [C]hildren have exhibited increased anxiety and negative behaviors when returning to the foster home. In addition, the disruptive behavior by [the twins] has extended into the classes at the Head Start Program. The anxiety displayed by [C]hildren has been caused by a fear of being separated from the foster mother.

BCCYS has requested that Mother participate in a family group decision-making conference. She has refused, indicating that she wanted to establish a residence before scheduling the conference.

Since being placed in foster care with their paternal aunt, who resides in Allegheny County, all three children have thrived. The paternal aunt is the mother of a son, age 17, who resides in the home and has taken on the role of big brother to [C]hildren. In addition, the paternal aunt has an adult daughter with two

children, ages 11 and 9, to whom [C]hildren have become close. Upon initial placement, all of the [C]hildren were withdrawn and the twins had difficulty at the Head Start Program. While in care, they have become more outgoing. At present the [twins] regularly attend the Head Start Program and are performing very well. The youngest child has been tested and is developmentally on target. The foster mother provides numerous activities in which [C]hildren participate, including swimming, program at Head Start, holiday gatherings and playing at the park. After struggling at the onset of placement, [C]hildren were described at present as being well-rounded, intelligent, healthy and happy. [C]hildren are closely bonded with paternal aunt and she has indicated a desire to adopt all three of them.

Trial Court Opinion, 11/28/2012, at 2-9.

On July 12, 2012, BCCYS filed petitions to terminate Mother's and Father's parental rights as to all three Children. After the hearing on November 9, 2012, the trial court issued final decrees terminating Mother's and Father's parental rights to Children pursuant to 23 Pa.C.S. § 2511(a)(8) and (b). Mother filed a timely notice of appeal from the decrees along with a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i). On November 28, 2012, the trial court filed an opinion addressing these issues.

On appeal, Mother presents two issues for our review:

I. Whether the trial court abused its discretion and/or erred as a matter of law in concluding the agency ([BCCYS]) established by clear and convincing evidence grounds to terminate [Mother's] parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(8)?

II. Whether the trial court abused its discretion and/or erred as a matter of law in concluding that termination of [Mother's] parental rights would serve the needs and welfare of [C]hildren pursuant to 23 Pa.C.S.A. § 2511(b)?

Mother's Brief at 4.

We consider Mother's questions mindful of the following.

In cases involving the termination of a parent's rights, our standard of review is limited to determining whether the order of the trial court is supported by competent evidence, and whether the trial court gave adequate consideration to the effect of such a decree on the welfare of the child.

Absent an abuse of discretion, an error of law, or insufficient evidentiary support for the trial court's decision, the decree must stand.... 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 C.W.U., Jr., 33 A.3d 1, 4 (Pa. Super. 2011) (internal quotations and citations omitted).

Our courts apply a two-part analysis in considering termination of parental rights. As we explained in *In re L.M.*, 923 A.2d 505 (Pa. Super. 2007),

[i]nitially, the focus is on the conduct of the parent. The party seeking termination must prove by clear and convincing evidence that the parent's conduct satisfies the statutory grounds for termination delineated in Section 2511(a). Only if the court determines that the parent's conduct warrants termination of his or her parental rights does the court engage in the second part of the analysis pursuant to Section 2511(b): determination of the needs and welfare of the child under the standard of best interests of the child. One major aspect of the needs and welfare analysis concerns the nature and status of the emotional bond between parent and child, with close attention paid to the effect on the child of permanently severing any such bond.

Id. at 511.

The governing statute provides as follows, in relevant part.

(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:

* * *

(8) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency, 12 months or more have elapsed from the date of removal or placement, 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.

* * *

(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) ... (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. § 2511.

Section 2511(a)(8) represents the determination that “a parent’s basic constitutional right to the custody and rearing of [her] ... child is converted, upon the failure to fulfill ... parental duties, to the child’s right to have proper parenting and fulfillment of his or her potential in a permanent, healthy, safe environment.” *In the Interest of K.Z.S.*, 946 A.2d 753, 759-760 (Pa. Super. 2008) (quoting *In re B.N.M.*, 856 A.2d 847, 856 (Pa. Super. 2004)).

Instantly, there is no dispute that Children had been out of Mother's care over 12 months at the time of the hearing.

Once the 12-month period has been established, the court must next determine whether the conditions that led to the child's removal continue to exist, despite the reasonable good faith efforts of [CYS] supplied over a realistic time period. Termination under Section 2511(a)(8) does not require the court to evaluate a parent's current willingness or ability to remedy the conditions that initially caused placement or the availability or efficacy of [CYS] services.

K.Z.S., supra at 759 (quoting *In re Adoption of K.J.*, 936 A.2d 1128, 1133 (Pa. Super. 2007)).

Mother argues that she completed certain aspects of her family service plan; those that she did not complete were not due to her lack of effort; and therefore BCCYS did not prove by clear and convincing evidence that Mother's parental rights should be terminated. Mother's Brief at 13-17. The trial court disagreed, concluding that

the conditions which initially led to the removal of [Children] from Mother's care, i.e., the need for mental health treatment, the lack of a suitable residence, participation in homemaker's services and completion of the parenting education program in a timely fashion, continue to exist in spite of the reasonable good faith efforts of BCCYS during a period of approximately 15 months as of the date of the hearing.

Trial Court Opinion, 11/28/2012, at 14. Furthermore, the trial court did not find convincing Mother's testimony regarding her explanations for why she failed to meet her objectives. *Id.* "When the trial court sits as fact finder, the weight to be assigned the testimony of the witnesses is within its exclusive province, as are credibility determinations, [and] the court is free

to choose to believe all, part, or none of the evidence presented." **Mackay v. Mackay**, 984 A.2d 529, 533 (Pa. Super. 2009). Additionally, even though the trial court was not required to consider Mother's continued efforts to remedy the conditions when terminating parental rights under section (a)(8), the trial court further pointed out that Mother provided no timeframe or schedule for completing the objectives. Trial Court Opinion, 11/28/2012, at 15. Thus, "reunification of Mother and [C]hildren [was] not imminent, especially in view of the Mother's lack of progress since the removal of [Children]." **Id.** As the record supports the trial court's findings, we hold that the trial court properly terminated Mother's parental rights under section (a)(8) because "conditions which led to the removal or placement of [Children] continue to exist." 23 Pa.C.S. § 2511(a)(8).

We now turn to the other requirement under section 2511(a)(8), regarding the best interests of Children. Here, BCCYS caseworker, Christine Renda, testified that Children have "thrived" in the care of their aunt, the twins are doing "fantastic" in school after having previously struggled and D.L.E. is meeting her milestones. N.T., 10/5/2012, at 46-47. Thus, the record supports the trial court's finding that terminating Mother's parental rights is in the best interests of Children.

Accordingly, we conclude that the trial court did not err in finding that BCCYS met its burden under section 2511(a)(8). **See, e.g., In re C.L.G.**, 956 A.2d 999, 1008 (Pa. Super. 2008) (*en banc*) ("[I]f we were to permit

Mother further opportunity to cultivate an environment where she can care for C.L.G., we would be subjecting a child, who has been waiting for more than two years for permanency, to a state of proverbial limbo in anticipation of a scenario that is speculative at best.”).

We next consider whether the trial court gave adequate consideration to the welfare of Children under section 2511(b). “Intangibles such as love, comfort, security, and stability are involved when inquiring about the needs and welfare of the child.” *K.Z.S., supra* at 760 (quoting *In re C.P.*, 901 A.2d 516, 520 (Pa. Super. 2006)).

The court should also consider the importance of continuity of relationships to the child.... The court must consider whether a natural parental bond exists between child and parent, and whether termination would destroy an existing, necessary and beneficial relationship. Most importantly, adequate consideration must be given to the needs and welfare of the child.

Id. (internal citations omitted).

Mother contends that the trial court erred in concluding that Children would not have “any adverse [e]ffects” from termination and “it is obvious that they maintained a very strong bond with their [M]other.” Mother’s Brief at 20. Mother further argues that BCCYS should have presented expert testimony or a bonding assessment. *Id.* The trial court agreed that there is an “apparent” bond between Mother and Children, but concluded that such bond does not overcome the “positive, stable and nurturing environment which the paternal aunt has established for [Children] for the past 16 months.” Trial Court Opinion, 11/28/2012, at 18. We agree.

The competent evidence clearly supports the determination that terminating Mother's parental rights, and freeing Children to be adopted by their paternal aunt, would best serve Children's needs and welfare. Children were very young (the twins were two years' old and D.L.E. had recently turned one) when they were removed from Mother's care. In fact, at the time of the hearing, D.L.E. had spent more time living with her paternal aunt than Mother. "The extent of the bond-effect analysis necessarily depends upon the unique facts and circumstances of the particular case." *In re K.M.*, 53 A.3d 781, 791 (Pa. Super. 2012). Thus, we cannot agree with Mother that BCCYS was required to conduct a formal bonding analysis under the facts of this case where Children who were very young spent so much of their lives out of Mother's care.

We also point out that there was ample evidence that Children had a strong bond with their paternal aunt, who was willing to adopt them. She testified that Children were "withdrawn" when they came to live with her, but are now "thriving" and "happier, healthier, and more outgoing." N.T., 10/5/2012, at 58. Ms. Renda also testified that Children were bonded with their paternal aunt. *Id.* at 50. *See, e.g., L.M., supra* at 512 ("There was absolutely no evidence that severing the ties between Mother and L.M. would have a negative effect on the child. Rather, unrefuted testimony indicated that L.M. was strongly bonded to her foster mother and was thriving in her foster home.").

Therefore, because the record supports the trial court's conclusions (1) that the conditions that led to Children's placement continue to exist, and (2) that termination of Mother's parental rights is in Children's best interests, we hold that the trial court committed no error or abuse of discretion in granting BCCYS's petitions under section 2511(a)(8) and (b).

Decrees affirmed.