

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: A.A.D.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: S.T.S., THE MOTHER

No. 1739 MDA 2012

Appeal from the Decree September 10, 2012
In the Court of Common Pleas of Berks County
Orphans' Court at No(s): 82559

BEFORE: MUNDY, J., OLSON, J., and STRASSBURGER, J.*

MEMORANDUM BY MUNDY, J.:

Filed: February 15, 2013

Appellant, S.T.S. (Mother), appeals from the September 10, 2012 decree involuntarily terminating her parental rights to her female child, A.A.D., born April 2006.¹ After careful review, we affirm the decree and grant counsel's petition to withdraw.

The trial court has set forth the relevant facts and procedural history as follows.

A.A.D., has been in the care of Berks County Children and Youth Services (hereinafter "BCCYS") since May 11, 2011, when Mother voluntarily agreed to grant temporary custody to BCCYS for thirty (30) days. [A.A.D.] was declared dependent by order of

* Retired Senior Judge assigned to the Superior Court.

¹ By separate decree, the trial court involuntarily terminated the parental rights of A.A.D.'s Father, A.D. Father has not appealed.

the [trial c]ourt on June 8, 2011. [A.A.D.] has remained in BCCYS' custody since that time. Mother has failed to follow the steps she was ordered to cooperate with and [A.A.D.] has been in care for a period exceeding twelve (12) months.

Mother's involvement with BCCYS began in July 2009 when a violent incident occurred between Mother and Father, A.D., in which Mother accused Father of threatening to kill her and the minor child and also cutting Mother's arm with a butcher knife. BCCYS opened in-home services to ensure that Mother was capable of protecting [A.A.D.] After Mother completed the necessary services, the case was closed in January 2010.

BCCYS then received two (2) reports in November 2010 and January 2011 concerning Mother's substance abuse and mental health issues. Based on the supervision of Mother and [A.A.D.] by staff at residential facilities during this time period, BCCYS did not yet seek removal of minor child from Mother's care. In March 2011, BCCYS learned that Mother had left her residential drug and alcohol treatment program against the advice of the program staff, and Mother had taken [A.A.D.] with her. The final report, which led BCCYS to remove [A.A.D.] from Mother's care, was received on May 11, 2011. The reporter saw Mother prostituting herself on the street late at night and [A.A.D.] with her. When the emergency caseworker went to Mother's home that night, [A.A.D.] was lying in a bed on which Mother's paramour was sitting in his boxers, there was drug paraphernalia in the home, and Mother appeared to be under the influence. Mother signed a voluntary placement agreement that night granting temporary custody to BCCYS and allowed the caseworker to remove [A.A.D.] from the home.

[A.A.D.] was declared dependent by order of the [trial c]ourt dated June 8, 2011. Mother was ordered, in relevant part, to: (1) cooperate with parenting education; (2) cooperate with drug and

alcohol evaluation and any recommended treatment; (3) submit to random urinalysis; (4) cooperate with domestic violence treatment; (5) cooperate with mental health evaluation and recommended treatment; and (6) establish and maintain appropriate housing and income. As of the date of the [t]ermination hearing, Mother had not fully completed any of the court-ordered services.

Trial Court Opinion, 10/22/12, at 4-6 (internal citations and footnote omitted).

Following the September 10, 2012 termination hearing, the trial court involuntarily terminated Mother's parental rights by decree dated the same day. On September 28, 2012, Mother filed a timely notice of appeal along with her concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i). Thereafter, on November 20, 2012, Mother's counsel filed an application to withdraw as counsel and an **Anders**² brief.

Before reaching the merits of the issues raised in the **Anders** brief, we must first address counsel's request to withdraw. **See Commonwealth v. Rojas**, 874 A.2d 638, 639 (Pa. Super. 2005) (stating, "[w]hen faced with a purported **Anders** brief, this Court may not review the merits of the underlying issues without first passing on the request to withdraw[.]") (citation omitted). In **In re V.E.**, 611 A.2d 1267 (Pa. Super. 1992), this Court extended the **Anders** principles to appeals involving the termination of parental rights. We stated that counsel appointed to represent an indigent

² **Anders v. California**, 386 U.S. 738 (1967).

parent on a first appeal from a decree involuntarily terminating parental rights may, after a conscientious and thorough review of the record, petition this Court for leave to withdraw representation and must submit an **Anders** brief. *Id.* at 1275. To withdraw pursuant to **Anders**, counsel must perform each of the following tasks.

(1) [P]etition the court for leave to withdraw stating that after making a conscientious examination of the record and interviewing the defendant, counsel has determined the appeal would be frivolous;

(2) file a brief referring to anything that might arguably support the appeal, but which does not resemble a "no merit" letter or *amicus curiae* brief; and

(3) furnish a copy of the brief to defendant and advise him of his right to retain new counsel, proceed *pro se* or raise any additional points that he deems worthy of the court's attention.

In re S.M.B., 856 A.2d 1235, 1237 (Pa. Super. 2004). Thereafter, this Court will examine the record and determine whether the appeal is wholly frivolous. *Id.*

In **Commonwealth v. Santiago**, 978 A.2d 349 (Pa. 2009), our Supreme Court stated that an **Anders** brief must comply with the following four factors.

(1) [P]rovide a summary of the procedural history and facts, with citations to the record;

(2) refer to anything in the record that counsel believes arguably supports the appeal;

(3) set forth counsel's conclusion that the appeal is frivolous; and

(4) state counsel's reasons for concluding that the appeal is frivolous. Counsel should articulate the relevant facts of record, controlling case law, and/or statutes on point that have led to the conclusion that the appeal is frivolous.

Id. at 361. Instantly, after a thorough review of counsel's **Anders** brief and petition to withdraw, we are satisfied the requirements of **Anders** and **Santiago** have been met.

We now review the merits of Mother's issues on appeal, which counsel states as follows.

1. Did the [trial] court err by terminating [Mother]'s parental rights because [BCCYS] did not establish by clear and convincing evidence that [Mother]'s parental rights should be terminated?
2. Did the [trial] court err by terminating [Mother]'s parental rights because the evidence presented by [BCCYS] was insufficient to support the lower court's decision?

Anders Brief at 1.

We begin by noting our well-settled standard of review.

[A]ppellate courts must apply an abuse of discretion standard when considering a trial court's determination of a petition for termination of parental rights. As in dependency cases, our standard of review requires an appellate court to accept the findings of fact and credibility determinations of the trial court if they are supported by the record. ***In re R.J.T.***, [], 9 A.3d 1179, 1190 (Pa. 2010). If the factual findings are supported,

appellate courts review to determine if the trial court made an error of law or abused its discretion. *Id.*; [*In re*] *R.I.S.*, [36 A.3d 567, 572 (Pa. 2011) (plurality)]. As has been often stated, an abuse of discretion does not result merely because the reviewing court might have reached a different conclusion. *Id.*; *see also Samuel Bassett v. Kia Motors America, Inc.*, 34 A.3d 1, 51 (Pa. 2011); *Christianson v. Ely*, 838 A.2d 630, 634 (Pa. 2003). Instead, a decision may be reversed for an abuse of discretion only upon demonstration of manifest unreasonableness, partiality, prejudice, bias, or ill-will. *Id.*

As we discussed in *R.J.T.*, there are clear reasons for applying an abuse of discretion standard of review in these cases. We observed that, unlike trial courts, appellate courts are not equipped to make the fact-specific determinations on a cold record, where the trial judges are observing the parties during the relevant hearing and often presiding over numerous other hearings regarding the child and parents. *R.J.T.*, 9 A.3d at 1190. Therefore, even where the facts could support an opposite result, as is often the case in dependency and termination cases, an appellate court must resist the urge to second guess the trial court and impose its own credibility determinations and judgment; instead we must defer to the trial judges so long as the factual findings are supported by the record and the court's legal conclusions are not the result of an error of law or an abuse of discretion. *In re Adoption of Atencio*, 650 A.2d 1064, 1066 (Pa. 1994).

In re Adoption of S.P., 47 A.3d 817, 826-827 (Pa. 2012).

Termination of parental rights is controlled by section 2511 of the Adoption Act, which requires a bifurcated analysis.

Our case law has made clear that under Section 2511, the court must engage in a bifurcated process prior to terminating parental rights. Initially, 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.

In re L.M., 923 A.2d 505, 511 (Pa. Super. 2007), *citing* 23 Pa.C.S.A. § 2511. The burden is upon the petitioner to prove by clear and convincing evidence that the asserted statutory grounds for seeking the termination of parental rights are valid. *In re R.N.J.*, 985 A.2d 273, 276 (Pa. Super. 2009).

Herein, both Mother's issues challenge the trial court's determination that the evidence supported termination of her parental rights. **Anders** Brief at 8. This Court need only agree with the trial court's analysis as to any one subsection of section 2511(a) in order to affirm the termination of parental rights. *In re B.L.W.*, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*) (citation omitted), *appeal denied*, 863 A.2d 1141 (Pa. 2004). Instantly, the trial court terminated Mother's parental rights pursuant to section 2511(a)(1),(2) and (5) and (b), which provide as follows.

(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.

(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.

...

(5) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the 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)(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. As previously noted, this Court need only agree with the trial court's analysis as to any one subsection of section 2511(a) in order to affirm the termination of parental rights. *In re B.L.W., surpa* at 384. Instantly, we review the trial court's analysis of section 2511(a)(5).

Under Section 2511(a)(5), we, thus, review the record to determine whether [a child has] been removed from Mother for six months and whether Mother can remedy the conditions leading to the removal of [the child]. *See, In the Interest of Lilley*, 719 A.2d 327, 334 (Pa. Super. 1998) (the child has been removed from the parents by the court and the conditions which led to placement of the child continue to exist and have not been remedied within a reasonable time and termination of parental rights would best serve the needs and welfare of the child). We also note that in considering the importance of stability to a child's welfare, the reasons why the child has been with the third party for so long must be taken into account. *In Re: Adoption of Steven S.*, 417 Pa. Super. 247, 612 A.2d 465, 471 (1992), *appeal denied*, 533 Pa. 661, 625 A.2d 1194 (1993).

In re Adoption of T.B.B., 835 A.2d 387, 395 (Pa. Super. 2003).

Herein, as previously noted, A.A.D. was removed from Mother's care pursuant to a voluntary placement agreement granting BCCYS temporary custody. Trial Court Opinion, 10/22/12, at 5. Additionally, the trial court concluded that as of September 10, 2012, the date of the termination

hearing, Mother had “not fully completed any of the court-ordered services.” *Id.* at 5-6; *see also* N.T., 9/10/12, at 14-16.

At the termination hearing, Melissa Senick, a caseworker at BCCYS, assigned to A.A.D.’s case, testified that Mother “consistently put [A.A.D.] as well as herself in situations which could be violent or inappropriate[.]” N.T., 9/10/12, at 18. Specifically, Senick expressed concern over A.A.D. “witnessing some of the interactions that [M]other was having with some of her client’s when she was prostituting.” *Id.* at 23.

Senick also expressed concern that Mother has not been able to secure stable and appropriate housing. *Id.* at 15-16. In support of this assertion, Senick noted that Mother has had 15 different addresses since May 2011. *Id.* at 18. The trial court agreed citing Mother’s inability to maintain housing, and to deal with her substance abuse issues, as its paramount concern.

Mother’s history of substance abuse and Mother’s unresolved mental health issues are extremely concerning as it relates to Mother’s ability to sufficiently provide care for [A.A.D.] Mother testified at the [t]ermination hearing that she began using cocaine shortly after the birth of her daughter. (N.T., 9/10/12, at 50, 53). Mother also admitted that she was last under the influence in May 2012. ([*Id.*] at 64). As of the date of the [t]ermination hearing, Mother was residing in Berks Counseling Center (BCC) housing. ([*Id.*] at 37). Mother reported that she had been living in that environment since July 12, 2012. ([*Id.*] at 37). In order to continue residing in BCC housing, Mother attends five (5) narcotics anonymous meetings a week, attends a weekly session with a

psychotherapist, attends scheduled sessions with her BCC case manager, and submits to regular urine screenings. (*Id.* at 38. 46). ... [T]he [trial c]ourt is concerned that two (2) months of demonstrated sobriety is not enough to assure Mother is or will ever be able to sufficiently care for her child. Mother has a documented history of failed rehabilitation attempts. During the last two (2) years, Mother has been enrolled in at least six (6) residential programs. (*Id.* at 10, 17, 46, 58-60; Exhibit 32 – Notes of the Caseworker, at 7). On multiple occasions, Mother was either terminated from a program or left a program against the advice of the program or medical staff. In March 2011, Mother left Vantage House against the advice of the program staff. (*Id.* at 10-11; Exhibit 32 – Notes of the Caseworker, at 4). In February 2012, Mother was discharged from the Berks Counseling Center (BCC) program for non-compliance and leaving treatment without notice. (*Id.*) (Exhibit 32 – Notes of the Caseworker, at 8-9). In March 2012, Mother left against medical advice from the Fairmount Institute. (*Id.*), at 58-59).

Id. at 6 (footnote omitted, citations in original). We conclude that the trial court's findings are supported by competent evidence, and therefore, we agree with the trial court's decision to terminate Mother's parental rights to Child pursuant to section 2511(a)(5).

We now turn to the effect that termination of Mother's parental rights will have on A.A.D. Pursuant to section 2511(b), this Court must consider whether the termination of Mother's parental rights would best serve the developmental, physical and emotional needs and welfare of Child. ***See In re C.M.S.***, 884 A.2d 1284, 1286-1287 (Pa. Super. 2005), *appeal denied*, ***C.M.S. v. D.E.H., Jr.***, 897 A.2d 1183 (Pa. 2006). "Intangibles such as love,

comfort, security, and stability are involved in the inquiry into the needs and welfare of the child.” *Id.* at 1287 (citation omitted). The trial court must also discern the nature and status of the parent-child bond in the case, with utmost attention to the effect of permanently severing that bond on the child. *Id.* Moreover, when evaluating a parental bond, “the [trial] court is not required to use expert testimony. Social workers and caseworkers can offer evaluations as well. Additionally, Section 2511(b) does not require a formal bonding evaluation.” *In re Z.P.*, 994 A.2d 1108, 1121 (Pa. Super. 2010) (internal citations omitted).

Upon review, we discern no error on the part of the trial court in concluding that the termination of Mother’s parental rights would best serve A.A.D.’s needs and welfare because it would provide her with the permanency and stability that she needs in her life. Senick testified that A.A.D. is “doing very well in her current foster home. She’s energetic, she’s very happy, very friendly.” N.T., 9/10/12, at 22.

Specifically, the trial court concluded that A.A.D. does not necessarily wish to “live with or be parented by Mother[,]” but “desire[s] merely to know that Mother is okay[.]” Trial Court Opinion, 1022/12, at 9; *see also* N.T., 9/10/12, at 23-24. There is ample evidence in the record that A.A.D.’s foster mother has a strong bond with A.A.D., having fulfilled exclusively the role of mother with A.D.D. over the past several months. Senick testified about the relationship between A.A.D. and her foster mother as follows.

They really care about each other very much. [A.A.D.] seeks out her attention. She seeks out her approval. She's very affectionate towards her; tells her that she loves her; and from my observation she appears very bonded to her.

N.T., 9/10/12, at 23.

Accordingly, for all the foregoing reasons, we conclude the trial court properly found the factors for termination pursuant to sections 2511(a)(5) and (b) were satisfied by clear and convincing evidence. Therefore, we affirm the September 12, 2012 decree terminating Mother's parental rights to A.A.D., and grant counsel's petition to withdraw.

Decree affirmed. Petition to withdraw granted.

Judge Strassburger files a Dissenting Memorandum.