

IN THE INTEREST OF: J.C.B., : IN THE SUPERIOR COURT OF
A/K/A/ J.B., A MINOR : PENNSYLVANIA
:
APPEAL OF: J.B., FATHER : No. 1854 EDA 2013

Appeal from the Decree Entered May 30, 2013
In the Court of Common Pleas of Philadelphia County
Family Court at Nos.:
CP-51-AP-0000090-2012
CP-51-CR-0000175-2010

BEFORE: BENDER, P.J., OTT, J., AND STRASSBURGER*, J.

MEMORANDUM BY BENDER, P.J.: **FILED DECEMBER 20, 2013**

J.B. (Father) appeals from the decree entered on May 30, 2013, terminating his parental rights to J.C.B. (Child) (born in February of 2003), pursuant to 23 Pa.C.S. § 2511(a)(1), (2), (5), (8), and (b).¹ On appeal, Father challenges the sufficiency of the evidence. After review, we affirm.

The trial court related the following factual and procedural history:

On May 27, 2010, the Department of Human Services (DHS) received a General Protective Services (GPS) report alleging that Mother could not provide adequate care and supervision for her three-month old daughter, C.M., and that Mother had two other children, J.C.B. and K.L., in her care. Upon investigation, the GPS report was substantiated. Mother contacted DHS and was provided with respite care for a few days.

On May 28, 2010, DHS received a supplement to the GPS report alleging that Mother was not cooperating with the voluntary services provided by DHS and that there were concerns about her ability to care for the children. It was

¹ The parental rights of Child's biological mother (Mother) were terminated on March 21, 2012. Mother did not appeal.

reported that Mother had a history of bipolar disorder and no family support. The GPS report was substantiated. Mother also confirmed to DHS that she was feeling overwhelmed as she did not have any family support.

In June of 2010, Rapid Service Response Initiative (RSRI) services were implemented in Mother's home through Carson Valley Children's Aid to assist Mother with mental health treatment and day care.

On July 7, 2010, DHS received a Child Protective Services (CPS) report alleging that Mother had been incarcerated around March of 2010, during which time she left J.C.B. in the care of maternal grandmother. While J.C.B. was in the care of maternal grandmother, she was reportedly sexually abused by a maternal uncle; however, Mother refused to take J.C.B. for a medical examination or to file criminal charges against maternal uncle and continued to take J.C.B. to maternal grandmother's home. It was also reported that Mother had a history of illegal and prescription drug use. In responding to the allegations in the report, Mother stated that the sexual abuse occurred more than two years prior, and she did not feel the need to file a report because J.C.B. had not had any recent contact with her uncle. The report was indicated.

On July 7, 2010, DHS received a supplement to the CPS report alleging that Mother and her three children were transported to DHS by officers from the 18th Police District because Mother's apartment had been destroyed by the father of C.M. Mother and [f]ather, M.M.[,] had a history of domestic violence, which led Mother to file a Protection from Abuse (PFA) Order, although she did not enforce it. It was reported that Mother and [M.M.] had been arguing for three days when M.M. became violent. M.M. was allegedly upset that Mother was allowing the three children to share her bedroom. When M.M. attempted to push the children out of the bedroom, Mother told him to leave the home. M.M. then proceeded to throw bleach all over the home, rip Mother's clothing, break windows and kick in the back door. Mother did not wish to enter a shelter with the children, so DHS arranged for respite care for the children at Baring House, and Mother went to the home of maternal grandmother.

On July 8, 2010, DHS learned that [f]ather of C.M., M.M.[,] went to maternal grandmother's home with a gun and broke several windows. Maternal grandmother called the police, but M.M. left before the police arrived.

On July 9, 2010, DHS obtained an Order of Protective Custody (OPC) for the three children because there were no available family members to care for them. The children remained at Baring House. The Court held a shelter care hearing on July 12, 2010, at which time the OPC was lifted, and the temporary commitment to DHS was ordered to stand. The Court granted Mother liberal visitation with the children. On July 13, 2010, the children were placed in a foster care home[] though Lutheran Children and Family Services (LCFS).

J.C.B.'s father, [Father,] was incarcerated at the time she came into care. On July 28, 2010, the Philadelphia Children's Alliance (PCA) conducted a forensic interview with J.C.B. She disclosed that she had been sexually abused by maternal uncle as well as by C.M.'s [f]ather, M.M.

On July 29, 2010, the Court held an adjudicatory hearing for the three children at which time it discharged the temporary commitment to DHS, and adjudicated the children dependent. The Court granted Mother biweekly supervised visits at LCFS, and a stay away order was issued against M.M. as to Mother and Mother's two children who were not fathered by M.M. (Statement of Facts: J.C.B., attached as Exhibit "A" to Petition for Involuntary Termination of Parental Rights). The Court further ordered that the children could be relocated to appropriate caregivers by agreement of the parties, and sibling visits were to be arranged.

On August 11, 2010, DHS held the initial Family Service Plan (FSP) meeting. On September 4, 2010, all three children were placed in the home of their maternal aunt.

On April 5, 2011, DHS received a CPS report alleging that J.C.B. had been the victim of sexual abuse by maternal uncle and M.M. and that the children were residing with maternal aunt. The report was indicated.

On June 22, 2011, DHS established the FSP objectives for [Father] as follows: 1) to maintain regular contact with J.C.B. via

telephone and letter. At the permanency review hearing on November 3, 2011, the Court found that J.B. was incarcerated at SCI Somerset. At the FSP revision meeting on November 28, 2011, the goal for the children was changed to adoption.

On January 4, 2012, Mother was arrested and charged with robbery and assault. On January 5, 2012, Mother was arrested and charged with aggravated assault, simple assault and recklessly endangering another person. Mother was incarcerated at Riverside Correctional Facility (RCF) as of the date the Petition for Involuntary Termination of Parental Rights was filed, March 5, 2013. Father[,] remains incarcerated at SCI Somerset.

Trial Court Opinion (T.C.O.), 7/16/13, at 2-8 (citations omitted).

On February 8, 2012, DHS filed a petition for the involuntary termination of Father's parental rights. On May 30, 2013, the trial court held a hearing on the petition. On that same date, the trial court entered its decree for the involuntary termination of Father's parental rights to Child, pursuant to 23 Pa.C.S. § 2511(a)(1), (2), (5), (8), and (b). Father timely appealed.

On appeal, Father enumerates nine issues for our review.² In sum, Father's issues are a challenge to the sufficiency of the evidence for the involuntary termination of his parental rights under 23 Pa.C.S. § 2511(a) and (b). We review appeals from the involuntary termination of parental rights according to the following standard:

² The argument section of Father's brief on appeal, however, consists of only a single section. **But cf.** Pa.R.A.P. 2119(a) ("The argument shall be divided into as many parts as there are questions to be argued.").

[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.***, 608 Pa. 9, 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 (2011) (plurality opinion)]]; 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.***, 608 Pa. 9, 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***, 539 Pa. 161, 650 A.2d 1064, 1066 (Pa. 1994).

In re Adoption of S.P., 47 A.3d 817, 826-27 (Pa. 2012).

Section 2511 of the Adoption Act provides in pertinent 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:

* * *

(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.

23 Pa.C.S. § 2511(a)(2), (b).

[U]nder 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 after determining that the parent's conduct warrants termination of his or her parental rights must the court engage in the second part of the analysis: determination of the needs and welfare of the child under the standard of best interests of the child. Although a needs and welfare analysis is mandated by the statute, it is distinct from and not relevant to a determination of whether the parent's conduct justifies termination of parental rights under the statute. One major aspect of the needs and welfare analysis concerns the nature and status of the emotional bond between parent and child.

In re Adoption of R.J.S., 901 A.2d 502, 508 (Pa. Super. 2006). “[W]e need only agree with [a trial court’s] decision as to any one subsection [of

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2511(a), along with 2511(b),] in order to affirm the termination of parental rights.” ***In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*).

Of particular relevance to the instant case, our Supreme Court recently held:

[I]ncarceration, 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).

In re Adoption of S.P., 47 A.3d at 830.

Here, Father has never met Child. Father has been incarcerated since 2003, the year of Child’s birth, and he avers that he expects to be released from prison between 2014 and 2026. The trial court found that throughout the case, Father failed to demonstrate a genuine interest in developing a relationship with his daughter. It found that Father made some effort to comply with his family service plan goals, but made no significant effort, and that Father has never provided for Child’s needs. The court found especially important Father’s failure to maintain contact with Child and with case workers. Additionally, based on the testimony of social workers, the trial court found that Child has no relationship with Father, that Child has little desire to visit with Father, and that Child would not be harmed or detrimentally impacted by the termination of Father’s parental rights. The trial court’s findings are supported by competent evidence in the record.

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With respect to section 2511(a)(2), Father contends that he has not been able to attend family service plan meetings due to his incarceration. He notes that, at the hearing, he testified that he maintained contact with Child by telephone and sent letters, pictures, and drawings to the address of Child's paternal grandmother. Father opines that DHS did not make reasonable efforts toward reunification because they allegedly failed or refused to arrange visits. Elsewhere in his brief, Father argues that he did not choose to be incarcerated and, consequently, he did not abandon Child.

Our review of the record reveals that the trial court's findings are based on competent evidence. With respect to Father's capacity to care for Child and his ability to remedy any incapacity to care for Child, the trial court's well-organized and cogent opinion demonstrates that it did not abuse its discretion. The court found that Father's ongoing incarceration, combined with the failure to establish or maintain a relationship with Child and failure to support Child, demonstrated Father's incapacity to provide essential parental care. Moreover, the trial court properly considered the length of the remaining confinement—between one and thirteen years' incarceration—in determining that Father cannot or will not remedy his incapacity to parent. With respect to the needs of Child, the trial court reasonably concluded that there is no relationship between Father and Child. In the absence of any evidence of a bond, it is reasonable to conclude that no bond exists. ***See In re K.Z.S.***, 946 A.2d 753, 762-63 (Pa. Super. 2008).

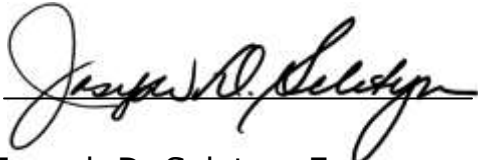
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Finally, while not relevant to the issue of termination, the trial court observed that a positive bond exists between Child and her foster mother, and that the foster mother is taking affirmative steps to ensure that Child's needs are met. These factors, established by the evidence of record, and taken together with the remainder of the trial court's findings and conclusions, suffice to establish the elements necessary to terminate Father's parental rights to Child.

Accordingly, for the reasons stated above, we affirm the trial court's decree terminating Father's parental rights to Child pursuant to 23 Pa.C.S. § 2511(a)(2) and (b).

Decree affirmed.

Judgment Entered.

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

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/20/2013