NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: W.C.L., III, A MINOR	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: W.L., FATHER	:	
	:	No. 1929 EDA 2012

Appeal from the Decree entered June 20, 2012
in the Court of Common Pleas of Philadelphia County
Family Court Division, at CP-51-AP-0000036-2012
FID 51-FN-0000032-2011

IN THE INTEREST OF: K.J.L., A MINOR	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: W.L., FATHER	:	
	:	No. 1930 EDA 2012

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BEFORE: OLSON, WECHT, and COLVILLE*, JJ.

MEMORANDUM BY OLSON, J.: Filed: February 27, 2013

W.L. ("Father") appeals from the decrees dated and entered June 20, 2012, granting the Philadelphia Department of Human Services' ("DHS") petitions to involuntarily terminate his parental rights to his children with J.P., the children's mother ("Mother"), K.J.L, and W.C.L., III (collectively, "the Children"), pursuant to section 2511(a)(1), (2), (5), (8), and (b) of the

* Retired Senior Judge assigned to the Superior Court.

Adoption Act, 23 Pa.C.S.A. § 2511(a)(1), (2), (5), (8), and (b), and changing the permanency goal for the Children to adoption, pursuant to section 6351 of the Juvenile Act, 42 Pa.C.S.A. § 6351.[1] We affirm.

K.J.L., a female, was born in November of 2006, and W.C.L., III, a male, was born in June of 2009. W.C.L., III, has a special medical need, as he has Treacher-Collins Syndrome, a genetic disease that affects his breathing and facial structure, requiring him to be on an oxygen machine and constantly monitored. N.T., 6/14/12, at 43. In January of 2011, the Children were removed from Mother's care and custody, were adjudicated dependent, and placed in the care of their maternal aunt, L.H. ("Aunt"), where they have remained. ***Id.*** at 25-26, 75. Aunt is a pre-adoptive resource for the Children. ***Id.*** at 75. Father was incarcerated between January of 2011 and January of 2012. ***Id.*** at 39-40. In March of 2012, he went to a detention center, and then to an inpatient drug and alcohol program for thirty days. ***Id.***

On January 27, 2012, DHS filed petitions for involuntary termination of parental rights with regard to both Father and Mother, seeking the termination of their parental rights to the Children, and a change of the Children's permanency goal to adoption. ***See*** Trial Court Opinion, 8/30/12, at 13.

[1] On June 20, 2012, the trial court also involuntarily terminated the parental rights of Mother to the Children. Mother has not filed an appeal, and she is not a party to this appeal.

On February 13, 2012, the trial court held an adjudicatory hearing as to another of Mother's children, G.G., who is not a child of Father. At the commencement of that hearing, trial counsel for Father, Attorney Karen Deanna Williams,[2] the counsel for DHS, and the counsel for Mother, addressed Father's visitation with regard to the Children. Father was not present at the hearing, and was incarcerated in a halfway house in Philadelphia. N.T., 2/13/12, at 4.

On June 14, 2012, the trial court held a hearing on the termination/change of goal petitions. Based on the testimony of the DHS social worker, Rudy Petruzzelli, at the hearing, the trial court made the following findings of fact.

> [DHS] first presented the testimony of DHS social worker, Rudy Petruzzelli, who testified credibly. Mr. Petruzzelli testified that, on January 1, 2011, DHS received a General Protective Services Report ("GPS") indicating that the Children, then 3 and 1 years old[,] were being left alone running around Dunkin Donuts while Mother and her paramour were unconscious. This report was investigated and substantiated by DHS[,] who then obtained an Order of Protective Custody ("OPC"). (N.T. p. 25-26). The Children were eventually adjudicated dependent. (N.T. p. 26). Father was incarcerated at this time. (N.T. p. 34). From January 2011 until January 2012[,] DHS attempted to make outreach to Father while he was incarcerated by sending him Family Service Plan ("FSP") letters. Mr. Petruzzelli testified that he never received any information indicating that Father had participated in any programs while incarcerated. In March of 2012[,] Father was released to a detention center located at 17th

[2] On June 20, 2012, the trial court appointed appellate counsel to represent Father. On October 15, 2012, this Court granted the motion to withdraw as counsel filed by the appellate counsel, and, on October 23, 2012, present court-appointed counsel entered an appearance on behalf of Father in this Court.

& Cambria Streets before going to an inpatient drug and alcohol program in Hummelstown, Pa., where he stayed for approximately thirty (30) days. (N.T. p. 39-40). During that time period, Father never made any outreach to DHS nor [sic] took any affirmative steps to contact the Children. Father never sent any gifts nor did he provide any financial support for the Children. (N.T. p. 38). Since the point that Mr. Petruzzelli spoke with Father while he was in the inpatient program, in late March or early April of 2012, Father did not reach out in an attempt to establish contact with the Children. (N.T. p. 41). Mr. Petruzzelli was told by Father that he would be residing at his aunt's house [] in Philadelphia when he was released from the program. Consequently, Mr. Petruzzelli continued to send mail to Father at that address. (N.T. p. 40-41). Mr. Petruzzelli testified that he sent a letter of introduction to Father on April 12, 2012[,] informing him [of] the names of the new DHS worker and supervisor. (N.T. p. 37). Additionally, Mr. Petruzzelli testified that he established the following [FSP] goals for Father: 1) participate in [a] drug and alcohol program, inpatient or outpatient upon his release; 2) parenting classes; 3) visitation with Children and 4) housing. As of the date of the termination hearing, Mr. Petruzzelli was unaware of the status of Father's housing. (N.T. p. 12). Regarding participation in a drug and alcohol program, Mr. Petruzzelli testified that he was just informed, prior to stepping into the courtroom[,] that Father was enrolled in [an] intensive outpatient program at the WEDGE. However, since no [a]uthorization for release of medical information was ever signed[,] and because of the late notice he received, Mr. Petruzzelli was unable to speak with anyone about this treatment, nor [sic] obtain any information as to what type of treatment Father is receiving, or how Father is doing. (N.T. p. 42, 68). Regarding parenting classes, Mr. Petruzzelli testified that he was unaware whether Father completed this goal nor [sic] did he have any documentation to indicate that Father had participated [in] and completed a parenting class. (N.T. p. 42). Mr. Petruzzelli did acknowledge that Father had made 100% of his visits at the agency since his release from the outpatient program. (N.T. p. 42). However, the City Solicitor also presented testimony from Kareylenn Hammond, a supervisor from Children's Choice who was involved with the Children for most of the life of their cases. (N.T. p. 87). This Court found Ms. Hammond to be a credible witness. Ms. Hammond testified that Father did not participate in visits until the last couple of months of his incarceration. (N.T. 88-89).

> Mr. Petruzzelli explained that both Children have been residing in a medical foster home thru [sic] Children's Choice with their maternal aunt, [L.H.], for over 15 months. (N.T. p. 43-44). He also observed the Children with their foster mother on several occasions. The Children seem to be very happy and content[,] and are bonded with their maternal aunt. Mr. Petruzzelli testified that the Children are "all over her". They are always bringing her stuff and asking her permission to do things. (N.T. p. 44). Mr. Petruzzelli also testified as to the special medical need of W.C.L., [III], who is afflicted with Treacher-Collins Syndrome, a genetic disease that afflicts the child's breathing and facial structure. This requires the child to be on an oxygen machine[,] which is constantly monitored. (N.T. p. 43).
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> Finally, Mr. Petruzzelli testified that, in his opinion, the Children would not suffer any irreparable harm if the [f]ather's parental rights were to be terminated. He based his opinion on the fact that Father hasn't been around for them because of his incarceration along with the fact that the Children are bonded with their foster mother who meets all of their needs. He added that [the] Children do not even ask him about Father. (N.T. p. 45-46).

Trial Court Opinion, 8/30/12, at 1-4.

DHS also presented the testimony of L.H., the maternal aunt and caregiver for the Children since January 7, 2011. N.T., 6/14/12, at 75. The trial court found the following facts from her testimony.

> [DHS] next called the Children's maternal aunt/foster mother, [L.H.] as a witness. [The trial court] found [L.H.] to be a credible witness. [L.H.] testified that she has been caring for the Children since January 7, 2011. [L.H.] stated that from January 2011 until January 2012, Father did not send any letters, presents nor [sic] lend any financial support for the Children. Furthermore, [L.H.] testified that Father had neither communication nor contact of any kind with the Children. (N.T. p. 75-76). [L.H.] also testified as to the special medical needs of W.C.L. [III,] which require ongoing care. (N.T. p. 77). The child has severe sleep apnea, severe asthma and suffers from Treacher-Collins Syndrome, a cranial facial disorder that affects

> the bone structure in the face. (N.T. p. 77-78). [L.H.] testified that the child requires overnight nursing care from 10 p.m. until 6 a.m. The child is also on three different machines including a Pulsox machine and a CPAP machine for sleep apnea. (N.T. p. 77-78). [L.H.] testified that Father has not been involved in any medical issues concerning the [c]hild W.C.L. [III] (N.T. p. 78). In fact, Father has never been a part of the life of W.C.L. [III] since the [c]hild's birth. Quite frankly this [c]hild doesn't know his [f]ather. (N.T. p. 76). When this [c]hild turned 1 year old, Father was released from prison, but was put back into custody after 1 month. [L.H.] testified that the [c]hild did not appear to be in any distress because of this. (N.T. p. 76-77).
>
> [L.H.] also testified as to the [c]hild, K.L., who she described as a normal, very active five year old who plays soccer and was attending summer camp at the "Y". (N.T. p. 78). From January 2011 thru [sic] January 2012, the [c]hild K.L. had no communication with Father. This [c]hild is aware that Father is in prison, but rarely asks about him. (N.T. p. 78-79). Finally, the foster mother testified that the Children call her "Mommy" or "Mom". (N.T. p. 80).

Trial Court Opinion, 8/30/12, at 4-5.

DHS also presented the testimony of Kareylenn Hammond, the supervisor from Children's Choice. ***Id.*** at 87. The trial court made the following findings of fact.

> As mentioned before, [DHS] presented the credible testimony of Kareylenn Hammond, Supervisor from Children's Choice. Ms. Hammond testified that she did not believe that either of the Children would be irreparably harmed if Father's parental rights were terminated. She testified that the [c]hild, W.C.L. [III,] has done very well medically and developmentally. Both Children have a very close bond with the foster mother. Ms. Hammond testified that she has observed the Children with the foster mother at least 20 times; [sic] as recently as the night before the hearing. Ms. Hammond testified that [the] Children were discussing their school day, were excited about showing their rooms and were talking about their plans for summer and the upcoming school year. Finally, Ms. Hammond testified that all of the needs of the Children were being met including food, clothes,

> school, snacks, dance class and the sorts of things that kids are interested in. Consequently, Ms. Hammond believed that it would be in the best interests of the Children to change their goal to adoption. (N.T. p. 91-93).

Trial Court Opinion, 8/30/12, at 5-6.

The trial court made the following findings from the testimony of Father, who testified on his own behalf. ***Id.*** at 102.

> Father also testified at the termination hearing. It must be noted that there were long delays by the [f]ather in answering basic questions posed to him both on direct and cross-examination. This demonstrated to [the trial court] that Father was sometimes being evasive and at other times displayed a diminished intelligence. In any event, Father certainly did not present himself as someone who had the ability to care for a child with any type of serious medical issues. In any event[,] the [trial court] did not find Father to be a credible witness. Father claimed that he was involved in the lives of his Children by changing their diapers and feeding them. (N.T. p. 103-104). He also asserted that he wrote 6 letters to the Children but could not recall their address. (N.T. p. 105). Father also claimed to have known what his younger [c]hild's medical condition was. However[,] when asked specifically what care this [c]hild required, he acknowledged[,] after a long pause[,] that he is not sure what care is needed. (N.T. p. 109). Finally, when Father was asked why he knew to take a parenting class in prison, after another long pause[,] Father simply stated, "I just took it". This also calls into question Father's assertion that he was never contacted by DHS regarding his goals. (N.T. p. 111).

Trial Court Opinion, 8/30/12, at 6.

On June 20, 2012, the trial court entered its decrees terminating Father's parental rights with regard to the Children under section 2511(a)(1), (2), (5), (8), and (b) of the Adoption Act, and changing the Children's permanency goal to adoption pursuant to section 6351 of the Juvenile Act. On July 12, 2012, Father timely filed his notices of appeal,

along with Concise Statements of Errors Complained of on Appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b).

In his brief on appeal, Father raises the following issue:

> Whether or not the trial court abused its discretion by finding that DHS made reasonable efforts to provide services to Father, and[,] if so[,] whether or not that failure to make reasonable efforts caused Father [to] fail to meet his objectives under 23 Pa.C.S. § 2511(a) and (b)[?]

Father's Brief, at 3.[3]

We apply the following standard of review in dependency cases.

> We accept the trial court's factual findings that are supported by the record, and defer to the court's credibility determinations. We accord great weight to this function of the hearing judge

[3] Father waived his second issue in his Concise Statement regarding whether his trial counsel rendered ineffective assistance, as he failed to raise the issue in his Statement of Questions Involved in his brief on appeal. ***See Krebs v. United Refining Co.***, 893 A.2d 776, 797 (Pa. Super. 2006), in which we stated, "[w]e will not ordinarily consider any issue if it has not been set forth in or suggested by an appellate brief's statement of questions involved, Pa.R.A.P. 2116(a). . . ." We, nevertheless, would find that the trial court adequately discussed and disposed of the issue in its Opinion. ***See*** Trial Court Opinion, 8/30/12, at 14-15. Likewise, to the extent that Father implies in his issue that the trial court abused its discretion in terminating his parental rights, we find that he has waived the issue by his failure to discuss it and support it with any citation to case law or statute in his brief. "[A]rguments which are not appropriately developed are waived. Arguments not appropriately developed include those where the party has failed to cite any authority in support of a contention." ***Lackner v. Glosser***, 892 A.2d 21, 29-30 (Pa. Super. 2006) (internal citations omitted). ***See Chapman-Rolle v. Rolle***, 893 A.2d 770, 774 (Pa. Super. 2006) ("It is well settled that a failure to argue and to cite any authority supporting any argument constitutes a waiver of issues on appeal") (quotation omitted). Nevertheless, we would affirm the termination of his parental rights under section 2511(a)(1), (2), and (b), as discussed in the trial court's opinion. ***See In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*) (stating that this Court may affirm the trial court's decision regarding the termination of parental rights with regard to any one subsection of section 2511(a)).

> because he is in the position to observe and rule upon the credibility of the witnesses and the parties who appear before him. Relying upon his unique posture, we will not overrule [the trial court's] findings if they are supported by competent evidence.

In re R.P., 957 A.2d 1205, 1211 (Pa. Super. 2008) (citations and quotations omitted) (brackets in original). We must accept the trial court's factual findings if they are supported by competent evidence. ***In the Interest of JOV***, 686 A.2d 421, 422 (Pa. Super. 1996). This Court is not bound by the trial court's inferences or conclusions of law. ***In the Interest of R.J.T.***, 9 A.3d 1179, 1190 (2010). The proper standard of review in dependency cases is abuse of discretion. ***Id.*** "An abuse of discretion is not merely an error of judgment; if, in reaching a conclusion, the court overrides or misapplies the law, or the judgment exercised is shown by the record to be either manifestly unreasonable or the product of partiality, prejudice, bias or ill will, discretion has been abused." ***Bulgarelli v. Bulgarelli***, 934 A.2d 107, 111 (Pa. Super. 2007).

Father asserts that the trial court should have first addressed DHS's reasonable efforts with regard to the goal change before addressing the termination petition. He contends that sections 6351(f) and (f.1) of the Juvenile Act require DHS to make "reasonable efforts" to provide services to assist a parent in remedying the causes of the removal of the Children. Father's Brief, at 8. He argues that DHS failed to make reasonable efforts to provide him with services during the time of his incarceration.

Father claims that the trial court failed to recognize that the FSPs for the Children were inadequate to achieve the permanency goal of reunification. He asserts that the first FSP did not include any goals, and the second FSP did not include a requirement for medical training so that Father could learn to care for W.C.L., III's special needs and medical equipment. Father takes the position that Mr. Petruzzelli's testimony that the first FSP had no "visible" objectives for Father to complete should have alerted the trial court to a problem with DHS's reasonable efforts. Father's Brief, at 8 (citing N.T., 6/14/12, at 52).

Father also claims that he did not receive his mail during his incarceration. Father asserts that, if he received the first FSP that set forth no objectives for him to complete, then the trial court abused its discretion in finding that he exhibited a continuous refusal to parent his children. Father admits that the only FSP that he may have received in prison that included objectives for him to complete was the March 2012 FSP. Father's Brief, at 14. He asserts that the second FSP was developed after his release to the detention center and/or the drug and alcohol rehabilitation center. ***Id.***

Father asserts that, assuming, *arguendo*, he received the FSPs while he was incarcerated and that he did not make progress on them, then it is DHS's fault, because DHS did not set appropriate goals, and the goals were revealed to him only three months before the hearing on the

termination/goal change petition. Father claims that Mr. Petruzelli testified that the effort he made with regard to getting Father into parenting classes and a drug and rehabilitation center was to look in the file for any "releases" signed by Father, and, when he did not find any, he did nothing further. Father's Brief, at 10. Father complains that Mr. Petruzzelli did not meet with him to discuss the FSP objectives, and did not send referral letters to Father to assign him to programs. Father asserts that his only contact with Mr. Petruzzelli was a phone conversation in March of 2012, so that DHS could learn his address. Father's Brief, at 10. He therefore argues that the trial court should have found that DHS's efforts were not reasonable, and were not even minimally adequate.

Dependency matters are governed by the Juvenile Act, 42 Pa.C.S.A. §§ 6301-6364. In ***In re D.A.***, 801 A.2d 614, 616 (Pa. Super. 2002) (*en banc*), this Court explained the following.

> [A] court is empowered by 42 Pa.C.S. § 6341(a) and (c) to make a finding that a child is dependent if the child meets the statutory definition by clear and convincing evidence. If the court finds that the child is dependent, then the court may make an appropriate disposition of the child to protect the child's physical, mental and moral welfare, including allowing the child to remain with the parents subject to supervision, transferring temporary legal custody to a relative or a private or public agency, or transferring custody to the juvenile court of another state. 42 Pa.C.S. § 6351(a).

In re D.A., 801 A.2d at 617 (quotation omitted).

Section 6351(e) of the Juvenile Act provides in pertinent part:

> **(e) Permanency hearings.—**

> (1) [t]he court shall conduct a permanency hearing for the purpose of determining or reviewing the permanency plan of the child, the date by which the goal of permanency for the child might be achieved and whether placement continues to be best suited to the safety, protection and physical, mental and moral welfare of the child. In any permanency hearing held with respect to the child, the court shall consult with the child regarding the child's permanency plan in a manner appropriate to the child's age and maturity. . . .
>
> * * *

42 Pa.C.S.A. § 6351(e).

Regarding permanency, section 6351(f) and (f.1), and (g) provide:

> **(f) Matters to be determined at permanency hearing.—** At each permanency hearing, a court shall determine all of the following:
>
> (1) The continuing necessity for and appropriateness of the placement.
>
> (2) The appropriateness, feasibility and extent of compliance with the permanency plan developed for the child.
>
> (3) The extent of progress made toward alleviating the circumstances which necessitated the original placement.
>
> (4) The appropriateness and feasibility of the current placement goal for the child.
>
> (5) The likely date by which the placement goal for the child might be achieved.
>
> **(5.1) Whether reasonable efforts were made to finalize the permanency plan in effect.**
>
> (6) Whether the child is safe.
>
> * * *

> (9) If the child has been in placement for at least 15 of the last 22 months or the court has determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's parent, guardian or custodian or to preserve and reunify the family need not be made or continue to be made, whether the county agency has filed or sought to join a petition to terminate parental rights and to identify, recruit, process and approve a qualified family to adopt the child unless:
>
> > (i) the child is being cared for by a relative best suited to the physical, mental and moral welfare of the child;
> >
> > (ii) the county agency has documented a compelling reason for determining that filing a petition to terminate parental rights would not serve the needs and welfare of the child; or
> >
> > (iii) the child's family has not been provided with necessary services to achieve the safe return to the child's parent, guardian or custodian within the time frames set forth in the permanency plan.
>
> * * *

(f.1) Additional determination. — Based upon the determinations made under subsection (f) and all relevant evidence presented at the hearing, the court shall determine one of the following:

> (1) If and when the child will be returned to the child's parent, guardian or custodian in cases where the return of the child is best suited to the safety, protection and physical, mental and moral welfare of the child.
>
> (2) If and when the child will be placed for adoption, and the county agency will file for termination of parental rights in cases where return to the child's parent, guardian or custodian is not best suited to the safety, protection and physical, mental and moral welfare of the child.

(3) If and when the child will be placed with a legal custodian in cases where return to the child's parent, guardian or custodian or being placed for adoption is not best suited to the safety, protection and physical, mental and moral welfare of the child.

(4) If and when the child will be placed with a fit and willing relative in cases where return to the child's parent, guardian or custodian, being placed for adoption or being placed with a legal custodian is not best suited to the safety, protection and physical, mental and moral welfare of the child.

(5) If and when the child will be placed in another living arrangement intended to be permanent in nature which is approved by the court in cases where the county agency has documented a compelling reason that it would not be best suited to the safety, protection and physical, mental and moral welfare of the child to be returned to the child's parent, guardian or custodian, to be placed for adoption, to be placed with a legal custodian or to be placed with a fit and wiling relative.

(f.2) Evidence. – Evidence of conduct by the parent that places the health, safety or welfare of the child at risk, including evidence of the use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk, shall be presented to the court by the county agency or any other party at any disposition or permanency hearing whether or not the conduct was the basis for the determination of dependency.

(g) Court order.— On the basis of the determination made under subsection (f.1), the court shall order the continuation, modification or termination of placement or other disposition which is best suited to the safety, protection and physical, mental and moral welfare of the child.

* * *

42 Pa.C.S.A. § 6351 (emphasis added).

The trial court found the following with regard to DHS's reasonable efforts under section 6351(f)(5.1).

> As stated before, the termination petitions were filed on January 27, 2012. Prior to this date there were numerous findings of reasonable efforts by judges of equal jurisdiction. (See Exhibits C-3, C-4, C-6, C-9, and C-12). [The trial court] also made findings of reasonable efforts at a status listing on February 13, 2012 and at the [g]oal [c]hange hearing of June 14, 2012. [The trial court's] findings were based upon the aforementioned credible testimony of Mr. Petruzzelli, who detailed his efforts to contact Father and establish FSP objectives for him. [The trial court] also accepted the testimony of Mr. Petruzzelli that DHS sent [] Father FSP letters during the time that the Children were in placement. [The trial court] did not accept Father's testimony that he never received any letters from DHS. [The trial court] found Father's testimony incredible in that Father, of his own choice, decided to take a parenting class while incarcerated. When initially asked how he knew that he should take a parenting class, Father stated, "I just took it." Father later claimed that the parenting class was a condition of parole. [The trial court] did not accept Father's testimony as credible. Rather, Father's decision to take a parenting class was circumstantial evidence that Father had indeed received contact from DHS despite his insistence otherwise. Consequently, there is no merit to [Father's] assertion that [the trial court] erred by finding that DHS made reasonable efforts.

Trial Court Opinion, 8/30/12, at 13-14.

After a careful review of the parties' briefs and the record in this matter, as well as the controlling case law, we find that the trial court's credibility and weight determinations regarding DHS's reasonable efforts to finalize the Children's permanency plan are supported by competent evidence. ***In re R.P.***, 957 A.2d at 1211. Thus, we will not disturb the trial court's decision that Father's testimony lacked credibility, and not to accord it any weight. Accordingly, we find that the trial court did not abuse its

discretion in changing the permanency goal for the Children to adoption, and that DHS's alleged failure to make reasonable efforts was not the cause of the termination of Father's parental rights under section 2511(a) and (b). ***In the Interest of R.J.T.***, 9 A.3d at 1190.

Decrees affirmed.