

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: K.R., a Minor, : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

APPEAL OF: A.K., Mother, :
: Appellant : No. 159 MDA 2014

Appeal from the Order entered on December 18, 2013
in the Court of Common Pleas of Mifflin County,
Orphans' Court Division, No. 10 of 2013

IN THE INTEREST OF: D.R., a Minor : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

APPEAL OF: A.K., Mother, :
: Appellant : No. 160 MDA 2014

Appeal from the Order entered on December 18, 2013
in the Court of Common Pleas of Mifflin County,
Orphans' Court Division, No. 5 - 2013

BEFORE: LAZARUS, STABILE and MUSMANN, JJ.

MEMORANDUM BY MUSMANN, J.: **FILED JULY 07, 2014**

A.K. ("Mother") appeals from the Order granting the Petition filed by Mifflin County Children & Youth Social Services Agency ("CYS") to involuntarily terminate her parental rights to her minor children K.R. and

D.R. (collectively referred to as "Children"), pursuant to 23 Pa.C.S.A. § 2511(a)(2), (5), (8), and (b).¹ We affirm.

The trial court set forth the relevant factual background and procedural history as follows:

[CYS] filed a dependency [P]etition for [C]hildren on August 8, 2011. It alleged truancy issues, the inability of the parents to control [C]hildren, a chaotic family environment, the lack of [] parental supervision and the absence of providing proper parental roles in [C]hildren's lives. Prior to the filing of those [P]etitions, [CYS] had been providing services since September 2010. The Family Preservation Unit of Mifflin County Family Intervention Crisis Services ("FICS") had provided services to the family from October 2010 until July 2011. At the termination of those services, the parents executed a voluntary placement agreement and [C]hildren were temporarily placed in foster care.

A dependency hearing was held on August 18, 2011, where [C]hildren were adjudicated dependent. Legal and physical custody to [CYS] was the disposition.

Trial Court Opinion, 12/18/13, at 1-2.

The trial court developed multiple child permanency plans for Mother and Father to address the concerns that necessitated placement. Parental objectives for Mother included demonstrating proper parenting, maintaining housing and sufficient income, participating with FICS to learn and implement skills, re-establishing her role as parent, attending visits and following visit plans, cooperating with FICS and CYS, and completing her

¹ The Order also terminated the parental rights of G.R. ("Father"). Trial Court Opinion, 12/13/13, at 1. Father does not appeal from the Order.

evaluation with the psychologist, David Ray ("Ray"). N.T., 8/13/13, at 182-83; **see also** Trial Court Opinion, 12/18/13, at 10.

Mindy Crownover ("Crownover"), the FICS counselor who worked with Mother, testified that FICS recognized several areas of concern, including age appropriate expectations for Children, recognizing the proper parental role, and preventing domestic violence. **See** N.T., 8/13/13, at 131-32. FICS provided counseling sessions to help Mother understand how her low self-esteem and depression could affect her parenting. **Id.** at 133. Mother was resistant to counseling and missed more than half of her scheduled sessions. **Id.** at 138. Crownover testified that Mother would "rather be a friend and see her kids happy than have rules and boundaries and expectations to keep them safe." **Id.** at 135. Crownover further testified that Mother also lacked assertiveness as a parent and was unable to address inappropriate behavior by Children. **Id.** at 140-41.

The trial court directed FICS to increase Mother's visitation time in order to determine whether Mother could be available to parent Children. Trial Court Opinion, 12/18/13, at 11. Mother showed resistance in providing FICS with the requested information, and she showed no changes in her parenting behaviors. **Id.** at 12. Although Children had improved through these services, FICS found that Mother did not improve and generally resisted recommendations. **Id.; see also** N.T., 8/13/13, at 149-50. In February 2013, at the sixth permanency review hearing, the trial court

changed the goal from reunification to adoption for Children. Trial Court Opinion, 12/18/13, at 2. In April 2013, CY5 filed Involuntary Termination of Parental Rights (“ITPR”) Petitions under 23 Pa.S.C.A. § 2511(a)(2), (5), (8) and (b). **Id.**

The trial court held hearings in August 2013. At the hearing, CY5 presented the testimony of Ray, who conducted a thorough evaluation of Mother, interviewed Children and the foster parents, and reviewed the records of FICS and CY5. N.T., 8/13/13, at 5, 25-26. Ray testified that Mother had borderline intelligence and a long pattern of personality dysfunction. **Id.** at 49-51; **see also id.** at 51-52 (stating Mother was self-centered, narcissistic, manipulative, and struggled to cope with stress). He opined that Mother’s dysfunctional relationship with Father affected her capacity to parent, to make good judgments for Children, and to provide structure. **Id.** at 56. Ray also testified that Mother was unable to provide for the psychological, emotional, and educational needs of Children. **Id.** at 57.

Ray also testified that D.R. had an “unhealthy, insecure, and ambivalent attachment” to Mother. **Id.** at 60. He indicated that D.R.’s behavior was calmer with the foster parents than with Mother. **Id.** Ray testified that, in his expert opinion, the benefits of permanency through adoption would outweigh any detriment by severing D.R.’s attachment with Mother. **Id.** at 71. Ray recommended that D.R. have no contact with

Mother or his other siblings for at least a significant period of time after adoption, until he understands that his adoptive home is permanent. **Id.** at 95-96.

Similarly, Ray described K.R.'s attachment with Mother as insecure and ambivalent. **Id.** at 70. He opined that K.R. felt responsible for Mother, and that, to some extent, "parentification" had occurred.² **Id.** at 65. On the other hand, Ray believes that K.R. is thriving with the foster parents, and has stated that she would like to live with them if she cannot go home to Mother. **Id.** at 66. Ray stated his belief that K.R. "is being absolutely pulled apart" because she knows the foster parents would provide a stable home, but she carries a sense of responsibility for Mother and is unsure how to tell Mother she wishes to be adopted. **See id.** at 66-67. Ray recommended an open adoption, during which K.R. could visit Mother, away from Mother's home, every few months. **Id.** at 68. He indicated an understanding that the foster parents are amenable to the idea of an open adoption. **Id.** at 71. Ultimately, he opined that the worst scenario would be for either child to leave the household of the foster parents. **Id.** at 98-99.

After hearing the evidence, the trial court terminated Mother's parental rights under 23 Pa.C.S.A. § 2511(a)(2), (5), (8) and (b). Mother filed

² "Parentification" is a term used to describe the apparent role reversal of Mother and K.R. Mother treats K.R. as a sister or friend, rather than as a child, and is unable to set boundaries. **See** N.T., 8/13/13, at 58, 65-66. As a result, K.R. developed a sense of responsibility for Mother and wishes to fix what is broken in Mother's home. **See id.**

timely Notices of Appeal along with Pennsylvania Rule of Appellate Procedure 1925(b) Concise Statements.

On appeal, Mother raises the following questions for our review:

I. Did the trial court err in ordering involuntary termination of Mother's parental rights despite the lack of the requisite clear, convincing and sufficient evidence that the needs and welfare of [C]hildren would be best served by such termination, and that the best interests of the children would be advanced by said termination, particularly by the severing of the Mother/child bond?

II. Did the trial court err in refusing to dismiss the [ITPR] Petition when the evidence showed that the fifteen-year-old child[, K.R.,] did not consent to being adopted?

Mother's Brief at 4 (issues renumbered for ease of disposition).

We review an appeal from the termination of parental rights in accordance with the following standard:

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).

Termination of parental rights is controlled by section 2511 of the Adoption Act. **See** 23 Pa.C.S.A. § 2511. The burden is upon the petitioner "to prove by clear and convincing evidence that its asserted grounds for seeking the termination of parental rights are valid." ***In re R.N.J.***, 985 A.2d 273, 276 (Pa. Super. 2009). "[C]lear and convincing evidence is defined as

testimony that is so clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conviction, without hesitance, of the truth of the precise facts in issue.” *Id.* (citation and quotation marks omitted). Further, 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.” *In re M.G.*, 855 A.2d 68, 73-74 (Pa. Super. 2004). If the competent evidence supports the trial court’s findings, “we will affirm even if the record could also support the opposite result.” *In re Adoption of T.B.B.*, 835 A.2d 387, 394 (Pa. Super. 2003).

Satisfaction of any one subsection of Section 2511(a), along with consideration of Section 2511(b), is sufficient for the involuntary termination of parental rights. *In re B.L.W.*, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*). In this case, we will review the trial court’s decision to terminate Mother’s parental rights based upon Section 2511(a)(2) and (b), which state the following:

§ 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 giving of notice of the filing of the petition.

23 Pa.C.S.A. § 2511.

To satisfy the requirements of Section 2511(a)(2), the moving party must produce clear and convincing evidence of the following elements: “(1) repeated and continued incapacity, abuse, neglect or refusal; (2) that such incapacity, abuse, neglect or refusal caused the child to be without essential parental care, control or subsistence; and (3) that the causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied.” ***In re Z.P.***, 994 A.2d 1108, 1117 (Pa. Super. 2010) (citation omitted). The grounds for termination of parental rights under Section 2511(a)(2) are not limited to affirmative misconduct; to the contrary, those grounds may include acts of refusal as well as incapacity to perform parental duties. ***In re A.L.D.***, 797 A.2d 326, 337 (Pa. Super. 2002). Parents are required to make diligent efforts towards the reasonably prompt assumption of full parental responsibilities. ***Id.*** at 340.

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 other provide the child with his or her physical and emotional needs.

In re K.Z.S., 946 A.2d 753, 759 (Pa. Super. 2008) (citations omitted).

In reviewing the evidence in support of termination under Section 2511(b), we consider whether the "termination of parental rights would serve the developmental, physical and emotional needs and welfare of the child." ***In re Adoption of J.M.***, 991 A.2d 321, 324 (Pa. Super. 2010). "Intangibles such as love, comfort, security, and stability are involved in the inquiry into the needs and welfare of the child." ***In re C.M.S.***, 884 A.2d 1284, 1287 (Pa. Super. 2005) (citation omitted). The court must also discern the nature and status of the parent-child bond, with utmost attention to the effect of permanently severing that bond on the child. ***Id.***

In her first claim, Mother asserts that the trial court failed to conduct a proper "needs and welfare of the child" analysis and incorrectly applied the "best interest of the child" standard under 23 Pa.C.S.A. § 2511(b). Mother's Brief at 16-17. Mother argues that there is no benefit to forcing K.R. to sever their relationship, especially because K.R. will become an adult soon after adoption proceedings take place. ***Id.*** at 13. Mother also claims that D.R., who is not yet old enough to require his consent to adoption, would suffer emotional pressure if his sister could visit Mother but he could not.

Id. at 13-14. Additionally, Mother asserts that she and her children were bonded as survivors of the trauma of Mother's abusive relationship with Father, and that she and her children should be permitted to work through that trauma together. **Id.** at 14-15.

Here, the trial court correctly determined that based upon the above-mentioned evidence, including Ray's testimony, Mother is unwilling and unable to provide [C]hildren with the essential parental care necessary for their physical and mental well-being." Trial Court Opinion, 12/18/12, at 17; **see also** N.T., 8/13/13, at 56-57. Additionally, the record confirms the trial court's finding that Mother is not able to remedy the causes of her refusal and inability to parent. Therefore, the evidence supports the trial court's finding that CYS sustained its burden to terminate Mother's parental rights under 23 Pa.C.S.A. § 2511(a)(2). Further, based upon Ray's testimony, the trial court correctly determined that CYS "has established by clear and convincing evidence that termination of the parental rights of . . . [Mother] would best serve the developmental, physical, and emotional needs and welfare of [C]hildren as required by 23 Pa.C.S.A. § 2511(b)." Trial Court Opinion, 12/18/13, at 18. Thus, Mother's first claim is without merit.

In her second claim, Mother asserts that the trial court incorrectly denied her Motion to Dismiss the ITPR Petition as to K.R. Mother's Brief at 8. Mother claims that K.R. did not consent to adoption, and that therefore, the trial court refused to respect K.R.'s legal right to consent. **Id.** at 8, 11;

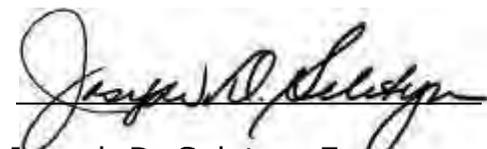
see also 23 Pa.C.S.A. § 2711(a)(1) (stating that consent to adoption is required if the adoptee is over 12 years of age).

Ray testified that the adoption decision was a difficult one for K.R., but that he believed she understood that the Powells's home is a good environment for her. **See** N.T., 8/13/13, at 66. He also acknowledged that even children from the most abusive and torn homes have some desire to return home. **Id.** at 90-91.

While K.R.'s consent is required for adoption, an imminent adoption is not necessary in order to terminate Mother's parental rights. **See In re T.S.M.**, 71 A.3d 251, 268 (Pa. Super. 2013) (stating that where an agency brings an ITPR petition, there is no requirement that a pending adoption exist before parental rights may be terminated); **see also** 23 Pa.C.S.A. § 2512(b). Further, as noted above, the termination of Mother's rights was in K.R.'s best interests. Therefore, the trial court did not err in denying Mother's Motion to Dismiss the ITPR Petition.

Order 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: 7/7/2014