

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

IN RE: ADOPTION OF: A.R.B. : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
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APPEAL OF: A.B., FATHER : No. 1841 MDA 2013

Appeal from the Decree entered September 24, 2013,
Court of Common Pleas, Northumberland County,
Orphans' Court at No. Adoptee No. 4 of 2013

BEFORE: DONOHUE, ALLEN and STABILE, JJ.

MEMORANDUM BY DONOHUE, J.:

FILED MAY 06, 2014

A.B. ("Father") appeals from the decree entered by the Northumberland County Orphans' Court on September 24, 2013, granting the petition filed by Northumberland County Children and Youth Services ("CYS") to involuntarily terminate his parental rights to A.R.B. ("the Child") pursuant to 23 Pa.C.S.A. § 2511(a)(1), (a)(2), (a)(5), (a)(8), and (b). Upon review of the record and the applicable law, we affirm.¹

A brief summary of the relevant facts and procedural history are as follows. The Child was born on January 15, 2007. Orphans' Court Opinion, 12/6/13, at 1. On October 27, 2011, CYS received a referral that the Child "was found in Maryland and was taken into protective custody."² N.T.,

¹ The orphans' court involuntarily terminated the parental rights of the Child's mother on September 24, 2013. This appeal involves the termination of Father's parental rights only.

² The Child was allegedly "missing for several months from a prior August due to a criminal incident resulting in Father's incarceration." N.T., 8/28/13,

8/28/13, at 10. Father was incarcerated at the Northumberland County Prison at the time. **Id.** On October 28, 2011, Father signed a voluntary entrustment agreement with CYS and the Child was placed in foster care. **Id.** at 7-8. On November 31, 2011, the Child was adjudicated dependent. **Id.** at 12.

CYS began consideration of the Child's paternal grandfather for kinship care on January 30, 2012. After a hearing on March 26, 2012, the Child moved from foster care into kinship care with paternal grandfather and his paramour and resided there until April 24, 2013. During his placement in the kinship home, the Child exhibited behavioral issues. **Id.** at 42-45. The Child was disruptive in school, defiant with the teacher, had a "low opinion of women," and had discipline issues at home. **Id.** at 42-44. Paternal grandfather's paramour had trouble managing the Child, and since paternal grandfather worked away from home for four weeks at a time, she threatened to leave paternal grandfather if the Child was not moved from the home. N.T., 8/28/13, at 51. The Child then moved back into the foster home into which he had originally been placed. Orphans' Court Opinion, 12/6/13, at 2.

While incarcerated at Northumberland County Prison, Father had five visits with the Child. N.T., 8/28/13, at 26. At the visits, the Child and

at 63. Father informed the caseworker that he knew the Child was there. **Id.** at 11. The Child had been living with Father and his paramour prior to Father being incarcerated. **Id.** at 63-64.

Father spoke through the phone because they were separated by glass. **Id.** at 26-27. Father had no visits with the Child after he was moved from Northumberland County Prison. **Id.** at 78. One visit was attempted while Father was incarcerated at SCI Rockview, but the attempt failed because the Child was not listed on Father's visitors list. **Id.** at 81-82, 90. However, Father allegedly maintained contact with the Child through phone calls while the Child was placed with paternal grandfather.³ Father provided no financial support to the Child while the Child was in placement and did not send any written correspondence to the Child. Orphans' Court Opinion, 12/6/13, at 15.

Since Father was released from prison on May 28, 2013, he has only had one visit with the Child. N.T., 8/28/13, at 35. This visit occurred on July 16, 2013. **Id.** at 35, 135. Three other visits were planned, but Father's schedule prevented the visits from occurring. **Id.** at 35-36, 135.

The petition for involuntary termination of Father's parental rights presently before this Court was filed in January 2013 while the Child was placed in kinship care with paternal grandfather. **Id.** at 52. Father's counsel questioned a CYS caseworker on cross-examination regarding the timing of the filing since the Child was in kinship care and Father was released from

³ Father testified that he maintained phone contact with the Child while the Child resided with paternal grandfather. N.T., 8/28/13, at 118. However, Father's contact was made directly through paternal grandfather and not through CYS, so CYS may have been unaware of this contact. **Id.; See also** Orphans' Court Opinion, 12/6/13, at 4.

incarceration shortly thereafter. **Id.** at 51-52. The caseworker testified that an automatic procedural requirement mandates a petition to be filed “if the child’s been in care 15 out of the last 22 months.” **Id.** at 69. According to the caseworker’s testimony, two instances where CYS is not required to file a petition for involuntary termination is when there are compelling reasons not to, such as when the parent complies with court orders to go to services and maintains housing, or when CYS does not want to disrupt a bond between the parent and child.⁴ **Id.** at 69-70. The CYS caseworker testified that compelling reasons were not present in this case because Father had made no progress to go to services or maintain housing. N.T., 8/28/13, at 70. Furthermore, the caseworker testified that terminating Father’s parental rights would have no detrimental effect on the Child. **Id.** at 70-71.

On September 24, 2013, the orphans’ court granted CYS’s petition to terminate Father’s parental rights pursuant to sections 2511(a)(1), (2), (5), (8), and (b) of the Adoption Act. Father timely filed a notice of appeal and a concise statement of error complained of on appeal pursuant to Pa.R.A.P. 1925(b). On appeal, Father raises the following issue for our review:

⁴ Father asserts in his brief that CYS is not required to file a petition for involuntary termination if “the child is being cared for by a relative best suited to the physical, mental and moral welfare of the child.” Father’s Brief at 6 (citing 42 Pa.C.S.A. § 6351(f)(9)(i)). Father is correct in his assertion. However, at the time of the termination hearing, the Child was no longer in kinship care with paternal grandfather, and, as will be discussed **infra**, placement with paternal grandfather is not best suited to the physical, mental and moral welfare of the Child. **See infra** pp. 11-12.

1. Is the decision of the Orphans' Court to terminate Father's parental rights under 25 Pa.C.S.A. § 2511(a)(1), 23 Pa.C.S.A. § 2511(a)(2), 23 Pa.C.S.A. § 2511(a)(5), 23 Pa.C.S.A. § 2511(a)(8) and 23 Pa.C.S.A. § 2511(b) supported by competent credible evidence, in the best interests of the child or justified by necessity?

Father's Brief at 3.

Our standard of review in cases involving termination of parental rights is as follows:

When reviewing an appeal from a decree terminating parental rights, we are limited to determining whether the decision of the trial court is supported by competent evidence. Absent an abuse of discretion, an error of law, or insufficient evidentiary support for the trial court's decision, the decree must stand. Where a trial court has granted a petition to involuntarily terminate parental rights, this Court must accord the hearing judge's decision the same deference that we would give to a jury verdict. 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 J.F.M., 71 A.3d 989, 992 (Pa. Super. 2013) (citing ***In re R.N.J.***, 985 A.2d 273, 276 (Pa. Super. 2009)). If the trial court's decision is supported by competent evidence, this Court must affirm the decision "even if the record could also support the opposite result." ***Id.*** (citing ***In re Adoption of T.B.B.***, 835 A.2d 387, 394 (Pa. Super. 2003)).

Involuntary termination of parental rights is governed by statute. 23 Pa.C.S.A. § 2511 *et seq.* 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:

(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 6 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 parental rights would best serve the needs and welfare of the child.

* * *

(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.

23 Pa.C.S.A. §§ 2511(a)(1), (2), (5), (8), (b).

In its analysis under section 2511, "the trial court must engage in a bifurcated process." ***In re B.C.***, 36 A.3d 601, 606 (Pa. Super. 2012).

The initial 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 at least one of the nine statutory grounds in section 2511(a). If the trial court determines that the parent's conduct warrants termination under section 2511(a), then it must engage in an analysis of the best interests of the child under section 2511(b), taking into primary consideration the developmental, physical, and emotional needs of the child.

Id.

Father argues that the orphans' court abused its discretion in terminating his parental rights because "he has made significant progress toward alleviating the circumstances that necessitated placement and that it is in [the Child's] best interests to maintain a relationship with him."

Father's Brief at 5. After our review of the record, we conclude that the record contains competent evidence to support the orphans' court's decision and was not the result of an abuse of discretion or error of law.

In this case, the orphans' court terminated Father's rights under sections 2511(a)(1), (2), (5), (8), and (b). Notably, "[t]his Court may affirm the trial court's decision regarding the termination of parental rights with regard to any one subsection of Section 2511(a)." *In re B.L.W.*, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*), *appeal denied*, 581 Pa. 668, 863 A.2d 1141 (2004). Therefore, we focus our review of this case on section 2511(a)(8).

Under section 2511(a)(8), CYS is required to prove the following: (1) the child has been removed from the care of the parent for at least 12 months; (2) the conditions that led to the removal or placement of the child continue to exist; and (3) termination of parental rights would best serve the needs and welfare of the child. *In re I.J.*, 972 A.2d 5, 11 (Pa. Super. 2009) (citing *In re C.L.G.*, 956 A.2d 999, 1005 (Pa. Super. 2008) (*en banc*)). We will address each of the three elements separately.

The first element of section 2511(a)(8) has unquestionably been met in this case. The parties stipulated at trial that the Child was placed into the care of CYS on October 28, 2011 when Father signed a voluntary entrustment agreement with CYS. N.T., 8/28/13, at 7-8. The parties also stipulated that CYS filed the termination of parental rights petition on

January 29, 2013. **Id.** at 8. Thus, the Child had been removed from Father's care for 15 months at the time CYS filed its petition, and thereby meets the 12 month requirement under section 2511(a)(8).

The second element goes to the core of Father's argument on appeal. The Child was removed from Father's care because Father was incarcerated. His incarceration left the Child without parental supervision, a parental figure, appropriate housing, care, and provision. Orphans' Court Opinion, 12/6/13, at 19. At trial, Father testified that prior to being incarcerated, he had cared for the Child for 4 years, providing food, clothing, shelter, and medical assistance. N.T., 8/28/13, at 122. Father repeatedly expressed his desire to be with the Child and his intentions of working towards being able to take care of the Child again and "support him 110 percent." **See id.** at 116, 119, 124. At the time of trial, Father had been taking parenting classes without being ordered to do so. **Id.** at 122, 137. He further stated that but for incarceration, he would have still been available to the Child. **Id.**

Although Father expressed a desire to be with the Child and be a parent to the Child when he is able to, "termination under subsection (a)(8) 'does not require an evaluation of [the parent's] willingness or ability to remedy the conditions that led to placement of the [child].'" **In re Adoption of R.K.Y.**, 72 A.3d 669, 679 (Pa. Super. 2013) (citing **In re R.J.S.**, 901 A.2d 502, 511 (Pa. Super. 2006)). Instead, the relevant inquiry

under the second element of section 2511(a)(8) is whether the conditions that led to the placement of the child continue to exist. *Id.* at 679-80.

In this case, the conditions that led to the placement of the Child continue to exist. Father admitted that he cannot parent the Child yet and suggests that the Child's paternal grandfather care for the Child until he is able to provide for the Child. N.T., 8/28/13, at 116. Father has a one-bedroom apartment, has not obtained employment, cannot provide a timeline for when he will be employed, and has no income other than money that his mother provides to him. *Id.* at 125-26. Although Father may be able to remedy the conditions that led to the placement of the Child at some indeterminate time in the future, and although he is arguably making progress towards that goal, at the time of the termination hearing, Father remained unable to remedy the conditions and unable to provide proper parental supervision, appropriate housing, care, or provision. Therefore, the second element under section 2511(a)(8) has been satisfied.

With regard to the third element of section 2511(a)(8), the record reflects that termination of Father's parental rights would best serve the Child's needs and welfare. The Child has been removed from Father's care for over two years. As this Court has repeatedly acknowledged:

We recognize that the application of Section (a)(8) may seem harsh when the parent has begun to make progress toward resolving the problems that had led to the removal of [his child]. ***By allowing for termination when the conditions that led to***

removal continue to exist after a year, the statute implicitly recognizes that a child's life cannot be held in abeyance while the parent is unable to perform the actions necessary to assume parenting responsibility. This Court cannot and will not subordinate indefinitely a child's need for permanence and stability to a parent's claims of progress and hope for the future. Indeed, we work under statutory and case law that contemplates only a short period of time, to wit eighteen months, in which to **complete** the process of either reunification or adoption for a child who has been placed in foster care.

In re I.J., 972 A.2d at 11-12 (emphasis added).

As previously discussed, Father is unable to remedy the conditions that led to the removal of the Child of Father's care, and despite his desire to care for the Child, Father has no definite timeline for when he will be able to do so. In the meantime, Father wishes for the Child to be placed in kinship care with the Child's paternal grandfather. However, the paternal grandfather has already demonstrated that he cannot care for the Child and cannot provide a permanent, stable, placement option.

The paternal grandfather spends a lot of time away from the home due to work, leaving the Child with his paramour and their young child. N.T., 8/28/13, at 51. The Child exhibited behavioral issues while previously placed with paternal grandfather which created stress in the household. ***Id.*** at 42-45, 51. The stress of caring for the Child jeopardized the relationship between paternal grandfather and his paramour, which led to the paternal grandfather requesting CYS to return the Child to foster care. ***Id.*** at 51.

In addition, the foster mother testified that after the Child returned to placement with her family, paternal grandfather requested a visit with the Child that was arranged to last for four days. *Id.* at 99. However, after only 24 hours together, paternal grandfather arranged for the Child to return to the foster family. *Id.* at 99. Thus, the record supports the orphans' court's finding that paternal grandfather is unable to provide a permanent, stable, placement option for the Child. Accordingly, we hold that the record supports the orphans' court's decision to terminate Father's parental rights pursuant to section 2511(a)(8).

Although the statutory requirement for involuntary termination of Father's parental rights has been established under subsection (a), we must also determine whether, under subsection (b), termination of Father's parental rights would best serve the developmental, physical, and emotional needs and welfare of the Child. This Court has held that

it is imperative that a trial court carefully consider the *intangible* dimension of the needs and welfare of a child – the love, comfort, security, and closeness – entailed in a parent-child relationship, as well as the tangible dimension. Continuity of relationships is also important to a child, for whom severance of close parental ties is usually extremely painful. The trial court, in considering what situation would best serve the [child]'s needs and welfare, must examine the status of the natural parental bond to consider whether terminating the natural parents' rights would destroy something in existence that is necessary and beneficial.

In re Adoption of K.J., 936 A.2d 1128, 1134 (Pa. Super. 2007) (citing ***In re C.S.***, 761 A.2d 1197, 1202 (Pa. Super. 2000)). “Common sense dictates that courts considering termination must also consider whether the children are in a pre-adoptive home and whether they have a bond with their foster parents.” ***In re T.S.M.***, ___ Pa. ___, 71 A.3d 251, 268 (2013) (citing ***In re K.M.***, 53 A.3d 781, 791 (Pa. Super. 2012)).

In this case, the orphans’ court found that the Child and Father have a relationship based on affection and emotional attachment, but that a bond beyond affection and emotional attachment does not exist. Orphans’ Court Opinion, 12/6/13, at 25-26. Testimony at trial established that the Child knew who his Father was, had friendly visits with Father, and exhibited affection towards Father. N.T., 8/28/13, at 46-48, 70. However, Child does not really speak about Father when they are separated. ***Id.*** at 100, 110.

Conversely, the record establishes that the Child is bonded with his foster family. The Child’s foster mother testified that while the Child enjoys being with paternal grandfather, “the last time he went for a visit [with paternal grandfather], he was a little uneasy about going because he thought he would have to stay there.” ***Id.*** at 99. Paternal grandfather testified that the Child wants to be with the foster family because of his relationship with the foster family’s 10 year old son, Daniel. ***Id.*** at 84. The Child calls his foster parents “mom” and “dad”, tells other kids that his foster parents are going to adopt him, and tells people at school that Daniel is his

brother. **Id.** at 99-100. The Child also expressed to his foster parents that he would like it “if he had the opportunity to stay with [his foster family] for good.” **Id.** at 104.

The record further establishes that the Child is responding well to his placement with his foster parents. The Child is doing well in school and plays well with other kids. N.T., 8/28/13, at 103. Furthermore, the Child does not exhibit behavioral issues at school or with his foster family that the paternal grandfather experienced and no longer needs therapy or counseling. **Id.** at 112-13. The foster parents are willing to be a permanent placement for the child and have thought about adopting the Child if the Child became free for adoption. **Id.** at 52, 58, 102. The foster parents are also willing to allow the Child to maintain a relationship with his paternal grandfather and believe that the Child’s relationship with paternal grandfather is beneficial. **Id.** at 104. The orphans’ court found that the foster family’s willingness to allow the child to maintain a relationship with paternal grandfather, by extension, would permit the Child and Father to remain in contact at some point post-termination. Orphans’ Court Opinion, 12/6/13, at 24.

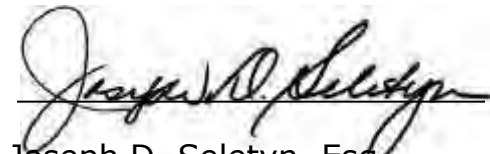
After a review of the record, we conclude that the orphans’ court’s decision to terminate Father’s parental rights to the Child was in the best interest of the Child and is supported by competent evidence. The Child is bonded with his foster family which provides him with the necessary

permanence and parental care that the Child needs. The permanence and stability offered by the foster family best serves the developmental, physical, and emotional needs of the Child, evidenced by the Child's success in school, the Child's desire to remain with the foster family, and the absence of behavioral issues that the Child exhibited prior to placement with the foster family. The record also reflects that termination of the Father's parental rights would not have a detrimental impact on the Child. As a result, we conclude that subsection (b) has been satisfied in this case. Accordingly, we affirm the orphans' court's decision to terminate Father's parental rights.

To the extent that Father requires further explanation of the orphans' court's decision to terminate his parental rights, we recommend the orphans' court's thoughtful, careful, and sensitive analysis of the difficult case set forth in its December 6, 2013 opinion.

Decree affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above the printed name.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/6/2014