

IN RE: ADOPTION OF Z.B., A MINOR,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
	:	
	:	
APPEAL OF: D.B., FATHER	:	No. 2071 MDA 2013

Appeal from the Orders Entered October 17, 2013,
in the Court of Common Pleas of Lackawanna County,
Juvenile Division at No(s): CP-35-DP-0000204-2011

BEFORE: FORD ELLIOTT, P.J.E., OLSON, and STRASSBURGER*, JJ.

MEMORANDUM BY STRASSBURGER, J.: **FILED JUNE 24, 2014**

D.B. (Father) appeals from the orders entered on October 17, 2013, which terminated involuntarily his parental rights to his daughters, A.B. and Z.B., born in June of 2011.¹ Upon review, we affirm.

A.B. and Z.B. (Children) are the twin biological daughters of L.R. (Mother) and Father. Children were born prematurely and spent the first two months of their lives in the hospital. When they were released to

* Retired Senior Judge assigned to the Superior Court.

¹ Father has filed four separate appeals in this case, two for each child. As to each child, Father appealed from the orders entered on the juvenile docket and the adoption docket. On December 10, 2013, this Court issued two rules to show cause as to why the appeals at the juvenile dockets for both children should not be dismissed because the October 17, 2013 order addressed only termination of parental rights. Father responded on December 19, 2013, arguing that dismissal of the appeals would “be a direct violation of his right to due process.” Answer to Rule to Show Cause, 12/19/2013, at ¶ 17. On December 23, 2013, this Court discharged the show cause orders, and the issue is now ripe for review. Based on the resolution of this appeal, *infra*, the issue of whether Father’s due process rights would be violated by dismissing appeals on the juvenile docket is moot, as we affirm the orders terminating Father’s parental rights to both children.

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Mother's care in August 2011, Mother and Children moved to the St. Joseph's Center Mother and Infants Program (the Center). The Lackawanna Office of Youth and Family Services (OYFS) was involved with the family during this time.

On January 11, 2012, Mother and Father were involved in an altercation outside the Center. Police were called, and Mother planned to press charges against Father because he attempted to strangle her. She was taken to the hospital with bruising, and Mother placed Children with OYFS voluntarily. N.T., 8/20/2013, at 27. Children were placed with Foster Parents, where they have remained throughout the case, and who are also prepared to adopt them.

In June of 2013, OYFS filed petitions to terminate involuntarily the parental rights of both Mother and Father as to Children. Over the course of Children's placement, Father achieved only minimal to moderate compliance with the permanency plan and made minimal progress toward alleviating the circumstances which led to Children's placement. Further complicating this matter, on July 24, 2012, Father was arrested and charged with two counts of possession with intent to deliver a controlled substance (heroin). On August 13, 2013, Father was convicted by a jury. He was sentenced to a mandatory minimum term of 24 months' incarceration, as the transaction occurred in a school zone.

At the termination hearing on August 20, 2013, Mother did not appear, but her attorney was present. Father, who had chosen to represent himself and was incarcerated, participated by telephone and requested a continuance. The trial court proceeded with the termination hearing as to Mother, but continued the termination hearing as to Father.

The hearing reconvened on October 17, 2013, with Father appearing in person and represented by court-appointed counsel. Once again, Mother did not appear, but her counsel was present. At that hearing, both OYFS caseworker Cristin Wormuth and Father testified. At the close of the hearing, the trial court concluded that "the law requires us to terminate [Father's] parental rights." N.T., 10/17/2013, at 102. The trial court entered an appropriate order, and Father timely filed a notice of appeal and concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i).

On appeal, Father sets forth several issues for our review, all of which challenge the trial court's decision to terminate his parental rights. We consider these issues mindful of the following.

In cases involving the termination of a parent's rights, our standard of review is limited to determining whether the order of the trial court is supported by competent evidence, and whether the trial court gave adequate consideration to the effect of such a decree on the welfare of the child.

Absent an abuse of discretion, an error of law, or insufficient evidentiary support for the trial court's decision, the decree must stand 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 C.W.U., Jr., 33 A.3d 1, 4 (Pa. Super. 2011) (quotation marks and citations omitted).

Our courts apply a two-part analysis in reviewing an order terminating parental rights. As we explained in ***In re L.M.***, 923 A.2d 505 (Pa. Super. 2007),

[i]nitially, 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.

Id. at 511.

Instantly, the trial court terminated Father's rights pursuant to 23 Pa.C.S. § 2511(a)(1), (2), (5), (8), and (b). "This [C]ourt 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 J.F.M.***, 71 A.3d 989, 992 (Pa. Super. 2013). For the purposes of our analysis, we focus on subsection (a)(8). The statute provides, in relevant part, 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:

* * *

(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. With respect to any petition filed pursuant to subsection (a) ... (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. § 2511.

Section 2511(a)(8) represents the determination that "a parent's basic constitutional right to the custody and rearing of [his] ... child is converted, upon the failure to fulfill ... parental duties, to the child's right to have proper parenting and fulfillment of his or her potential in a permanent, healthy, safe environment." ***In the Interest of K.Z.S.***, 946 A.2d 753, 759-760 (Pa. Super. 2008) (quoting ***In re B.N.M.***, 856 A.2d 847, 856 (Pa. Super. 2004)).

Instantly, there is no dispute that Children had been out of Father's care for over 12 months at the time of the hearing.

Once the 12-month period has been established, the court must next determine whether the conditions that led to the child's removal continue to exist, despite the reasonable good faith efforts of [OYFS] supplied over a realistic time period. Termination under Section 2511(a)(8) does not require the court to evaluate a parent's current willingness or ability to remedy the conditions that initially caused placement or the availability or efficacy of [CYS] services.

K.Z.S., supra at 759 (quoting **In re Adoption of K.J.**, 936 A.2d 1128, 1133 (Pa. Super. 2007)).

With respect to this subsection, Father argues that OYFS "failed to present clear and convincing evidence to support a decree of termination of parental rights." Father's Brief at 9. Specifically, Father asserts that "although currently incarcerated, he is attempting to get his life together." **Id.** at 10. He argues that when he is released from prison, "he will have a job available" and contends that Children should remain with Foster Parents until Father is ready to care for them. **Id.**

The trial court offered the following analysis.

The initial condition leading to the removal of [] [C]hildren was the alleged domestic abuse perpetrated by Father on Mother in the presence of the minor [C]hildren. This has not been remedied and continues to exist because Father has failed to attend domestic violence counseling as recommended by OYFS. Additionally, the OYFS had concerns of drug use. It would appear that this condition has not been remedied seeing as Father is currently incarcerated on drug-related charges. As discussed, Father was incarcerated at the time of the October 17, 2013 hearing. He remains incarcerated and is projected to be released from incarceration no earlier than November 2014.

Trial Court Opinion, 1/10/2014, at 7.

Father testified that it was due to Mother's drug use that he was not involved with Children at the time they were born, and it was also her drug use that caused his legal and financial issues. N.T., 10/17/2013, at 61-64. Father also testified that Mother prevented him from seeing Children from the time they were born until the time they were placed with OYFS. *Id.* at 68. Father testified that he plans to participate in recommended programs while he is incarcerated. Father admitted that he and Mother were involved in a domestic dispute, and that he also had a prior domestic dispute with a former girlfriend. He also admitted that he had not yet attended a domestic violence program. *Id.* at 87.

It is evident that Father has not remedied the domestic violence propensity that led to Children's placement. During his testimony, Father blamed Mother for all of his troubles, rather than taking responsibility for his own actions. Thus, the record supports the trial court's findings, and we hold that the court properly terminated Father's rights under subsection (a)(8) because "conditions which led to the removal or placement of [Children] continue to exist." 23 Pa.C.S. § 2511(a)(8).

We now turn to the other requirement under section 2511(a)(8), regarding the best interests of Children. Wormuth testified that Z.B. has recently been diagnosed with cerebral palsy, and Children attend a daycare for medically fragile children because they have "lung issues." N.T., 10/17/2013, at 21. Even with Children's health issues, Foster Parents have

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stated that they intend to adopt Children. **Id.** at 22. Thus, the record supports the trial court's finding that terminating Father's rights is in the best interests of Children.

Accordingly, we conclude that the trial court did not err in finding that OYFS met its burden under section 2511(a)(8). **See, e.g., In re C.L.G.**, 956 A.2d 999, 1008 (Pa. Super. 2008) (*en banc*) ("[I]f we were to permit Mother further opportunity to cultivate an environment where she can care for C.L.G., we would be subjecting a child, who has been waiting for more than two years for permanency, to a state of proverbial limbo in anticipation of a scenario that is speculative at best.").

We next consider whether the trial court gave adequate consideration to the welfare of Children under section 2511(b). "Intangibles such as love, comfort, security, and stability are involved when inquiring about the needs and welfare of the child." **K.Z.S., supra** at 760 (quoting **In re C.P.**, 901 A.2d 516, 520 (Pa. Super. 2006)).

The court should also consider the importance of continuity of relationships to the child.... The court must consider whether a natural parental bond exists between child and parent, and whether termination would destroy an existing, necessary and beneficial relationship. Most importantly, adequate consideration must be given to the needs and welfare of the child.

Id. (internal citations omitted).

Father contends, once again, that the better alternative under these circumstances is to permit Foster Parents to continue to have custody of Children to provide Father time to bond with Children once he is released

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from prison. Father's Brief at 14. In a sense, Father concedes that, at this point, he has no bond with Children worth preserving, but he would like more time to develop one. However, based on the aforementioned principles of law, time has run out. The trial court concluded that the needs of Children would best be served by terminating Father's parental rights and permitting Foster Parents adopt them. Trial Court Opinion, 1/10/2014, at 8. This conclusion is supported by the record.

Children have never lived with Father and have lived with Foster Parents for all but six months of their lives. Wormuth testified that prior to Father being incarcerated, he attended 11 out of 25 scheduled visits with Children.² She further testified that, because Children had not seen Father in over a year, they did not have any bond with him. N.T., 10/17/2013, at 35. Wormuth testified that Children are bonded with Foster Parents, whom they call "mom and dad." *Id.* at 16. Thus, there is ample evidence that Children have no bond with Father worth preserving and that they do have a strong bond with Foster Parents, who are willing to adopt them. *See, e.g., L.M., supra* at 512 ("There was absolutely no evidence that severing the ties between Mother and L.M. would have a negative effect on the child. Rather, unrefuted testimony indicated that L.M. was strongly bonded to her foster mother and was thriving in her foster home.").

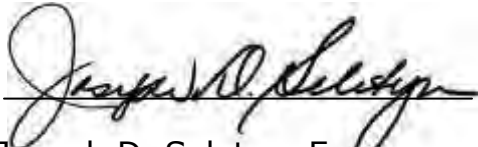
² The testimony reveals that Father did not attend visits between September 2012 and his incarceration in November 2012, as he was a fugitive. N.T., 10/17/2013, at 83.

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Despite Father's protestations to the contrary, we have long held that "[p]arental rights are not preserved by waiting for a more suitable or convenient time to perform one's parental responsibilities while others provide the child with [the child's] physical and emotional needs." ***In re Z.P.***, 994 A.2d 1108, 1119 (Pa. Super. 2010). Therefore, because the record supports the trial court's conclusions (1) that the conditions that led to Children's placement continue to exist, and (2) that termination of Father's rights is in Children's best interests, we hold that the orphans' court committed no error or abuse of discretion in granting OYFS's petition under section 2511(a)(8) and (b).

Orders 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: 6/24/2014