

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: J.L.R., a Minor

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: J.A.R., Father

No. 2167 MDA 2013

Appeal from the Decree entered November 7, 2013,
in the Court of Common Pleas of Lancaster County,
Orphans' Court, at No(s): 36-2012-2371

BEFORE: OTT, STABILE and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED APRIL 29, 2014

J.A.R. ("Father") appeals from the Decree granting the Petition filed by the maternal uncle ("Maternal Uncle") of the subject female child, J.L.R. ("Child") (born in May of 2005), and his partner, D.M. ("Partner"), to involuntarily terminate Father's parental rights, pursuant to section 2511(a)(1) and (b) of the Adoption Act, 23 Pa.C.S.A. § 2511(a)(1) and (b), so that Maternal Uncle and Partner may adopt Child. We affirm.

The trial court set forth the relevant facts as follows:

[Father] was not present at [Child's] birth, and [Maternal Uncle] was in the delivery room and cut the umbilical cord. [Father] became incarcerated on February 28, 2013. Before that, he was in the community for the entirety of [Child's] life. Father is sentenced to serve 3 to 6 years in prison, but is hoping to be released sometime next year.

[Father's] sister[, L.C. ("L.C."),] testified that [Father] would see [Child] every other day or so for a few months after [Child's] birth. [Father] claimed that in 2007[,], he lived with [Child's] mother, A.G.V. a/k/a A.V. ("Mother"), and [Child] for about a year. He claims that after they separated, he was told by [Child's] maternal grandmother not to look for [Mother]

anymore[,] and he did not have much contact with [Child] after that. . . . [Mother] moved around from 2007 to 2009 and allowed [Child] and [Child's half-sister, K.M.G. ("K.M.G."),] to continue to reside with [K.M.G.'s grandmother, M.M. ("M.M.")].

A custody action involving [Child] was commenced by [M.M.] after [Mother] granted [Maternal Uncle] guardianship of [Child] and [K.M.G.] in September of 2009. [Father] claimed that he did not know where [Child] was, but he knew that both [Maternal Uncle] and [M.M.] had shared custody of her. [Maternal Uncle] was awarded sole legal and physical custody of [Child] and [K.M.G.] by the [trial c]ourt on May 24, 2011. [Father] claimed that he received notice that [Maternal Uncle] gained sole custody of [Child] in 2011, but the papers he received did not have [Maternal Uncle's] address or contact information. [Maternal Uncle] testified that he asked [Father] at the custody conference if he wanted to see a picture of [Child], and [Father] said "No." [Father] never paid child support or provided any financial compensation.

* * *

[Maternal Uncle] testified that the only time that he is aware that [Father] saw [Child] after September of 2009, was at her fifth birthday party in May of 2010. According to [Maternal Uncle], this was very upsetting to [Child].

* * *

From May 2010-present, [Father] has had no contact with [Child]. He testified that he could not find her, despite knowing that she was with [Maternal Uncle]. [Father] stated that he tried to find [Maternal Uncle and Partner] on the internet 4 times in 2012, but he did not know how to spell [Maternal Uncle's] last name.

Trial Court Opinion, 12/23/13, at 2-4 (footnote omitted).

On November 9, 2012, Maternal Uncle and Partner filed a Petition seeking to terminate Father's parental rights to Child so that they could

adopt her.¹ The trial court appointed counsel for Father, and a guardian *ad litem* for Child.²

On November 6, 2013, the trial court conducted a termination hearing.³ At the hearing, Maternal Uncle and Partner testified on their own behalf. Father testified on his own behalf and presented the testimony of his girlfriend, A.R., and L.C.

In a Decree entered on November 13, 2013, the trial court terminated the parental rights of Father to Child.⁴ Father filed a timely Notice of Appeal and a Concise Statement of Matters Complained of on Appeal, pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b).

On appeal, Father raises the following issues for our review:

1. Whether the [t]rial [c]ourt erred in terminating Father's parental rights under 23 Pa.C.S. § 2511(a)(1) when [Maternal

¹ In their Petition, Maternal Uncle and Partner also sought to terminate the parental rights of Mother to Child and to K.M.G., as well as the parental rights of K.M.G.'s biological father, N.L.G. ("N.L.G."), to K.M.G.

² The trial court appointed separate counsel for Mother and N.L.G., and a guardian *ad litem* for K.M.G.

³ On May 1, 2013, the trial court conducted a termination hearing as to all parties, but ultimately bifurcated the hearing regarding Father's parental rights to Child because Father, who attended the hearing from prison via telephone, was unable to remain on the line. On July 3, 2013, the trial court entered a Decree terminating the parental rights of Mother to Child, and Mother and N.L.G. to K.M.G. This Court affirmed the July 3, 2013 Decree as to Mother. **See *In re J.L.R. and K.M.G.***, 1356 MDA 2013 (Pa. Super. filed February 12, 2014).

⁴ The Decree terminating Father's parental rights to Child is dated November 7, 2013, but was not docketed until November 13, 2013. Thus, we will utilize the November 13, 2013 date when referring to the Decree.

Uncle and Partner] failed to proved [sic] by clear and convincing evidence that Father evidenced a settled purpose of relinquishing her [sic] parental claim to her [sic] [C]hild or failed to perform her [sic] parental duties for a period of six (6) months immediately preceeding [sic] the filing of the Petition[?]

2. Whether the [t]rial [c]ourt erred in terminating Father's parental rights when a bonding assessment failed to done [sic] which may have indicated a bond between [C]hild and Father[?]

Father's Brief at 11.

We will review Father's issues together. Father contends that Maternal Uncle and Partner failed to prove by clear and convincing evidence the requirements of section 2511(a)(1) and (b) of the Adoption Act. **Id.** at 15. In particular, Father contends that there was not enough evidence for the trial court to determine whether Father evidenced a settled purpose of relinquishing his parental claim or failed to perform parental duties. **Id.** Additionally, Father claims that he "used all reasonable means available to him based upon his capacity and knowledge of the judicial system and internet in order to find [Child] and resume a continuing relationship." **Id.** at 14. Father also asserts that Maternal Uncle and Partner failed to obtain a bonding assessment, and contends that such an assessment would have proven that a bond existed between Father and Child. **Id.**

Termination of parental rights is controlled by section 2511 of the Adoption Act. 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 hesitation, of the truth of the precise facts in issue.” *Id.* (citation and internal 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 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). Further, 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*).

Here, the trial court terminated Father’s parental rights under section 2511(a)(1) and (b), which provide as follows:

§ 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:

- (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.

* * *

(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 the giving of notice of the filing of the petition.

23 Pa.C.S.A. § 2511.

We have explained this Court's review of a challenge to the sufficiency of the evidence supporting the involuntary termination of a parent's rights pursuant to section 2511(a)(1) as follows:

To satisfy the requirements of section 2511(a)(1), the moving party must produce clear and convincing evidence of conduct, sustained for at least the six months prior to the filing of the termination petition, which reveals a settled intent to relinquish parental claim to a child or a refusal or failure to perform parental duties.

* * *

Once the evidence establishes a failure to perform parental duties or a settled purpose of relinquishing parental rights, the court must engage in three lines of inquiry: (1) the parent's explanation for his or her conduct; (2) the post-abandonment contact between parent and child; and (3) consideration of the effect of termination of parental rights on the child pursuant to Section 2511(b).

In re Z.S.W., 946 A.2d 726, 730 (Pa. Super. 2008) (citations omitted).

[T]o be legally significant, the [post-abandonment] contact must be steady and consistent over a period of time, contribute to the psychological health of the child, and must demonstrate a serious intent on the part of the parent to recultivate a parent-child relationship and must also demonstrate a willingness and

capacity to undertake the parental role. The parent wishing to reestablish his parental responsibilities bears the burden of proof on this question.

In re Z.P., 994 A.2d 1108, 1119 (Pa. Super. 2010) (citation omitted); **see also *In re Adoption of C.L.G.***, 956 A.2d 999, 1006 (Pa. Super. 2008) (*en banc*).

Further, regarding the definition of “parental duties,” this Court has stated as follows:

There is no simple or easy definition of parental duties. Parental duty is best understood in relation to the needs of a child. A child needs love, protection, guidance, and support. These needs, physical and emotional, cannot be met by a merely passive interest in the development of the child. Thus, this court has held that the parental obligation is a positive duty which requires affirmative performance.

This affirmative duty encompasses more than a financial obligation; it requires continuing interest in the child and a genuine effort to maintain communication and association with the child.

Because a child needs more than a benefactor, parental duty requires that a parent exert himself to take and maintain a place of importance in the child’s life.

Parental duty requires that the parent act affirmatively with good faith interest and effort, and not yield to every problem, in order to maintain the parent-child relationship to the best of his or her ability, even in difficult circumstances. 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 others provide the child with . . . her physical and emotional needs.

In re B., N.M., 856 A.2d 847, 855 (Pa. Super. 2004) (citations omitted); ***see also In re Adoption of S.P.***, 47 A.3d 817, 828 (Pa. 2012).

Here, the trial court thoroughly considered the facts and determined that Father had failed to perform his parental duties for the requisite six-month period. Trial Court Opinion, 12/23/13, at 5-6. The trial court found that, from May 2010 to the date of filing of the Petition, Father had no contact with Child, and was content to let other people parent her, despite the fact that he was in the community. ***Id.*** at 4, 6-7. The trial court also considered the fact that Father was incarcerated in 2013 for three to six years, with a minimum release date of 2016. ***Id.*** at 7-8; ***see also In re Adoption of S.P.***, 47 A.3d at 827-28, 830-31 (stating that the trial court may consider a parent's incarceration in ruling on a termination petition); ***In re G.P.-R.***, 851 A.2d 967, 976 (Pa. Super. 2004) (stating that "[i]t is incumbent upon a parent when separated from his child to maintain communication and association with the child. This requires an affirmative demonstration of parental devotion, imposing upon the parent the duty to exert himself, to take and maintain a place of importance in the child's life.").

After our careful review of the trial court's application of the law to the facts of this case, we find no reason to disturb the trial court's conclusions that Father failed to perform his parental duties with regard to Child, that his explanations for his lack of contact lacked credibility, and that he failed to

sustain his burden of proof with regard to the post-abandonment contact. Thus, the trial court's determinations regarding section 2511(a)(1) are supported by competent, clear and convincing evidence in the record. **See *In re Adoption of S.P.***, 47 A.3d at 826-27.

After we determine that the requirements of section 2511(a) are satisfied, we proceed to review whether the requirements of subsection (b) are satisfied. **See *In re Adoption of C.L.G.***, 956 A.2d at 1009. This Court has stated that, whereas the focus in terminating parental rights under section 2511(a) is on the parent, it is on the child under section 2511(b). ***Id.*** at 1008. Regarding section 2511(b), the court inquires whether the termination of parental rights would best serve the developmental, physical and emotional needs and welfare of the child. **See *In re C.M.S.***, 884 A.2d 1284, 1286-87 (Pa. Super. 2005). "Intangibles such as love, comfort, security, and stability are involved in the inquiry into the needs and welfare of the child." ***Id.*** at 1287 (citation omitted). The court must also discern the nature and status of the parent-child bond, with utmost attention to the effect on the child of permanently severing that bond. ***Id.*; see also *In re K.Z.S.***, 946 A.2d 753, 762-63 (Pa. Super. 2008) (stating that where there is no evidence of any bond between the parent and child, it is reasonable to infer that no bond exists). Additionally, "the strength of emotional bond between a child and a potential adoptive parent is an important

consideration in a 'best interests' analysis." ***In re I.J.***, 972 A.2d 5, 13 (Pa. Super. 2009).

Here, the trial court found that Father has had no contact with Child since at least May 2010, and has not provided for her developmental, physical, and emotional needs and welfare. Trial Court Opinion, 12/23/13, at 6-8. The trial court also found that, because of Father's lack of contact with Child, there is no existing bond between Father and Child. ***Id.*** at 7; ***see also In re K.K.R.-S.***, 958 A.2d 529, 535-36 (Pa. Super. 2008) (stating that where no clear bond between the parent and the subject child was apparent, there was no requirement to prove the absence of a positive bond); ***In re K.Z.S.***, 946 A.2d at 764 (observing that no bond worth preserving is formed between a child and a natural parent where the child has been in foster care for most of the child's life, and the resulting bond with the natural parent is attenuated). The evidence reflects that Father failed to "exhibit [the] bilateral relationship which emanates from the parent[']s willingness to learn appropriate parenting" ***In re K.K.R.-S.***, 958 A.2d at 534. He did not put himself in a position to assume daily parenting responsibilities so that he could develop a real bond with Child. ***See In re J.L.C.***, 837 A.2d 1247, 1249 (Pa. Super. 2003). Additionally, as part of its bonding analysis, the trial court appropriately examined Child's relationship with her caregivers, Maternal Uncle and Partner, who have served as her parents. Trial Court Opinion, 12/23/13, at 9; ***see also In re:***

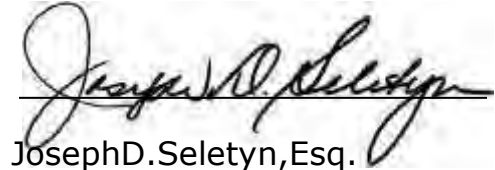
T.S.M., 71 A.3d 251, 267-68 (Pa. 2013) (stating that existence of a bond attachment of a child to a parent will not necessarily result in the denial of a termination petition, and the court must consider whether the child has a bond with the foster parents). Based upon the foregoing, competent evidence supports the trial court's determination that the termination of Father's parental rights would serve Child's best interests. **See In re Z.P.**, 994 A.2d at 1125 (stating that a child's life "simply cannot be put on hold in the hope that [a parent] will summon the ability to handle the responsibilities of parenting."); **see also In re Adoption of S.P.**, 47 A.3d at 826-27; **In re B., N.M.**, 856 A.2d at 856 (stating that "a parent's basic constitutional right to the custody and rearing of his child is converted, upon the failure to fulfill his or her parental duties, to the child's right to have proper parenting and fulfillment of his or her potential in a permanent, healthy, safe environment.").

Based upon the trial court's analysis, we conclude that Father's appeal is without merit. Thus, we affirm the Decree terminating Father's parental rights.

Decree affirmed.

J-S25032-14

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: 4/29/2014