

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: R.L.B., A MINOR CHILD	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
	:	
APPEAL OF: R.G.N.	:	No. 237 WDA 2014

Appeal from the Order Entered January 21, 2014
 In the Court of Common Pleas of Clarion County
 Orphans' Court at No(s): 237 OC 2013

BEFORE: GANTMAN, P.J., BENDER, P.J.E., AND OTT, J.

MEMORANDUM BY GANTMAN, P.J.: **FILED JUNE 06, 2014**

Appellant, R.G.N. ("Father"), appeals from the order entered in the Clarion County Court of Common Pleas, Orphans' Court, which involuntarily terminated Father's parental rights to his minor child, R.L.B. ("Child"). We affirm.

In its opinion, the trial court fully and correctly sets forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them.

Father raises two issues for our review:

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION AND COMMITTED AN ERROR OF LAW BY DETERMINING NO ADVERSE CONSEQUENCES WILL BE SUFFERED BY THE MINOR CHILD IN TERMINATING [FATHER'S] PARENTAL RIGHTS.

WHETHER THE TRIAL COURT COMMITTED AN ERROR OF LAW BY FAILING TO GIVE NOTICE TO [FATHER] PURSUANT TO 23 PA.C.S.A. § 2511(C).

(Father's Brief at 4).

Preliminarily, we observe generally that issues not raised in a Rule 1925 statement will be deemed waived. ***Commonwealth v. Castillo***, 585 Pa. 395, 403, 888 A.2d 775, 780 (2005) (quoting ***Commonwealth v. Lord***, 553 Pa. 415, 420, 719 A.2d 306, 309 (1998)). An appellant's concise statement must properly specify the error to be addressed on appeal. ***Commonwealth v. Dowling***, 778 A.2d 683 (Pa.Super. 2001). In other words, the Rule 1925 statement must be "specific enough for the trial court to identify and address the issue [an appellant] wishe[s] to raise on appeal." ***Commonwealth v. Reeves***, 907 A.2d 1, 2 (Pa.Super. 2006), *appeal denied*, 591 Pa. 712, 919 A.2d 956 (2007). "[A] [c]oncise [s]tatement which is too vague to allow the court to identify the issues raised on appeal is the functional equivalent of no [c]oncise [s]tatement at all." ***Id.*** The court's review and legal analysis can be fatally impaired when the court has to guess at the issues on appeal. ***Id.*** Thus, if a concise statement is too vague, the court may find waiver and disregard any argument. ***Id. See also In re L.M.***, 923 A.2d 505 (Pa.Super. 2007) (applying Rule 1925 waiver standards in family law context); ***In re C.P.***, 901 A.2d 516 (Pa.Super. 2006) (holding mother waived claim challenging termination of her parental rights because it was not included in her concise statement).

Instantly, Father presented his first issue on appeal in his concise statement as follows: "The trial court abused its discretion and committed an

error of law by determining no adverse consequences will be suffered by [C]hild in terminating [Father's] parental rights." (Father's Concise Statement, filed 2/6/14, at 1). On appeal, the crux of Father's argument is that the court failed to consider the differences in income and earning capacity between Father and Mother's husband, which will impact who can better financially support Child—the "adverse consequence" that Father refers to in his concise statement. Father's concise statement, however, fails to make clear this precise argument, which could result in waiver of his claim on appeal. **See Reeves, supra.** Nevertheless, we will review the merits of Father's complaint where the trial court addressed it as part of its 23 Pa.C.S.A. § 2511(b) analysis.

The standard and scope of review applicable in termination of parental rights cases are 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 it 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.

Furthermore, we note that the trial court, as the finder of fact, is the sole determiner of the credibility of witnesses and all conflicts in testimony are to be resolved by [the] finder of fact. The burden of proof is on the party seeking

termination to establish by clear and convincing evidence the existence of grounds for doing so.

The standard of clear and convincing evidence means 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. We may uphold a termination decision if any proper basis exists for the result reached. If the trial court's findings are supported by competent evidence, we must affirm the court's decision, even though the record could support an opposite result.

In re Adoption of K.J., 936 A.2d 1128, 1131-32 (Pa.Super. 2007), *appeal denied*, 597 Pa. 718, 951 A.2d 1165 (2008) (internal citations omitted).

Under Section 2511(b), the court must consider whether termination of parental rights meets the children's needs and welfare. ***In re C.P.***, 901 A.2d 516, 520 (Pa.Super. 2006). "Intangibles such as love, comfort, security, and stability are involved when inquiring about the needs and welfare of the child. The court must also discern the nature and status of the parent-child bond, paying close attention to the effect on the child of permanently severing the bond." ***Id.*** (internal citation omitted).

The statute permitting the termination of parental rights outlines certain irreducible minimum requirements of care that parents must provide for their children. ***In re B.L.L.***, 787 A.2d 1007 (Pa.Super. 2001).

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 [the child's] physical and emotional needs.

In re B., N.M., 856 A.2d 847, 855 (Pa.Super. 2004), *appeal denied*, 582 Pa. 718, 872 A.2d 1200 (2005) (internal citations omitted). Accordingly, "a parent's basic constitutional right to the custody and rearing of his...child is converted, upon the failure to fulfill his...parental duties, to the child's right to have proper parenting and fulfillment of his...potential in a permanent, healthy, safe environment." ***Id.*** at 856.

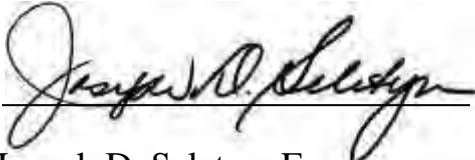
After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable James G. Arner, we conclude Father's issues merit no relief. The trial court opinion

comprehensively discusses and properly disposes of the questions presented. (**See** Trial Court Opinion, filed March 13, 2014, at 1-4) (finding: **(1)** Child is autistic and Mother cares for Child's needs, whereas Father has had very little involvement in Child's life; Father has not provided financial support for Child since 2009 or had any contact with Child since then other than two letters he sent Child after Mother filed petition for involuntary termination of Father's parental rights; Mother's husband wants to adopt Child and Mother wants her husband to adopt Child; Mother's husband has known Child since Child was five months old and has assumed financial responsibility for Child over past five years; Mother's husband is aware of Child's special needs and is directly involved with Child's daily activities; Mother's husband loves Child as if Child was his own; Father has been incarcerated since August 24, 2010 serving two to six year sentence; Father will serve his maximum sentence and remain incarcerated until 2016 because Father refuses to participate in prison programs which could otherwise earn Father early release; Child does not know Father; Father is unrealistic in his assessment that he will soon get out of prison and will win millions of dollars in lawsuit alleging unlawful incarceration, and then have means to support Child; termination of Father's parental rights will best serve Child's developmental, physical, and emotional needs; Child will not suffer adverse consequences as result of termination of Father's parental rights; **(2)** through oversight, court failed to give Father notice per Section

2511(c), which provides that after court enters order of termination, court shall advise parent of his continuing right to update personal and medical history with court and Department of Public Welfare; nevertheless, court's error does not constitute basis for reversing termination order; court can remedy error by providing Father notice per Section 2511(c) after decision on Father's appeal). Accordingly, we affirm on the basis of the trial court's opinion.¹

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: 6/6/2014

¹ On April 29, 2014, Mother and her husband filed a motion for counsel fees, alleging Father's appeal is "frivolous and dilatory," and Mother and her husband lack financial resources to litigate the appeal. We deny the motion.

IN THE COURT OF COMMON PLEAS
OF CLARION COUNTY, PENNSYLVANIA

RECEIVED

IN RE: R.L.B., a minor child : ORPHAN'S COURT
: :
: NO. 237 OC 2013

MAR 13 2014

BY _____

OPINION PURSUANT TO PA.R.A.P. 1925(a)(2)

Arner, J.

March 12, 2014

By Order of January 21, 2014, this court granted the Petition of the biological mother and her husband to involuntarily terminate the parental rights of the biological father to the parents' six year old son. This court found that the petitioners proved by clear and convincing evidence that the biological father, R.G.N. had by conduct continuing for a period of at least six months prior to the filing of the Petition evidenced a settled purpose of relinquishing his parental claim and had refused and failed to perform his parental duties. This court also found that the petitioners proved that it is in the child's best interest for Father's rights to be terminated and that the child will not suffer any adverse consequences because he and Father have no relationship.

Father has filed a Concise Statement of Matters Complained of on Appeal, alleging the following two errors: (1) the trial court abused its discretion and committed an error of law by determining that no adverse consequences will be suffered by the child in terminating Father's rights and (2) the trial court committed an error of law by failing to give notice to Father pursuant to 23 Pa.C.S.A. section 2511(c).

The Superior Court stated in *In re E.M.I.*, 57 A.3d 1278, 1286 -

cc: Hager
McDaniel
Shekell

3/13/14

(14)

1287 (Pa.Super.2012):

Assuming the termination pleading meets threshold requirements, the court proceeds with the two-part test for termination of parental rights under Section 2511 of the Adoption Act. See 23 Pa.C.S.A. § 2511. The initial focus is on the conduct of the parent whose rights are at issue. *In re C.L.G.*, 956 A.2d 999, 1004 (Pa.Super.2008) (*en banc*). A party seeking termination under Section 2511(a)(1) must demonstrate the other parent has either: (1) shown a settled purpose to relinquish his parental claim to the child; or (2) failed to perform parental duties for at least six months prior to the termination petition. *In re I.J.*, 972 A.2d 5, 10 (Pa.Super.2009). The second prong of the test centers on the needs and welfare of the child. *In re Z.P.*, 994 A.2d 1108, 1121 (Pa.Super.2010). 'A proper Section 2511(b) analysis focuses on whether termination of parental rights would best serve the developmental, physical, and emotional needs and welfare of the child.' *In re T.D.*, 949 A.2d 910, 920 (Pa.Super.2008), *appeal denied*, 601 Pa. 684, 970 A.2d 1148 (2009). The court should examine intangibles such as 'love, comfort, security, and stability' when determining the needs and welfare of the child. *Id.*

Father has not challenged the finding that he evidenced a settled purpose of relinquishing his parental claim and refused and failed to perform his parental duties. The first error complained of deals only with the second prong of the two-part test.

The child here R.L.B. is six years old. He was born in August 2007. He has autism. This presents challenges with speech delay, potty training, and the ability to do things on his own. His mother, *B.J.G.*, cares for the child's needs by taking her time with him. The biological father, *R.G.N.* has not had much involvement with the child's care. He has not provided any financial support since 2009. *Father* has not had any contact of any nature with the child since 2009, other than two letters he sent after the Petition for Involuntary Termination was filed. See Notes of Testimony (NT) at pages 5, 6 and 7 from the involuntary termination hearing of January 17, 2014. The letters, according to mother, were "just jibber jabber." *Father* has

not communicated about his son in any other manner during that time. See N.T. page 21. Mother's husband, E. F. G., Sr. wants to adopt R.L.B. and Mother wants him to. N.T. at page 24.

E. F. G., Sr. has had contact with R.L.B. since he was five months old. He said R.L.B. is "like a son, a blood son." For the past five years, E. F. G., Sr. has assumed financial responsibility for the child and agrees to continue to do so. E. F. G., Sr. is aware of the child's special needs and is directly involved in R.L.B.'s daily activities. See N.T. pages 26 and 31.

Biological father, whose rights are at stake here, has been incarcerated in state prison since August 24, 2010 on a sentence of two to six years for aggravated assault and other charges. He has filed a PCRA petition and has stated if he is unsuccessful he will serve his maximum sentence because he refuses to do what they ask in prison. N.T. at pages 50, 52, and 53 and 91 and 92. Father believes he will be able to take care of his son financially with the millions of dollars he expects to win in a lawsuit he will file based on his illegal conviction and incarceration. N.T. at pages 80, 81, and 82.

The evidence here shows that for at least the past five years, E. F. G., Sr. has acted as R.L.B.'s father and performed parental duties. Since 2009, the biological father, R. G. N. has had no contact with the child. R.L.B. does not know Father.

Father is entirely unrealistic in his assessment that he will get out of prison soon and win millions of dollars in a lawsuit and then will be able to be a parent. If he

does not succeed on his PCRA petition he will remain incarcerated in state prison through his maximum sentence in 2016 because he will refuse to participate in programs that may earn him an earlier release.

The evidence shows, clearly and convincingly, that the developmental, physical and emotional needs and welfare of the child R.L.B. will be best served by termination of the parental rights of Father and by adoption by E.F.G., Sr. The child will not suffer any adverse consequences from termination of Father's rights.

The second error complained of an error of law by this court in failing to give notice to Father pursuant to 23 Pa.C.S.A. section 2511(c). That section provides:

(c) Right to file personal and medical history information.--At the time the decree of termination is transmitted to the parent whose rights have been terminated, the court shall advise the parent, in writing, of his or her continuing right to place and update personal and medical history information, whether or not the medical condition is in existence or discoverable at the time of adoption, on file with the court and with the Department of Public Welfare pursuant to Subchapter B of Chapter 29 [FN1] (relating to records and access to information).

The appellant is correct. This court through oversight did not provide that notice. However, the failure to give notice of the right to file and update medical history is irrelevant to the termination of parental rights and therefore, is not a basis for reversing this court's decision that Father's rights should be terminated.

The issue can be remedied by this court providing the required notice after this appeal is decided. The appellant will not be prejudiced by a late notice. This court will correct the error.

BY THE COURT:

James L. Arnes P.J.