NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: TERMINATION OF PARENTAL RIGHTS OF: A.M., JR. and C.R. in and to F.M., A MINOR	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: A.M., JR., BIOLOGICAL FATHER OF F.M., A MINOR	No. 241 EDA 2014

Appeal from the Decree entered December 27, 2013, in the Court of Common Pleas of Carbon County, Orphans' Court, at No(s): 12-9172

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

MEMORANDUM BY OLSON, J.: **FILED JUNE 11, 2014**

A.M., Jr. ("Father") appeals from the decree entered on December 27, 2013, that granted the petition filed on June 8, 2012, by the Carbon County Office of Children and Youth Services ("CYS"), to involuntarily terminate his parental rights to his dependent, female child, F.M., ("Child"), born in October 2010, pursuant to section 2511(a)(1), (2), (5), and (b) of the Adoption Act, 23 Pa.C.S.A. § 2511(a)(1), (2), (5), and (b). We affirm.[1]

In its memorandum opinion filed on February 19, 2014, the trial court thoroughly explained the factual background and procedural history of this appeal. The trial court held hearings on the termination petitions on

[1] In the same decree entered on December 27, 2013, the trial court granted the petition to involuntarily terminate the parental rights of Child's natural mother, C.R. ("Mother"). ***See*** Trial Court Opinion, 2/19/14, at 1 n.1. Mother is not a party to the present appeal, nor has she filed a separate appeal.

February 19, 2013, May 16, 2013, and June 17, 2013. At the hearing on February 19, 2013, CYS presented the testimony of Toby Butz, the CYS caseworker assigned to the family, and Brian Alboucq, the JusticeWorks Youth Care program director for Carbon County. N.T. Hearing, 2/19/13, at 4 and 66. At the hearing on May 16, 2013, CYS presented the testimony of John Seasock, Ph.D., as an expert in performing psychological evaluations of individuals and bonding assessments. N.T. Hearing, 5/16/13, at 3-6. CYS also presented the testimony of E.M., Child's foster mother, ("Foster Mother"), who intends to adopt Child. ***Id.*** at 91, 111. Father presented the testimony of C.D., his aunt, who had provided kinship care for Child. ***Id.*** at 114-116. Additionally, Mother testified on her own behalf. At the hearing on June 17, 2013, counsel for CYS and the guardian *ad litem* cross-examined Mother. Father testified on his own behalf. As the trial court explained, during these hearings, the following evidence was presented:

> [Child] was born [in October 2010]. [Child] is the biological daughter of Mother, who was [17] years old at the time, and Father, who was then [18] years of age. On December 9, 2010, less than two months after [Child] was born, [Child] was admitted to Gnaden Huetten Memorial Hospital with multiple bruises and a fractured left radius. Because [the p]arents could not explain [Child's] injuries, CYS placed [Child] in emergency shelter care and filed a child abuse report against both Mother and Father. In this report, both parents were indicated as having physically abused [Child].
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> On January 24, 2011, [Child] was adjudicated dependent. At this time a Family Service Plan [("FSP")] was implemented that [Mother and Father] needed to comply with in order for [Child] to be returned to their care. The FSP required [the] parents to participate in in-home

services offered by JusticeWorks and complete a parenting assessment, and required Father to complete an anger management assessment. [The p]arents initially complied with the FSP. Consequently, after six months in foster care, on June 23, 2011, [Child] was returned to [the parents'] care. Nevertheless, [Child's] status remained that of a dependent child.

At first, [Child's] return to [the p]arents' care appeared successful. [The P]arents had stable housing with Father's family, Father supported Mother and [Child] by working at a grocery store, and [the family] continued to receive services from JusticeWorks. However, problems arose within a month after [Child's] return[] when[,] on July 17, 2011, Mother overdosed on blood-pressure medication in an attempted suicide.

A week after this suicide attempt, CYS asked [Dr.] John Seasock to perform a psychological evaluation of [the p]arents. Dr. Seasock's evaluation revealed that [the p]arents suffered from serious mental health issues as well as drug and alcohol dependency that limited their ability to adequately care for [Child]. Dr. Seasock diagnosed Mother with severe depression, psychotic features such as auditory and visual hallucinations, and borderline personality disorder. These conditions caused Mother to not understand [Child's] cues to respond to [Child's] needs. They also severely limited Mother's ability to care for herself. Consequently, Dr. Seasock recommended, and the FSP then required, that another adult supervise Mother when she cared for [Child].

Dr. Seasock diagnosed Father with bipolar disorder and polysubstance dependence. Father suffered mood swings that caused him to turn violent and aggressive. By the age of [19], Father had been psychiatrically hospitalized seven times, starting at the age of six, for violent and aggressive behavior. Father abused drugs and alcohol to control his mood swings. Unlike Mother, Dr. Seasock found that Father, while limited, was able to adequately care for [Child].

Based on his evaluation, Dr. Seasock found the family to be at high-risk because, with Mother's inability to care for

> [Child], Father had to shoulder the majority of the parenting responsibilities. Dr. Seasock feared that the stress of this responsibility would cause Father to turn aggressive or abandon the family, leaving Mother by herself with [Child].
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> Based on Dr. Seasock's evaluation, the court-ordered FSP was amended to include the following conditions: (1) Parents to continue with JusticeWorks and follow its recommendations, (2) Parents to complete parenting classes, (3) Parents to seek mental health treatment and follow any recommendations made, (4) Mother not to be left alone with [Child] for more than four hours, and (5) Father to complete anger management classes. The FSP was clear that if [the p]arents failed to comply with these conditions, CYS would remove [Child] from their care.
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> To assist [the p]arents in complying with the FSP, CYS offered [the p]arents multiple services. In addition to the programs offered by JusticeWorks, CYS referred [the p]arents to parenting classes offered by Right From the Start, referred [the p]arents to mental health services through ReDCo, referred Father to drug and alcohol rehabilitation services, and referred Father to anger management classes through Care Net.
>
> Unfortunately, [the p]arents did not utilize the services provided and did not comply with the FSP. First, [the p]arents frequently prevented JusticeWorks from entering their home to provide services. On occasions when JusticeWorks was allowed into the home, only Mother would participate, and on several visits, Father was verbally abusive to JusticeWorks employees. Second, [the p]arents refused to participate in the parenting classes offered by Right From the Start. [The p]arents told CYS they did not need the classes. Third, because [the p]arents did not attend recommended outpatient counseling, they were unsuccessfully discharged from ReDCo's mental health treatment. Fourth, because Father did not attend the required sessions, he was unsuccessfully discharged from anger management classes. Finally, Father did not complete drug and alcohol treatment, which was later added to the FSP. This condition was added after Father tested positive for drugs on numerous occasions.[fn.1]

> [fn.1] Father tested positive for Vicodin, Xanax, Ativan, and marijuana on September 16, 2011[,] November 2, 2011[,] November 22, 2011[,] December 7, 2011[,] December 22, 2011[,] and January 25, 2012. He also refused to take a drug test on October 21, 2011. Father did not submit to drug tests from January 2012 to January 2013.

Because of [the p]arents' hollow efforts to comply with the FSP, on December 21, 2011, CYS removed [Child] from [the p]arents' care and returned her to emergency care. [Child] has not been in [the p]arents' care since that date.

After [Child] was removed from their home, [the p]arents' lives deteriorated. Father lost his job in December 2011, and he did not find employment for the next six months. By January 2012, [the p]arents were homeless. During this time, they lived in their car, a motel, or with Mother's grandmother in Lehigh County, Pennsylvania. JusticeWorks attempted to provide services to help [the p]arents find shelter but [the p]arents refused. On February 1, 2012, JusticeWorks discharged [the p]arents from its program for noncompliance. [The p]arents then stopped communicating with CYS from February 1, 2012, to the end of March. During this two-month period, [the p]arents had no contact with [Child]. From March 2012 to June 2012, despite having visitation rights, [the p]arents' visits and contact with [Child] were infrequent. [The p]arents also continued not to comply with the FSP.

After close to a year of non-compliance with the FSP, and [16] months after [Child] was adjudicated dependent, on June 1, 2012, [Child's] placement goals in the dependency proceedings were changed from reunification to adoption. Seven days later, on June 8, 2012, CYS petitioned to have [the p]arents' parental rights over [Child] terminated. At this time, the FSP required[:] (1) Parents to complete parenting classes, (2) Parents to seek mental health treatment and follow recommendations, (3) Father to complete anger management classes, (4) Parents to submit to random drug tests, (5) Father to complete drug and alcohol treatment, (6) Parents to maintain financial stability, and (7) Parents to obtain and maintain stable housing. . . . [The p]arents complied with none of these requirements.

On December 8, 2012, six months after the termination petition was filed, Dr. Seasock performed a second evaluation of [the p]arents. Dr. Seasock again diagnosed Mother with depression, psychotic features, and borderline personality disorder. He found that these conditions still prevented Mother from meeting [Child's] needs as a parent. He opined that there was a low probability that Mother would ever develop the ability to adequately care for [Child].

In his evaluation of Father, Dr. Seasock again diagnosed Father with bipolar disorder and polysubstance dependence. He found that Father continued to use drugs and alcohol to deal with his anger and mood swings. Dr. Seasock observed that Father's condition had deteriorated to the point [where] he was no longer able to adequately care for [Child]. While Dr. Seasock believed that with drug, alcohol, and mental health treatment Father would be able to adequately care for [Child] in the future, Dr. Seasock also noted that Father had demonstrated a pattern of not complying with drug and alcohol programs and not complying with mental health treatment.

As part of his evaluation, Dr. Seasock performed a bonding assessment of the relationship between [the p]arents and [Child]. He found that no parental bond existed between [Child] and either parent. Rather, he described the relationship which existed between [Child] and [the p]arents as that which exists between playmates.

Based on his evaluation, Dr. Seasock opined that [Child] should not be reunited with [the p]arents. Dr. Seasock testified that as of December 2012, [the p]arents were unable to take care of themselves, much less [Child]. He concluded that since [Child] was not attached to either parent, [Child] would suffer no harm if [Mother's and Father's p]arental rights were terminated.[fn.2]

> [fn.2] Dr. Seasock was also concerned with the dangers of reuniting [Child] with [the p]arents after she had been removed from their home for such a long period of time. According to Dr. Seasock, when a child is between the ages of zero and five and is removed from the home

> for a period of [18] to [24] months, the child suffers significant emotional, psychiatric, and bonding issues if the child is then reunited with his or her parents. As of the June 17, 2013[] hearing date, [Child] had been removed from [the p]arents' home for [18] straight months and [24] total months. As of the date of this appeal, [Child] has been removed from [the p]arents' home for [25] straight months and [31] total months.
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> Since December 22, 2011, when [Child] was removed from [the p]arents' care for the second time, she has thrived living with her foster parents. [Child] was placed in the home of D.M. and E.M., who also take care of [Child's] biological sister, K.M.[fn.3] When [Child] initially began living with D.M. and E.M., she threw screaming tantrums. After several months, these tantrums stopped, and [Child] has become a much more outgoing, confident, and happier child. [Child] has developed a strong relationship with D.M. and E.M., as well as with K.M. and a third child living with them. D.M. and E.M. would like to adopt all three children. While in E.M. and D.M.'s care, [Child] has undergone ear surgery and received speech therapy to treat speech issues.
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> [fn.3] On October 11, 2011, [Mother and Father] had a second child, K.M. [Mother and Father] voluntarily terminated their parental rights with regard to K.M. As of May 2013, E.M. and D.M. were in the process of adopting K.M.

Trial Court Opinion, 2/19/14, at 1-10 (internal citations and some internal footnotes omitted).

The trial court explained that, at the close of the hearing on June 17, 2013, the parents requested that the court permit Dr. Seasock to perform a third evaluation, and also requested an opportunity to submit to the court proposed findings of fact and conclusions of law. Trial Court Opinion, 2/19/14, at 10. The trial court reviewed the record and the proposed findings of fact and conclusions of law submitted by the parties, and,

subsequently, denied the request for a third evaluation. ***Id.*** On December 27, 2013, the trial court entered its decree terminating Father's parental rights to Child.

On January 24, 2014, Father timely filed a notice of appeal, but he failed to accompany his appeal with a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b). On January 24, 2014, the trial court entered an order affording Father twenty-one days to file a concise statement. Father complied, filing a concise statement on February 11, 2014.

We agree with the trial court that Father's failure to file his concise statement simultaneously with his notice of appeal is not fatal to his appeal, as we can discern no prejudice to CYS or Child from his late-filed concise statement. ***See In re K.T.E.L.***, 983 A.2d 745, 747 (Pa. Super. 2009) (finding that the appellant's failure to simultaneously file a Rule 1925(b) Statement did not result in waiver of all issues on appeal where the appellant later filed the statement, and there was no allegation of prejudice from the late filing) ***cf. J.P. v. S.P.***, 991 A.2d 904 (Pa. Super. 2010) (finding that the appellant waived issues for appeal by failing to comply with the trial court's order directing her to file a Rule 1925(b) Statement within twenty-one days).[2]

[2] On February 19, 2014, the trial court filed a memorandum and an addendum to the memorandum. Within the addendum, the trial court stated that it found that its memorandum adequately discussed the first four issues

In his brief, Father raises the following issues:

> A. Whether the [t]rial [c]ourt abused its discretion in ordering [] Father's parental rights terminated in disregard of the expert testimony offered that [] Father can continue to [make] progress [with] his parenting skills with the proper support services[?]
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> B. Whether the [t]rial [c]ourt erred in ruling that [] Father's parental rights to [C]hild should be terminated despite evidence that not all available reunification services were attempted in this case[?]
>
> C. Whether the decision of the [t]rial [c]ourt that it was in the best interest of [] [C]hild to terminate [] Father's parental rights was not supported by competent evidence[?]
>
> D. Whether the [t]rial [c]ourt erred in terminating [] Father's parental rights despite evidence that CYS did not use reasonable efforts to attempt to reunify Father and [] [C]hild prior to seeking termination[?]
>
> E. Whether the inferences and conclusions of the [t]rial [c]ourt are not supported by the record and law and cannot provide a basis for terminating Father's parental rights to [C]hild[?]

See Father's Brief at 9.[3]

We will review Father's issues together, as they are interrelated. Father requests this Court to reverse the trial court's termination of his parental rights. Father asserts that Dr. Seasock's testimony showed that, with proper support, he could parent Child. Father's Brief at 20. He asserts

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Father raised in his concise statement, and that Father's fifth issue was waived for lack of specificity. ***See*** Trial Court's Addendum, 2/19/14, at 1.

[3] In his brief, Father states that he has withdrawn his fifth issue. ***See*** Father's Brief at 9 and 30.

that JusticeWorks, the agency responsible for providing him social services support, did nothing to vary its approach in dealing with him in light of his mental health issues. ***Id.*** at 20-22. Father claims that he required more assistance from CYS than he received. ***Id.*** at 22. Father alleges that, because of his mental health issues, he was unable to avail himself of the services, and that CYS failed to provide him further assistance, and locate alternative programs more suited to his mental and emotional needs. ***Id.*** at 25-27. Father asserts that he has had to overcome very difficult obstacles, and that, because of his battle with mental illness and poly-substance abuse, he required more time to get to a point where he could benefit from support services. ***Id.*** at 30. He also alleges that he had problems with his insurance coverage and transportation difficulties. ***Id.*** Father claims that he secured services without any aid or assistance from CYS, and that it took him more than two years to complete the services. Father's Brief at 29. Father relies on ***In re: Adoption of Ferrante***, 482 A.2d 1076 (Pa. Super. 1984),[4] and ***In re: Interest of C.M.E.***, 448 A.2d 59 (Pa. Super. 1982),[5] in arguing that the

[4] We note that our Supreme Court reversed this decision, and reinstated the termination of the parental rights of the subject child's natural mother. Thus, we do not discuss this case in this memorandum. ***See In re Adoption of A.F.***, 494 A.2d 1049 (Pa. 1985).

[5] We note that this Court, sitting *en banc*, distinguished the decision in ***In re: Interest of C.M.E.*** in a matter in which the mother of the subject child was arguing that a period of two and one-half years was reasonable to allow a parent to regain the necessary parenting skills required to regain custody of a child. We rejected the mother's reliance on ***In re: Interest of C.M.E.*** because that case was decided prior to the Adoption and Safe Families Act of

trial court should have allowed a period of two-and-one-half years for him to rehabilitate so that it would be safe to return Child to his care. Father's Brief at 29-30. Thus, Father contends that the termination of his parental rights was premature, and that the trial court should have allowed the re-evaluation. ***Id.*** at 29.

In reviewing an appeal from the termination of parental rights, we review the appeal in accordance with the following standard.

> [A]ppellate courts must apply an abuse of discretion standard when considering a trial court's determination of a petition for termination of parental rights. As in dependency cases, our standard of review requires an appellate court to accept the findings of fact and credibility determinations of the trial court if they are supported by the record. ***In re: R.J.T.***, 9 A.3d 1179, 1190 (Pa. 2010). If the factual findings are supported, appellate courts review to determine if the trial court made an error of law or abused its discretion. ***Id.***; ***R.I.S.***, [36 A.3d 567, 572 (Pa. 2011) (plurality opinion)]. As has been often stated, an abuse of discretion does not result merely because the reviewing court might have reached a different conclusion. ***Id.***; ***see also Samuel Bassett v. Kia Motors America, Inc.***, 34 A.3d 1, 51 (Pa. 2011); ***Christianson v. Ely***, 838 A.2d 630, 634 (Pa. 2003). Instead, a decision may be reversed for an abuse of discretion only upon demonstration of manifest unreasonableness, partiality, prejudice, bias, or ill-will. [***Christianson***, 838 A.2d at 634].

1997 ("ASFA"), P.L. 105-89, 1997 HR 867 (November 19, 1997), 42 U.S.C. § 671-675, which imposes upon states the requirement to focus on the child's need for permanency rather than the parent's actions and inactions. ***See In re C.L.G.***, 956 A.2d 999, 1009 (Pa. Super. 2008) (*en banc*). In this matter, the trial court similarly explained the requirements of the ASFA in rejecting Father's argument concerning affording him additional time to acquire the necessary parenting skills to regain Child. ***See*** Trial Court Opinion, 2/19/14, at 28-34 and n. 14.

> As we discussed in ***R.J.T.***, there are clear reasons for applying an abuse of discretion standard of review in these cases. We observed that, unlike trial courts, appellate courts are not equipped to make the fact-specific determinations on a cold record, where the trial judges are observing the parties during the relevant hearing and often presiding over numerous other hearings regarding the child and parents. ***R.J.T.***, 9 A.3d at 1190. Therefore, even where the facts could support an opposite result, as is often the case in dependency and termination cases, an appellate court must resist the urge to second guess the trial court and impose its own credibility determinations and judgment; instead we must defer to the trial judges so long as the factual findings are supported by the record and the court's legal conclusions are not the result of an error of law or an abuse of discretion. ***In re Adoption of Atencio***, 650 A.2d 1064, 1066 (Pa. 1994).

In re Adoption of S.P., 47 A.3d 817, 826-827 (Pa. 2012).

The burden is upon the petitioner to prove by clear and convincing evidence that the asserted grounds for seeking the termination of parental rights are valid. ***In re R.N.J.***, 985 A.2d 273, 276 (Pa. Super. 2009).

Moreover, we have explained:

> [t]he standard of clear 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., *quoting* ***In re J.L.C.***, 837 A.2d 1247, 1251 (Pa. Super. 2003).

This Court may affirm the trial court's decision regarding the termination of parental rights with regard to any one subsection of section 2511(a). ***See In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*). In the instant appeal, we have reviewed the record and the evidence

in light of section 2511(a)(1), (2), and (5), and found competent evidence to support the termination under those subsections.

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 C.L.G.***, 956 A.2d 999, 1009 (Pa. Super. 2008) (*en banc*). This Court has stated that the focus in terminating parental rights under section 2511(a) is on the parent, but it is on the child pursuant to section 2511(b). ***Id.*** at 1008.

In reviewing the evidence in support of termination under section 2511(b), our Supreme Court recently stated as follows.

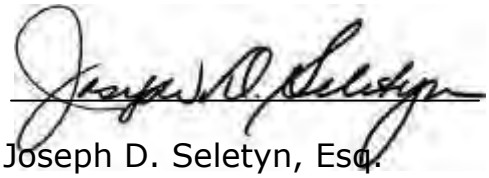
> [I]f the grounds for termination under subsection (a) are met, a court "shall give primary consideration to the developmental, physical and emotional needs and welfare of the child." 23 Pa.C.S.A. § 2511(b). The emotional needs and welfare of the child have been properly interpreted to include "[i]ntangibles such as love, comfort, security, and stability." ***In re K.M.***, 53 A.3d 781, 791 (Pa. Super. 2012). In ***In re E.M.***, [620 A.2d 481, 485 (Pa. 1993)], th[e Supreme] Court held that the determination of the child's "needs and welfare" requires consideration of the emotional bonds between the parent and child. The "utmost attention" should be paid to discerning the effect on the child of permanently severing the parental bond. ***In re K.M.***, 53 A.3d at 791.

See also In re: T.S.M., 71 A.3d 251, 267 (Pa. 2013).

Here, the trial court found that the requirements of section 2511(a)(1), (2), (5), and (b) were satisfied.[6] After a careful review of the evidence, we find that there is competent, clear, and convincing evidence in the record to support the trial court's credibility and weight assessments in concluding that all of the considerations for termination under section 2511(a)(1), (2), (5), and (b) were satisfied. Accordingly, we affirm the trial court's decree on the basis of the trial court's opinion and its addendum to that opinion, both filed on February 19, 2014. In any future filings with this or any other court addressing this ruling, the filing party shall attach a copy of the trial court's opinion.

Decree affirmed. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/11/2014

[6] We note that the trial court discussed section 2511(b) in relation to the best interests inquiry relevant to subsection (a)(1) on pages 19-25 of its opinion.