

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: A.J.A.,

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: L.A., FATHER,

Appellant

No. 3215 EDA 2013

Appeal from the Order Dated October 28, 2013
In the Court of Common Pleas of Philadelphia County
Family Court at No(s): CP-51-AP-0000568-2013, CP-51-DP-0062301-2000,
FID: 51-FN-329289-2009

BEFORE: FORD ELLIOTT, P.J.E., BOWES, and SHOGAN, JJ.

MEMORANDUM BY BOWES, J.:

FILED JULY 14, 2014

L.A. ("Father") appeals from the October 28, 2013 order terminating his parental rights to his now-fourteen-year-old son, A.J.A., hereinafter referred to as A.A.¹ We affirm.

This family has a protracted involvement with the Philadelphia Department of Human Resources ("DHS") that began during 2000, immediately after A.A.'s birth. That intervention flowed from the agency's concern that Father and A.A.'s mother, L.M. ("Mother"),² were unprepared to

¹ Although Father's notice of appeal also referred to the October 28, 2013 order in which the juvenile court changed A.A.'s permanency goal from reunification to adoption, he does not challenge that order specifically in his brief.

² The trial court also terminated L.M.'s parental rights to A.A. She did not appeal that decision.

care for the infant and due to reports of Father's domestic violence against Mother. In addition, hospital staff alleged that Father emitted an odor of alcohol following his son's birth. Although Father denied these allegations, A.A. was adjudicated dependent and remained in foster care for approximately two years before he was returned to Mother and Father's care under the agency's supervision. The juvenile court eventually discharged the dependency on January 9, 2003.

The trial court succinctly summarized DHS's most recent involvement with the family as follows:

On September 4, 2012, the Department of Human Services (DHS) received a General Protective Services (GPS) Report alleging that Mother did not provide appropriate supervision for A.A. and that she would not let him into the home until late at night. The report further alleged that Mother and Father had a history of domestic violence and alcohol abuse, that Father was incarcerated due to a domestic dispute, and that A.A. had witnessed and become involved in incidents of domestic violence between Mother and Father in the past. The GPS report was substantiated.

At the Contested Goal Change Hearing on October 28, 2013, the DHS intake social worker testified that when she went to Mother and Father's home to investigate the allegations in the GPS report, Mother was intoxicated and had difficulty expressing herself; however, she did disclose prior incidents of domestic violence. Father was incarcerated for domestic violence at the time the social worker came to the home to investigate on September 4, 2012. The social worker also had an opportunity to speak with A.A. She testified,

He told me that he was very afraid of his Father and that he was worried about his Father learning what he disclosed to me. He told me that there was a lot of domestic violence occurring in the home and that he would intervene. He said that Mom was constantly intoxicated and that he would stay out sometimes until

10:00, 11:00, 12 o'clock at night, until Mom finally fell asleep because he didn't want to deal with her intoxication.

He said he either slept in the bed with his Mother or on the floor with his Father. He said that the last time he had intervened during a domestic violence incident, that Father had slammed his head into the refrigerator. He said . . . Mom had kicked him out one time all night and made him stay out all night.

(N.T. 10/28/2013, p. 67, line 14 — p. 68, line 7).

An Order of Protective Custody (OPC) for A.A. was obtained on September 5, 2012, and A.A. was placed in the home of a maternal cousin.

A shelter care hearing was held on September 7, 2012 at which time the Court lifted the OPC and ordered the temporary commitment to DHS to stand. Parents were ordered to the Clinical Evaluation Unit (CEU) for a forthwith drug and alcohol screen. A.A. was adjudicated dependent and committed to DHS on September 13, 2012. Parents were re-referred to CEU and were to undergo a parenting capacity evaluation. A.A. was referred to Behavioral Health Services (BHS) as well as for a physical, dental and mental examination. The kinship care provider's address was to be kept confidential, and a Stay Away Order was entered against L.A. as to A.A. and maternal cousin, A.A.'s foster parent.

The initial Family Service Plan (FSP) [m]eeting was held on October 18, 2012. Parents' objectives were to: 1) provide A.A. with adequate supervision; 2) learn age-appropriate behavior for A.A.; 3) provide adequate and safe living conditions for A.A.; and 4) participate in parenting capacity evaluations and comply with the recommendations. It was further recommended that Father: 1) remain sober; 2) follow the recommendations in the psychiatric evaluation; 3) address issues of domestic violence; and 4) utilize non-violent methods of discipline.

Trial Court Opinion, 1/10/14, at 2-4 (superfluous citations omitted).

At subsequent permanency review hearings during October 2012 and February 2013, it was determined that Father achieved minimal compliance with the permanency plan. Accordingly, the juvenile court maintained the no-contact order against Father, and after Father was incarcerated during summer 2013 following yet another domestic dispute with Mother, the juvenile court suspended all contact between A.A. and either of his parents.

On October 11, 2013, DHS filed a petition to terminate Mother's and Father's parental rights to A.A. pursuant to 23 Pa.C.S. § 2511(a)(1), (2), (5), (8) and (b). Father retained private counsel to defend his parental rights.³ During the ensuing hearing, DHS presented the testimony of Stephen Miksic, Ph.D., the evaluator who performed Father's forensic psychological/parenting evaluation, Debra Ruben and Okay Hubbard, the DHS caseworkers assigned to the family, and Jessica Bishop, the caseworker who administered A.A.'s foster care. Father testified on his own behalf. At the close of the hearing, the trial court observed that Father achieved only minimal compliance with the FSP and that clear and convincing evidence existed to involuntarily terminate Father's parental rights pursuant to § 2511(a)(1), (2), (5), (8), and (b).

Father filed a timely notice of appeal and a concomitant Rule 1925(b) statement asserting four issues that he reiterates on appeal as follows:

³ The trial court subsequently appointed Father's counsel to represent him through the appeal process.

1. Did the Court erroneously fail to find that there were no dependency issues for Appellant?
2. Did the Court erroneously fail to find that Appellant had substantially complied with the Family Service Plan to the extent that he was requested to do so?
3. Did the Court erroneously find that the Department of Human Services did not make reasonable efforts to facilitate reunification for Appellant and that it prematurely decided not to assist him with reunification?
4. Did the Court erroneously terminate Appellant's parental rights when Appellant never had the opportunity to resolve any issues with his son through any form of visitation, because the Court restricted visitation and contact with the child from the start of the case?

Father's brief at 2.

We apply the following standard of review of an order terminating parental rights:

In cases concerning the involuntary termination of parental rights, our review is limited to a determination of whether the decree of the termination court is supported by competent evidence. ***Adoption of B.D.S.***, 494 Pa. 171, 431 A.2d 203, 207 (1981). The party petitioning for termination "must prove the statutory criteria for that termination by at least clear and convincing evidence." ***In re T.R.***, 502 Pa. 165, 465 A.2d 642, 644 (1983). 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 hesitancy, of the truth of the precise facts in issue." ***Matter of Sylvester***, 521 Pa. 300, 555 A.2d 1202, 1203-04 (1989).

In re Adoption of L.J.B., 18 A.3d 1098, 1107 (Pa. 2011). As the ultimate trier of fact, the trial court is empowered to make all determinations of credibility, resolve conflicts in the evidence, and believe all, part, or none of the evidence presented. ***In re A.S.***, 11 A.3d 473, 477 (Pa.Super. 2010).

“If competent evidence supports the trial court's findings, we will affirm even if the record could also support the opposite result.” *Id.*

We address collectively the first and second issues that Father listed in his brief. These issues concern whether Father rectified the problems that necessitated DHS intervention and whether he complied substantially with the FSP. Father complains that “[t]here was no objective evidence proving that [he] had any form of substance abuse issue, or that [he] had not already provided a physically safe and adequate home for the child.” Father’s brief at 6. He also protests that he completed anger management and a parenting class entitled, “Focus on Fathers.” *Id.* In further support of his position, Father points to his own self-serving testimony that he was an involved parent, never employed corporal punishment, and drank only moderate amounts of alcohol. *Id.* at 6-8.

DHS counters with myriad references to the certified record that established that Father still has not satisfied several components of the FSP, or addressed the problem of domestic violence or his impulsiveness. For example, Okay Hubbard, a DHS caseworker assigned to the family, testified during the hearing that while Father completed some of his service referrals with Achieving Reunification Center (“ARC”), he discontinued others. N.T., 10/28/13, at 101. Mr. Hubbard specified that Father failed to complete programs relating to domestic violence, parenting, or mental health. *Id.* at 105-106. Indeed, the only aspect of the FSP that Father addressed at ARC

was anger management. *Id.* at 106. Unfortunately for Father, that training was clearly ineffectual, as Father was arrested for assault after completing the course. *Id.* at 149-150.

Essentially, Father's arguments challenge the trial court's findings regarding his level of compliance with the FSP and its determination that clear and convincing evidence existed to sustain the statutory grounds to terminate Father's parental rights. While we observe that Father made progress toward completing some of his goals, we cannot reweigh the trial court's determinations of fact, credibility, and weight of the evidence that is supported by the record. *In re A.S., supra.* Mindful of our limited standard of review, we decline Father's request to revisit the trial court's findings of fact that are supported by the record. Thus, even though a modicum of evidence exists, albeit undocumented, to support Father's characterization of his accomplishments, since the certified record also supports the trial court's determination that his compliance was minimal, we will not disturb it. *Id.*

Next, we address Father's remaining complaints concerning DHS's failure to make reasonable efforts towards reunification and the court's decision to preclude Father's visitation with A.A. The following principles are relevant to this aspect of Father's argument.

Before filing a petition for termination of parental rights, the Commonwealth is required to make reasonable efforts to promote reunification of parent and child. However, the Commonwealth does not have an obligation to make such efforts indefinitely. The Commonwealth has an interest not only in family reunification but also in each child's right to a stable, safe,

and healthy environment, and the two interests must both be considered. A parent's basic constitutional right to the custody and rearing of his or her child is converted, upon the parent's 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. When reasonable efforts to reunite a foster child with his or her biological parents have failed, then the child welfare agency must work toward terminating parental rights and placing the child with adoptive parents. The process of reunification or adoption should be completed within eighteen (18) months. While this time frame may in some circumstances seem short, it is based on the policy that a child's life simply cannot be put on hold in the hope that the parent will summon the ability to handle the responsibilities of parenting.

In re Adoption of R.J.S., 901 A.2d 502, 507 (Pa.Super. 2006) (emphasis, citations, and internal quotation marks omitted) (footnote omitted).

The crux of Father's argument is that, absent evidence of physical abuse or expert testimony that visitation would have harmed A.A., the agency provided a disservice to A.A. by failing to provide even therapeutic visitation to address his son's alleged fears. Father's brief at 9. He continues that since A.A.'s fear of Father was instrumental in the no-contact order and the ultimate termination of parental rights, the agency's refusal to address that obstacle was tantamount to a failure to make reasonable efforts toward reunification. In a related argument, Father criticizes the trial court for failing to ease the no-contact order so that Father could participate in a form of therapeutic visitation with A.A. For the following reasons, no relief is due.

Contrary to Father's protestations, DHS did not capriciously withhold therapeutic visitation. In reality, A.A.'s therapist, Helen Schmitheizer determined that therapeutic visitation was unwarranted because the child's deep-seated issues with his Father were beyond repair. Ms. Schmitheizer testified during the July 1, 2013 permanency review hearing that she had been providing A.A. bi-monthly outpatient clinical services for six months. N.T., 7/1/13, at 5. She explained that A.A. suffers from extreme anxiety stemming from his fear that he would be removed from foster placement and returned to his biological parents. **Id.** Ms. Schmitheizer continued that A.A. is capable of relaying his fears and concerns of visiting with Father. **Id.** at 9. For example, she recently discussed with A.A. the possibility of contacting Father, and A.A. reiterated that "he unequivocally does not want any visitation with his Father." **Id.** at 9. She stressed, "He is very fearful of his father." **Id.** In sum, she opined that based upon A.A.'s high level of fear about his relationship with Father and his apprehension that Father would abduct him and take him to his home country of Jamaica, it would be useless to attempt therapeutic sessions. **Id.** at 20-21.

To emphasize A.A.'s "tremendous fear" of Father, Ms. Schmitheizer highlighted the extreme actions that the teen informed her that he would employ in order to avoid Father. She relayed, "[A.A.] has gone to great lengths to describe what he would do if he had [to face Father]. He would like to have someone who is very strong with him, a big strong male[,] and

he would . . . [disguise] himself under a wig and other clothing to avoid his Father recognizing him.” *Id.* at 20-21.

In light of the significant emotional harm that would befall A.A. if DHS or the trial court imposed a forced relationship with Father upon him under the circumstances of this case, we reject Father’s complaint that DHS’s objections to therapeutic visitation was tantamount to the agency’s failure to provide reasonable efforts toward reunification. Simply stated, DHS’s interest in maintaining a safe, stable, and healthy environment for A.A. while he is in the agency’s care supersedes Father’s desire for visitation in contravention of the no-contact order. No relief is due.

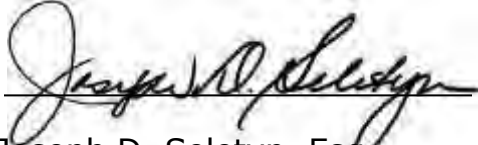
We also note that the record belies Father’s assertion that he repeatedly requested the trial court to provide him visitation with A.A. In actuality, Father made one request for A.A. to appear at a permanency review hearing, which the trial court considered and denied following a hearing and its deliberation of the foregoing evidence. Thus, this contention also fails.

Finally, while Father does not level a conventional argument against the trial court’s decision to involuntarily terminate his parental rights, in an abundance of caution, we observe that had Father challenged any of the statutory grounds that the trial court found to support termination or the trial court’s § 2511(b) needs-and-welfare analysis, we would affirm the order terminating Father’s parental rights on the basis of the cogent discussion

relating to § 2511(a) and (b) at pages six through thirteen of the Honorable Allan L. Tereshko's well-reasoned opinion entered on January 10, 2014.⁴

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: 7/14/2014

⁴ In light of the significant consequences of the order involuntarily terminating Father's constitutionally protected parental rights, and the fact that Father raised material arguments regarding his level of compliance and DHS's efforts toward reunification, we decline Judge Tereshko's request to assess counsel fees against Father on the basis that the instant appeal was frivolous. **See** Trial Court Opinion, 1/10/14, at 13-14.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

IN THE INTEREST OF:

A.A.

APPEAL OF:

L.A.

FAMILY COURT DIVISION
CP-51-DP-0062301-2000

OPINION

PROCEDURAL HISTORY

On October 28, 2013, this Court held a hearing on the petition to terminate the parental rights of the biological mother and father of A.A. The petition was filed by the Department of Human Services (DHS) and served on all parties. L.M. ("Mother") and L.A. ("Father") were present at the hearing and represented by counsel. After a full hearing on the merits, this Court found clear and convincing evidence to involuntarily terminate the parental rights of the Mother and Father. On November 21, 2013, L.A., by and through his counsel, filed a timely Notice of Appeal with Matters Complained of on Appeal attached thereto.

STATEMENT OF MATTERS COMPLAINED OF ON APPEAL

Father's Statement of Matters Complained of on Appeal is set forth in its entirety as follows:

- 1) Did the Court erroneously fail to find that there were no dependency issues for Appellant?

Answered in the negative by the court.

- 2) Did the Court erroneously fail to find that Appellant had substantially complied with the Family Service Plan to the extent of what he was requested to do?

Answered in the negative by the Court.

- 3) Did the Court erroneously fail to find that the Department of Human Services did not make reasonable efforts to facilitate reunification for Appellant and that it prematurely decided not to assist him with reunification?

Answered in the negative by the Court.

- 4) Did the Court erroneously terminate Appellant's parental rights when Appellant never had an opportunity to resolve any issues with his son through any form of visitation, because the Court restricted visitation and contact with the child from the start of the case?

Answered in the negative by the Court.

FINDINGS OF FACT

On September 4, 2012, the Department of Human Services (DHS) received a General Protective Services (GPS) Report alleging that Mother did not provide appropriate supervision for A.A. and that she would not let him into the home until late at night. (Statement of Facts: A.A., attached as Exhibit "A" to Petition for Involuntary Termination of Parental Rights). The report further alleged that Mother and Father had a history of domestic violence and alcohol abuse, that Father was incarcerated due to a domestic dispute, and that A.A. had witnessed and become involved in incidents of domestic violence between Mother and Father in the past. (Statement of Facts: A.A., attached as Exhibit "A" to Petition for Involuntary Termination of Parental Rights). The GPS report was substantiated. (Statement of Facts: A.A., attached as Exhibit "A" to Petition for Involuntary Termination of Parental Rights).

At the Contested Goal Change Hearing on October 28, 2013, the DHS intake social worker testified that when she went to Mother and Father's home to investigate the allegations in the GPS report, Mother was intoxicated and had difficulty expressing herself; however, she did disclose prior incidents of domestic violence. (N.T. 10/28/2013,

p. 65, lines 11-25). Father was incarcerated for domestic violence at the time the social worker came to the home to investigate on September 4, 2012. (N.T. 10/28/2013, p. 66, lines 13-17). The social worker also had an opportunity to speak with A.A. She testified,

He told me that he was very afraid of his Father and that he was worried about his Father learning what he disclosed to me. He told me that there was a lot of domestic violence occurring in the home and that he would intervene. He said that Mom was constantly intoxicated and that he would stay out sometimes until 10:00, 11:00, 12 o'clock at night, until Mom finally fell asleep because he didn't want to deal with her intoxication.

He said he either slept in the bed with his Mother or on the floor with his Father. He said that the last time he had intervened during a domestic violence incident, that Father had slammed his head into the refrigerator. He said had Mom had kicked him out one time all night and made him stay out all night.

(N.T. 10/28/2013, p. 67, line 14 – p. 68, line 7).

An Order of Protective Custody (OPC) for A.A. was obtained on September 5, 2012, and A.A. was placed in the home of a maternal cousin. (Statement of Facts: A.A., attached as Exhibit "A" to Petition for Involuntary Termination of Parental Rights).

A shelter care hearing was held on September 7, 2012 at which time the Court lifted the OPC and ordered the temporary commitment to DHS to stand. (See Docket). Parents were ordered to the Clinical Evaluation Unit (CEU) for a forthwith drug and alcohol screen. (See Docket). A.A. was adjudicated dependent and committed to DHS on September 13, 2012. (See Docket). Parents were re-referred to CEU and were to undergo a parenting capacity evaluation. (See Docket). A.A. was referred to Behavioral Health Services (BHS) as well as for a physical, dental and mental examination. (See Docket). The kinship care provider's address was to be kept confidential, and a Stay Away Order was entered against L.A. as to A.A. and maternal cousin, A.A.'s foster parent. (See Docket).

The initial Family Service Plan (FSP) Meeting was held on October 18, 2012. (See Docket). Parents' objectives were to: 1) provide A.A. with adequate supervision; 2) learn age-appropriate behavior for A.A.; 3) provide adequate and safe living conditions for A.A.; and 4) participate in parenting capacity evaluations and comply with the recommendations. It was further recommended that Father: 1) remain sober; 2) follow the recommendations in the psychiatric evaluation; 3) address issues of domestic violence; and 4) utilize non-violent methods of discipline.

A permanency review hearing was held on October 18, 2012, at which time the Court entered a Stay Away Order against Mother as to A.A. (See Docket). Mother was to have no contact with the child in person or via telephone and was not to have another person contact the child; however, contact could be initiated by the child. (See Docket). A permanency review hearing was held on December 3, 2012. (See Docket). It was reported that A.A. was receiving individual therapy, and both parents had received a psychological evaluation. (See Docket). A CEU Report of non-compliance was incorporated by reference as to Mother, and it was reported that Mother and Father achieved minimal compliance with the permanency plan. (See Docket). The Stay Away Order against Father was to remain in place, but contact between Mother and the child could occur at the child's discretion. (See Docket). In addition, the Court found clear and convincing evidence to establish aggravated circumstances as to Mother based upon a prior termination of her parental rights and ordered that no reasonable efforts be made to preserve the family and reunify child with Mother. (See Docket).

A permanency review hearing was held on February 11, 2013, and the Stay Away Order against Father was ordered to stand. (See Docket). A permanency review hearing

was held on July 1, 2013 at which time Father was incarcerated due to a domestic dispute with Mother. (See Docket). All contact with Mother and Father and the child was to be suspended until further Order of the Court.

A termination of parental rights hearing was held on October 28, 2013 at which time the Court noted that there was minimal compliance with the permanency plan by Mother and Father. (See Docket). The Court found clear and convincing evidence to involuntarily terminate Mother and Father's parental rights pursuant to 23 Pa.C.S.A. §2511(a)(1), (2), (5) & (8) and found that adoption would be in the best interest of A.A.

On November 21, 2013, L.A., by and through his counsel, filed a timely Notice of Appeal with Statement of Matters Complained of on Appeal attached thereto. This appeal now follows.

LEGAL ANALYSIS

First, this Court asserts that the appeal should be dismissed on the basis that Father's Statement of Matters Complained of on Appeal fails to advise the Court of any alleged errors, setting forth boilerplate language without any indication of the substance of the appeal.

Pursuant to Pennsylvania Rule of Appellate Procedure 1925(b) (4):

(ii) The Statement shall concisely identify each ruling or error that the appellant intends to challenge with sufficient detail to identify all pertinent issues for the judge. The judge shall not require the citation to authorities; however, appellant may choose to include pertinent authorities in the Statement.

(vii) Issues not included in the Statement and/or not raised in accordance with the provisions of this paragraph (b) (4) are waived.

“Rule 1925 is intended to aid trial judges in identifying and focusing upon those issues which the parties plan to raise on appeal. Rule 1925 is thus a crucial component of the appellate process.” *Commonwealth v. Lord*, 553 Pa. 415, 419, 719 A.2d 306, 308 (1998). As the Superior Court has reasoned:

This Court has considered the question of what constitutes a sufficient 1925(b) statement on many occasions, and it is well-established that ‘Appellant’s concise statement must properly specify the error to be addressed on appeal.’ *Commonwealth v. Hansley*, 24 A.3d 410, 415 (Pa.Super.2011), *appeal denied*, 613 Pa. 642, 32 A.3d 1275 (2011) (citation omitted). ‘[T]he Rule 1925(b) statement must be specific enough for the trial court to identify and address the issue an appellant wishes to raise on appeal.’ *Id.* (brackets, internal quotation marks, and citation omitted). Further, this Court may find waiver where a concise statement is too vague. *Id.* ‘When a court has to guess what issues an appellant is appealing, that is not enough for meaningful review.’ *Commonwealth v. Dowling*, 778 A.2d 683, 686 (Pa.Super.2001) (citation omitted). ‘A Concise Statement which is too vague to allow the court to identify the issues raised on appeal is the functional equivalent of no Concise Statement at all.’ *Id.* at 686–87.

In re A.B., 2013 PA Super 43, 63 A.3d 345, 350 (Pa. Super. Ct. 2013)

While the appeal should be dismissed on the basis that counsel has failed to concisely identify any errors with the requisite degree of specificity, if the Superior Court is inclined to address the merits of the appeal, this Court’s legal analysis follows.

In articulating the appellate standard of review of a termination of parental rights, the Superior Court has stated,

We are bound by the findings of the trial court, which have adequate support in the record so long as the findings do not evidence a capricious disregard for competent and credible evidence. *In re Diaz*, 447 Pa. Super. 327, 669 A.2d 372 (Pa. Super. 1995). 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 finder of fact. *In re B.G.S.*, 418 Pa. Super. 588, 614 A.2d 1161 (Pa. Super. 1992).

In re: Adoption of A.C.H., 2002 Pa. Super 218, P4; 803 A.2d 224, 228 (2002)

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. See *In re K.C.W.*, 456 Pa.Super. 1, 689 A.2d 294, 298 (1997). Absent an abuse of discretion, an error of law, or insufficient evidentiary support for the trial court's decision, the decree must stand. *Id.* 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. See *In re Child M.*, 452 Pa.Super. 230, 681 A.2d 793, 800 (1996). 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. See *In re Matsock*, 416 Pa.Super. 520, 611 A.2d 737, 742 (1992). *In re C.S.*, 2000 PA Super 318; 761 A.2d 1197, 1199 (Pa.Super. 2000). It is clear that in a termination proceeding, the focus is on the conduct of the parents. *In the Interest of A.L.D.*, 2002 PA Super 104, 797 A.2d 326 (Pa.Super. 2002); *In the Interest of M.D.*, 449 Pa. Super. 507, 674 A.2d 702 (Pa.Super. 2002). *In the Matter of B.L.W.*, 2004 Pa. Super 30, P9; 843 A.2d 380, 383 (2004).

This Court found clear and convincing evidence to terminate Father's parental rights pursuant to 23 Pa. C.S.A. §§ 2511(a)(1), (2), (5), & (8)¹ because Father has failed to perform parental duties and failed to remedy the conditions that brought the child into care. It was the opinion of the mental health professionals working with this family that Father will not be able to remedy the conditions that brought the child into care.

¹ (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 six 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 the 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.

Father is unable to recognize the harm he has caused to his child and his child's Mother and has refused to engage in domestic violence counseling or mental health treatment. As Father is in complete denial of the conditions that led to the removal of his child, he will be unable to remedy the issues in the home.

While Father and his counsel have tried to minimize the trauma A.A. experienced while under his Father's care, A.A.'s sessions with his clinician reveal a deeply traumatized child who continues to deal with fear and anxiety even after being removed from his parents' care:

[A.A.] has a tremendous fear, you Honor, that [h]is Father will abduct him, and hide him somewhere. He has gone to great lengths to describe what he would do if he had to appear in court so that his Father would not recognize him. He would like to have someone who is very strong with him, a big strong male and he would be in great – he went to great lengths to describe how he would hide himself under a wig and other clothing to avoid his Father recognizing him.
(N.T. 7/1/2013, p. 24, lines 16 - 25).

The evaluator who performed Father's Forensic Psychological/Parenting Evaluation, Dr. Stephen Miksic concurred that violence in the household is traumatic for any child. He testified, "And for a child to be present and witness that conflict even one time, not to mention multiple times, is traumatic to the child, whether or not the child has been caught up in the violent conflicts." (N.T. 10/28/2013, p. 37, lines 8-12). Father has been arrested at least three or four times for domestic violence against Mother, and each time Mother fails to pursue the charges. (N.T. 7/1/2013, p. 29, line 19 – p. 30, line 12).

A.A.'s treating clinician described a particularly traumatic incident related to her by A.A. during which A.A. was trying to protect his Mother from his Father, and Father slammed his head into the refrigerator. (N.T. 7/1/2013, p. 15, line 24 – p. 16, line 3). In

addition, she testified, "he has said that he was physically hit by his Father at least a couple of times a month, at least twice a month, for as long as he could remember. In fact, so many times, he has lost count." (N.T. 7/1/2013, p. 17, lines 2-6).

Father was evaluated by Dr. Miksic previously in 2001 and is still dealing with the same issues that plagued him twelve years ago, namely domestic violence and possible alcohol abuse. During the May 7, 2013 Evaluation, Father was in complete denial of any issues in the home and claimed that A.A. made up the allegations because his foster mother signed him up for a basketball team, and he wanted to continue living there to play basketball. (Miksic Evaluation attached as DHS Exhibit "2" at pg. 6). However, all the professionals involved in this case agree, as does the Court, that the credibility lies with the child. (N.T. 7/1/2013, p. 18, line 22 – p. 19, line 7; N.T. 10/28/2013, p. 39, line 16 – p. 40, line 4; p. 66, line 22 – p. 68, line 7; p. 110, line 15 – p. 111, line 12; p. 125, line 21 – p. 126, line 10).

Despite L.A.'s protestations that A.A. had a good home life, the testimony elicited at the Contested Goal Change Hearing suggests otherwise. The DHS intake social worker explained,

And subsequent to my initial interview, [A.A.] eventually began to reveal that Father was abusive or that Father – Father would take him places but he would have to stand at attention where they were, and just do Father's bidding. He really didn't interact with the people there, he just stood, and if Father wanted something or needed something, he would go get it. He really didn't do much interacting. So, all of these things that Father did with him, they were not a comfortable thing for [A.A.] (N.T. 10/28/2013, p. 72, lines 11-21).

This account by A.A. is in line with Dr. Miksic's diagnosis of Father with narcissistic personality disorder. As Dr. Miksic explained, "Narcissistic means an individual expects their needs to be met before others and makes them a priority (sic) even

when in certain circumstances it would be best to put his needs secondary to other individuals." (N.T. 10/28/2013, p. 43, lines 21-25). He went on to describe the narcissistic types of expectations expressed by Father that led to his diagnosis:

He said that [A.A.] knew he was not supposed to be around the person that he ended up being placed with, he knew he was supposed to not be in contact with her. He said that [L.M.] knew that [A.A.] was not supposed to go with that person, and that he fully expected that [A.A.] and [L.M.] would comply with his wishes, regardless of what their feelings were, what their experiences had been with him, or any other factor, just that he said that is what he expected and therefore, they should comply. (N.T. 10/28/2013, p. 44, lines 7-17).

Dr. Miksic's summary supports the conclusion that Father will not be able to remedy the conditions that caused his child to come into care and is as follows:

The report that [A.A.] has been exposed to parental domestic violence and on occasion has been a victim due to attempts to intervene on behalf of his mother, with repeated arrests and jail time for [L.A.] related to injuries and behavior with [A.A.]'s mother, suggest the same issues continue for these parents. During their interviews at this time both parents flatly denied any ongoing domestic conflicts of a severe nature, lack of supervision or mistreatment of [A.A.] or that there was indirect abuse of [A.A.] in the midst of domestic conflicts. Given statements of [A.A.]'s reports and the long history of these issues being identified for [L.A.] and [Mother, L.M.], the credibility lies with [A.A.] and the additional reporters. Thus, [L.A.]'s attempts to rationalize [A.A.]'s attitudes and reports as due to the privilege of participating in special activities such as basketball and having been influenced or brainwashed to make other statements of unhealthy experiences with father and mother are not considered legitimate. This is further reinforced by [L.A.] again jailed for allegations of significant injuries to [L.M.] with hospitalization after my most recent meeting with him. The elevation in the Rigidity scale on the Child Abuse Potential Inventory is a further indication of [L.A.]'s tendency to have unreasonable expectations for a child's behavior and compliance. His statements that [A.A.] and [L.M.] were both instructed by him not to have contact with [A.A.]'s current caretaker is an additional example of [L.A.]'s efforts to exert control and dominance, indicating there is not a cooperative or open level of co-parenting and parental communication. Discussion of A.A.'s history and current behavior with his current caretaker provided additional information which supports these conclusions.

Given this information and the results of testing procedures, it is noted at this time [L.A.] is not able to provide adequately for supervision or protection of [A.A.] due to behavioral and personality factors. It would not be anticipated that [A.A.] would be able to return to the care of his parents, and it is not foreseen that father will be able to change his attitudes and behavior to support co-parenting and safety with [A.A.] at any time in the future.

(Miksic Evaluation attached as DHS Exhibit "2" at pg. 8-9).

This conclusion was reiterated by Dr. Miksic in his testimony on October 28, 2013. He stated,

Given the history and my involvement with [L.A.] in the current evaluation, as well as the [p]ast, and in considering the totality of the information, it would be unlikely that he would be amenable to treatment or rehabilitation to change the habitual ways of interacting with [L.M.] and with others in general in society. And, therefore, the recommendation, if that were the case, would be for permanency for [A.A.]

(N.T. 10/28/2013, p. 23, lines 1-9).

A.A.'s treating clinician echoed the same opinion regarding the family's ability to remedy the conditions that brought the child into care when she stated, "I do not believe the issues between [A.A.] and his parents are able to be resolved, Your Honor." (N.T. 7/1/2013, p. 20, lines 12-14).

This Court concurred and involuntarily terminated Father's parental rights pursuant to 23 Pa.C.S.A. §2511(a)(1), (2), (5) & (8).

In conducting the second half of its analysis, this Court concluded that adoption would be in the best interest of the child pursuant to 23 Pa. C.S.A. § 2511(b).

At the July 1, 2013 hearing, A.A.'s treating clinician testified to the progress A.A. has made since being placed in his foster home. She testified that in those nine months,

He has grown developmentally, he has begun to make friendships, he has improved his academics in school, he has gained 15 pounds. His nutrition is much improved. He is able to communicate more directly to me. His body language has improved from fearful to more pleasant and able to

articulate his needs and concerns to a greater degree. And he just seems happier.
(N.T. 7/1/2013, p. 10, lines 5-12).

When the DHS intake social worker was asked whether she had any concerns about the foster mother, she testified, "To the contrary she has changed his life." (N.T. 10/28/2013, p. 71, lines 2-3). The ongoing DHS social worker concurred, testifying, "No concern. Everything I considered was positive. He is in a very good home. He is loved and he is cared for. And he is happy." (N.T. 10/28/2013, p. 107, lines 22-24). The agency worker testified that Father has never called her and asked her how A.A. was doing and has never sent any letters or gifts throughout the pendency of this case. (N.T. 10/28/2013, p. 127, lines 13-19). She further testified that she did not believe that A.A. would be harmed if Father's rights were involuntarily terminated, and she believed that adoption would be in A.A.'s best interest. (N.T. 10/28/2013, p. 127, line 24 – p. 128, line 5). When she was questioned about why she felt adoption would be in the best interest of A.A., the agency social worker responded,

Again [A.A.] has been excelling in this home. He takes to his kinship parents as his caregivers. He looks to them to meet his needs. [A]gain, he has a strong bond with his siblings, who are also in the home being cared for by the kinship parents. And he takes to her children, as well.
(N.T. 10/28/2013, p. 128, lines 7-12).

A.A.'s treating clinician described not only the advances A.A. has made since being placed in the foster home, but also related her fears should A.A. be reunified with his parents. She testified,

Your Honor, although I have never met [A.A.]'s parents, or observed the dynamics of their relationship with him, that is true, but based on the facts that [A.A.] has presented to me for the past six months, with continuity, it would certainly be my clinical perspective that [A.A.] would be placed in harm's way, emotionally and physically and psychologically, if he should return to his family home.

(N.T. 7/1/2013, p. 10, line 20 – p. 11, line 5).

In addition, while the wishes of the child are certainly not the Court's sole consideration in a best interest determination, they are taken into account, particularly when the child is old enough to articulate those wishes. In the instant matter, it is clear that the child does not wish to be reunified with his parents.

Father has not had contact with A.A. since September of 2012 due to the Stay Away Order imposed by the Court. When asked if she had spoken with A.A. about visitation with his Father, A.A.'s treating clinician responded,

I have asked [A.A.] if he would like to have any visitation with his Father. The young man is very articulate, your Honor. He is very able to communicate his fears and concerns. He unequivocally (sic) does not want any visitation with his Father. He is very fearful of his Father.
(N.T. 7/1/2013, p. 11, line 21 – p. 12, line 1).

When asked about reunification, A.A.'s treating clinician testified, "He does not want to return. He is very clear. Your Honor, every single time he discusses this with me." (N.T. 7/1/2013, p. 19, line 25 – p. 20, line 2).

After taking into consideration the testimony presented on July 1, 2013 and October 28, 2013, this Court concluded that adoption would be in the best interest of A.A.

Finally, this Court requests that the Superior Court assess a reasonable counsel fee to be paid into the Philadelphia Court of Common Pleas by counsel for Father on the basis that the instant appeal is frivolous. Pursuant to Pennsylvania Rule of Appellate Procedure 2744, an appellate court may award a reasonable counsel fee if it determines that an appeal is frivolous. Pa. R.A.P. 2744. "Generally, an appeal which is determined to lack any basis in law or fact is considered to be frivolous." *Smith v. Bd. of Probation*

and Parole, 524 Pa. 500, 506, 574 A.2d 558, 562 (1990). In the instant matter, in light of the egregious circumstances that brought this case to the attention of DHS as well as Father's failure to comply with any of the objectives set forth for him by DHS, there is no apparent basis for the appeal or any evidence that would support preservation of his parental rights. This appeal further delays permanency for this child who desires to be adopted by his foster family who, by all accounts, is enabling the child to come to terms with the violence he witnessed while under the care of his Father.

This Court is of the opinion that the instant appeal was frivolous as there is no apparent basis in law or fact that would support the filing of an appeal. In an era where budgets are tight, the instant appeal is a waste of judicial resources. Therefore, this Court respectfully requests that the Superior Court assess a reasonable counsel fee against attorney for Father and have it paid to the Family Court Division for reimbursement of this unnecessary expenditure.

CONCLUSION

This Court, after careful review of the findings of fact, the testimony presented on October 28, 2013 and the law of the Commonwealth of Pennsylvania, finds clear and convincing evidence to terminate Father, L.A.'s parental rights pursuant to 23 Pa. C.S. 2511(a)(1), (2), (5) & (8). This Court further finds that, pursuant to 23 Pa. C.S. 2511(b), termination of L.A.'s parental rights would not have a detrimental effect on A.A. and that adoption would be in the child's best interest. For the foregoing reasons, this Court respectfully requests that the October 28, 2013 Order terminating Father, L.A.'s parental rights and changing A.A.'s permanency goal to adoption **AFFIRMED**.

BY THE COURT:

1-10-14
Date


ALLAN L. TERESHKO, J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above-captioned Opinion was filed on 1-10-14 in the Court of Common Pleas of Philadelphia County Family Court Division and served by first class mail upon the following:

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ALLAN L. TERESHKO, J.