

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: ADOPTION OF C.R.C., A MINOR

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: E.C., FATHER

No. 388 MDA 2014

Appeal from the Decree January 30, 2014
In the Court of Common Pleas of York County
Orphans' Court at No(s): 2013-0118

IN THE INTEREST OF: C.R.C., A MINOR

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: E.C., FATHER

No. 398 MDA 2014

Appeal from the Order Entered January 30, 2014
In the Court of Common Pleas of York County
Juvenile Division at No(s): CP-67-DP-3-2012

BEFORE: LAZARUS, J., STABILE, J., and MUSMANNNO, J.

MEMORANDUM BY LAZARUS, J.:

FILED JULY 09, 2014

E.C. (Father) appeals from the trial court's order involuntarily terminating his parental rights to his minor child, C.C. (born 8/2010), and changing the court-ordered goal from reunification to adoption. Due to Father's significant cognitive limitations and behavioral issues, he is unable to provide a suitably safe and emotionally and financially stable life for C.C. Thus, we affirm the order terminating his parental rights to C.C. based upon the thorough opinion authored by the Honorable Harry M. Ness.

On January 9, 2012, C.C. was placed into protective custody with York County Children Youth and Families (CYF) after her infant brother died from inappropriate administration of food and water as a result of suspected severe parental neglect.¹ C.C. was subsequently placed with emergency kinship caretakers and adjudicated dependent. CYF set the following goals for parents² to reunify with C.C.: scheduling an appointment for a psychiatric evaluation; taking parenting classes; and visiting C.C. Father completed a psychological evaluation and participated in grief counseling and parenting classes. Father also visited with C.C. two times per week, supervised, for two hours. On June 1, 2012, Mother and Father were incarcerated; Father remained incarcerated at several of the permanency hearings held throughout 2012. Ultimately, Father was released from prison in April 2013.³

Despite his request to see C.C., visits remained suspended between Father and C.C. until Father completed a psychological evaluation, which was to be reviewed by the court, and obtained a recommendation from C.C.'s therapist that resuming visitation would not have a negative impact

¹ C.C. was malnourished at the time of placement.

² The trial court entered a final decree granting Mother's petition to confirm consent to adoption for C.C. Mother has not appealed.

³ Father was released after the charge of criminal homicide in the death of his infant child, C.C.'s sibling, was nol prossed. Father was ultimately found to be incompetent to stand trial in criminal court.

upon her. Although Father did obtain a psychological evaluation, he never obtained the therapist's recommendation determining that visitation would be appropriate. Father received a certificate of completion of a parenting class through Family-Child Resources; however, the court determined that there is nothing to ensure that Father understands and realistically can apply the obligations associated with parenting C.C.

On October 24, 2013, CYF filed a petition for involuntary termination of parental rights, a petition to confirm consent to adoption and a petition for hearing to change the court-ordered goal. A hearing on the petitions was held on January 30, 2014, at which time witnesses were called, exhibits were entered, stipulations were confirmed and counsel presented arguments. Ultimately, the court determined that Father had made minimal to moderate progress with the permanency plan and minimal progress toward alleviating the circumstances that necessitated C.C.'s original placement. The court also found that CYF made reasonable efforts to finalize the permanency plan. On February 4, 2014, the trial court involuntarily terminated Father's parental rights to C.C. based upon 23 Pa.C.S. §§ 2511(a)(5)⁴ and (b) and changed the court-ordered goal from reunification to adoption. This appeal followed.

⁴ (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:

* * *

(Footnote Continued Next Page)

On appeal, Father presents the following issues for our consideration:

- (1) The trial court erred in terminating parental rights because sufficient services were not provided by the Office of Children, Youth and Families to assist Father in performing parental duties when Father was willing to cooperate with any services, substantially complied with the goals listed on the family service plan, but has cognitive limitations and was incarcerated for the majority of time his child was in care;
- (2) The trial court erred in terminating parental rights by finding that Father lacked the intellectual capacity to parent his daughter;
- (3) The trial court erred in finding that termination of the parental rights would best serve the needs and welfare of the child without allowing interaction to assess Father's ability to parent the child or observe a parental bond; and
- (4) The trial court erred in changing the court[-]ordered goal in that services were not offered to Father specifically designed to address his cognitive limitations and without Father being given a chance to demonstrate his ability to parent his daughter.

Change of Goal from Reunification to Adoption

(Footnote Continued) _____

(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.

23 Pa.C.S. § 2511(a)(5).

In cases involving a court's order changing the placement goal from reunification to adoption, an appellate court's standard of review is abuse of discretion. ***In re S.B.***, 943 A.2d 973, 977 (Pa. Super. 2008). To hold the trial court abused its discretion, the appellate court must determine its judgment was manifestly unreasonable, that the court disregarded the law, or that its action was a result of partiality, prejudice, bias or ill will. ***Id.*** While the appellate court is bound by the facts determined in the trial court, it is not bound by the court's inferences, deductions and conclusions; the appellate court has a responsibility to ensure that the record represents a comprehensive inquiry and that the hearing judge has applied the appropriate legal principles to that record. ***Id.*** Therefore, the appellate court's scope of review is broad. ***Id.***

Instantly, Judge Ness evaluated each factor listed in the Juvenile Act, ***see*** 42 Pa.C.S. § 6351(f)(1)-(6), to determine whether CYS had proven by clear and convincing evidence that a change of goal was in C.C.'s best interest. Specifically, the court determined that: (1) continued placement was necessary where Father had not achieved the court-ordered goals due in large part to his incarceration and lack of intellectual ability and emotional capability to parent; (2) Father's goals under the permanency plan were feasible and appropriate despite his limited cognitive abilities; (3) Father is unable to secure independent appropriate housing and his current residence where he lives with C.C.'s paternal grandfather and uncles presents significant safety concerns; (4) the current placement goal is not feasible;

(5) Father's cognitive and behavioral limitations prevent him from achieving long-term goals during C.C.'s lifetime; and (6) Father made minimal to moderate progress in goals in large part due to incarceration, despite reasonable efforts made by CY5 to assist Father in reaching his goals.

Because the goal change was supported by the evidence of record and Judge Ness applied the appropriate legal principles to reach his decision, we find that there was no abuse of discretion. ***In re S.B., supra***. We rely upon Judge Ness's February 4, 2014, opinion to affirm the trial court's decision to change the court-ordered goal from reunification to adoption.

Termination of Parental Rights under 23 Pa.C.S. § 2511

In a proceeding to terminate parental rights involuntarily, 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 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." It is well established that a court must examine the individual circumstances of each and every case and consider all explanations offered by the parent to determine if the evidence in light of the totality of the circumstances clearly warrants termination.

In re adoption of S.M., 816 A.2d 1117, 1122 (Pa. Super. 2003) (citation omitted). ***See also In re C.P.***, 901 A.2d 516, 520 (Pa. Super. 2006) (party seeking termination of parental rights bears burden of proving by clear and convincing evidence that at least one of eight grounds for termination under 23 Pa.C.S. § 2511(a) exists and that termination promotes emotional needs and welfare of child set forth in 23 Pa.C.S. § 2511(b)).

We review a trial court's decision to involuntarily terminate parental rights for an abuse of discretion or error of law. ***In re A.R.***, 837 A.2d 560, 563 (Pa. Super. 2003). Our scope of review is limited to determining whether the trial court's order is supported by competent evidence. ***Id***

At the time of the termination hearing, C.C. had been in placement for more than 24 months. Moreover, Father had made no progress with recommended intervention for his major psychological issues. C.C. has a number of emotional disorders, and Father is incapable of meeting C.C.'s special therapy needs.

In total, Father was incarcerated from 6/1/12- 4/23/13 and then again from 7/9/13-7/19/13 (for a probation violation). Father resides with paternal grandfather. Due to Father's limited income, consisting solely of social security payments, as well as his mental health issues, Father is unable to secure his own safe, stable and appropriate housing. Father last visited with C.C. in May 2012 when she was one-and-one-half years old; Father had no visits with C.C. in 2013 and 2014. ***In re K.M.***, 53 A.3d 781 (Pa. Super. 2012) (termination under section 2511(b) appropriate where CYS caseworker testified that although child had initially fashioned bond with Mother, because child had not seen Mother in over one year, he would no longer recognize her). Father is not permitted to have unsupervised contact with C.C. Moreover, Doctor Edmund Garvey, a clinical psychologist who examined Father, testified that due to Father's intellectual issues, normal therapies used to address personality disorders would not necessarily be

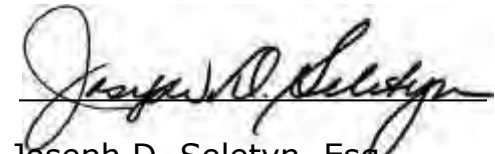
effective for him. Due to these limitations, it is highly unlikely that Father will be able to parent C.C. without supervision in the next year or two.

It 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. ***In re G.P.-R.***, 851 A.2d 967, 977 (Pa. Super. 2004).

After a careful review of the record, with particular attention to the evidence presented at the January 30, 2014 termination hearing, we are convinced that the trial court properly involuntarily terminated Father's parental rights and changed the court-ordered goal to adoption. Ultimately, the court determined that Father had made minimal to moderate progress with the permanency plan and minimal progress toward alleviating the circumstances which necessitated C.C.'s original placement. The court also found that CYF made reasonable efforts to finalize the permanency plan. We agree with these conclusions and rely upon Judge Ness's February 4, 2014, opinion to affirm the trial court's order on appeal. We ask the parties to attach a copy of Judge Ness's opinion in the event of further proceedings in the matter.

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: 7/9/2014