

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN THE INTEREST OF: H.B., AKA H.A.F.,  
JR., A MINOR

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

v.

APPEAL OF: H.F., FATHER

No. 88 EDA 2014

Appeal from the Decree entered December 16, 2013,  
in the Court of Common Pleas of Philadelphia County,  
Juvenile Division, at No(s): CP-51-AP-0000407-2013

BEFORE: GANTMAN, P.J., ALLEN, and FITZGERALD\*, JJ.

MEMORANDUM BY ALLEN, J.:

**FILED JULY 07, 2014**

H.F. ("Father") appeals from the decree terminating his parental rights to his son, H.B., aka H.A.F., born in July of 2010 ("Child"), pursuant to 23 Pa.C.S.A. § 2511(a)(1), (2), (5), (8) and (b). We affirm.

The trial court related the following facts:

[Prior to Child's birth, o]n April 29, 2009, [the minor] mother of [Child] was adjudicated delinquent ... The relevant charges were criminal conspiracy, recklessly endangering another person and endangering the welfare of a child.

[Child] was born July [] 2010 at a birth weight of two pounds and three ounces to teenage parents. Mother was unaware of the pregnancy and did not receive prenatal care. Father stated he was unaware of mother's pregnancy.

On October 11, 2010, the Department of Human Services received an Emergency General Protective Services Report (EGPS) due to mother's present inability to parent and provide proper care for her children, failure to provide [a] safe living environment, and mother's failure to visit [Child] in the hospital.

[Child] was born premature and suffered from multiple medical problems. Mother, sixteen years old, was also caring for her ten-month-old child. The report was substantiated.

On October 13, 2010, the Department of Human Services performed a home assessment visit and determined that mother did not have the appropriate knowledge and concern for [Child's] medical condition. The Department of Human Services was unable to contact [F]ather.

On December 4, 2010, [F]ather contacted the Department of Human Services by telephone, indicating he was absent from visits with [Child] due to his arrest for possession of illegal substances. Father scheduled a meeting with the Department of Human Services for December 7, 2010.

On December 7, 2010, [F]ather failed to attend a meeting with the Department of Human Services.

On December 22, 2010, [Child] was scheduled to be released from the St. Christopher's Hospital for children following several medical procedures and surgeries to stabilize his health. The Department of Human Services learned the child would require multiple follow-up medical appointments.

On December 23, 2010, the Department of Human Services obtained an Order of Protective Custody (OPC) for the child and placed him in a Bethanna Foster Home. Upon investigation, the Department of Human Services learned that during [C]hild's hospitalization, mother only visited for a total of three (3) times and [F]ather only visited once (1).

An adjudicatory hearing was held on January 3, 2011. The [trial court] adjudicated [C]hild dependent and committed him to the Department of Human Services. Mother and Father were referred to the Achieving Reunification Center (ARC) program.

On February 12, 2011, the Department of Human Services learned mother and [F]ather failed to participate in the ARC program and their status was changed to inactive.

A Family Service Plan meeting was held. The Family Service Plan objectives for mother and [F]ather were (1) learn and use non-physical discipline methods, (2) meet with the Bethanna/ARC program weekly to learn parenting skills, (3)

meet and follow through with their Individual Service Plan (ISP) and (4) visit [C]hild.

The matter was then listed on a regular basis before the [trial court] pursuant to Section 6351 of the Juvenile Act, 42 Pa. C.S.A. § 6351 and evaluated for the purpose of determining or reviewing the permanency plan of the child with the goal of reunification of the family.

In subsequent hearings, the DRO's reflect the Court's review and disposition as a result of evidence presented addressing the lack of compliance with mental health and drug and alcohol treatment.

On December 16, 2013, a termination of parental rights hearing for [Child] was held in the matter. The Court found by clear and convincing evidence that [F]ather's parental rights of [Child] should be terminated pursuant to Pennsylvania's Juvenile Act. Furthermore, the Court held it was in the best interest of [C]hild that the goal be changed to adoption.

Trial Court Opinion, 3/7/14, at 1-3 (unnumbered).

On December 16, 2013, the trial court entered its decree terminating Father's parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(1), (2), (5), (8) and (b). On January 6, 2014, Father simultaneously filed his notice of appeal and concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b).

On appeal, Father presents two issues for our review:

A. Whether the trial court erred in changing the goal to adoption and involuntarily terminating Father's parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(1)(2)(5) and (8) where there was undisputed testimony that Father had consistently visited Child and Father had substantially completed all of his FSP goals?

B. Whether the trial court erred in involuntarily terminating Father's parental rights where it was not supported by clear and convincing evidence and there was a bond between the Father

and Child and the termination of parental rights would have a negative effect on the developmental, physical and emotional needs of the child pursuant to Section 2511(b) of the Adoption Act?

Father's Brief at 5.

We review appeals from the involuntary termination of parental rights according to 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.***, 608 Pa. 9, 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.***; [***In re R.I.S.***, [\_\_\_ Pa. \_\_\_, \_\_\_, 36 A.3d 567, 572 (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.***, [\_\_\_ Pa. \_\_\_], 34 A.3d 1, 51 (Pa. 2011); ***Christianson v. Ely***, [575 Pa. 647, 654-655], 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. ***Id.***

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.***, 608 Pa. 9, 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***, 539 Pa. 161, 650 A.2d 1064, 1066 (Pa. 1994).

***In re Adoption of S.P.***, 47 A.3d 817, 826-27 (Pa. 2012).

Termination of parental rights is governed by section 2511 of the Adoption Act, which requires a bifurcated analysis:

Our case law has made clear that under Section 2511, the court must engage in a bifurcated process prior to terminating parental rights. Initially, the focus is on the conduct of the parent. The party seeking termination must prove by clear and convincing evidence that the parent's conduct satisfies the statutory grounds for termination delineated in Section 2511(a). Only if the court determines that the parent's conduct warrants termination of his or her parental rights does the court engage in the second part of the analysis pursuant to Section 2511(b): determination of the needs and welfare of the child under the standard of best interests of the child. One major aspect of the needs and welfare analysis concerns the nature and status of the emotional bond between parent and child, with close attention paid to the effect on the child of permanently severing any such bond.

***In re L.M.***, 923 A.2d 505, 511 (Pa. Super. 2007) (citations omitted).

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

Here, Father first challenges the trial court's finding as to 23 Pa.C.S.A. § 2511(a)(1)(2)(5) and (8), and asserts that termination was improper where he attempted to cooperate with the Agency "at all times" and maintained regular visitation with Child. Father's Brief at 7-15.

**§ 2511. Grounds for involuntary termination**

**(a) General rule.**--The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds:

(1) The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.

(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.

23 Pa.C.S.A. § 2511(a)(1), (2), (5), and (8).

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*). Thus, we address whether the trial court properly terminated Father's parental rights pursuant to section 2511(a)(1).

The trial court explained:

Under Pennsylvania law, to satisfy section 2511 (a) (1), the moving party must produce clear and convincing evidence of conduct sustained for at least six months prior to the filing of the termination petition, which reveals a settled intent to relinquish parental claim to a child or a refusal or failure to perform parental duties. 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." *In re D.J.S.* 1999 Pa. Super. 214 (1999).

It is clear from the record that for a period of six (6) months leading up to the filing of the Petition for Involuntary Termination, [F]ather failed to perform any parental duties for the child H.F. aka H.B. The court found by clear and convincing evidence that [F]ather failed to perform his parental duties. The testimony stated [F]ather missed several scheduled visits with the child. (N.T. 12/16/13 pg. 8, 11-12). Furthermore, the testimony established [F]ather has a history of periods of incarceration which prevented consistent visitation with the child. (N.T. 12/16/13 pg. 32-34). Moreover, the testimony established that [F]ather failed to comply with the visitation schedule arrangement upon his release from incarceration. (N.T. 12/16/13 pg. 7-8, 32-44). Lastly, the testimony established [F]ather failed to demonstrate an ability or willingness to parent the child during the visits with the child. (N.T. 12/16/13 pg. 9-10, 43-44).

A parent has an affirmative obligation to act in his child's best interest. As stated in *Adoption of Hamilton*, 379 Pa. Super at 274, 59 A.2d at 1291, "to be legally significant, the contact must

be steady and consistent over a period of time, contribute to the psychological health of the child, and must demonstrate a serious intent on the part of the parent to recultivate a parent-child [relationship], and must demonstrate a willingness and capacity to undertake the parental role. *In re E.S. M.*, 424 Pa. Super at 296.

In the instant matter, the child has medical needs and has been in placement care for over twenty three months. (N.T. 12/16/13, pgs. 15-16, 21). The testimony established the child is in a stable environment and adoption was in the best interest of the child. (N.T. 12/16/13 pgs. 22-24).

Trial Court Opinion, 3/7/14, at 3-4 (unnumbered).

Our review of the record reveals the following: Bethanna social worker Ashley Zacirka testified that Father's parenting goals were "to go to parenting classes, find housing, and visit with [Child]." N.T., 12/16/13, at 13. Ms. Zacirka was not aware of Father completing parenting classes, and had not determined whether he had obtained appropriate housing. *Id.* She testified that under her oversight, Father was offered fifteen visits and attended seven of those visits. N.T., 12/16/13, at 7. Father was late for three of the seven visits he attended. *Id.* On five occasions, Father called to confirm a visit, and then failed to show. *Id.* at 7-8. In "all of 2013", Father was offered thirty-three visits and attended a total of fourteen visits. *Id.* One of the visits occurred at prison on February 19, 2013 when Father was incarcerated. *Id.* at 12.

DHS social worker Britton Stewart testified he referred Father twice to ARC's parenting program and Father did not go either time. *Id.* at 20. Father did not provide Mr. Stewart documentation of completing any parenting classes while in prison or otherwise. *Id.* at 20-21. With regard to



housing, Mr. Stewart referred Father to ARC but Father did not attend. *Id.* at 21. Mr. Stewart testified that he was unable to determine whether Father had appropriate housing, because upon scheduling a home visit with Father, Mr. Stewart appeared but no one was present. *Id.*

With regard to visitation with Child, the following exchange occurred:

Q. To your knowledge aside from the time he has been incarcerated, has [Father] been involved in the child's life outside...?

A. In the beginning Father was involved with the child's life. He would call to see how his child was doing, he would be involved, he would say that he was going to like class, mentoring classes, and so he was involved in the beginning.

Q. What about recently?

A. No.

Q. When is the last time you had contact with Father?

A. The last time I had contact with Father was in the summer when he came into court on the 7<sup>th</sup> of August. We spoke, he told me – I told him I would go out to his home and visit him and he said he would be there. And when I went, he wasn't there.

*Id.* at 21-22.

Father offered testimony which was often contradictory to the testimony of Ms. Zacirka and Mr. Stewart. Father testified that he saw Child once a month during his incarceration. *Id.* at 32. Father also testified that while in prison, and prior to his release on February 27, 2013, he completed parenting classes, anger management class, and a life skills program. *Id.* Father contradicted Mr. Stewart's testimony regarding the home visit, and stated that he took off work and was home at 4 o'clock for the home

assessment but Mr. Stewart “never showed up.” *Id.* at 33. Father testified that he called Mr. Stewart, and Mr. Stewart said he “had other engagements ... and would not be able to make it and [would have] to reschedule.” *Id.* Father further testified that he shares his home with his mother, and has room and appropriate housing for Child. *Id.* at 34. At the time of the hearing, Father was taking another parenting class. *Id.* at 35. In addition, he was working plumbing and construction jobs for Hammer’s Construction and reporting to his probation officer as instructed. *Id.* at 36. Father testified that “of course” he wanted custody of Child. *Id.*

Although the hearing testimony between the Department of Human Services and Father conflicted, the trial court concluded:

[I]n the instant matter, the social worker for the Department of Human Services testified credibly. The testimony regarding [F]ather’s lengthy periods of incarceration, lack of parental bond, and lack of appropriate housing was credible. (N.T. 12/16/13 pgs. 13, 32-34). The testimony regarding [F]ather’s completion of his Family Service Plan objectives lacked the supportive documentation to establish that he completed his objectives. (N.T. 12/16/13 pgs. 29-30, 39-40, 47).

Trial Court Opinion, 3/7/14, at 5 (unnumbered).

Given the testimony and the trial court’s credibility determination, we discern no error in the trial court’s conclusion that termination was appropriate pursuant to 23 Pa.C.S.A. § 2511(a)(1).

Father additionally contends that the trial court erred by granting termination where Father “had a bond with his child that would be

detrimental to the child if it were severed.” Father’s Brief at 16. Section 2511(b) of the Adoption Act provides, in pertinent part:

**(b) Other considerations.**—The court in terminating the rights of a parent shall give primary consideration to the developmental, physical and emotional needs and welfare of the child. The rights of a parent shall not be terminated solely on the basis of environmental factors such as inadequate housing, furnishings, income, clothing and medical care if found to be beyond the control of the parent.

This Court has held:

Although a needs and welfare analysis is mandated by the statute, it is distinct from and not relevant to a determination of whether the parent’s conduct justifies termination of parental rights under the statute. One major aspect of the needs and welfare analysis concerns the nature and status of the emotional bond between parent and child.

***In re Adoption of R.J.S.***, 901 A.2d 502, 508 (Pa. Super. 2006). In addition:

[T]he court must consider whether the child’s needs and welfare will be met by termination pursuant to subsection (b). In this context, the court must take into account whether a bond exists between child and parent, and whether termination would destroy an existing, necessary and beneficial relationship.

\* \* \*

Above all else[,] adequate consideration must be given to the needs and welfare of the child. A parent’s own feelings of love and affection for a child, alone, do not prevent termination of parental rights.

***In re Z.P.***, 994 A.2d at 1121 (citations omitted).

In its opinion pursuant to Pa.R.A.P. 1925(a), the trial court stated:

The best interest of the child is determined after consideration of the needs and welfare of the child. The trial court must examine the individual circumstances of each case and consider all explanations offered by the parent facing termination of his parental rights to determine if the evidence in light of the totality of the circumstances clearly warrants involuntary termination.

When determining the best interest of a child, many factors are to be analyzed, "such as love, comfort, security and stability." Another factor that a court is to consider is what, if any bond exists for the child. In the instant matter, the testimony established the child would not suffer any irreparable emotional harm if [F]ather's parental rights were terminated. (N.T. 12/16/13, pgs. 8, 10, 25, 30). The testimony of the social worker established that [F]ather and the child did not have a bond. (N.T. 12/16/13, pgs. 24-25). Furthermore, the testimony of [the] social worker established the child has a strong bond with his foster parents. (N.T. 12/16/13 pg. 23). Lastly, testimony established the child becomes very excitable when in the presence of his foster parents and is despondent upon departure from the foster parents. (N.T. 12/16/13, pgs. 23-24).

Trial Court Opinion, 3/7/14, at 4 (unnumbered) (case citations omitted).

Here, Ms. Zacirka testified that during the visits, Father "tries" to appropriately parent Child, but "doesn't really have a parent bond" with Child. *Id.* at 8-9. Ms. Zacirka testified to observing Child interact with his pre-adoptive parents, and opined that Child evinced a parent/child bond with them. *Id.* at 9. She stated: "[Child] calls them Mom and Dad. And, you

know, when he is hurt he goes to her first. When he is upset he goes to her first. Normal parent/child reactions." *Id.* at 9-10.

DHS Social worker Britton Stewart testified that Child has been in his medical foster placement his entire life, although that is not his "preadoptive resource." *Id.* at 22. Child's preadoptive resource is a Virginia couple who "in the beginning, were [Child's] respite foster parents, and then they [wanted] to adopt [Child]..." *Id.* Mr. Stewart has taken Child to visits at his pre-adoptive home in Virginia, and opined that Child's needs are met in the home, he has a bond with his future adoptive parents, and in fact Child exhibits anxiety when he leaves his pre-adoptive parents. *Id.* at 23-24. Mr. Stewart had not observed such bond between Child and Father, and opined that termination was in Child's best interests. *Id.* at 25.

Again, Father offered contrary testimony. He explained:

I wanted to speak ... Because [Ms. Zacirka] said I didn't have a bond with my son. My son calls me Dad. He calls me Dad when he sees me.

He calls me Daddy when he sees me. And she says he looks at me as a playmate. It's easy for her to say he's bonded with his foster parents, because he is with them every day of his life, when I get two times out of a month. That is who he is going to bond with, who he sees every day. ... So, when I see him twice a month, yeah, we have a bond, it's a playful bond. This is Daddy, we are going to have fun. He is going to talk to me. He is going to read me a book, whatever. When you said he doesn't have a bond with me, that's a lie, sir. Your Honor, I apologize, but he does and when he sees me he is excited.

N.T., 12/16/13, at 40-41.

Relative to 23 Pa.C.S.A. § 2511(b), the trial court had to make a credibility determination. After hearing all of the evidence, the trial court explained:

[The] decision [to terminate Father's parental rights] is not that easy. He has done some of the things, he has visited some of the time. However, the fact remains that the child has been in care for about two or three years. [Father] has been out of prison since February 27<sup>th</sup>, 2013, and he has visited 14 out of 33 times. He was present in court on August 7<sup>th</sup>, 2013, when he met with Mr. Stewart. Yet, we still don't have any documentation or home evaluation, to determine whether Father has appropriate housing. His visits were inconsistent at best, a little less than 50 percent.

Parenting class, I don't know, because there is no evidence from Father aside from his testimony. Therefore, I do find that the Department of Human Services has met their burden by clear and convincing evidence to involuntarily terminate Father's parental rights pursuant to 2511A-1, 2, 5, and 8, as well as 2511B. I find it is in the best interests of the child to change the goal to adoption.

... I do find that DHS testified credibly. That is my ruling.

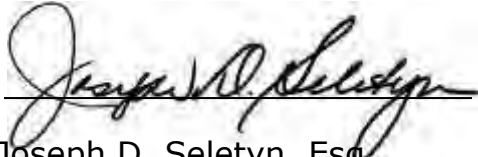
N.T., 12/16/13, at 47-48.

Upon review of the record, we discern no error in the trial court's determinations and conclusion that termination was appropriate pursuant to 23 Pa.C.S.A. § 2511(a)(1) and (b). We therefore affirm the trial court's decree terminating Father's parental rights.

Decree affirmed.

J-S43016-14

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 7/7/2014