

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN THE INTEREST OF: H.J.L., A MINOR

Appellee

APPEAL OF: J.A.S., FATHER

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1381 MDA 2016

Appeal from the Decree July 22, 2016  
In the Court of Common Pleas of Lancaster County  
Orphans' Court at No(s): 36-2016-0552

BEFORE: LAZARUS, J., RANSOM, J., and FITZGERALD, J.\*

MEMORANDUM BY LAZARUS, J.:

**FILED DECEMBER 22, 2016**

J.A.S. (Father) appeals from the trial court's order involuntarily terminating his parental rights to his daughter, H.J.L. (Child) (born 7/2009). After careful review, we affirm.<sup>1</sup>

From 2006 through 2014, Lancaster County Children and Youth Social Service Agency (Agency) received multiple reports of child neglect, unsanitary home conditions, domestic violence, inappropriate persons residing in Child's home and drug dealing in the home where Child resided

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\* Former Justice specially assigned to the Superior Court.

<sup>1</sup> Child's Guardian Ad Litem has indicated that he concurs with the position of petitioner, Lancaster County Children and Youth Social Service Agency.

with Mother.<sup>2</sup> In addition, Mother tested positive for marijuana and heroin use. Father resided in the house with Mother and Child until February 2013, when he was incarcerated for robbery, resisting arrest and related offenses. Father remained in county prison until February 2014; this was the last time he saw Child. In February 2014, Father was transferred to SCI-Camp Hill; in July 2014, he was transferred to SCI-Retreat. Father is due to be released from prison in February 2017.

In January 2015, the Agency filed for temporary physical and legal custody of Child; she was adjudicated dependent and placed in foster care. In November 2015, Child was placed in a foster home where she remains to date; it is a pre-adoptive placement. Child has bonded with her foster parents and attends weekly therapy sessions where she addresses her emotional distress, anger problems, and anxiety issues.

After receiving a letter from an Agency employee in 2015, Father requested contact with Child. In late November 2015, Father began to write Child letters on a weekly/bi-weekly basis.

On January 19, 2016, the Agency filed a petition to involuntarily terminate Father's parental rights to Child. On May 23, 2016, and July 18,

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<sup>2</sup> Mother consented to termination of her parental rights to Child in July 2016. She is not a party to this appeal.

2016, the court held termination hearings.<sup>3</sup> On July 22, 2016, the court terminated Father's parental rights to Child pursuant sections 2511(a)(1), (a)(2), (a)(5), and (b) of the Adoption Act.<sup>4</sup> Father filed a timely appeal in which he raises the following issues for our consideration:

- (1) Did the trial court err and abuse its discretion in terminating the parental rights of Father where he exerted [a] sincere and genuine effort to maintaining the parent-child relationship, used the resources available to him to preserve the parental relationship, exercised reasonable firmness in resisting obstacles placed in the way of maintaining the relationship, and where Father may be released from prison in a reasonable period of time?
- (2) Did the trial court err and abuse its discretion in finding that there is clear and convincing evidence that it is in H.J.L.'s best interest to terminate Father's parental rights?

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.* Moreover,

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

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<sup>3</sup> On April 11, 2016, the court also held a review hearing where Father, Mother, and several agency employees testified.

<sup>4</sup> **See** 23 Pa.C.S. §§ 2101-2910.

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.

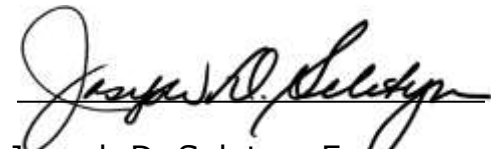
***In re adoption of S.M.***, 816 A.2d 1117, 1122 (Pa. Super. 2003) (citation omitted). ***See also In re C.P.***, 901 A.2d 516, 520 (Pa. Super. 2006) (party seeking termination of parental rights bears burden of proving by clear and convincing evidence that at least one of eight grounds for termination 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)).

After reviewing the parties’ briefs, the record, and relevant case law, we affirm the trial court’s order involuntarily terminating Father’s parental rights to Child on the basis of the well-written decision authored by the Honorable Leslie Gorbey. While Father may have the “intent to improve his parenting capacity and ability to provide for H.J.L.,” Appellant’s Brief, at 17, this does not overcome the fact that he has failed to assert a place of importance in Child’s life while he has been incarcerated. ***See In re Adoption of S.P.***, 47 A.3d 817, 828 (Pa. 2012) (while incarceration neither compels nor precludes termination, it is potentially determinative factor in court’s conclusion that grounds for termination exist under section 2511(a)(2) where repeated and continued incapacity of parent due to incarceration has caused child to be without essential parental care, control or subsistence and causes of incapacity cannot or will not be remedied). In

addition, even though Father may believe that Child “deserves the opportunity to have a relationship with [him,]” Appellant’s Brief, at 17, this does not change the fact that Father simply cannot meet “the developmental, physical and emotional needs and welfare of [Child].” 23 Pa.C.S. § 2511(b). Father has not seen his daughter for more than half of her young life, he has not asked the Agency about Child’s wellbeing, there is no apparent parent-child bond, and Child has no desire to respond to Father’s letters. Finally, the positive impact that the foster parents have had on Child’s emotional and developmental needs is significant and supports the trial court’s decision to terminate Father’s parental rights under section 2511(b). N.T. Termination Hearing, 5/23/16, at 26, 49. **See In the Interest of T.A.C.**, 110 A.3d 1028 (Pa. Super. 2015).

Order affirmed.<sup>5</sup>

Judgment Entered.



Joseph D. Seletyn, Esq.  
Prothonotary

Date: 12/22/2016

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<sup>5</sup> We instruct the parties to attach a copy of Judge Gorbey’s opinion in the event of further proceedings in the matter.

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

IN THE INTEREST OF:	:	
	:	SUPER. CT. NO.: 1381 MDA 2016
H.J.L., a minor	:	
	:	Trial Ct. Docket No.: 36-2016-0552
	:	

BY GORBHEY, L.

OPINION SUR APPEAL

**PROCEDURAL HISTORY**

This termination matter was initiated on March 9, 2016 with the filing of a Petition for Termination of the parental rights of Wendy Jo Lasher (Mother) and Jonathon Allen Seager (Father) to Harley Jo Lasher<sup>1</sup>. A preliminary decree was entered on March 10, 2016, scheduling a hearing for April 11, 2016, at which time the Record from the prior Dependency matter was ordered to be incorporated into the Termination record. On April 11, 2016, the termination hearing was continued to May 23, 2016, at which time it was completed. A Final Decree was entered on July 22, 2016, terminating Father's parental rights to Harley pursuant to 23 PA C.S.A. 2511(a)(1), (2) and (5). On August 22, 2016 Father filed a Notice of Appeal to the Superior Court of Pennsylvania, pursuant to which this opinion is being written.

**FACTUAL HISTORY**

Wendy Jo Lasher (Mother) and her son, Preston Lasher first became known to the Lancaster County Children and Youth Social Service Agency (Agency) on March 1,

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<sup>1</sup>The Petition also requested termination of parental rights to Harley's older half-brother, Preston, who has a different father. This request was granted and no appeal was taken.

2006 because Mother had tested positive for marijuana on January 23, 2006.<sup>2</sup> Mother completed her Family Service Plan and the case was closed. Harley Lasher was born on July 16, 2009. Her Father is Jonathon Allen Seager. Additional reported allegations of neglect which were received by the Agency on April 11, 2007 and on May 21, 2007 could not be substantiated and the case was closed. Between April 11, 2007 and September 19, 2014 there were thirteen additional reports made to the Agency concerning such problems as a filthy home environment, drug use and dealing, screaming fights between the parents and/or other adults, children outside unsupervised, bruises on children, children left in the car alone, refuse from dogs and cats, drug paraphernalia scattered throughout the house, electricity turned off, inappropriate non-family persons living in house, children lacking weather appropriate clothes, hole to the outside in the bathroom ceiling, Preston found walking alone along a main road, reports from school that Preston's clothes were filthy and his body odor offensive, bruising on his body, Mother using heroin, little to no food in house, and Mother overdosing on heroin. Throughout this period, the Agency did not open an ongoing file, either screening the report out, or closing the case after an initial investigation. (Petitioner's Exhibit 1, 5/23/2016)

Then on September 19, 2014, a report that Mother had overdosed on heroin and had gone into cardiac arrest resulted in a file being opened for the family. Also in September of 2014 there were new multiple reports about unsanitary home conditions, domestic violence between Mother and her paramour, inappropriate persons residing in

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<sup>2</sup>The Juvenile Record was incorporated into the Termination Record on April 11, 2016.

house, and lack of follow-through in counseling for the children. On November 21, 2014, Preston said that he was tired because Mother and her paramour were "up all night having sex". Mother had moved three carnival workers into the house, one of whom, Mike, smacked Preston often. Preston said he only felt safe when he was on the school bus. Mother denied to the caseworker that other people lived in the house. But on December 2, 2014, Mike set fire to Preston's shirt with a lighter. The child dropped and rolled to put the fire out, but suffered third degree burns on the left side of his body and second degree burns on his leg. Police removed Mike and one of the other persons from the home and Mike was indicated for abuse. The matter was not pursued, because the offending party was out of the house. As of January 27, 2015, Preston's school had developed a protocol that included giving him a shower and clean clothes every day, because of ongoing hygiene issues. He often was given breakfast because he appeared to be hungry. The Agency could not contact mother. On January 28, 2015 Preston was found to have bruises on his arm inflicted by Mother's paramour. The Agency asked that the paramour leave the house and Mother agreed. When the police checked the house on January 29, 2015, they found the children in the paramour's sole care. As a result, the Agency filed for temporary physical and legal custody and the children were placed in foster care on January 30, 2015. They were adjudicated dependent and the parents were given a Child permanency Plan. Mother signed a consent and her parental rights were terminated by decree on July 22, 2016.

Father had resided in the house with Mother and the children until February 2013, when he was incarcerated pursuant to charges of Robbery--Threat of Immediate Serious Injury; Theft by Unlawful Taking -- Movable Property; Unlawful



Restraint/Serious Bodily Injury, Resisting Arrest or Other Law Enforcement and Conspiracy to Robbery. He was at the Lancaster County Prison from February of 2013 through February of 2014, during which time he had visits with Harley. He was moved to Camp Hill for five months during which time he saw Harley three times. He was then transferred to SCI Retreat and there have been no visits at that facility. N.T. 142, 7/18/16. A new Agency caseworker took over the case in April of 2015 and wrote to Father on May 1, 2015. *Id.* At 146. He did not receive a return letter from Father until November of 2015, the purpose of which letter was to inquire about contacting Harley. *Id.* At 37-38. When testifying, Father admitted he had learned of Harley being in Agency custody in February of 2015, but did not seek contact until the latter part of October because he didn't think the placement would last long. In December of 2015, he began writing letters to Harley on a weekly or biweekly basis. (N.T. 135, 7/18/16) He is due to be released in February of 2017. ( N.T. 12-13, 5/23/16) At the time of his release he will have to be assessed for a Plan.

Seven year old Harley lives in a resource home which is a potential permanent resource. She is the only child in the home and has been there since November 20, 2015. (N.T. 72, 7/18/16) She has developed a bond with her resource parents. N.T. 26, 49 5/23/16 However, she does have some mental health problems, particularly surrounding anger, and her resource parents have concern about her negative behaviors. *Id.* at 47. She has "meltdowns" during which she throws and breaks things absent an obvious triggering event. N.T. 12-13, 5/23/16. She attends weekly therapy sessions for emotional distress and is making progress. *Id.* at 24-25. She has stated to

her therapist that she wants to be adopted. (*Id* at 48). She has been offered the opportunity to respond to Father's letters, but has declined to do so. N.T. 55, 5/23/16. She has had a psychiatric evaluation and is now on anti-anxiety medication. ( N.T. 66, 73, 7/18/16) Arrangements have been worked out for her and Preston to see each other on a regular basis. (N.T. 41, 5/23/16) Harley was three years old when Father was imprisoned.

### **ISSUE**

Whether Father 's parental rights are appropriately terminated when he is imprisoned in February of 2013 for violent crimes, sought no contact with his dependent daughter between summer of 2014 and December 2015, has written her two to four letters a month since then, and when released in February of 2017 still needs to be assessed for a Family Service Plan, which, if received, must be completed, leaving his daughter in foster care for more than two full years, where she is well cared for and bonded with the family.

### **ANALYSIS**

The termination of parental rights is governed by statute. *In re Child N.*, 681 A.2d 793 (1996). The pertinent statutory sections, 23 Pa. C.S.A. §2511, provide as follows:

(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.

.....  
**(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 party seeking the termination of parental rights bears the burden of providing clear and convincing evidence to do so. *In Re C.M.S.*, 832 A.2d 457 (Pa. Super. 2003). Clear and convincing evidence is testimony that is so "clear, direct, weighty and convincing as to enable the trier of fact to come to a clear convictions, without hesitation, of the truth of the precise facts in issue." *In Re Adoption of J.M.M.*, 782 A.2d 1024, 1030 (Pa. Super. 2001), *citing In Re C. S.*, 761 A.2d 1197, 1201 (Pa. Super. 2000), *citation omitted*. In a termination proceeding, the focus is on the conduct of the parent and whether that conduct justifies a termination of parental rights. *In Re B.,N.M.*, 856 A.2d 847, 854-855 (Pa. Super. 2004) *citations omitted*

The decision about involuntary termination is a two step process. Once it has been determined that the standard of 23 Pa.C.S.A. §2511(a) has been met, the Court must examine the requirements of Section 2511(b) set out above. The Pennsylvania

Superior Court has discussed the requirements of the language of that section in *In re Z.P.*, 994 A.2d 1108 (Pa. Super 2010), saying

Before granting a petition to terminate parental rights, it is imperative that a trial court carefully consider the *intangible* dimension of the needs and welfare of a child – the love, comfort, security and closeness—entailed in a parent-child relationship, as well as the tangible dimension. Continuity of relationships is also important to a child, for some severance of close parental ties is usually extremely painful. The trial court, [in considering what situation would best serve the children's] needs and welfare, must examine the status of the natural parental bond to consider whether terminating the natural parents' rights would destroy something in existence that is necessary and beneficial. *Id.* At 1121.

The Court believes that the requirements of 2511(a) have been met. Before Father went to prison in 2013, he lived in the family home with Harley and Mother and was therefore a knowledgeable participant in the horrifying problems in that house which led to Harley being adjudicated a dependent child. After he went to SCI Retreat, he made no effort to stay in contact with Harley until receiving a letter from Agency caseworkers, and it still took him more than seven additional months to start a correspondence. He started writing to Harley two to four times a month in December of 2015, but has taken no other action to enlarge his relationship with her, such as petitioning the court for visits. He has not seen her since February of 2014. The Court understands that incarceration seriously curtails the availability of remedial activities in such a situation, but that does not mean that an incarcerated parent's responsibilities are tolled during his incarceration. It remains the parent's responsibility to pursue a secure a bond with his child. *In re E.A.P.* 944 A.2d 79 (Pa. Super, 2008) In his concise statement, Father has attempted to blame the Agency for failing to give him the necessary instructions to maintain his relationship with his child. But it cannot be the

Agency's duty to initiate the steps to foster a relationship if the parent has no visible interest in raising the issue. Father went an unreasonably long time in raising the issue. And now he is doing only the minimum by writing infrequent letters to a little girl who is not yet of an age to read them.

Father also contends that he has seriously accomplished those things which were available to him in prison. It is accepted law in Pennsylvania that a parent who is incapable of performing parental duties is just as unfit as one who refuses to perform the duties. An illustration of this concept was used by the Pennsylvania Superior Court in holding that termination under 2511(a)(2) is supported by a parent's repeated incarcerations and failure to be present for the child, which caused the child to be without essential care and subsistence for most of her life, which could not be remedied. In re *E.A.P.*, 944 A.2d 79 (Pa. Super 2008). Father has been in prison for almost four years of Harley's seven years, and he has not shown great enthusiasm for re-establishing whatever relationship he had with her prior to his incarceration. The Court concludes that the requirements of (a)(1)(2) and (5) have been satisfied.

The Court must now determine whether termination is in Harley's best interests pursuant to §2511(b). Harley is seven years old. She has not seen her Father since February of 2014 and she will certainly not see him until after February of 2017, his expected release date. Since she was only three when he went to prison, it is most unlikely that any parent-child bond has been retained. In fact, the only relevant fact available is a negative one, i.e.,-- that given the opportunity to answer his letters, she has declined to do so.

Harley's situation is very complex. This is the Father who participated in a household of drug use, filth, abuse, lack of care, lack of food and domestic violence, among other horrors. Since he has not yet been evaluated for a plan, it is unknown whether he would be capable of providing an appropriate home for her, particularly with her current mental problems. Also, Harley has already established a bond with her resource parents. She wants to be adopted by them. She has no interest in responding to Father's letters. She is receiving therapy for her mental health issues and her violent acting out behavior. She needs psychotropic medication. But she is also a little girl who likes to play outside, swim, play dress up and laugh. She is now in a situation where all of the complexities and difficulties of her young life are being properly addressed, and she does not want to return to the past. The Court sees nothing which would lead it to believe that Father is up to the task of caring for her.

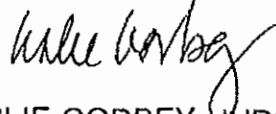
The time frame of this matter is also problematic. After Father is released from prison in 2017, he still has to be evaluated for a plan, and, assuming he receives one, finish all of his compliance activities. The Court does not know whether that compliance will be forthcoming, as his past history as a father has not been exemplary. At the minimum, Harley will have been in foster care for well more than two years. If we add to that the time for Father to complete his plan and then also consider the uncertainty of when the court will return the child to him, it is obvious that waiting for Father to take custody of Harley leaves her in a lengthy period of limbo, allowing her to strengthen her bond with her foster parents only to face the possibility of being given to

a comparative stranger. It is not in Harley's best interest to reverse the termination and force her to wait and see whether Father passes muster at some distant future time..

### CONCLUSION

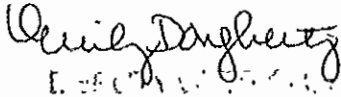
The Court believes that failing to terminate Father's parental rights is against Harley's best interest and welfare. It is in her best interest to be adopted and to be permitted to live a life with a family who is committed to her and loves her. The facts indicate that Father's rights are appropriately terminated pursuant to Sections 2511(a) and (b) of the Pennsylvania Adoption Act.

BY THE COURT:



LESLIE GORBEBY, JUDGE

DATED: September 15, 2016

Attest:   
E. DOUGHERTY

Copies to:

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