

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: J.V.S., A MINOR,

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: J.S., FATHER

Appellant

No. 335 EDA 2017

Appeal from the Decree Entered December 19, 2016
In the Court of Common Pleas of Philadelphia County
Family Court at No(s): CP-51-AP-0000708-2016, CP-51-DP-0002513-2014,
FID: 51-FN-002315-2014

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

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: J.S., FATHER

No. 339 EDA 2017

Appeal from the Decree Entered December 19, 2016
In the Court of Common Pleas of Philadelphia County
Family Court at No(s): CP-51-AP-0000709-2016, CP-51-DP-0002516-2014,
FID: 51-FN-002315-2014

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

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: J.S., FATHER

No. 344 EDA 2017

Appeal from the Decree Entered December 19, 2016
In the Court of Common Pleas of Philadelphia County
Family Court at No(s): CP-51-AP-0000710-2016, CP-51-DP-0002515-2014,
FID: 51-FN-002315-2014

IN THE INTEREST OF: A.B.G., A MINOR,

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: J.S., FATHER

No. 351 EDA 2017

Appeal from the Decree Entered December 19, 2016
In the Court of Common Pleas of Philadelphia County
Family Court at No(s): CP-51-AP-0000711-2016, CP-51-DP-0002514-2014,
FID: 51-FN-002315-2014

IN THE INTEREST OF: N.S., A MINOR,

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: J.S., FATHER

No. 357 EDA 2017

Appeal from the Decree Entered December 19, 2016
In the Court of Common Pleas of Philadelphia County
Family Court at No(s): CP-51-AP-0001180-2016, CP-51-DP-0002519-2014,
FID: 51-FN-002315-2014

BEFORE: BENDER, P.J.E., SHOGAN and MUSMANNO, JJ.

MEMORANDUM BY SHOGAN, J.:

FILED JULY 21, 2017

J.S. ("Father") appeals from the decrees involuntarily terminating his parental rights to his five children: A.R.G. (born December of 2003), J.V.S. (born March of 2005), J.H.G. (born August of 2006), A.B.G. (born February of 2011), and N.S. (born September of 2014) (collectively, "the Children").¹

After careful consideration, we affirm.

The trial court set forth the following findings of fact in its opinion to this Court:

On August 23, 2006, the family became known to [DHS] through a General Protective Services (GPS) report alleging that Mother had recently given birth to J.H.G. and that J.H.G. had been delivered by a midwife at Mother's house. The GPS [report] alleged that Mother refused to take J.H.G. to the hospital for an examination because Mother did not want to pay medical fees. On November 14, 2006, DHS received a GPS [r]eport which alleged that another child [J.S.] had language and motor delays and was left unattended in a crib for extended periods of time. The GPS [r]eport also alleged that Mother had made no plans to make areas of her house safe for J.H.G.

On October 24, 2014, DHS received a GPS report alleging that another child "F.J.W." was not receiving appropriate supervision from Mother. . . . This GPS report also alleged that F.J.W. was not attending school, and was often left alone to supervise his siblings.

¹ J.K.G., a/k/a J.G. a/k/a J.S. ("Mother") is the biological mother of the Children and of F.J.W. (born December of 2001), who is Father's stepson. Mother appealed the decrees terminating her parental rights to F.J.W. and the Children at 146 EDA 2017, 147 EDA 2017, 148 EDA 2017, 149 EDA 2017, 150 EDA 2017, and 151 EDA 2017. We address Mother's appeals in a separate memorandum.

On Friday October 24, 2014, DHS visited the family's home. DHS learned that F.J.W., J.S., and A.R.G. were home alone and summoned the police. Mother arrived at the house one hour after DHS entered the home. DHS observed the house to be in a deplorable condition. There was a large hole in the ceiling and the house smelled of cat urine. DHS learned that six children slept on one mattress that was dirty and covered with cat feces and urine. Dirty laundry was strewn throughout the house in piles up to the ceiling. The house was infested with bugs. DHS learned that Mother and father "J.S." . . . had another child named [V.S.] who died from carbon monoxide poisoning in 2009. DHS immediately obtained an Order of Protective Custody ("OPC") for the Children. The Children were transported to the Children's Hospital of Philadelphia ("CHOP"). It was determined at CHOP that N.S. had an enlarged head and no record of immunizations. Furthermore, there was no record of the Children receiving any immunizations since the year 2009. During a medical examination it was discovered that A.R.G. had a severe case of head lice and significant ear pain. On October 25, 2014, F.J.W. and A.R.G. were placed together in a separate foster home from their siblings. It was also learned that F.J.W., J.S., [and] A.R.G. were inconsistent with school attendance. On February 2, 2015, the Community Umbrella Agency ("CUA") Asociacion De Puertorriquenos En Marcha ("APM") held a Single Case Plan ("SCP") meeting. The goal identified for the Children was to return to Mother [and J.S. (Father)]. Parents were asked to clean their home. On November 14, 2014, an adjudicatory hearing was held before the Honorable Jonathan Irvine. The Children were adjudicated dependent. On March 20, 2015, CUA revised the SCP. The goal for the Children was to return to parents. The goal[s] for parents [were] (1) to clean the house; (2) to keep all supervised visits; (3) to attend the Achieving Reunification Center ("ARC") program; (4) to explore new suitable housing; (5) to attend CEU [Clinical Evaluation Unit] appointments; [and] (6) to receive a Parenting Capacity Evaluation ("PCE").

At a permanency review on September 10, 2015, it was testified that child J.S. has been diagnosed with autism. Child A.B.G. was diagnosed with Adjustment Disorder. Child F.J.W. was also diagnosed with autism. At that time, Mother was not cooperating with mental health treatment. However, . . . Father had completed parenting education classes at the ARC program. On December 8, 2015, A PCE was conducted for each parent. In

summary, the PCE report stated that . . . Father failed to grasp [his] responsibilities to [the] Children.

Trial Court Opinion, 3/10/17, at 3–5 (internal citations omitted).

The Department of Human Services (“DHS”) filed petitions to terminate Father’s parental rights to his five children on August 8, 2016. The trial court held a hearing on December 19, 2016, at which Father was present and represented by counsel. After receiving testimony and exhibits, the trial court found clear and convincing evidence to involuntarily terminate Father’s parental rights to the Children pursuant to 23 Pa.C.S. § 2511(a)(1), (2), (5), (8), and (b). The trial court also changed the permanency goals for the Children to adoption. Father filed the instant appeal and a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b).²

On appeal, Father presents the following questions for our review:

1. Did the court err or abuse its discretion when terminating Father’s parental rights under §2511(a) when Father has performed substantially his duties such as required by his plan, met most of his goals under the plan and satisfied the requirements of §§ (a)(1),(2),(5) and (8) under the totality of the circumstances; and, therefore, terminating Father’s parental rights on non competent [sic] or insufficient evidence?

² Although Father’s notices of appeal refer to the termination decrees and the goal-change orders, Father did not raise any issues involving the goal-change orders in his Pa.R.A.P. 1925(b) statement. Therefore, we conclude that Father has waived any challenge to the goal-change orders. **See *In re L.M.***, 923 A.2d 505, 509 (Pa. Super. 2007) (explaining that failure to include issue in Rule 1925(b) statement results in waiver).

2. Did the court err or abuse its discretion when terminating Father's parental rights under §2511(b) without doing an analysis of the emotional needs of the Children, and therefore, terminating Father's parental rights on non competent [sic] or insufficient evidence?

Father's Brief at 2 (italicization omitted).

The standard of review in termination of parental rights cases requires appellate courts to accept the findings of fact and credibility determinations of the trial court if they are supported by the record. If the factual findings are supported, appellate courts review to determine if the trial court made an error of law or abused its discretion. A decision may be reversed for an abuse of discretion only upon demonstration of manifest unreasonableness, partiality, prejudice, bias, or ill-will. The trial court's decision, however, should not be reversed merely because the record would support a different result. We have previously emphasized our deference to trial courts that often have first-hand observations of the parties spanning multiple hearings.

In re T.S.M., 71 A.3d 251, 267 (Pa. 2013) (citations and quotation marks omitted).

Termination of parental rights is governed by Section 2511 of the Adoption Act, 23 Pa.C.S. §§ 2101–2938, which requires a bifurcated analysis.

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). We need agree with the trial court as to only one subsection of Section 2511(a), as well as 2511(b), in order to affirm an involuntary termination order. ***In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*).

Here, the trial court terminated Father's parental rights under Section 2511(a)(1), (2), (5), (8), and (b). We analyze the trial court's decision to terminate under Section 2511(a)(2) and (b), which 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:

* * *

(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.

* * *

(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. With respect to any petition filed pursuant to subsection (a)(1), (6) or (8), the court shall not consider any efforts by the parent to remedy the conditions described therein which are first initiated subsequent to the giving of notice of the filing of the petition.

23 Pa.C.S. § 2511(a)(2) and (b). We have held that:

[i]n order to terminate parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(2), the following three elements must be met: (1) repeated and continued incapacity, abuse, neglect or refusal; (2) such incapacity, abuse, neglect or refusal has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being; and (3) the causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied.

The grounds for termination due to parental incapacity that cannot be remedied are not limited to affirmative misconduct. To the contrary, those grounds may include acts of refusal as well as incapacity to perform parental duties.

In re Adoption of C.D.R., 111 A.3d 1212, 1216 (Pa. Super. 2015) (reformatted; citations and internal quotation marks omitted).

Father first challenges the termination of his parental rights because “there was no repeated incapacity to satisfy §2511(a)(2). Father’s Brief at 11. According to Father, he “began looking for new housing and began attending his mental health treatment sessions before the termination petition was filed. He thus had taken steps to remedy the conditions and causes of the incapability that created the dependency[.]” ***Id.*** at 11-12. Upon review, we discern no abuse of the trial court’s discretion or error of law in terminating Father’s parental rights to the Children pursuant to Section 2511(a)(2).

The record confirms that Father has demonstrated neglect, causing the Children to be without essential parental care, control, or subsistence necessary for their physical or mental well-being. Specifically, DHS was first

introduced to the family in late 2006, at which point DHS received a report that J.H.G. had been delivered at home by a midwife and Father refused to take her to the hospital because "someone from Birthright planned to visit the family's home to examine [J.H.G.], although Birthright only handle[s] pregnancy and not newborns." Petition for Termination of Parental Rights, 8/8/14, Exhibit A (Statement of Facts) at ¶ a. The report further disclosed that J.V.S. was left unattended in a crib or playpen for extended periods of time, he "banged" his head against these objects, and he had chipped teeth; Mother was unwilling to make these areas safe for J.V.S. ***Id.*** at ¶ b.

In 2009, Mother and Father's son, V.S., died of carbon monoxide poisoning, but they did nothing to ameliorate the condition and make the house safe. Petition for Termination of Parental Rights, 8/8/14, Exhibit A (Statement of Facts) at ¶ d; N.T., 12/19/16, at 71-72. Five years later, DHS learned that F.J.W. was not receiving appropriate supervision; he was truant; and he was often left alone to supervise his younger siblings. Petition for Termination of Parental Rights, 8/8/14, Exhibit A (Statement of Facts) at ¶ c; N.T., 12/19/16, at 7. Upon visiting the family home in October of 2014, DHS discovered F.J.W., J.V.S., and A.R.G. alone, living in deplorable, bug-infested conditions. Father claimed that a relative had been supervising the Children, but had to leave because of an emergency. Petition for Termination of Parental Rights, 8/8/14, Exhibit A (Statement of Facts) at ¶ d.

Moreover, N.S. had an enlarged head, multiple medical conditions, and no immunizations; there were no immunization records for the other children since 2009. Petition for Termination of Parental Rights, 8/8/14, Exhibit A (Statement of Facts) at ¶ i; N.T., 12/19/16, at 8–9, 111. A.R.G. had a severe case of head lice and chronic ear pain. Petition for Termination of Parental Rights, 8/8/14, Exhibit A (Statement of Facts) ¶ j; N.T., 12/19/16, at 10. F.J.W. did not attend school during the 2014–2015 school year, and three of the siblings were receiving truancy prevention services. Petition for Termination of Parental Rights, 8/8/14, Exhibit A (Statement of Facts) at ¶ o. In May of 2015, after the Children were in care, DHS received a substantiated report that “[Mother and Father had] padlocked [the Children] in a bedroom without adult supervision, and that the [C]hildren were scratching on the window for . . . help. The report also alleged that [Mother and Father] had restrained [the Children] in a playpen with plywood covering the top locking.” Petition for Termination of Parental Rights, 8/8/14, Exhibit A (Statement of Facts) at ¶ v; N.T., 12/19/16, at 43–44.

Additionally, Father has demonstrated incapacity and refusal, causing the Children to be without the essential parental care, control, or subsistence necessary for their physical or mental well-being. Specifically, during the two years following the Children’s placement, Father failed to obtain consistent mental health treatment or suitable housing contrary to DHS’ recommendations and referrals. N.T., 12/19/16, at 22–24, 39, 53–55,

113–114. Although Father attended eight individual therapy sessions, he did not provide documentation confirming completion of mental health treatment. *Id.* at 22–23. Additionally, although Father submitted a lease to DHS on the day of the termination hearing, he was awaiting a site visit by DHS and needed additional funding in order to move into the apartment. *Id.* at 14, 16–18, 50–51, 113–114. Furthermore, Father failed to schedule an appointment at CHOP to receive vital training on how to care for N.S., who was diagnosed with multiple medical conditions and required a feeding tube. N.T., 12/19/16, at 9–10, 15, 25–26. Disturbingly, Father would consistently fail to sign consents for medications for the Children, and he interfered with their medical treatments by canceling appointments without informing DHS or the foster parents, which was in violation of a court order. *Id.* at 31–35, 37. Moreover, Father showed no interest in the Children’s medical conditions and failed to take an active role in their treatments. *Id.* at 28–30, 33, 36, 48. Regarding visitation, Father was inconsistent, due in part to scheduling conflicts with his work, the agency, and the foster parents. N.T., 12/19/16, at 24, 41, 52. Furthermore, Father interfered with the relationship between the Children and the foster parents by showing up unannounced at the foster home and the Children’s school. *Id.* at 38.

In the expert opinion of Dr. Erica Williams, who performed the parenting evaluation, Father “did not present with the capacity to provide either safety nor permanency . . . based on not only his minimization and

denial of each of the things that occurred, but also the concerns with the visitation, the violations, and the ongoing lack of knowledge of the specific needs of the [C]hildren.” N.T., 12/19/16, at 86. Finally, nothing in the record indicates that Father can or will remedy the conditions and causes of his neglect, incapacity, and refusal to provide parental care. Based on the foregoing, therefore, we agree with the trial court that there exists competent evidence of record to justify the termination of Father’s parental rights to the Children pursuant to Section 2511(a)(2).

Next, Father challenges the termination of his parental rights as improper under Section 2511(b) because “DHS did not present any testimony regarding the effect the termination would have on each of the [C]hildren.” Father’s Brief at 21. In response, the Children’s guardian *ad litem* (“GAL”) asserts, “The mere existence of an emotional bond does not preclude the termination of parental rights.” GAL’s Brief at 44–45 (quoting ***In re N.A.M.***, 33 A.3d 95, 103 (Pa. Super. 2011)). The GAL continues, “Being a parent means assuming responsibility so that a real bond develops, not just having a casual relationship with one’s children.” ***Id.*** at 45 (quoting ***In re J.L.C.***, 837 A.2d 1247, 1249 (Pa. Super. 2003)). Upon the record at hand, we agree with the GAL.

This Court has discussed the analysis pursuant to Section 2511(b) as follows:

Section 2511(b) focuses on whether termination of parental rights would best serve the developmental, physical, and

emotional needs and welfare of the child. As this Court has explained, Section 2511(b) does not explicitly require a bonding analysis and the term 'bond' is not defined in the Adoption Act. Case law, however, provides that analysis of the emotional bond, if any, between parent and child is a factor to be considered as part of our analysis. **While a parent's emotional bond with his or her child is a major aspect of the subsection 2511(b) best-interest analysis, it is nonetheless only one of many factors to be considered by the court when determining what is in the best interest of the child.**

[I]n addition to a bond examination, the trial court can equally emphasize the safety needs of the child, and should also consider the intangibles, such as the love, comfort, security, and stability the child might have with the foster parent. Additionally, this Court stated that the trial court should consider the importance of continuity of relationships and whether any existing parent-child bond can be severed without detrimental effects on the child.

In re Adoption of C.D.R., 111 A.3d 1212, 1219 (Pa. Super. 2015) (quoting ***In re N.A.M.***, 33 A.3d 95, 103 (Pa. Super. 2011)) (quotation marks and citations omitted; emphasis supplied). "[T]he extent of the bond-effect analysis necessarily depends on the circumstances of the particular case." ***In re Adoption of J.M.***, 991 A.2d 321, 324 (Pa. Super. 2010) (citations omitted). When evaluating a parental bond, "the court is not required to use expert testimony. Social workers and caseworkers can offer evaluations as well. Additionally, Section 2511(b) does not require a formal bonding evaluation." ***In re Z.P.***, 994 A.2d 1108, 1121 (Pa. Super. 2010) (citations omitted).

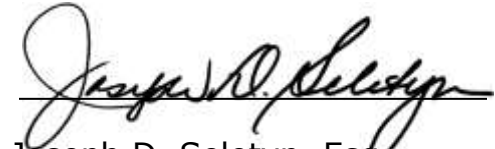
In conducting its Section 2511(b) analysis, the trial court recognized that "there exist[s] a loving relationship between Father and his Children."

Trial Court Opinion, 3/10/17, at 9. Nevertheless, the trial court “concluded that the termination of the Father’s parental rights would be in the best interest of the Children . . . pursuant to 23 Pa.C.S.A. § 2511(b) due in part to his inability and refusal to provide the parental guidance and supervision to address his Children’s needs.” *Id.* at 9.

As outlined above, our review of the record confirms that terminating Father’s parental rights will best serve the needs and welfare of the Children. As of the termination hearing, the Children had been in care for over two years. N.T., 12/19/16, at 7, 119. While the Children have a relationship with Father, they will not suffer irreparable harm as a result of terminating Father’s parental rights. *Id.* at 57, 59–60. Father has failed or refused to meet the basic emotional, medical, housing, and educational needs of the Children, let alone address their special medical and educational needs. Contrarily, the foster parents are meeting the basic **and** the special needs of the Children and share a parent-child bond with them. *Id.* at 42. This Court has long recognized that “[a] child’s life, happiness and vitality simply cannot be put on hold until the parent finds it convenient to perform parental duties.” *In the Matter of the Adoption of A.M.B.*, 812 A.2d 659, 675 (Pa. Super. 2002). Thus, we affirm the decrees terminating Father’s parental rights.

Decrees 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: 7/21/2017