

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: D.S.H. AND B.R.H., MINORS	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
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APPEAL OF: R.A.H., FATHER	:	No. 1795 MDA 2017

Appeal from the Decrees November 2, 2017
In the Court of Common Pleas of Lancaster County
Orphans' Court at No(s): 1751 of 2017,
1752 of 2017

BEFORE: GANTMAN, P.J., OTT, J., and KUNSELMAN, J.

MEMORANDUM BY GANTMAN, P.J.:

FILED MAY 03, 2018

Appellant, R.A.H. ("Father"), appeals from the decrees entered in the Court of Common Pleas of Lancaster County Orphans' Court Division, which granted the petition of the Lancaster County Children and Youth Social Services Agency ("Agency") for involuntary termination of Father's parental rights to his minor children, D.S.H. and B.R.H. ("Children"). We affirm.

In its opinion, the Orphans' Court fully and correctly set forth the relevant facts and procedural history of the case.¹ Therefore, we have no reason to restate them.

Father raises the following issues for our review:

WHETHER THE COURT ERRED IN TERMINATING FATHER'S

¹ This appeal is related to the appeal listed consecutively at No. 1847 MDA 2017 (J-S20041-18).

AND MOTHER'S PARENTAL RIGHTS?

WHETHER THE COURT ERRED IN CONCLUDING THAT THE EVIDENCE CLEARLY AND CONVINCINGLY ESTABLISHED THAT FATHER AND MOTHER HAD, BY CONDUCT CONTINUING FOR MORE THAN SIX MONTHS, EVIDENCED A SETTLED PURPOSE OF RELINQUISHING PARENTAL CLAIM TO CHILDREN AND HAD REFUSED [OR] FAILED TO PERFORM PARENTAL DUTIES?

WHETHER THE COURT ERRED IN CONCLUDING THAT THE EVIDENCE CLEARLY AND CONVINCINGLY ESTABLISHED THAT THE REPEATED AND CONTINUED INCAPACITY, NEGLECT OR REFUSAL OF FATHER AND MOTHER HAD CAUSED CHILDREN TO BE WITHOUT ESSENTIAL PARENTAL CARE, CONTROL AND SUBSISTENCE NECESSARY FOR THEIR PHYSICAL AND MENTAL WELL-BEING AND THAT THE CONDITIONS AND CAUSES OF THE INCAPACITY, NEGLECT OR REFUSAL CANNOT OR WILL NOT BE REMEDIED BY THE PARENTS?

WHETHER THE COURT ERRED IN CONCLUDING THAT THE LANCASTER COUNTY CHILDREN AND YOUTH AGENCY HAD MET ITS BURDEN IN PROVING THAT FATHER'S AND MOTHER'S PARENTAL RIGHTS SHOULD BE TERMINATED WHEN THERE WAS EVIDENCE THAT MOTHER HAD BEEN ACTIVELY WORKING ON AND COMPLETING THE GOALS OF HER CHILD PERMANENCY PLAN?

WHETHER THE COURT ERRED IN FINDING THAT TERMINATING FATHER'S AND MOTHER'S PARENTAL RIGHTS WOULD BEST SERVE THE NEEDS AND WELFARE OF CHILDREN?

(Father's Brief at 11).²

² Pennsylvania law on common law standing provides that a person can invoke the jurisdiction of a court to enforce private rights or maintain an action for the enforcement of such rights, only if that person has in an individual or representative capacity some real interest in the legal right that is the subject matter of the controversy. ***In Interest of G.C.***, 673 A.2d 932, 935 (Pa.Super. 1996). ***See generally In re T.J.***, 559 Pa. 118, 124, 739 A.2d 478, 481

Appellate review of termination of parental rights cases implicates the following principles:

In cases involving termination of parental rights: “our standard of review is limited to determining whether the order of the trial court is supported by competent evidence, and whether the trial court gave adequate consideration to the effect of such a decree on the welfare of the child.”

In re Z.P., 994 A.2d 1108, 1115 (Pa.Super. 2010) (quoting ***In re I.J.***, 972 A.2d 5, 8 (Pa.Super. 2009)).

Absent an abuse of discretion, an error of law, or insufficient evidentiary support for the trial court’s decision, the decree must stand. ... 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.

In re B.L.W., 843 A.2d 380, 383 (Pa.Super. 2004) (*en banc*), *appeal denied*, 581 Pa. 668, 863 A.2d 1141 (2004) (internal citations omitted).

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 the finder of fact. The burden of proof is

(1999) (stating: “In determining whether a party has standing, a court is concerned only with the question of who is entitled to make a legal challenge and not the merits of that challenge”; “the purpose of the ‘standing’ requirement is to insure that a legal challenge is by a proper party”). Here, Father filed a notice of appeal from the November 2, 2017 decrees terminating his parental rights. Mother also filed a notice of appeal from the November 2, 2017 decrees terminating her parental rights. Mother and Father each improperly filed only a single notice of appeal from those decisions. The subject decrees reflected the separate docket numbers and separate decisions as to each child. The decrees were entered on each docket. Father should have filed separate notices of appeal from each of the November 2, 2017 decrees entered on separate dockets. In any event, Father has no standing to raise issues related to Mother or on Mother’s behalf.

on the party seeking termination to establish by clear and convincing evidence the existence of grounds for doing so.

In re Adoption of A.C.H., 803 A.2d 224, 228 (Pa.Super. 2002) (internal citations and quotation marks omitted). The standard of clear and convincing evidence means 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 J.D.W.M.***, 810 A.2d 688, 690 (Pa.Super. 2002). We may uphold a termination decision if any proper basis exists for the result reached. ***In re C.S.***, 761 A.2d 1197, 1201 (Pa.Super. 2000) (*en banc*). If the court's findings are supported by competent evidence, we must affirm the court's decision, even if the record could support an opposite result. ***In re R.L.T.M.***, 860 A.2d 190, 191-92 (Pa.Super. 2004).

In re Z.P., supra at 1115-16 (quoting ***In re Adoption of K.J.***, 936 A.2d 1128, 1131-32 (Pa.Super. 2007), *appeal denied*, 597 Pa. 718, 951 A.2d 1165 (2008)).

Agency filed a petition for the involuntary termination of Father's parental rights to Children on the following grounds:

§ 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.

* * *

(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.A. § 2511(a)(1), (a)(2), (a)(5), (a)(8), and (b). “Parental rights may be involuntarily terminated where any one subsection of Section 2511(a) is satisfied, along with consideration of the subsection 2511(b) provisions.”

In re Z.P., supra at 1117.

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... 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.

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

Termination under Section 2511(a)(1) involves the following:

To satisfy the requirements of [S]ection 2511(a)(1), the moving party must produce clear and convincing evidence of conduct, sustained for at least the 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. In addition,

Section 2511 does not require that the parent demonstrate both a settled purpose of relinquishing parental claim to a child and refusal or failure to perform parental duties. Accordingly, parental rights may be terminated pursuant to Section 2511(a)(1) if the parent either demonstrates a settled purpose of relinquishing parental claim to a child or fails to perform parental duties.

Once the evidence establishes a failure to perform parental duties or a settled purpose of relinquishing parental rights, the court must engage in three lines of inquiry: (1) the parent’s explanation for his... conduct; (2) the post-abandonment contact between parent and child; and (3)

consideration of the effect of termination of parental rights on the child pursuant to Section 2511(b).

In re Z.S.W., 946 A.2d 726, 730 (Pa.Super. 2008) (internal citations omitted). Regarding the six-month period prior to filing the termination petition:

[T]he trial court must consider the whole history of a given case and not mechanically apply the six-month statutory provision. The 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 the involuntary termination.

In re B.,N.M., 856 A.2d 847, 855 (Pa.Super. 2004), *appeal denied*, 582 Pa. 718, 872 A.2d 1200 (2005) (internal citations omitted).

The grounds for termination of parental rights under Section 2511(a)(2), 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 A.L.D.***, 797 A.2d. 326, 337 (Pa.Super. 2002). "Parents are required to make diligent efforts towards the reasonably prompt assumption of full parental responsibilities." ***Id.*** at 340. The fundamental test in termination of parental rights under Section 2511(a)(2) was long ago stated in the case of ***In re Geiger***, 459 Pa. 636, 331 A.2d 172 (1975), where the Pennsylvania Supreme Court announced that under what is now Section 2511(a)(2), "the petitioner for involuntary termination must prove (1) repeated and continued incapacity,

abuse, neglect or refusal; (2) that such incapacity, abuse, neglect or refusal caused the child to be without essential parental care, control or subsistence; and (3) that the causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied.” ***In Interest of Lilley***, 719 A.2d 327, 330 (Pa.Super. 1998).

“Termination of parental rights under Section 2511(a)(5) requires that: (1) the child has been removed from parental care for at least six months; (2) the conditions which led to removal and placement of the child continue to exist; and (3) termination of parental rights would best serve the needs and welfare of the child.” ***In re Z.P., supra*** at 1118.

“[T]o terminate parental rights under Section 2511(a)(8), the following factors must be demonstrated: (1) [t]he child has been removed from parental care for 12 months or more from the date of removal; (2) the conditions which led to the removal or placement of the child continue to exist; and (3) termination of parental rights would best serve the needs and welfare of the child.” ***In re Adoption of M.E.P.***, 825 A.2d 1266, 1275-76 (Pa.Super. 2003). “Section 2511(a)(8) sets a 12-month time frame for a parent to remedy the conditions that led to the children’s removal by the court.” ***In re A.R.***, 837 A.2d 560, 564 (Pa.Super. 2003). Once the 12-month period has been established, the court must next determine whether the conditions that led to the child’s removal continue to exist, despite the reasonable good faith efforts of the Agency supplied over a realistic time. ***Id.*** Termination under

Section 2511(a)(8) does not require the court to evaluate a parent's current willingness or ability to remedy the conditions which initially caused placement or the availability or efficacy of Agency services. ***In re Adoption of T.B.B.***, 835 A.2d 387, 396 (Pa.Super. 2003); ***In re Adoption of M.E.P., supra.***

Under Section 2511(b), the court must consider whether termination will meet the child's needs and welfare. ***In re C.P.***, 901 A.2d 516, 520 (Pa.Super. 2006). "Intangibles such as love, comfort, security, and stability are involved when inquiring about the needs and welfare of the child. The court must also discern the nature and status of the parent-child bond, paying close attention to the effect on the child of permanently severing the bond."

Id. Significantly:

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.

When conducting a bonding analysis, 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., supra at 1121 (internal citations omitted).

"The statute permitting the termination of parental rights outlines certain irreducible minimum requirements of care that parents must provide for their children, and a parent who cannot or will not meet the requirements within a reasonable time following intervention by the state, may properly be considered unfit and have his...rights terminated." ***In re B.L.L.***, 787 A.2d

1007, 1013 (Pa.Super. 2001). This Court has said:

There is no simple or easy definition of parental duties. Parental duty is best understood in relation to the needs of a child. A child needs love, protection, guidance, and support. These needs, physical and emotional, cannot be met by a merely passive interest in the development of the child. Thus, this [C]ourt has held that the parental obligation is a positive duty which requires affirmative performance.

This affirmative duty encompasses more than a financial obligation; it requires continuing interest in the child and a genuine effort to maintain communication and association with the child.

Because a child needs more than a benefactor, parental duty requires that a parent exert [himself] to take and maintain a place of importance in the child's life.

Parental duty requires that the parent act affirmatively with good faith interest and effort, and not yield to every problem, in order to maintain the parent-child relationship to the best of his... ability, even in difficult circumstances. A parent must utilize all available resources to preserve the parental relationship, and must exercise reasonable firmness in resisting obstacles placed in the path of maintaining the parent-child relationship. Parental rights are not preserved by waiting for a more suitable or convenient time to perform one's parental responsibilities while others provide the child with his or her physical and emotional needs.

In re B., N.M., supra at 855 (internal citations omitted). “[A] parent’s basic constitutional right to the custody and rearing of his...child is converted, upon the failure to fulfill his...parental duties, to the child’s right to have proper parenting and fulfillment of [the child’s] potential in a permanent, healthy, safe environment.” ***Id.*** at 856.

After a thorough review of the record, the briefs of the parties, the

applicable law, and the well-reasoned opinion of the Honorable Thomas B. Sponaugle, we conclude Father's issues merit no relief. The Orphans' Court opinion comprehensively discusses and properly disposes of the questions presented. (**See** Orphans' Court Opinion, dated December 18, 2017, at 1-8) (finding: Father failed to complete his objectives; initial evaluation of Father showed Father lacked capacity to parent; evaluator diagnosed Father with host of issues including, but not limited to, parent-child relationship problem, relationship distress with spouse, high expressed emotion level within family, and spousal violence; evaluator recommended minimum of 26 weeks' individual counseling as well as couples' counseling; Father did very little towards completing his counseling; Father participated in couples' counseling but did not "satisfy" evaluator's recommendation; after re-evaluation, evaluator concluded Father still lacked motivation to parent; Father failed to meet objective of obtaining and using good parenting skills; Father has not progressed beyond one hour weekly supervised visits with Children; Father did not complete objective of financial and housing stability; Father has struggled to maintain clean home; home was disheveled and unsanitary when CYS first became involved in case and there have been only slight improvements since then; parent educator reported that home was dirty and unsafe; mental health evaluator stated Father lacks motivation to do what is necessary to have Children returned to him; Father struggles with boundaries and disciplining Children; Father cannot resolve his significant issues within

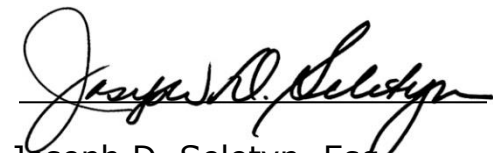
reasonable time; Children are in loving and healthy foster home that is potentially permanent resource; Children have bonded with foster family; Children cannot wait indefinitely for Father to reach his goals; involuntary termination of Father's parental rights was proper). Accordingly, we affirm based on the Orphans' Court opinion.

Decrees affirmed.

Judge Kunselman joins this memorandum.

Judge Ott concurs in the result.

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: 5/3/2018