

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: A.S., A MINOR	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
APPEAL OF: J.T., BIRTH MOTHER	:	
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	:	
	:	
	:	No. 792 WDA 2018

Appeal from the Order Entered April 9, 2018
In the Court of Common Pleas of Allegheny County Civil Division at
No(s): CP-02-AP-0000190-2017

BEFORE: OLSON, J., MURRAY, J., and FORD ELLIOTT, P.J.E.

MEMORANDUM BY MURRAY, J.: **FILED OCTOBER 10, 2018**

J.T. (Mother) appeals from the order involuntarily terminating her parental rights to her minor daughter, A.S. (Child), pursuant to 23 Pa.C.S.A. § 2511(a)(2), (5), (8), and (b) of the Adoption Act.¹ We affirm.

We adopt and summarize the trial court’s recitation of the facts, which is supported by the record. **See** Trial Court Opinion, 6/25/18, at 3-7; **see also** N.T., 12/8/17, at 1-26; N.T., 4/9/18, at 96. Child was born in September 2014. The Allegheny County Office of Children, Youth, and Families (CYF) became involved with the family in June 2016, following reports that Mother was using and selling illegal drugs from her home. Mother was uncooperative with CYF’s attempts to obtain a urine sample, and “disappeared” during an

¹ The court terminated the rights of G.L.S. (Father) pursuant to 23 Pa.C.S.A. § 2511(a)(1), (2), (5), (8), and (b). Father did not separately appeal and is not a party to the instant appeal.

appointment to produce a urine sample in June of 2016. At the time, Father was incarcerated and serving a sentence with an earliest release date in September 2021. CYF obtained an emergency custody authorization and took Child into custody. The court convened a shelter care hearing on June 24, 2016. At that time, Mother tested positive for cocaine.

The court adjudicated Child dependent on July 27, 2016. The court noted that: 1) Mother and Father had a history of domestic violence; 2) Mother had problems with drugs and alcohol; 3) Mother had not attended her drug and alcohol evaluation; 4) Mother had not attended the adjudication hearing; and 5) of three required urine screens, Mother could not produce a specimen for two and produced a positive test on the third. Child was placed in foster care with her maternal aunt and uncle. The court ordered Mother to: 1) complete a drug and alcohol evaluation; 2) follow all recommendations; 3) participate in domestic violence counseling; 4) undergo a mental health evaluation; 5) comply with any necessary treatment; and 6) visit Child.

The court convened permanency hearings in October 2016, February 2017, May 2017, September 2017, and December 2017. At each hearing, Mother demonstrated minimal compliance with the permanency plans and minimal progress towards alleviating the circumstances that necessitated Child's placement. Mother was incarcerated four times during the pendency of this case. In December 2016, she entered a guilty plea to a DUI – impaired

ability,² graded as a misdemeanor, and was sentenced to six months of probation. In January 2017, she was charged with criminal conspiracy, graded as a misdemeanor, and driving while operating privilege is suspended, graded as a summary offense, and sentenced to sixty days in jail.³ In July 2017 and August 2017, Mother pled guilty to simple possession and possession of drug paraphernalia, and was sentenced to six months of probation.⁴ Mother was re-incarcerated in February 2018.⁵ In March 2018, Mother pled guilty plea to possession with intent to deliver a controlled substance,⁶ and was sentenced to two years of probation.

Mother did not consistently maintain contact with CYF while incarcerated, did not complete drug and alcohol treatment or domestic violence counseling, missed almost 80% of her required urine screens, and attended only 18 of 63 possible visits with Child. Child has been in kinship foster care with Mother's twin sister and her husband since being removed from Mother's home. On November 8, 2017, CYF filed a petition seeking to involuntarily terminate Mother's parental rights.

² **See** 75 Pa.C.S.A. § 3802(a).

³ **See** 18 Pa.C.S.A. § 903, 75 Pa.C.S. § 1543.

⁴ **See** 35 P.S. § 780-113(a)(16), (32).

⁵ It appears from the record that Mother was re-incarcerated after she was unable to produce a screening sample for her probation officer. **See** N.T., 4/9/18, at 49-53.

⁶ **See** 35 P.S. § 780-113(a)(30).

In April 2018, the court convened a termination hearing. CYF presented the testimony of Athena Wright, a CYF caseworker, and Dr. Neil Rosenblum, a forensic psychologist who performed evaluations of Mother and Child. Both witnesses testified that it was in Child's best interests for Mother's rights to be terminated. **See** N.T., 4/9/18, 7-41, 42-60. Mother was represented by counsel and testified on her own behalf. **Id.** at 2, 65-81, 93. Child was represented by Cynthia Moore, Esquire, as legal counsel; Attorney Moore participated in the cross-examination of witnesses. **Id.** at 2; 27-40; 58-60; 79. The court terminated Mother's parental rights by order dated April 9, 2018. Mother timely appealed and filed a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2) and 1925(b).⁷

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

1. Did the trial court abuse its discretion and/or err as a matter of law in granting the petition to involuntarily terminate Mother's parental rights pursuant to 23 Pa.C.S. § 2511(a)(2), (5), and (8)?
2. Did the trial court abuse its discretion and/or err as a matter of law in concluding that CYF met its burden of proving by clear and convincing evidence that termination of Mother's parental rights would best serve the needs and welfare of the child pursuant to 23 Pa.C.S. § 2511(b)?
3. Did the trial court abuse its discretion and/or [err] as a matter of law by allowing [c]ounsel appointed to represent the child's legal interest to substitute her judgment for the child and opine that termination meets the safety and permanence needs of the

⁷ The trial court's order was docketed on April 30, 2018. **See** Pa.R.A.P. 108(b) ("The date of entry of an order . . . shall be the day on which the clerk makes the notation in the docket that notice of entry of the order has been given pursuant to Pa.R.C.P. 236(b).").

child thus depriving the child of her statutory right to effective representation by counsel?

Mother's Brief at 6.

We review cases involving the termination of parental rights mindful of the following:

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) (internal citations and quotations omitted).

Here, the court terminated Mother's parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(2), (5), (8), and (b). Termination 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). To affirm, we need only agree with any one of the subsections of 2511(a), as well as subsection (b). ***See In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*). Instantly, we focus our analysis on subsection (a)(2) and (b).

The relevant sections of 23 Pa.C.S. § 2511 provide that:

(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.A. § 2511.

To satisfy the requirements of Section 2511(a)(2), the moving party 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.” **See *In Interest of Lilley***, 719 A.2d 327, 330 (Pa. Super. 1998). The grounds for termination are not limited to affirmative misconduct, but concern parental incapacity that cannot be remedied. ***In re Z.P.***, 994 A.2d 1108, 1117 (Pa. Super. 2010). Parents are required to make diligent efforts toward the reasonably prompt assumption of full parental duties. ***Id.***

Mother claims that the court erred and abused its discretion by involuntarily terminating her parental rights. Mother’s Brief at 15-17. She contends that “she has remedied any parental incapacity,” and CYF’s case was based on speculation that she will repeat the cycle of drug use and incarceration, where no evidence was introduced that she was in danger of “violating her probation or conducting herself in any manner which could lead to incarceration.” ***Id.*** at 17. The record does not support this argument.

The hearing testimony established that Mother’s parental rights were properly terminated under Section 2511(a)(2). During the approximately 20 months that Child was in care the care of CYF, Mother entered guilty pleas or was charged with crimes on four separate criminal informations, sentenced to varying terms of probation and incarceration, and violated her probation. Testimony established that Mother was minimally compliant with her objectives: she did not maintain contact with CYF, missed an overwhelming majority of her required urine screens and tested positive for cocaine in 2018, and attended only 18 of 63 possible visits with Child. In addition, Mother did

not obtain a job or appropriate housing, nor did she attend her drug and alcohol evaluation. This Court has noted that “a child’s life cannot be held in abeyance while a parent attempts to attain the maturity necessary to assume parenting responsibilities. The court cannot and will not subordinate indefinitely a child’s need for permanence and stability to a parent’s claims of progress and hope for the future.” ***In re Adoption of R.J.S.***, 901 A.2d 502, 513 (Pa. Super. 2006).

Accordingly, we conclude that the trial court properly found by competent, clear, and convincing evidence that Mother’s parental rights could be terminated pursuant to Section 2511(a)(2), based upon the finding that Mother evinced a continued incapacity – her drug use and chronic arrests – which resulted in Child being without essential parental care, the cause of which “cannot or will not be remedied.” ***See Lilley***, 719 A.2d at 330; ***Z.P.***, 994 A.2d at 1117.

Next, we must consider whether Child’s needs and welfare will be met by termination pursuant to Subsection (b). ***See Z.P.***, 994 A.2d at 1121. “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.” ***Id.*** The court is not required to use expert testimony, and social workers and caseworkers may offer evaluations as well. ***Id.*** Ultimately, the concern is the needs and welfare of a child. ***Id.***

We have explained:

[b]efore 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 whom severance of close parental ties is usually extremely painful. The trial court, in considering what situation would best serve the child[ren]’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.

Z.P., 994 A.2d at 1121 (quoting **In re C.S.**, 761 A.2d 1197, 1202 (Pa. Super. 2000)). The trial court may equally emphasize the safety needs of the child and may consider intangibles, such as the love, comfort, security, and stability the child might have with the foster parent. **See In re N.A.M.**, 33 A.3d 95, 103 (Pa. Super. 2011).

Mother contends that she has a loving bond with Child, which CYF’s witnesses recognized. **See** Mother’s Brief at 18; N.T., 4/9/18, at 45-50. Child calls Mother “Meme” and cries when she leaves. **Id.** However, testimony was also presented that Child has an excellent relationship with her foster parents, who are nurturing and supportive toward her and provide for her needs. **Id.** Child calls them mommy and daddy. **Id.** Further, Dr. Rosenblum testified that although Child has a positive attachment to Mother, severance of the attachment would not harm Child, because Child has not seen Mother consistently for two years. **Id.** Thus, the record supports the finding that although Child had a bond with Mother, Child’s need for stability and security is best served by termination. Clear and convincing evidence supported the trial court’s termination of Mother’s parental rights with respect to Section

2511(b), where adoption would best serve Child's needs and welfare. **See Z.P.**, 994 A.2d at 1126-27.

Finally, Mother claims that the court erred by allowing Child's appointed counsel to represent Child's legal interests while arguing that termination served Child's best interests. **See** Mother's Brief at 20. Mother contends that as a result, Child was deprived of her statutory right to effective representation by counsel, particularly where Child stated she wanted to stay with Mother during a visit and cried when the visit with Mother ended. **Id.** at 20-21.

Our Supreme Court, in **In re Adoption of L.B.M.**, 161 A.3d 172, 183 (Pa. 2017) (plurality), held that 23 Pa.C.S. § 2313(a) requires that counsel be appointed to represent the legal interests of any child involved in contested involuntary termination proceedings. The Court noted that legal interests are synonymous with the child's preferred outcome, but the child's best interests are determined by the court. **Id.** Since **L.B.M.**, this Court has clarified the requirements counsel must meet to provide adequate representation in termination matters. **See In re Adoption of T.M.L.M.**, 184 A.3d 585, 587-91 (Pa. Super. 2018). Additionally, the Pennsylvania Supreme Court recently held that a guardian ad litem may serve as counsel where there is no conflict between the child's legal and best interests, and there is no conflict between the child's best and legal interests if the child is non-communicative due to the child's young age. **See In re T.S.**, --- A.3d ---, 2018 WL 4001825 *10 (filed August 22, 2018).

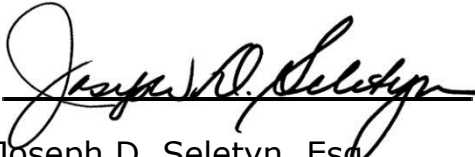
Here, Child was only three and one-half years old at the time of the hearing and was too young to clearly express a preference, such that there was no conflict between her best and legal interests. **T.S.**, 2018 WL 4001825 *10. The incident at one of Mother's few visitations, where Child cried and stated she did not want to leave "Meme," was not an articulate expressed preference regarding custody, termination, or eventual adoption. Nonetheless, testimony regarding this particular incident was presented to the court, which took the incident into consideration. Moreover, testimony indicated that Child is happy with her foster parents, and refers to them as mommy and daddy. Accordingly, because Child was too young to clearly express her legal interests, and there was no conflict between her legal and best interests, Child was not deprived of her right to counsel. **See T.M.L.M.**, 184 A.3d at 587-91; **T.S.**, 2018 WL 4001825 *10.

For all of the above reasons, we affirm the order terminating Mother's parental rights.

Order affirmed.

J-S58029-18

Judgment Entered.

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

Joseph D. Seletyn, Esq.
Prothonotary

Date: 10/10/2018