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: No. 220 MDA 2021

Appeal from the Decree Entered January 15, 2021  
In the Court of Common Pleas of Luzerne County Orphans' Court at  
No(s): A-9065

BEFORE: NICHOLS, J., KING, J., and MUSMANNO, J.

MEMORANDUM BY MUSMANNO, J.: **FILED: SEPTEMBER 17, 2021**

Mother, D.A.K., ("Mother"), appeals from the Decrees granting the Petitions filed by the Luzerne County Children and Youth Services ("CYS," or the "Agency") seeking to involuntarily terminate the parental rights of Mother to her seven children: A.M.K. (a female born in July 2004); C.F.C., (a female born in March 2014); L.D.C., (a female born in June 2009); I.D.C., (a female born in May 2011); D.F.C., (a female born in January 2013); J.L.K., Jr., (a male born in February 2018); and R.R.K., (a female born in April 2019) (collectively, the "Children"), pursuant to the Adoption Act (the "Act"), 23 Pa.C.S.A. § 2511(a)(2), (5), (8), and (b).<sup>1, 2</sup> We affirm.

The trial court set forth the factual background and procedural history of these consolidated appeals as follows:

On August 20, 2020, [CYS] filed Petitions for the Involuntary Termination of Parental Rights (["Petition[s"]]) as to [the Children]. [CYS] sought to terminate the parental rights of [Mother] and the respective natural father of each child.

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<sup>1</sup> Mother has another child, V.K., Jr. (a male born in September 2005), who was not a subject of the termination Petitions.

<sup>2</sup> None of the Children's fathers has filed an appeal, nor has any father participated in Mother's appeal. **See** Trial Court Opinion, 3/19/21, at 3.

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It is un rebutted that R.R.K. was placed [in foster care] on April 22, 2019, and the remaining six (6) children have been in [foster care] placement since January 7, 2019. Initially, [CYS] sought a shelter order because there were concerns regarding Mother's substance abuse issues[,] as Mother overdosed on illegal substances. In addition to substance abuse issues, [CYS] also had concerns of domestic violence in the home, Mother's anger issues and [Mother's] outbursts toward the [C]hildren. **Id.** With respect to A.M.K., she was originally placed on January 7, 2019[,] and then placed on [sic] September 2019 with the paternal grandmother. However, the paternal grandmother left [A.M.K.] with Mother unsupervised against [a] court order. Thus, A.M.K. was returned to the custody of [CYS] on March 5, 2020.

Trial Court Opinion, 3/19/20, at 2, 4.

The trial court held evidentiary hearings regarding the termination Petitions and goal changes on December 7, 2020, December 15, 2020, and January 12, 2021. At the hearing on December 7, 2020, Christopher Harrison, Esquire, and Harry Skene, Esquire, appeared on behalf of the Agency. Mother appeared with her counsel, Robert Kobilinski, Esquire, and Ashley Messoline, Esquire. Tiffany Crispell, Esquire, appeared as both guardian *ad litem* ("GAL") on behalf of all the Children and legal interest counsel for the Children except A.M.K. Maria Turetsky, Esquire ("Attorney Turetsky"), appeared as legal interest counsel on behalf of A.M.K. N.T., 12/7/20, at 4-7. At the hearing on December 7, 2020, the Agency presented the testimony of Angelica Beaver ("Beaver"), a caseworker with the Agency. **Id.** at 25. The Agency also presented the testimony of George Hockenbury, who is employed by Northern Tier Research, a toxicology facility that tests urine and blood, and conducts

drug testing, where he reviews drug screens. **Id.** at 41-42. Additionally, the Agency presented the testimony of Jacqueline Marrero, who is employed by Pathway to Recovery (“Pathway”), an outpatient drug and alcohol facility and mental health facility, as a drug and alcohol treatment specialist and a mental health professional. **Id.** at 54-55. Finally, the Agency presented the testimony of Cathy Sheridan, who is employed as a parent educator by Concerned, a private foster care agency contracted with the Agency to provide a community-based program. **Id.** at 73.

At the hearing on December 15, 2020, Mother presented the testimony of Stacey Kittrick, Mother’s case manager at the Day Reporting Center. N.T., 12/15/20, at 10. Mother also testified on her own behalf. **Id.** at 31. The Agency then presented the testimony of Beaver. **Id.** at 56.

At the hearing on January 12, 2021, the Agency presented additional testimony from Beaver. N.T., 1/12/21, at 95. Mother again testified on her own behalf. **Id.** at 124. Attorney Turetsky presented the testimony of Beth Distasio, the court-appointed special advocate for A.M.K. **Id.** at 139.

The trial court made findings of fact based upon the testimonial and documentary evidence at the hearings, which it found credible. **See** Trial Court Opinion, 3/19/21 at 7-21. We adopt those findings as though they were fully set forth herein. **See id.**

On January 15, 2021, the trial court entered Decrees terminating the parental rights of Mother to the Children pursuant to 23 Pa.C.S.A.

§ 2511(a)(2), (5), (8), and (b). On February 11, 2021, Mother timely filed separate Notices of Appeal, along with Pa.R.A.P. 1925(a)(2)(i) and (b) Concise Statements of errors complained of on appeal as to each of the termination Decrees. On March 23, 2021, this Court, *sua sponte*, consolidated Mother's appeals.

In her brief on appeal, Mother raises one issue:

- A. Whether the trial court erred in terminating parental rights and/or abused its discretion in giving primary consideration pursuant to the factors set forth in 23 Pa.C.S.A. [§] 2511(b) (developmental, physical, and emotional needs and welfare of the child)[,] because testimony presented at trial established a strong parent-child bond that would be detrimental to the physical, emotional, and general well-being of the [Children] if the bond were to be severed?

Mother's Brief at 2.<sup>3</sup>

Mother argues that CYS failed to meet its burden of clear and convincing evidence to terminate her parental rights pursuant to 23 Pa.C.S.A. § 2511(b), and that the trial court failed to give primary consideration to subsection (b). Mother's Brief at 11. Mother asserts that her own testimony clearly established that a parent-child bond exists between her and each of the Children, and that the Agency has failed to prove that it would not be

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<sup>3</sup> In the Statement of Questions Involved portion of her brief on appeal, Mother does not challenge the termination of her parental rights based on section 2511(a), and, accordingly, she has waived any such challenge under section 2511(a). ***See Krebs v. United Refining Co. of Pennsylvania***, 893 A.2d 776, 797 (Pa. Super. 2006) (stating that any issue not set forth in or suggested by an appellate brief's statement of questions involved is deemed waived). Nevertheless, we will address section 2511(a) *infra*.

detrimental to sever the parent-child bond between her and the Children. **Id.** at 12. Mother urges that she was not provided proper visitation with the Children. **Id.** at 13. Mother asserts that, when she did have supervised visits, she played games and puzzles with the Children and performed many activities, as permitted by the Agency's facility and the supervised visitation. **Id.** Mother claims that she also speaks with her oldest child in this matter, A.M.K., every day, and that she was the primary caregiver for the Children prior to their placement. **Id.** (citing N.T., 1/12/21, at 125-33). Mother alleges that she was unjustly denied the correct visitation hours, as the COVID-19 pandemic permitted her to have only video visits with the Children for nearly a year, to her detriment. **Id.** Mother states that the Children share and reciprocate the bond that has been established with her, and that severing that bond, by terminating Mother's parental rights, would not be in the best interests of the Children. **Id.** Mother claims that she has provided love, and more, to the Children. **Id.** Mother further asserts that she can safely and adequately provide for the Children, and that she has done so throughout their lives. **Id.** According to Mother, the best interests of the Children are met by continuing to allow Mother to work toward completing all services that necessitated their placement in foster care. **Id.** at 14.

In reviewing the trial court order granting a petition to terminate parental rights, we adhere 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.***, [], 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.***; ***R.I.S.***, 36 A.3d 567, 572 (Pa. 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.***, ... 34 A.3d 1, 51 (Pa. 2011); ***Christianson v. Ely***, 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.***, 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***, 650 A.2d 1064, 1066 (Pa. 1994).

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

The burden is upon the petitioner to prove by clear and convincing evidence that the asserted grounds for seeking the termination of parental rights are valid. ***In re R.N.J.***, 985 A.2d 273, 276 (Pa. Super. 2009). Moreover, as we have explained, "[t]he 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.” *Id.* (quoting *In re J.L.C.*, 837 A.2d 1247, 1251 (Pa. Super. 2003)). 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), along with consideration of section 2511(b). *See In re B.L.W.*, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*).

Although Mother has waived this issue, we set forth the following analysis to demonstrate that even if she had preserved such a challenge, it would have lacked merit. We address sections 2511(a)(2) and (b), which provide as follows:

**§ 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:

\* \* \*

(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(a)(2), (b).

To satisfy the requirements of section 2511(a)(2), the moving party must produce clear and convincing evidence regarding the following elements: (1) repeated and continued incapacity, abuse, neglect or refusal; (2) such incapacity, abuse, neglect or refusal 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. **See *In re Adoption of M.E.P.***, 825 A.2d 1266, 1272 (Pa. Super. 2003). 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).

The trial court made determinations with regard to section 2511(a)(2). **See** Trial Court Opinion, 3/19/21, at 5-21. Because the trial court's determinations are supported by competent, clear and convincing evidence in the record, we adopt the trial court's rationale and analysis as if they were fully set forth herein. **See *id.***

Next, this Court has stated that the focus in terminating parental rights under section 2511(a) is not on the parent, but it is on the child pursuant to

section 2511(b). **See *In re Adoption of C.L.G.***, 956 A.2d 999, 1008 (Pa. Super. 2008) (*en banc*). In reviewing the evidence in support of termination under section 2511(b), our Supreme Court has stated as follows:

[I]f the grounds for termination under subsection (a) are met, a court “shall give primary consideration to the developmental, physical and emotional needs and welfare of the child.” 23 Pa.C.S.[A]. § 2511(b). The emotional needs and welfare of the child have been properly interpreted to include “[i]ntangibles such as love, comfort, security, and stability.” ***In re K.M.***, 53 A.3d 781, 791 (Pa. Super. 2012). In ***In re E.M.***, [620 A.2d 481, 485 (Pa. 1993)], this Court held that the determination of the child’s “needs and welfare” requires consideration of the emotional bonds between the parent and child. The “utmost attention” should be paid to discerning the effect on the child of permanently severing the parental bond. ***In re K.M.***, 53 A.3d at 791.

***In re: T.S.M.***, 71 A.3d 251, 267 (Pa. 2013). 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) (internal citations omitted). Although it is often wise to have a bonding evaluation and make it part of the certified record, “[t]here are some instances ... where direct observation of the interaction between the parent and the child is not necessary and may even be detrimental to the child.” ***In re K.Z.S.***, 946 A.2d 753, 762 (Pa. Super. 2008).

A parent’s abuse and neglect are likewise a relevant part of this analysis:

concluding a child has a beneficial bond with a parent simply because the child harbors affection for the parent is not only dangerous, it is logically unsound. If a child’s feelings were the dispositive factor in the bonding analysis, the analysis would be reduced to an exercise in semantics as it is the rare child who,

after being subject to neglect and abuse, is able to sift through the emotional wreckage and completely disavow a parent. ... Nor are we of the opinion that the biological connection between [the parent] and the children is sufficient in [and] of itself, or when considered in connection with a child's feeling toward a parent, to establish a *de facto* beneficial bond exists. The psychological aspect of parenthood is more important in terms of the development of the child and [his or her] mental and emotional health than the coincidence of biological or natural parenthood.

***In re K.K.R.-S.***, 958 A.2d 529, 535 (Pa. Super. 2008) (internal citations and quotation marks omitted). Thus, the court may emphasize the safety needs of the child. ***See In re K.Z.S.***, 946 A.2d at 763 (affirming involuntary termination of parental rights, despite existence of some bond, where placement with mother would be contrary to child's best interests). "[A] parent's basic constitutional right to the custody and rearing of ... her child is converted, upon the failure to fulfill ... her parental duties, to the child's right to have proper parenting and fulfillment of [the child's] potential in a permanent, healthy, safe environment." ***In re B.,N.M.***, 856 A.2d at 856 (internal citations omitted).

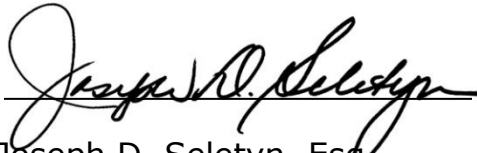
This Court has explained that a parent's own feelings of love and affection for a child, alone, do not prevent termination of parental rights. ***In re Z.P.***, 994 A.2d at 1121. It is well-settled that "we will not toll the well-being and permanency of [a child] indefinitely." ***In re Adoption of C.L.G.***, 956 A.2d at 1007 (citing ***In re Z.S.W.***, 946 A.2d 726, 732 (Pa. Super. 2008) (noting that a child's life "simply cannot be put on hold in the hope that [a parent] will summon the ability to handle the responsibilities of parenting.")).

The trial court addressed Mother's issue regarding section 2511(b) in its well-reasoned Opinion. **See** Trial Court Opinion, 3/19/21, at 3, 32-35. The trial court's determination that the Agency satisfied the requirements of section 2511(b) is supported by competent, clear, and convincing evidence in the record. Thus, we adopt the trial court's Opinion and analysis as if they were fully set forth herein. **See id.**

Accordingly, we affirm the trial court Decrees terminating Mother's parental rights as to the Children.

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: 9/17/2021