

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: ADOPTION OF: R.H.B. : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
:
APPEAL OF: N.H., MOTHER :
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: No. 1123 MDA 2021

Appeal from the Decree Entered August 9, 2021
In the Court of Common Pleas of Cumberland County Orphans' Court at
No(s): 008-ADOPT-2021,
CP-21-DP-0000125-2019

IN THE INT. OF: R.H.B., A MINOR : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
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APPEAL OF: N.H., MOTHER :
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: No. 1127 MDA 2021

Appeal from the Dispositional Order Entered August 9, 2021
In the Court of Common Pleas of Cumberland County Juvenile Division at
No(s): CP-21-DP-0000125-2019

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

MEMORANDUM BY LAZARUS, J.:

FILED: APRIL 6, 2022

N.H. (Mother) appeals from the trial court's order and decree¹ changing the permanency goal to adoption and involuntarily terminating Mother's

¹ On September 16, 2021, our Court *sua sponte* consolidated Mother's appeals at Nos. 1123 MDA 2021 and 1127 MDA 2021. **See** Pa.R.A.P. 513; Pa.R.A.P. 2138.

parental rights to her minor daughter, R.H.B. (Child) (born May 2019).² Counsel has filed an application and **Anders**³ brief seeking to withdraw, claiming that the appeal is wholly frivolous. After careful review, we grant counsel's application, and affirm the decree and order based upon the trial court's opinion.⁴

In May 2019, Child was born to Mother and Father,⁵ who were never married, but were residing together in Lancaster County in unsuitable housing. Father and Mother have serious intellectual disabilities and a history of limited parenting abilities.⁶ Mother was also reported to suffer from anxiety, PTSD,

² Child was represented by legal counsel, Damian J. DeStefano, Esquire, in the matter. Attorney DeStefano concurs with the trial court's opinion and counsel's **Anders** brief, also concluding that the appeal is wholly frivolous. **See** Damian J. DeStefano Letter, 10/25/21. Child was also represented by guardian *ad litem* (GAL), Tammi B. Blackburn, Esquire.

³ **Anders v. California**, 386 U.S. 738 (1967).

⁴ We note that by filing two separate notices of appeal with one docket number on each notice, Mother has complied with the dictates of **Commonwealth v. Walker**, 185 A.3d 969 (Pa. 2018), which held that "where a single order resolves issues arising on more than one docket, separate notices of appeal must be filed for each of those cases." **See also** Pa.R.A.P. 341(a).

⁵ Father has filed separate appeals, from the order terminating his parental rights to Child and decree changing the placement goal, at 1119 MDA 2021 and 1128 MDA 2021.

⁶ Mother also has another child, Child's older sister, with Father. Lancaster County Children and Youth Services implemented a safety plan in 2017 as a result of concerns that the child had significant intellectual delays and that Parents were unable to appropriately care for child's basic needs. Paternal
(Footnote Continued Next Page)

and depression. Child was removed from Parents' care on June 3, 2019, due to Mother's inability to prepare a bottle for child without assistance.⁷ Subsequently, legal and physical custody of Child was transferred to Lancaster County CYS.⁸ Child was placed in a kinship caregiver home with paternal great aunt and uncle, a long-term and adoptive resource for Child. ***Id.*** at 95. On July 29, 2019, Child was adjudicated dependent.

In August 2019, Mother and Father moved to Camp Hill, Cumberland County, and the case was transferred to Cumberland County Children and Youth Services (CYS), who took custody of Child. In September 2019, Parents participated in a Families & Schools Together (FAST) evaluation, after which

grandfather was subsequently awarded custody of that child in 2018. ***See*** N.T. Termination Hearing, 4/27/21, at 96.

⁷ Mother was observed at her pediatrician's office feeding Child water in a bottle. When the office staff provided Mother with formula to feed Child, she was unable to do so without assistance. At that moment, the pediatrician took the infant and called Lancaster County Child and Youth Services CYS (Lancaster County CYS).

⁸ In January 2011, Father pled guilty to aggravated indecent assault without consent, statutory sexual assault, and corruption of minors. The charges stemmed from Father's alleged sexual conduct with a 13-year-old girl. As a result of his guilty plea, Father is a registered lifetime Megan's Law offender and was precluded from having contact with children as a condition of his probation/parole. Father was discharged from probationary supervision on March 12, 2021. N.T. Termination Hearing, 4/27/21, at 41, 91. Lancaster County CYS filed a petition for a finding of aggravated circumstances against Father due to his Megan's Law conviction and parole conditions. The court found aggravated circumstances existed and Father was initially barred from visiting Child.

it was recommended that Mother participate in TIPS⁹ parenting program sessions, which included basic infant care, nutrition and safety. It was also recommended that Mother attend a partial hospitalization program due to a history of sexual, physical, and emotional abuse, as well as anxiety, depression and trauma. The following permanency plan was established for Mother: demonstrate stability in finances and housing; maintain visitation schedule with Child; improve parenting; and participate in mental health evaluations and follow recommendations.

Mother participated in weekly two-hour visits with Child at Alternative Behavior Consultants (ABC) in October and November 2019 and in TIPS sessions from October 2019 through December 2019. On December 9, 2019, Mother participated in a psychological evaluation that determined she did not have an intellectual disability, but had the functional independence of a nine-year-and-two-month-old child and the social interaction and communication skills level of a six-year-and-nine-month-old child. Mother only attended one of her two weekly visits in December 2019.

⁹ The TIPS program consists of ten parenting education classes. Upon successful completion of the TIPS program, the participant is able to advance to the more intensive SKILLS program for reunification services. **See Adoption of: J.L.**, 870 MDA 2021, *2 n.4 (Pa. Super. filed Dec. 2021) (unpublished memorandum decision) (citation to record omitted). **See also** Pa.R.A.P. 126(b)(2) ("Non-precedential decisions [of the Superior Court filed after May 1, 2019] . . . may be cited for their persuasive value."); Pa.R.A.P. 126(b)(1).

At a January 13, 2020 permanency hearing, Mother was reported to have been cooperating with CYS and progressing with her objectives by completing TIPS sessions, undergoing the requested evaluation, participating in recommended mental health care, medication management, administrative case management, and scheduling an intake for outpatient counseling. At that time, Mother and Father were participating in supervised visitation through ABC. On March 20, 2020, ABC instituted COVID protocols and all in-person visits were suspended.

In May 2020, foster mother reported that Parents were participating in virtual visits with Child three days a week, and that foster mother was sending pictures of Child to Parents daily. Later in the month, Father's case manager reported that Parents were behind in paying their utility bills, were not cleaning their apartment, and were fighting and arguing at home. At a June 2020 permanency hearing, Mother was reported to have progressed from TIPS to SKILLS sessions, and was participating in mental health treatment, medication management, administrative case management, ongoing counseling and trauma therapy. However, while Mother was showing progress with her parenting skills, she still required supervision when directly caring for Child.

In August 2020, Mother's home was still reported to have a significant amount of trash throughout it; bags of garbage were hidden in the closets. Moreover, due to her missed appointments and cancellations, Mother's behavioral health services provider was considering discharging her from its

program. In September 2020, the court found that Parents had been following ABC recommendations regarding financial budgeting and were scheduling visits with Child. Parents were deemed to be making progress in accomplishing their plan goals. However, the following month Mother was again falling behind in paying the utility bills. In December 2020, Mother was discharged from her behavioral health services provider for being uncooperative. In February 2021, visitation was ordered to be supervised for Parents, who were not making substantial progress on their efforts to reunify with Child.

On April 16, 2021, CYS¹⁰ filed petitions to change the permanency goal to adoption and to involuntarily terminate Mother's and Father's parental rights pursuant to sections 2511(a)(2), (5), (8) & (b) of the Adoption Act.¹¹ On April 27, 2021, May 4, 2021, and August 4, 2021,¹² the trial court held termination hearings at which S.S. (foster mother), Lee Marriot (ABC parent

¹⁰ Child's attorney and CYS have filed letters in lieu of briefs in support of counsel's **Anders** brief and motion to withdraw, indicating that they believe the appeal is wholly frivolous and rely on the trial court's opinion. **See** Damian J. DeStefano, Esquire, Letter, 10/25/21; CYS Letter, 11/9/21.

¹¹ 23 Pa.C.S.A. §§ 2101-2938.

¹² Each termination hearing was held virtually, via Zoom. The April and June 2021 hearings were held before the now-retired Honorable Thomas A. Placey. The August 2021 hearing was held before the Honorable Carrie E. Hyams, who has authored the instant Pa.R.A.P. 1925(a) opinion, and who "reviewed the audio and video of the pervious hearings in their entirety" prior to ruling on the goal change and termination petitions. Trial Court Opinion, 9/24/21, at 2.

educator), Benjamin Feirer (therapist at CCG), Sarah Hower (case manager at Merakey Stevens), Andrea Chapman (CYS caseworker), Father, and Mother testified.

Mother filed a timely notice of appeal and Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal.¹³ On, October 22, 2021, counsel filed an application and brief seeking to withdraw pursuant to **Anders** and **In re V.E.**, 611 A.2d 1267 (Pa. Super. 1992). In **V.E.**, our Court stated:

Counsel appointed to represent an indigent parent on a first appeal from a decree involuntarily terminating his or her parental rights, may, after a conscientious and thorough review of the record, petition this court for leave to withdraw representation if he or she can find no issues of arguable merit on which to base the appeal. Given the less stringent standard of proof required and the quasi-adversarial nature of a termination proceeding in which a parent is not guaranteed the same procedural and evidentiary rights as a criminal defendant, the court holds that appointed counsel seeking to withdraw representation must submit an **Anders** brief.

In re Adoption of V.E., 611 A.2d at 1275. Moreover, we held that “any motion to withdraw representation, submitted by appointed counsel, must be accompanied by an advocate’s brief, and not the *amicus curiae* brief delineated in [**Commonwealth v. McClendon**, [434 A.2d 1185 (Pa. 1981)].

¹³ In his Rule 1925(b) statement, counsel lists the issues Mother intends to raise on appeal. However, we remind counsel that in cases where an attorney seeks to withdraw on appeal, pursuant to **Anders**, counsel may “file of record and serve on the judge a statement of intent to file an **Anders/Santiago** brief in lieu of filing a Rule 1925(b) statement. **See** Pa.R.A.P. 1925(c)(4); **see also Interest of J.T.**, 983 A.2d 771 (Pa. Super. 2009) (determining that **Anders** procedure set forth in Rule 1925(c)(4) is proper in termination of parental rights case).

See also *In re Adoption of R.I.*, 312 A.3d 601, 602 (Pa. 1973) (“the logic behind . . . an individual in a criminal case being entitled to representation by counsel at any proceeding that may lead to ‘the deprivation of substantial rights’[,], . . . is equally applicable to a case involving an indigent parent faced with the loss of her child.”).

In his ***Anders*** brief, counsel raises the following issues for our consideration:

- (1) Whether the [t]rial [c]ourt abused its discretion and committed an error of law when it found, despite a lack of clear and convincing evidence, that . . . sufficient [evidence] existed for a termination of [Mother’s] parental rights under [s]ection 2511(a) of the Adoption Act[.]
- (2) Whether the [t]rial [c]ourt abused its discretion and committed an error of law in terminating [Mother’s] parental rights when the conditions which led to the removal or placement of [C]hild no longer existed or were substantially eliminated, thus contravening section 2511(a) and (b) of the Adoption Act[.]^{14]}
- (3) Whether the [t]rial [c]ourt abused its discretion and committed an error of law in determining it would be in [C]hild’s best interest to have parental rights terminated, when it failed to primarily consider [C]hild’s developmental, physical, and emotional needs and welfare, thus contravening [s]ection 2511(b) of the Adoption Act[.]

Anders Brief, at 7.

¹⁴ We can affirm the trial court’s decision regarding the termination of parental rights with regard to any single subsection of section 2511(a). ***In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (en banc).

Before reaching the merits of Mother's appeal, we must first address counsel's application to withdraw. To withdraw under **Anders**, counsel must:

- 1) petition the court for leave to withdraw stating that, after making a conscientious examination of the record, counsel has determined that the appeal would be frivolous; 2) furnish a copy of the [**Anders**] brief to the [appellant]; and 3) advise the [appellant] that he or she has the right to retain private counsel or raise additional arguments that the [appellant] deems worthy of the court's attention.^[15]

Commonwealth v. Cartrette, 83 A.3d 1030, 1032 (Pa. Super. 2013) (en banc) (citing **Commonwealth v. Lilley**, 978 A.2d 995, 997 (Pa. Super. 2009)). With respect to the third requirement of **Anders**, that counsel inform the appellant of his or her rights in light of counsel's withdrawal, this Court has held that counsel must "attach to [his or her] petition to withdraw a copy of the letter sent to their client advising him or her of their rights."

Commonwealth v. Millisock, 873 A.2d 748, 752 (Pa. Super. 2005).

An **Anders** brief must also comply with the following requirements:

- (1) provide a summary of the procedural history and facts, with citations to the record;
- (2) refer to anything in the record that counsel believes arguably supports the appeal;
- (3) set forth counsel's conclusion that the appeal is frivolous; and
- (4) state counsel's reasons for concluding that the appeal is frivolous. Counsel should articulate the relevant facts of record, controlling case law, and/or statutes on point that have led to the conclusion that the appeal is frivolous.

¹⁵ Mother has not raised any additional arguments on appeal.

Commonwealth v. Santiago, 978 A.2d 349, 361 (Pa. 2009). Finally, this Court must “conduct an independent review of the record to discern if there are any additional, non-frivolous issues overlooked by counsel.” **Commonwealth v. Flowers**, 1133 A.3d 1246, 1250 (Pa. Super. 2015) (footnote omitted).

Instantly, Mother’s counsel filed an application to withdraw, certifying that he reviewed the record and determined that Mother’s appeal is wholly frivolous. Counsel also filed a brief, which includes a summary of the history and facts of the case, potential issues that could be raised by Mother, and counsel’s assessment of why those issues are wholly frivolous, with citations to relevant legal authority. Counsel has also provided Mother with a copy of the brief and application, together with a letter advising her of her right to retain new counsel or raise additional issues *pro se*. Accordingly, we find that counsel has substantially complied with the requirements of **Anders**, **Santiago**, and **V.E.**, and, thus, may review the issues raised by counsel and also conduct our independent review of the record.

On appeal, change of goal¹⁶ decisions are subject to an abuse of discretion standard of review. **In re N.C.**, 909 A.2d 818, 822 (Pa. Super. 2006).

¹⁶ The Juvenile Act controls the disposition of dependent children. **In re R.P.**, 957 A.2d 1205, 1217 (Pa. Super. 2008). **See generally** 23 Pa.C.S.A. § 6351(f) (listing matters to be determined at permanency hearings); **id.** at § (Footnote Continued Next Page)

In order to conclude that the trial court abused its discretion [in a goal change case], we must determine that the court's judgment was "manifestly unreasonable," that the court did not apply the law, or that the court's action was "a result of partiality, prejudice, bias or ill will," as shown by the record. We are bound by the trial court's findings of fact that have support in the record. The trial court, not the appellate court, is charged with the responsibilities of evaluating credibility of the witness and resolving any conflicts in the testimony. In carrying out these responsibilities, the trial court is free to believe all, part, or none of the evidence. When the trial court's findings are supported by competent evidence of record, we will affirm, "even if the record could also support an opposite result."

Id. at 822-23 (internal citations omitted).

Moreover, 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,

(f.1) (providing what additional determination shall be made based on subsection (f) evidence presented at hearings).

(f.2) Evidence.—Evidence of conduct by the parent that places the health, safety or welfare of the child at risk, including evidence of the use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk, shall be presented to the court by the county agency or any other party at any disposition or permanency hearing whether or not the conduct was the basis for the determination of dependency.

42 Pa.C.S.A. §§ 6351(f), (f.1), (f.2).

the decree must stand.” ***In re B.L.W., supra*** at 383 (internal citations omitted). On review, “we employ a broad, comprehensive review of the record in order to determine whether the trial court’s decision is supported by competent evidence.” ***Id.***

Parental rights may be involuntarily terminated where any one subsection of [s]ection 2511(a) is satisfied, along with consideration of the subsection 2511(b) provisions. 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 [s]ection 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 [s]ection 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).

Instantly, the trial court heard three days of extensive testimony, consisting largely of witnesses on behalf of CYS, supporting a goal change and termination of Mother’s parental rights. Taken as a whole, the evidence proves that Mother is simply unable to parent Child independently. The trial court recognized the significant fact that, because Mother requires assistance to adequately care for Child, the instability of Mother and Father’s relationship directly “inhibits their ability to parent.” Trial Court Opinion, 9/24/21, at ¶ 25. Moreover, record evidence established that Mother had inflicted physical violence on Father, N.T. Termination Hearing, 8/4/1, at 13-15, and that, as a result of overall domestic unrest, Child was exhibiting regressing behaviors,

including crying at night. **Id.** at ¶ 27. Finally, both Mother and Father were unable to successfully manage their finances, leading to unpaid utility bills.

While Mother undoubtedly made efforts to comply with her permanency and service goals, she has not been able to consistently prove that, after Child's more than 24-month placement, she can adequately care for Child and provide Child with a stable, suitable, and permanent home environment. **See In re N.C., supra** at 823 ("When the child welfare agency has made reasonable efforts to return a [dependent] child to his or her biological parent, but those efforts have failed, then the agency must redirect its efforts towards placing the child in an adoptive home."); 42 Pa.C.S.A. § 6351(g) ("Court order.—On the basis of the determination made under subsection (f.1), the court shall order the continuation, modification or termination of placement or other disposition which is best suited to the safety, protection and physical, mental and moral welfare of the child."). **See also** 23 Pa.C.S.A. § 2511(a)(5) (parental rights may be terminated where clear and convincing evidence proves "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").

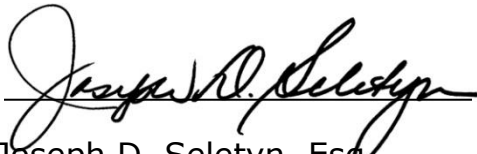
Moreover, Child's kinship/foster family, who are an adoptive resource, provide Child with the emotional, physical, and social support she needs and also have developed a strong bond with Child. **See *In the Interest of N.G.***, 235 A.3d 1274, 1281 (Pa. Super. 2020) (for section 2511(b) purposes, "trial 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") (citation omitted); N.T. Termination Hearing, 4/27/21, at 110 (CYS caseworker recognizing Child's bond with kinship family) ***id.***, 5/4/21, at 8 (foster mother testifying how bonded Child is with her and her husband, that they "love [Child] very much," and that "[Child] returns [the love]").

Accordingly, we rely upon the trial court opinion, authored by Judge Hyams, in affirming the decree and order changing Child's permanency goal to adoption and involuntarily terminating Mother's parental rights.¹⁷ The trial court's decisions are supported in the record and are not an abuse of discretion. ***In re N.C., supra; In re B.L.W., supra.*** The parties are directed to attach a copy of Judge Hyams' opinion in the event of further proceedings in the matter.

Decree and order affirmed. Application to withdraw granted.

¹⁷ Notably, foster mother testified that she believes that if she were to adopt Child, "it's in [Child's] best interest to always have a relationship with her parents in whatever capacity is safe." N.T. Termination Hearing, 5/4/21, at 7.

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: 4/06/2022

IN RE: ADOPTION OF R [REDACTED]
H [REDACTED]-B [REDACTED], a minor

: IN THE COURT OF COMMON PLEAS OF
: CUMBERLAND COUNTY, PENNSYLVANIA

: CP-21-DP-125-2019

: 08 ADOPTION 2021

CLERK OF
ORPHANS COURT
CUMBERLAND COUNTY, PA
2021 SEP 24 AM 11:43
LISA M. GRAYSON, ESQ.
REGISTER OF WILLS

IN RE: 1925(a) OPINION

HYAMS J. 23 SEPTEMBER 2021

PROCEDURAL HISTORY

Mother, ~~Neel Hartman~~, appeals the August 9, 2021 Order terminating her parental rights and changing the permanency goal to adoption involving daughter, ~~R [REDACTED] Hartman Bradley~~ (henceforth R.H.), and entered at CP-21-DP-125-2019 and 08 ADOPTION 2021. On June 3, 2019, R.H. was removed from the care of Mother and Father and placed in the custody of Lancaster County Children and Youth Services with kinship caregiving provided by paternal great aunt and uncle. The initial cause for removal was Mother's inability to prepare a bottle for the child without assistance at the pediatrician's office. She was observed giving the child a bottle with only water in it. On July 29, 2019 R.H. was adjudicated to be dependent.

In August 2019, natural Mother and Father established residency in Camp Hill, Pennsylvania, and subsequently the case was transferred to Cumberland County Children and Youth Services (henceforth Agency). On September 9, 2019, Parents participated in a FAST evaluation, and Father was recommended for no unsupervised contact with R.H. A permanency plan was developed for Mother on October 14, 2019, and subsequently revised on December 18, 2019; May 20, 2020, October 23, 2020; and April 9, 2021.

On April 16, 2021, the Agency petitioned for the involuntary termination of Mother's parental rights. Hearings on the petition were held on April 27, 2021 (via Zoom before the Honorable Thomas A. Placey who retired in June 2021), May 4, 2021 (via Zoom before the Honorable Thomas A. Placey), and August 4, 2021 (via Zoom before the undersigned, who reviewed the audio and video of the previous hearings in their entirety).

Mother's parental rights were terminated on August 9, 2021, and a timely notice of appeal was filed challenging the sufficiency of the evidence, and further avers:

1. This Honorable Court erred as a matter of law and abused its discretion when it found, despite a lack of clear and convincing evidence that sufficient grounds existed for a termination of Appellant's parental rights to her child, thus contravening section 2511(a) of the Adoption Act, 42 PA.C.S. §2511(a).¹
2. This Honorable Court erred as a matter of law and abused its discretion in terminating Appellant's parental rights when the conditions which led to the removal or placement of the child no longer existed or were substantially eliminated, thus contravening sections 2511(a) and (b) of the Adoption Act, 42 Pa.C.S. § 2511(a), (b).²
3. This Honorable Court erred as a matter of law and abused its discretion in determining the best interests of the child would be served by terminating parental rights when Appellant, if given sufficient time, would be ready, willing and able to parent the child and provide for her needs, thus contravening section 2511(b) of the Adoption Act, 42 Pa.C.S §2511(b).³

This Opinion is in support of the decision to terminate Mother's parental rights.

¹ Concise Statement of Matters Complained of on Appeal, filed August 25, 2021.

² Id.

³ Id.

FINDINGS OF FACT

The following findings of fact are made upon review of the hearing transcripts, filings of record, and the trial court's notes.

1. The child, R.H., was born on May 24, 2019, and is the offspring of Mother and D. B. (Father).
2. In June of 2011, Father was charged with Rape, Terroristic Threats, Indecent Assault without Consent, Indecent Assault of Person Less Than 16 Years of Age, Corruption of Minors, Sexual Assault, and Statutory Sexual Assault.
3. Father is a registered lifetime Megan's Law offender, and is specifically precluded from having contact with children as a condition of his parole.
4. At the time of R.H.'s birth, Mother and Father were residing in an apartment that was inappropriate for children.
5. R.H. was removed from the care of Mother and Father on June 3, 2019, and, as a result, she has been continuously residing with kinship care giver foster home since that date.
6. The cause for removal was Mother's inability to prepare a bottle for the child without assistance while at the pediatrician's office. She was observed giving the child a bottle with only water in it. R.H. was ten (10) days old at the time.
7. Mother participated in a FAST evaluation on September 9, 2019, and was recommended for a partial hospitalization program due to her history of sexual, physical, and emotional abuse, anxiety, depression, and trauma. Both parents were recommended for the TIPS program to include basic infant care, nutrition and safety.

8. Parents participated in weekly two-hour supervised visitations conducted at ABC in October and November 2019, then missed three consecutive scheduled visits in December.
9. Mother participated in TIPS sessions with Father from October 24, 2019, through December 30, 2019.
10. In early 2020, both parents moved to SKILLS sessions.
11. In early March 2020, Father was participating in Commonwealth Clinic Group (CCG); however, he was not making progress toward his anger management or treatment and therefore visitation remained supervised.
12. On March 20, 2020, ABC instituted COVID-19 protocols where all in-person visitations were suspended.
13. By June 2020, Mother was showing progress with her mental health treatment, medication management, ongoing counseling, and trauma therapy.
14. In August of 2020 it was reported that some progress was being made by Father and Mother regarding cleaning their home; however, a significant number of trash and bags of garbage were hidden in closets, dirty dishes were hidden below the sink, and Father was not following through on his medication management.
15. On August 25, 2020, Merakey⁴ discussed discharging Mother due to her missed appointments and cancellations.

⁴ Merakey provides supportive services to help individuals accomplish predetermined goals in including things such as bill paying, medical appointments, and medication management.

16. On September 23, 2020 the Agency learned that Father had stopped attending trauma therapy, a condition of his parole, and that Father and Mother were in financial distress and behind on their bills.
17. On December 18, 2020, Father failed his third polygraph examination, and remained unable to progress in his treatment with CCG or have his restriction of no contact with children lifted.
18. In December 2020, Mother was discharged from Merakey for failure to cooperate during meetings and in the home.
19. On February 1, 2021, it was determined that visitation must be supervised for both Father and Mother due to her failure to make substantial progress.
20. On February 4, 2021, both parents were not progressing in their efforts to reunify with their child and, as a result, it was determined that visitation would need to be held at ABC or the Agency with supervision.
21. Father was released from parole on March 12, 2021.
22. Between the May 4, 2021 hearing and August 4, 2021 hearing, the parents resumed overnight visits with R.H. upon the recommendation of ABC.
23. Father was able to provide appropriate care to R.H., however, Mother requires Father's assistance to adequately parent. It is clear that the Mother and Father's relationship stability directly impacts their ability to provide adequate care for R.H.
24. On July 15, 2021, Mother and Father rejected a multiple overnight opportunity with R.H. due to a fight between the parents that caused Mother to leave the home. Father indicated he would not care for R.H. without Mother there to assist and that he had made other plans.

25. Increased time and overnight visits with R.H. intensified the strain on the parent's relationship, which in turn inhibits their ability to parent.
26. There were incidents of physical violence by Mother against Father during this same period of time, including choking, hitting, and threats of stabbing.
27. R.H. also began to exhibit regressive behavior such as crying at night when she would stay with the parents overnight.
28. Both parents requested more time to start couple's counseling to attempt to improve their relationship stability.
29. There is an ongoing issue with unpaid bills and lack of evidence of what bills have been paid.
30. Foster parents, paternal great aunt and uncle, are an adoptive resource and have cared for R.H. since June 3, 2019.

DISCUSSION

Statement of law: Termination of parental rights is controlled by statute.⁵ In relevant part, the statute provides as follows:

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. ...

(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

⁵ See 23 Pa.C.S. § 2511.

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 ... (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.⁶

“The focus of involuntary termination proceedings is on the conduct of the parent(s).”⁷

Our appellate courts have determined that:

[a] parent’s basic constitutional right to the custody and rearing of his or her child is converted, upon the parent’s failure to fulfill his or her parental duties, to the child’s right to have proper parenting and fulfillment of his or her potential in a permanent, healthy, safe environment. When reasonable efforts to reunite a foster child with his or her biological parents have failed, then the child welfare agency must work toward terminating parental rights and placing the child with adoptive parents.⁸

There is a two part test a court must apply when evaluating a termination of parental rights petition. A court must determine if the petitioner has proven at least one of the statutory

⁶ *Id.* at a(2), (5), (8) and (b).

⁷ *In re B.L.L.*, 787 A.2d 1007, 1013 (Pa. Super. 2001)(internal citation omitted).

⁸ *In re Adoption of R.J.S.*, 901 A.2d 502, 507 (Pa. Super. 2006)(internal citations and quotations omitted).

grounds of termination set forth in 23 Pa.C.S. § 2511(a) and evaluate whether termination is in the best interests of the child, as required by 23 Pa.C.S. § 2511(b). *In re Adoption of C.D.R.*, 111 A.3d 1212, 1215 (Pa. Super. 2015). The burden is on the petitioner to prove by clear and convincing evidence⁹ 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). The court's initial focus is on the conduct of the parent and whether the petitioning party establishes that conduct satisfies the statutory grounds set forth in Section 2511. If this burden is met, the court shall proceed to the second analysis of whether termination best serves the needs and general welfare of the child. *In re L.M.*, 923 A.2d 505, 511 (Pa. Super. 2007).

In evaluating this case, this Court found that the Agency unmistakably met their burden with regard to 23 Pa.C.S. § 2511(a)(8). Almost 26 months have passed since R.H. was removed from Mother's care, and this Court found that Mother's failure to complete her permanency plan indicated that the conditions that caused removal continued to exist.

Mother loves R.H. but is incapable of caring for her child. Despite receiving parenting services for two years, three SKILLS program authorizations, and numerous revised permanency plans Mother was unable to fully demonstrate the ability to provide stable finances, suitable housing, and a stable, safe environment that would promote the physical and developmental needs necessary to resume independent care of R.H. Mother was unable to demonstrate that she could parent independent of Father, and there appears to be increasing inability for the Mother and Father to work together to properly parent R.H.

⁹ "Before terminating a parent's rights, the trial court must receive 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 Adoption of A.C.*, 162 A.3d 1123, 1133 (Pa. Super. 2017) (quoting *In re Adoption of Antencio*, 650 A.2d 1064, 1066 (Pa. 1994)).

R.H. now appears to be in an environment with proper parenting, with people who are caring, dependable, and dedicated to the promotion of her development. Unlike with Mother, who is unable to provide R.H. with a stable home environment. R.H. is now in a home that provides a healthy and safe environment.

Father and Mother have been unable to remedy the deficiencies in a reasonable amount of time—child has been dependent for nearly 26 months and the conditions which led to the removal of the child continue to exist.; however, the record is replete with other equally clear and convincing evidence of Mother's incapacity to meet the child's needs and promote her welfare. Many opportunities have been given to Mother and sadly all have been missed; Mother's request for more time is unfair to R.H. and not in her best interest.

For the reasons stated above, the instant appeal should be denied.

BY THE COURT:



Carrie E. Hyams, J.

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