

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

IN RE: ADOPTION OF K.A.M-T. : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
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:
:
APPEAL OF: A.M-T., FATHER : No. 2062 EDA 2013

Appeal from the Decree entered July 10, 2013,
in the Court of Common Pleas of Montgomery County,
Orphans' Court, at No: 2013-A0039

BEFORE: BENDER, P.J., OTT, J. and STRASSBURGER,* J.

MEMORANDUM BY STRASSBURGER, J.: **FILED DECEMBER 19, 2013**

A.M-T. (Father) appeals from the July 10, 2013 decree granting the petition filed by the Montgomery County Office of Children and Youth (OCY) to terminate Father's parental rights to K.A.M-T. (Child). We affirm.

The relevant history of this case is as follows. Father was arrested for assaulting J.K. (Mother) while she was pregnant with Child. Child was born in March 2011 while Father was in prison. Because Mother tested positive for several controlled substances, OCY became involved at the time of Child's birth and provided services to Mother.

Father was released to a halfway house in March 2012. On May 22, 2012, after OCY learned that Mother was using illegal controlled substances and was receiving inpatient treatment following suicide threats, OCY obtained custody of Child and placed him in foster care with G.K., Mother's

*Retired Senior Judge assigned to the Superior Court.

sister. The following month, Father was arrested for a parole violation and was reincarcerated.¹

On March 7, 2013, after Child had been in placement for over nine months, OCY filed petitions to terminate the parental rights of Mother and Father. Subsequently, amended petitions were filed, counsel was appointed, and Mother signed a written consent to the termination of her rights. On July 10, 2013, the trial court held a hearing on OCY's petition to terminate Father's rights, at which two police officers and the OCY caseworker testified. Father attended the hearing in person, represented by counsel, and testified in opposition to the petition.

The evidence showed that Father had begun using illegal drugs when he was nine years old. N.T., 7/10/2012, at 107, 137. From the time Father was first adjudicated delinquent at age 14 until the time of the hearing when he was 27 years old, Father had never succeeded in completing a term of probation or parole, and had never been out of placement or prison for more than seven or eight months at a time. *Id.* at 107, 176. While incarcerated, Father completed drug and alcohol counseling, a batterers' group, a victim awareness course, and a violence prevention program; and was, at the time of the hearing, participating in a newly-offered parenting skills class. *Id.* at 93-97. Although each time Father had been released he intended to "do the

¹ Father's term of incarceration maxed out in early December of 2013.

good things," he ultimately went back to drug use to "alleviate all of that stress" when life became "overwhelming every time." **Id.** at 127.

Father has never resided with or cared for Child full time. **Id.** at 115-116. Father had been incarcerated for all but two months of Child's life, and, as of the date of the hearing, had not seen Child in 14 months. **Id.** at 43. Child, therefore, had no bond with Father. **Id.** However, while in prison during Child's placement, Father attempted to be involved in Child's life by requesting visitation; writing monthly letters to the OCY caseworker inquiring about Child and Child's progress; seeking and providing photographs; and sending Child cards for Christmas and his birthday. **Id.** at 50-52.

G.K. is willing to adopt Child. **Id.** at 43. Child refers to G.K. as "mommy," and is very attached to G.K. and G.K.'s two daughters, whom Child views as his siblings. **Id.** at 44. Child's developmental delays and issues with sensory perception were being addressed while in G.K.'s care, with Child making "tremendous progress." **Id.** at 45, 61. G.K. is meeting Child's medical, developmental, and emotional needs, and has provided Child with stability for the first time in his life. **Id.** at 46. G.K. has further indicated her willingness to allow Child to maintain contact with Father. **Id.** at 47.

Upon release from prison, Father intended to reside with his mother. **Id.** at 98. Father worked as a mechanic at an auto repair shop during his

last stint out of prison, and produced a letter from that employer indicating that his job would be available to him when he was released. *Id.* at 70-71. However, because Father would need to establish and maintain stable housing and employment; demonstrate that he is able to stay sober and avoid criminal activity; and develop a relationship and bond with Child; it would be at least one year after Father's release from prison before OCY would consider putting Child in Father's care. *Id.* at 45-46.

At the conclusion of the hearing, the trial court granted the petition as to Father under 23 Pa.C.S. § 2511(a)(2), (a)(5), and (b), and stated on the record its reasons for doing so. N.T., 7/10/2013, at 168-183. On that same date, the trial court entered a decree terminating Father's parental rights. Father filed a timely notice of appeal and statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i). On August 19, 2012, the trial court filed a statement in lieu of an opinion referring this court to the hearing transcript for its reasons in entering the decree.

Father states the following questions for this Court's review.

1. Did the trial court commit error by involuntarily terminating Father's parental rights under 23 Pa.C.S.[§] 2511(a)(2) where [OCY] did not establish by clear and convincing evidence that Father's incapacity cannot or will not be remedied by Father, particularly in light of the impressive strides made by Father while in prison and the extent to which Father has endeavored to remain in contact with the Child[?]

[2]. Did the trial court commit error by involuntarily terminating Father's parental rights where the facts did not establish by clear and convincing evidence that such termination

was in the best interests of the Child as contemplated by 23 Pa.C.S.[§] 2511(b)[?]

Father's Brief at 4 (some capitalization omitted).²

We begin by noting our standard and scope of review.

When reviewing an appeal from a decree terminating parental rights, we are limited to determining whether the decision of the trial court is supported by competent evidence. Absent an abuse of discretion, an error of law, or insufficient evidentiary support for the trial court's decision, the decree must stand. Where a trial court has granted a petition to involuntarily terminate parental rights, this Court must accord the hearing judge's decision the same deference that we would give to a jury verdict. 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.

The burden is upon the petitioning person or agency to prove by clear and convincing evidence that its asserted grounds for seeking the termination of parental rights are valid. Moreover, we have explained:

The 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."

The trial court is free to make all credibility determinations, and may believe all, part, or none of the evidence presented. If the findings of the trial court are supported by competent evidence, we will affirm even if the record could also support the opposite result.

² Father also challenges termination under 23 Pa.C.S. § 2511(a)(5). However, based upon our conclusion as to subsection (a)(2), we need not consider this argument. ***See In re N.A.M.***, 33 A.3d 95, 100 (Pa. Super. 2011) ("We must agree with the trial court's decision as to only one subsection of 23 Pa.C.S. § 2511(a) in order to affirm the termination of parental rights.").

In re Adoption of R.K.Y., 72 A.3d 669, 673-674 (Pa. Super. 2013) (quoting ***In re T.M.T.***, 64 A.3d 1119, 1125 (Pa. Super. 2013) (citations omitted)).

Our courts apply a two-part analysis in considering termination of parental rights. As we explained in ***In re L.M.***, 923 A.2d 505 (Pa. Super. 2007),

[i]nitially, 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.

Id. at 511.

The governing statute provides as follows, in relevant part.

(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. ...

23 Pa.C.S. § 2511.

Instantly, the trial court concluded that OCY met its burden of providing clear and convincing evidence that Father's parental rights should be terminated, finding that Father's substance abuse and criminal recidivism have rendered him repeatedly and continuously incapacitated, and that Father will not remedy his incapacity within a reasonable time. The trial court found "striking" the fact that Father, over the last 12 years, had never been out on the street for more than seven or eight months at a time. N.T., 7/10/2013, at 176-177. The trial court further found that Child had formed no bond with Father, but had formed a bond with G.K. and her children. *Id.* at 179.

Father argues that the trial court's conclusion under subsection (a)(2) should be reversed because it is not supported by clear and convincing evidence that Father cannot or will not remedy his incapacity. Father notes that he has done everything he possibly could have while incarcerated to prepare to be a good citizen and parent upon his release, that he has made

every effort to remain part of Child's life during his incarceration, that he will be out of prison before this appeal is concluded, and that he has employment and housing lined up upon his release. Father's Brief at 12-14.

Child, through his guardian *ad litem*, notes that Father has time and again received counseling and education while in placement or prison, yet turned back to drugs and crime nearly as soon as he was out. Guardian *Ad Litem's* Brief at 11-12. Child agrees with the trial court's conclusion:

Father is not ready now to care for [Child] and cannot possibly be ready to do so at any time in the reasonably foreseeable future. He has not experienced real life in 14 years. He knows nothing about assuming and accepting responsibility for his own life, let alone the life of a defenseless, dependent, special needs child. It would be folly to believe that within a reasonable time [Father] could put himself in a position to protect the life of another.

Guardian *Ad Litem's* Brief at 13.

"The courts of this Commonwealth have long held that a child's life simply cannot be put on hold in the hope that [Father] will summon the ability to handle the responsibilities of parenting." ***In re Z.S.W.***, 946 A.2d 726, 732 (Pa. Super. 2008) (internal quotation omitted). Accordingly, because the record supports the trial court's determination that Father will not remedy his incapacity in within a reasonable time, we hold that the trial court did not err in finding that OCY met its burden under section 2511(a)(2). ***See, e.g., In re A.S.***, 11 A.3d 473, 480 (Pa. Super. 2010) ("Father's recurrent incarceration is evidence of his parental incapacity. ...

[Father's] pattern of behavior [of continuing the criminal activity that resulted in incarceration] supports the trial court's conclusion that Father has refused to remedy the conditions that led to Children's placement, per Section 2511(a)(2).” **See also *In re C.L.G.***, 956 A.2d 999, 1008 (Pa. Super. 2008) (*en banc*) (“[I]f we were to permit Mother further opportunity to cultivate an environment where she can care for C.L.G., we would be subjecting a child, who has been waiting for more than two years for permanency, to a state of proverbial limbo in anticipation of a scenario that is speculative at best.”).

We next consider whether the trial court gave adequate consideration to the welfare of Child under section 2511(b). “Intangibles such as love, comfort, security, and stability are involved when inquiring about the needs and welfare of the child.” ***K.Z.S., supra*** at 760 (quoting ***In re C.P.***, 901 A.2d 516, 520 (Pa. Super. 2006)).

The court should also consider the importance of continuity of relationships to the child.... The court must consider whether a natural parental bond exists between child and parent, and whether termination would destroy an existing, necessary and beneficial relationship. Most importantly, adequate consideration must be given to the needs and welfare of the child.

Id. (internal citations omitted). “In cases where there is no evidence of any bond between the parent and child, it is reasonable to infer that no bond exists.” ***Id.*** at 762-763.

Father argues that OCY did not meet its burden under subsection (b) because Father testified that he bonded with Child when Mother brought three-month-old Child to prison to visit him, and the OCY caseworker merely testified that she did not think Child would suffer harm if Father's parental rights were terminated, rather than offer a more definite opinion. Father's Brief at 29.

The trial court believed that Child had put his arms out to Father when visiting him in the past, but, with Child not having seen Father in more than a year, concluded "I don't believe it's possible for your child, at age 2 years, 3 months or 2 years, 3 and a half months, to have formed a bond with you, because he just hasn't seen you enough." N.T., 7/10/2013, at 179. The trial court also concluded that Child had formed a bond with G.K. and her daughters. **Id.** Terminating Father's rights and allowing G.K. to adopt Child, the trial court concluded, was what was best for Child. **Id.**

We agree with the trial court that the evidence was sufficient to show that there was no bond between Child and Father worth preserving, and that terminating Father's parental rights would best serve Child's needs and welfare. **See, e.g., L.M., supra** at 512 ("There was absolutely no evidence that severing the ties between Mother and L.M. would have a negative effect on the child. Rather, unrefuted testimony indicated that L.M. was strongly bonded to her foster mother and was thriving in her foster home.").

Therefore, because the record supports the trial court's conclusions (1) Father's incapacity has left Child without essential parental care and would not be remedied within a reasonable time, and (2) that termination of Father's parental rights is in Child's best interests, we hold that the trial court committed no error or abuse of discretion in granting OCY's petition under subsections 2511(a)(2) and (b).

Decree affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.

Prothonotary

Date: 12/19/2013