

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

IN THE INTEREST OF: E.M.S., A MINOR :	IN THE SUPERIOR COURT OF
:	PENNSYLVANIA
:	
Appeal of: B.S., Father	:
:	
:	
Appellant	No. 2045 MDA 2012

Appeal from the Decree entered October 26, 2012
in the Court of Common Pleas of York County,
Orphan's Court Division, at No. 2012-0042

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Appeal of: B.S., Father	:
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Appellant	No. 2079 MDA 2012

Appeal from the Order entered October 26, 2012
in the Court of Common Pleas of York County,
Criminal Division, at CP-67-DP-28-2011

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

MEMORANDUM BY OLSON, J.:

FILED MAY 21, 2013

B.S., ("Father"), appeals from the decree entered on October 26, 2012, which granted the petition filed by the York County Office of Children, Youth, and Families ("CYF"), seeking to involuntarily terminate Father's parental rights to his dependent, female child, E.M.S., born in May 2009, ("Child"), pursuant to sections 2511(a)(1), (2), (5), (8), and (b) of the Adoption Act. 23 Pa.C.S.A. § 2511(a)(1), (2), (5), (8), and (b). Father also

appeals from the October 26, 2012 order that changed the permanency goal for Child to adoption, pursuant to section 6351 of the Juvenile Act. 42 Pa.C.S.A. § 6351.¹ We affirm.

The trial court ably set forth the factual background and procedural history with regard to this appeal, which we adopt. **See** Trial Court Opinion, 10/26/12, at 1-8. We set forth herein only those facts found by the trial court as are necessary to understand the instant appeals.

In 2003, Father received his fourth conviction for possessing a controlled substance with the intent to deliver and the trial court sentenced Father to a term of five to ten years in prison. N.T. Hearing, 8/27/12, at 62-63; Trial Court Opinion, 10/26/12, at 3. Father began serving this sentence on June 27, 2004 and Father was initially paroled in June 2008. Trial Court Opinion, 10/26/12, at 3. On November 16, 2010, however, Father was re-incarcerated for violating his parole (as a result of a physical altercation with Mother) and, since that time, Father has remained in prison. N.T. Hearing, 8/27/12, at 64-65; Trial Court Opinion, 10/26/12, at 3. Father's maximum release date is May 27, 2013. N.T. Hearing, 8/27/12, at 20; Trial Court Opinion, 10/26/12, at 6.

¹ On December 18, 2012, this Court, acting *sua sponte*, consolidated Father's appeals. We note that, in the decree and the order entered on October 26, 2012, the trial court involuntarily terminated the parental rights of Child's mother, N.M.M. ("Mother"), to Child, and ordered the permanency goal changed to adoption. Mother is not a party to the instant appeals, nor has she filed an appeal of her own.

Child was born in May 2009, during Father's period of release on parole. Father claims that he was the primary caregiver for Child after she was born in 2009 until Father's re-incarceration in November 2010. N.T. Hearing, 8/27/12, at 58. In January 2011, Mother became incarcerated. She placed Child in the care of her paramour, M.B. In June 2011, Mother gave birth to a daughter, L'R.L.M., Child's half-sibling, fathered by M.B. N.T. Hearing, 8/27/12, at 8-9.

In March 2011, Child, while in the care of M.B., was injured. At that time, the trial court placed Child in the legal and physical custody of CYF, based on allegations that M.B. physically abused Child. N.T. Hearing, 8/27/12, at 8-9. On April 13, 2011, the trial court adjudicated Child dependent, and awarded CYF both legal and physical custody of Child. ***Id.*** at 10-13. Child has remained dependent since the adjudication.

On April 14, 2011, CYF established Family Service Plan ("FSP") objectives for both Father and Mother. ***Id.*** at 13-14. CYF revised the FSP objectives on September 1, 2011, and updated the FSP objectives on March 1, 2012 and July 25, 2012. ***Id.***

On June 12, 2012, CYF filed the termination and goal change petitions with regard to both parents. On August 27, 2012, the trial court held an evidentiary hearing on CYF's petitions. At the hearing, CYF presented the

testimony of Ms. Pam Hunt, the caseworker assigned to the family. Father testified on his own behalf, *via* telephone, from prison.²

In the decree and order entered on October 26, 2012, the trial court involuntarily terminated Father's parental rights and changed the permanency goal for Child to adoption. On November 21, 2012, Father filed notices of appeal from the decree and the order, along with concise statements of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b).

On appeal, Father raises two issues:³

I. Whether the [trial] court abused its discretion in terminating parental rights of [Father] against the sufficiency and weight of the evidence[?]

II. Whether the [trial] court abused its discretion in ordering a change of goal to adoption against the sufficiency and weight of the evidence by finding that [Child's] best interests would be served by terminating Father's parental rights by finding Father had been given a reasonable amount of time to achieve permanency due to incarceration[?]

Father's Brief at 6.

First, Father claims that the evidence is insufficient to support the termination of his parental rights to Child. Father also claims that the trial court's decree is against the weight of the evidence. Both claims are

² We note that, during the hearing, Father testified that he had one other child in the past and that, with respect to this other child, Father's parental rights were terminated. N.T. Hearing, 8/27/12, at 69-70.

³ Within Father's Rule 1925(b) statements, Father preserved both issues he currently raises on appeal.

premised upon Father's contention that he "has done everything he could do while incarcerated to maintain his parental duties" and to achieve his FSP goals. Father's Brief at 12-17. These claims fail.

In reviewing an appeal from the termination of parental rights, we utilize the following standard:

appellate 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 [that we] 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. As has been often stated, an abuse of discretion does not result merely because the reviewing court might have reached a different conclusion. Instead, a decision may be reversed for an abuse of discretion only upon demonstration of manifest unreasonableness, partiality, prejudice, bias, or ill-will.

As [was] 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 S.P., 47 A.3d 817, 826-27 (Pa. 2012) (some internal citations omitted).

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). 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.”

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). ***See In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*). In this case, the trial court terminated Father’s parental rights under sections 2511(a)(1), (2), (5), (8), and (b) of the Adoption Act. On appeal, however, we will focus on sections 2511(a)(1), (2), and (b).

In relevant part, section 2511 provides:

§ 2511. Grounds for involuntary termination

(a) General rule.--The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds:

- (1) The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.

(2) The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.

. . .

(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.

We have explained this Court's review of a challenge to the sufficiency of the evidence to support the involuntary termination of a parent's rights pursuant to section 2511(a)(1):

To satisfy the requirements of section 2511(a)(1), the moving party must produce clear and convincing evidence of conduct, sustained for at least the six months prior to the filing of the termination petition, which reveals a settled intent to relinquish parental claim to a child or a refusal or failure to perform parental duties. . . . Section 2511 does not require that the parent demonstrate both a settled purpose of relinquishing parental claim to a child and refusal or failure to perform parental duties. Accordingly, parental rights may be terminated pursuant to [s]ection 2511(a)(1) if the parent either demonstrates a settled purpose of

relinquishing parental claim to a child or fails to perform parental duties.

Once the evidence establishes a failure to perform parental duties or a settled purpose of relinquishing parental rights, the court must engage in three lines of inquiry: (1) the parent's explanation for his or her conduct; (2) the post-abandonment contact between parent and child; and (3) consideration of the effect of termination of parental rights on the child pursuant to [s]ection 2511(b).

In re Z.S.W., 946 A.2d 726, 730 (Pa. Super. 2008) (internal quotations and citations omitted).

Regarding the definition of "parental duties," this Court has stated as follows:

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

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

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

Parental duty requires that the parent act affirmatively with good faith interest and effort, and not yield to every problem, in order to maintain the parent-child relationship to the best of his or her ability, even in difficult circumstances. A parent must utilize all available resources to preserve the parental relationship, and must exercise reasonable firmness in resisting obstacles placed in the path

of maintaining the parent-child relationship. Parental rights are not preserved by waiting for a more suitable or convenient time to perform one's parental responsibilities while others provide the child with . . . her physical and emotional needs.

In re B., N.M., 856 A.2d 847, 855 (Pa. Super. 2004) (internal quotations and citations omitted).

In ***In re Adoption of S.P.***, our Supreme Court held:

Applying [***In re: Adoption of McCray***] the provision for termination of parental rights based upon abandonment, now codified as § 2511(a)(1), we noted that a parent "has an affirmative duty to love, protect and support his child and to make an effort to maintain communication and association with that child." . . . Where the parent does not exercise reasonable firmness in declining to yield to obstacles, his other rights may be forfeited.

In re Adoption of S.P., 47 A.3d at 828, quoting ***In re: Adoption of McCray***, 331 A.2d 652, 655 (Pa. 1975) (internal footnotes and some internal quotations omitted).

In ***In re Z.P.***, this Court instructed:

[t]o be legally significant, the [post-abandonment] contact must be steady and consistent over a period of time, contribute to the psychological health of the child, and must demonstrate a serious intent on the part of the parent to recultivate a parent-child relationship and must also demonstrate a willingness and capacity to undertake the parental role. The parent wishing to reestablish his parental responsibilities bears the burden of proof on this question.

In re Z.P., 994 A.2d 1108, 1119 (Pa. Super. 2010), quoting ***In re D.J.S.***, 737 A.2d 283, 286 (Pa. Super. 1999).

After we find the requirements of subsection (a)(1) satisfied, we proceed to review whether the requirements of subsection (b) are satisfied. ***In re Z.P.***, 994 A.2d at 1121. We have stated that the focus in terminating parental rights under section 2511(a) is on the parent, but it is on the child pursuant to section 2511(b). ***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), we consider whether termination of parental rights would best serve the developmental, physical, and emotional needs and welfare of the child. ***See In re C.M.S.***, 884 A.2d 1284, 1286-1287 (Pa. Super. 2005).

Intangibles such as love, comfort, security, and stability are involved in the inquiry into the needs and welfare of the child. The court must also discern the nature and status of the parent-child bond, with utmost attention to the effect on the child of permanently severing that bond.

Id. at 1287 (citations omitted).

With regard to section 2511(b), the Pennsylvania Supreme Court held:

If a court finds grounds for termination under subsection (a)[], a court must determine whether termination is in the best interests of the child, considering the developmental, physical, and emotional needs and welfare of the child pursuant to § 2511(b). In this regard, trial courts must carefully review the individual circumstances for every child to determine, *inter alia*, how a parent's incarceration will factor into an assessment of the child's best interest.

In re Adoption of S.P., 47 A.3d at 830-31.

As to section 2511(a)(1), the trial court set forth the following reasoning in support of its decision to terminate Father's parental rights.

CYF has proven by clear and convincing evidence that . . .
Father [has] failed to perform [his] parental duties. . . .

Father has been incarcerated for the length of placement and the four months that preceded placement. To his credit[,] Father has written to [] Child on a bi-weekly basis while incarcerated, and has made arrangements to participate in bi-weekly telephone calls with [] Child. However, Father's limited involvement with [] Child does not equate to the performance of parental duties. For the past [23] months ([19] in placement and four preceding placement), Father has had no physical contact with [] Child. All of [] Child's needs have been met by third parties. Father acknowledged that [] Child has no bond with him. Given [] Child's young age and the fact that she has not seen Father for twenty-three months, which represents more than half of her age, it is doubtful that [] Child would recognize Father if she saw him.

. . . Father [has] not performed parental duties for a period well in excess of six months and [his] parental rights should be terminated.

Once failure to perform parental duties is established, the second step of the analysis under 23 Pa.C.S.A. § 2511(a)(1) requires the [c]ourt to look at the explanation for the conduct, the post-abandonment contact, and the effect of the termination on the child.

. . . Father's only explanation is his incarceration. Father has reminded the [c]ourt that he was at one time the primary caregiver for [] Child. Father offered no explanation, however, as to why he could not control his actions and conduct towards Mother and remain in the community to continue in that role. Father's inability to follow the terms of his earlier probation resulted in his re-incarceration and his denial of parole on two occasions. Neither parent offered the [c]ourt an adequate explanation for his/her conduct.

As to post-abandonment contact, . . . Father's contact has been limited to telephonic communication and letters he has written to [] Child. Given [] Child's young age, Father has acknowledged that he and [] Child could not form a bond by

telephone. Further, it is doubtful, given [] Child's age and the length of time that has passed, that she can truly acknowledge or understand the identity of the person on the other end of the phone or the sender of the written communications from Father. Father requested no visits at his place of incarceration prior to the [Change of Goal/Termination of Parental Rights ("COG/TPR")] hearing.

Finally, the [c]ourt must consider the effect that termination will have upon the [c]hild. The [c]ourt believes that termination of parental rights will have no significant effect upon [] Child. . . . Father has essentially been absent from her life for nearly two years and she would have little if any memory of him. [] Child looks to her foster family to meet her needs. She seeks their love and security when she is [in] need of comfort or consolation. The foster parents have provided her with a safe and secure life, which has been enriched by the company of her half-sibling. To disturb her new family relationship would have a very devastating effect upon her in comparison to the insignificant effect that termination of parental rights of . . . Father could have.

Therefore, for all the reasons stated above, CYF has proven by clear and convincing evidence that termination of parental rights to [] Child is justified pursuant to Section 2511(a)(1). Furthermore, termination of parental rights would serve the best needs and welfare of the child.

Trial Court Opinion, 10/26/12, at 12-15.

The trial court thoroughly considered the facts and determined that Father had failed to perform his parental duties for the requisite six-month period. The trial court considered that Father's explanation for his failure to perform his parental duties and for his post-abandonment conduct was his incarceration. However, the trial court rejected Father's bi-weekly letters and phone calls from prison as sufficient to amount to the performance of his parental duties or to have developed a bond with the very young child.

We have instructed:

It is incumbent upon a parent when separated from his child to maintain communication and association with the child. This requires an affirmative demonstration of parental devotion, imposing upon the parent the duty to exert himself, to take and maintain a place of importance in the child's life.

In re G.P.–R., 851 A.2d 967, 976 (Pa. Super. 2004).

After our careful review of the trial court's application of the law to the facts of this case, we find no reason to disturb the trial court's conclusions.

We have stated:

a "parent's basic constitutional right to the custody and rearing of his child is converted, upon the failure to fulfill parental duties, to the child's right to have proper parenting and fulfillment of his or her potential in a permanent, healthy, safe environment." ***In re N.M.B.***, 856 A.2d 847, 856 (Pa. Super. 2004), *appeal denied*, 582 Pa. 718, 872 A.2d 1200 (2005). Moreover, "the parent wishing to reestablish [his or her] parental responsibilities bears the burden of proof relative to post-abandonment contact." ***See In re K.Z.S.***, 946 A.2d 753, 759 (Pa. Super. 2008).

In re Adoption of C.L.G., 956 A.2d at 1006. As we stated in ***In re Z.P.***, 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." ***In re Z.P.***, 994 A.2d at 1125. We find that the trial court's determinations regarding section 2511(a)(1) are supported by ample, competent evidence in the record. ***In re Adoption of S.P.***, 47 A.3d at 826-27.

Next, we address the sufficiency of the evidence to support the termination of Father's parental rights under section 2511(a)(2). The Supreme Court set forth our inquiry under section 2511(a)(2) as follows.

[Section] 2511(a)(2) provides [the] statutory ground[] for termination of parental rights where it is demonstrated by clear and convincing evidence that "[t]he 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." . . .

[The Supreme Court] has addressed incapacity sufficient for termination under § 2511(a)(2):

A decision to terminate parental rights, never to be made lightly or without a sense of compassion for the parent, can seldom be more difficult than when termination is based upon parental incapacity. The legislature, however, in enacting the 1970 Adoption Act, concluded that a parent who is incapable of performing parental duties is just as parentally unfit as one who refuses to perform the duties.

In re Adoption of J.J., 515 A.2d 883, 891 (Pa. 1986), quoting ***In re: William L.***, 383 A.2d 1228, 1239 (Pa. 1978).

In re Adoption of S.P., 47 A.3d at 827.

This Court has stated that a parent is required to make diligent efforts towards the reasonably prompt assumption of full parental responsibilities.

In re A.L.D. 797 A.2d 326, 337 (Pa. Super. 2002). A parent's vow to cooperate, after a long period of uncooperativeness regarding the necessity

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or availability of services, may properly be rejected as untimely or disingenuous. *Id.* at 340.

Recently, our Supreme Court instructed:

incarceration is a factor, and indeed can be a determinative factor, in a court's conclusion that grounds for termination exist under § 2511(a)(2) where the repeated and continued incapacity of a parent due to incarceration has caused the child to be without essential parental care, control or subsistence and [] the causes of the incapacity cannot or will not be remedied.

In re Adoption of S.P., 47 A.3d at 828.

After re-visiting its decision in ***In re: R.I.S.***, 36 A.3d 567, 572 (Pa. 2011), regarding incarcerated parents, the Supreme Court stated:

we now definitively hold that incarceration, while not a litmus test for termination, can be determinative of the question of whether a parent is incapable of providing "essential parental care, control or subsistence" and the length of the remaining confinement can be considered as highly relevant to whether "the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent," sufficient to provide grounds for termination pursuant to 23 [Pa.C.S.A.] § 2511(a)(2). [***See In re: E.A.P.***, 944 A.2d 79, 85 (Pa. Super. 2008)] (holding termination under § 2511(a)(2) supported by mother's repeated incarcerations and failure to be present for child, which caused child to be without essential care and subsistence for most of her life and which cannot be remedied despite mother's compliance with various prison programs). If a court finds grounds for termination under subsection (a)(2), a court must determine whether termination is in the best interests of the child, considering the developmental, physical, and emotional needs and welfare of the child pursuant to § 2511(b). In this regard, trial courts must carefully review the individual circumstances for every child to determine, *inter alia*, how a parent's incarceration will factor into an assessment of the child's best interest.

In re Adoption of S.P., 47 A.3d at 830-31 (some internal citations omitted).

The trial court set forth the following reasoning in support of its decision to terminate Father's parental rights under section 2511(a)(2), based on the Supreme Court's decision in ***In re Adoption of S.P.***

There is no certainty that Father will be released from incarceration prior to May 27, 2013, his maximum sentence date, which is another seven months from now. There is no certainty as to where Father will reside upon release, or what income he will have to support himself. Given Father's criminal history, an evaluation would be necessary prior to placing [] Child in his custody to determine whether he poses a threat of harm or is [in] need of any counseling. Certainly, at the very least, some therapy sessions would be necessary to re-introduce Father to this young child. All of these steps will further delay any possibility of reunification to a time that would likely exceed the thirty-six months of foster care placement.

The [trial court] finds that Father has not been able to remedy the conditions that led to placement (i.e., his inability to parent in Mother's absence due to his incarceration) within a reasonable period of time and will not be able to do so for a considerable period of time.

. . .

Th[e trial c]ourt considers not only the remaining period of incarceration, but the nineteen months that have already passed.

Trial Court Opinion, 10/26/12, at 16-18.

Pursuant to the Supreme Court's decision in ***In re Adoption of S.P.***, the trial court properly considered the history of the case, including Father's present incarceration and the length of his remaining incarceration, and

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Father's lack of plans to care for Child. Importantly, the trial court considered that Father has been incarcerated and re-incarcerated for his drug-related conduct, and that Father violated his parole after he was involved in a physical altercation with Mother. After our careful review of the record in this matter, including the testimony and the exhibits admitted into evidence, we find that the trial court's credibility and weight determinations regarding section 2511(a)(2) are supported by competent evidence in the record. ***In re Adoption of S.P.***, 47 A.3d at 826.

With regard to section 2511(b), the trial court found that Father had absolutely no in-person contact with Child and made no effort to be involved in her life, aside from his bi-weekly letters and telephone calls. Father had never visited with Child while he was incarcerated. The trial court specifically found that there is no bond between Child and Father that would be harmed by the termination. The trial court could have appropriately made such a factual finding based on the testimony of the CYF caseworker, Pam Hunt. We have stated that, when conducting a bonding analysis, the court is not required to use expert testimony, but may rely on the testimony of social workers and caseworkers. ***In re Z.P.***, 994 A.2d at 1121. This Court has observed that no bond worth preserving is formed between a child and a natural parent where the child has been in foster care for most of the child's life, and the resulting bond is attenuated. ***In re K.Z.S.***, 946 A.2d 753, 764 (Pa. Super. 2008).

The trial court ruled that the termination of Father's parental rights was in Child's best interests, and that the termination would serve Child's well-being by allowing her to be with her foster family, with whom she was bonded. Pursuant to our Supreme Court's recent pronouncement in ***In re Adoption of S.P.***, we find no merit to Father's argument that the trial court abused its discretion with regard to finding sufficient evidence to support the termination of his parental rights under section 2511(b). ***See In re K.Z.S.***, 946 A.2d 762-63.

We find that the trial court did not abuse its discretion in terminating Father's parental rights to Child on the basis of section 2511(a)(1), (2), and (b). To the extent that Father wishes to have an opportunity to bond with Child, this Court has held, "[t]he 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); ***In re Adoption of C.L.G.***, 956 A.2d at 1007-1008. In ***In re B., N.M.***, we stated, "[a] parent cannot protect his parental rights by merely stating that he does not wish to have his rights terminated." ***In re B., N.M.***, 856 A.2d at 855. Thus, we reject Father's argument that he wishes to have a relationship with Child and requires more time to address his issues. As we stated in ***In re Z.P.***, 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." ***In re Z.P.***, 994 A.2d at 1125.

Next, we address Father's argument concerning the change of Child's permanency goal from reunification to adoption. Father contends that the trial court's determination that the change of goal would be in Child's best interests is "against the sufficiency and weight of the evidence" because Father has not been afforded a reasonable amount of time to achieve permanency, given his incarceration. Father's Brief at 18-19.

Our Supreme Court set forth our standard of review for dependency cases as follows.

the standard of review in dependency cases requires an appellate court to accept the findings of fact and credibility determinations of the trial court if they are supported by the record, but does not require the appellate court to accept the lower court's inferences or conclusions of law. Accordingly, we review for an abuse of discretion.

In re R.J.T., 9 A.3d at 1190.

Furthermore, this Court has stated:

Placement of and custody issues pertaining to dependent children are controlled by the Juvenile Act [42 Pa.C.S.A §§ 6301-6365], which was amended in 1998 to conform to the federal Adoption and Safe Families Act ("ASFA"). The policy underlying these statutes is to prevent children from languishing indefinitely in foster care, with its inherent lack of permanency, normalcy, and long-term parental commitment. Consistent with this underlying policy, the 1998 amendments to the Juvenile Act, as required by the ASFA, place the focus of dependency proceedings, including change of goal proceedings, on the child. Safety, permanency, and well-being of the child must take precedence over **all** other considerations, including the rights of the parents.

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In re N.C., 909 A.2d 818, 823 (Pa. Super. 2006) (internal citations and footnotes omitted) (emphasis in original).

Here, considering Child's permanency needs and welfare, the trial court stated:

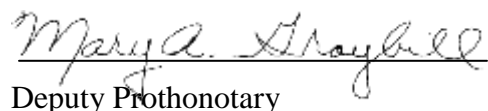
To await the uncertainty of Father's release date and transition back into the community, coupled with [] Child's separation from her foster family and half-sibling[,] would significantly delay permanency for [] Child, who has already waited more than [19] months. [] Child deserves better. She is bonded to her foster family and her half-sibling[,] and the disturbance of that bond would have a significant detrimental effect on [] Child. [] Child's needs and welfare will not be served by further delay[,] waiting and hoping that Father can pull himself together and establish a stable living environment for [] Child.

Trial Court Opinion, 10/26/12, at 17.

We find the trial court's credibility and weight determinations are supported by the evidence. ***In re R.J.T.***, 9 A.3d at 1190. Thus, we find no abuse of the trial court's discretion in changing Child's permanency goal to adoption. Accordingly, we affirm the order of the trial court changing the permanency goal to adoption.

Decree and order affirmed.

Judgment Entered.


Deputy Prothonotary

Date: 5/21/2013