

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: D.R.K., C.M.K., D.M.M., D.L.A.M.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: T.A.K., MOTHER

No. 2252 MDA 2012

Appeal from the Decrees November 15, 2012
In the Court of Common Pleas of Berks County
Orphans' Court at Nos.: 82703, 82704, 82705, 82706

BEFORE: DONOHUE, J., ALLEN, J., and PLATT, J.*

MEMORANDUM BY PLATT, J.

FILED MAY 24, 2013

T.A.K. (Mother) appeals from the decrees of the Court of Common Pleas of Berks County, entered November 15, 2012, that terminated her parental rights to her children, D.R.K., female, age seven; C.M.K., female, age five; D.M.M., male, age two, and D.L.A.M., female, age one¹ (Children), and authorized the adoption of the Children without notice to or consent of Mother (or their fathers).² We affirm.

* Retired Senior Judge assigned to the Superior Court.

¹ Ages are at the time that the petitions were filed.

² The trial court also terminated the parental rights of the putative or unknown fathers of the Children. None filed appeals of those terminations.

None of Mother's six children are in her care. Mother's two oldest children, who are not subject to this litigation, reside in New Jersey with their maternal grandmother. Mother first became involved with Berks County Children and Youth Services (BCCYS) in November of 2003, when BCCYS received reports about the stability of her mental health, lack of appropriate parenting skills, poor housekeeping, unstable housing and income, and incidents of domestic violence with her paramours. (**See** N.T., 11/15/12, at 46-47). BCCYS received the final report on November 16, 2011, when D.L.A.M. was admitted to the Penn State Milton S. Hershey Medical Center (Hershey) suffering from vomiting, head injuries, and bruises throughout her body. (**See id.** at 47-48). The Child Safety Team at Hershey diagnosed her with non-accidental trauma because she suffered bilateral subdural hematomas, spinal cord subdural hematomas, bilateral retinal hemorrhages, and fingertip bruising on her trunk. (**See id.** at 48). BCCYS investigated and identified Mother's paramour, D.M., as the perpetrator of this physical abuse.³ (**See id.**). Mother placed D.R.K., D.M.M., and C.M.K. with BCCYS voluntarily on November 17, 2011. (**See id.** at 47-48). Mother placed D.L.A.M. with BCCYS voluntarily on November 22,

³ During the investigation, C.M.K., using a doll, demonstrated how D.M. violently shook D.L.A.M. and slammed his hand down on her chest. (**See** N.T., 11/15/12, at 48, 49). D.M. was convicted of simple assault and endangering the welfare of a child, on October 18, 2012. (**See id.** at 49).

2011, upon her discharge from Hershey. (**See id.** at 48). BCCYS petitioned for dependency and custody of the Children on December 16, 2011, based on the outcome of its investigation into D.L.A.M.'s injuries. The trial court adjudicated the Children dependent on January 25, 2012, and transferred them to the temporary legal custody of BCCYS. (**See id.** at 50). The Children's primary goal was set as reunification with a concurrent goal of adoption. (**See id.**).

The trial court ordered Mother to undergo parenting education, a mental health evaluation and any recommended treatment, domestic violence counseling, and casework sessions and any recommendations. She was also required to establish and maintain stable and appropriate housing and income, sign all necessary releases, and keep BCCYS informed of any changes in her residence or income. Mother was to have supervised visitation with the Children. (**See id.** at 50-51).

During the first review period, from January 25, 2012 to May 1, 2012, Mother resided with family friends. She was unemployed, but received social security disability benefits connected to her mental illness. She participated in casework sessions with BCCYS and the Children's Home of Reading.

Mother submitted to a psychological evaluation with Robert M. Nagle, Ph.D., on April 16, 2012 and May 7, 2012. According to Dr. Nagle, Mother admitted that her marriage to her estranged husband had been abusive and

that she was a victim of domestic violence. She told Dr. Nagle that she did not believe that D.M. hurt D.L.A.M. and she attempted to incriminate D.M.'s sister as the perpetrator. Dr. Nagle noted that Mother was restless, agitated, distracted, nervous, and depressed. According to Dr. Nagle, Mother's judgment was limited and her insight was poor. She had a high need for recognition and her thinking was obsessive. Dr. Nagle further noted that Mother had a significantly high lie scale score and that she expended a lot of energy glossing over any of her flaws. She had little insight into her own behavior and he believed that she was a poor candidate for psychotherapy. He was extremely concerned regarding Mother's ability to care for the Children due to her history of rejection, as well as her insufficient attention to the medical and emotional needs of the Children. He was also extremely concerned that Mother allowed her estranged husband to abuse her older children and her paramour to abuse her youngest child. Dr. Nagle believed that Mother was at risk for becoming involved with abusive men and was at a significantly high risk for chronic mental health problems. Dr. Nagle recommended that Mother continue to participate in therapy, medication management, domestic violence counseling, and parenting education. (**See** Nagle Psychological Evaluation, BCCYS Exhibit 66).

BCCYS held a Family Group Decision Making (FGDM) conference on April 27, 2012, where Mother presented numerous ideas and suggestions regarding the Children and their care going forward. BCCYS caseworker,

Melissa Orzechowski, testified that when D.M. was sentenced for his assault on D.L.A.M., the sentencing order specifically forbade him to have any contact with the Children. (**See** N.T., 11/15/12, at 51). After the FGDM conference and throughout the month of May of 2012, Mother began having extended visits with the Children in her home. (**See** BCCYS Termination Hearing report, BCCYS Exhibit 87, at 13).

Mother submitted to a non-offending parent evaluation with Tracy Holmes of Commonwealth Clinical Group on May 17, 2012. During the evaluation, Mother admitted that she had a violent relationship with her ex-husband and that she left him when he started hitting the Children. She said that she had a good relationship with D.M., and that "it never did get bad with h[i]m, I used to push the limits and buttons with him because I was used to it with my husband and he never hit me." (Non-Offending Parent Intake Assessment, BCCYS Exhibit 70, at 2). She said that she was depressed because the Children were not with her because "my kids are my world." (**Id.** at 3). Ms. Holmes noted that Mother was very conflicted about the abuse and was still struggling to admit that D.M. hurt D.L.A.M. Ms. Holmes recommended that Mother participate in individual counseling as well as parenting education. Ms. Holmes specifically noted that Mother needed to learn how to keep the Children safe and how to recognize red flags of violent partners. (**See id.** at 6).

On May 25, 2012, BCCYS received information that Mother had been having contact with D.M. by telephone and in writing, and that she had allowed D.M. to have telephone contact with the Children. (**See** N.T., 11/15/12, at 53; BCCYS Termination Hearing report, BCCYS Exhibit 87, at 13-14). In response to that report, BCCYS obtained recordings of 19.9 hours of telephone calls that occurred between Mother and D.M. from March 8, 2012 to June 11, 2012. Mother spent \$332.71 on those telephone calls. (**See** N.T., 11/15/12, at 54; BCCYS Termination Hearing report, BCCYS Exhibit 87, at 14; Transcripts of Phone Calls, BCCYS Exhibits 57A to 60). Throughout the conversations, Mother continually stated that she knew she should not be having contact with D.M., but nonetheless discussed deceiving BCCYS so that D.M. could have contact with the Children upon his release from prison. She also repeatedly stated that she believed D.M. was innocent. In addition, Mother allowed D.M. to speak with the Children on at least six occasions. Mother and D.M. also exchanged frequent written communications throughout the same time. (**See** N.T., 11/15/12, at 53).

Mother submitted to a psychiatric evaluation with Larry A. Rotenberg, M.D., on July 3, 2012. During that evaluation, Mother stated that she suffered from depression, anxiety and panic attacks, and that she was in counseling. (**See** Rotenberg Report, BCCYS Exhibit 69, at 3). Mother specifically stated, "they say [D.M. shook D.L.A.M]." (**Id.** at 6). She stated that she did not know what happened to D.L.A.M. because she was not there

and that she had passed a polygraph. (**See id.**). Dr. Rotenberg noted in his report that Mother's judgment was poor, especially when it came to her choice of men. He further noted that Mother had very little capacity to self-observe and little personal insight. (**See id.** at 11). Dr. Rotenberg diagnosed Mother with personality disorder NOS (not otherwise specified), with narcissistic and antisocial features. (**See id.** at 12). He noted that, initially, on a superficial level, Mother gave a good impression because she was pleasant, polite and said "all the right things." (**Id.**). Dr. Rotenberg specifically stated, "[h]owever, the closer one gets to her, when one pokes ever so slightly, one gets a degree of characterological impairment which is ubiquitous and pervasive, and seems to touch every aspect of her life." (**Id.** at 12-13). He believed that Mother's "notion" that she suffered from depression, panic, and anxiety was problematic and supported by her family reports of her lying and manipulative nature. (**Id.** at 13). Dr. Rotenberg specifically stated, "[i]n all my years, I have never seen anyone as young and healthy as she, with that kind of diagnosis who could not be treated very successfully with a combination of the proper medications and cognitive behavioral therapy." (**Id.** at 13). Dr. Rotenberg testified that Mother has neither the proper medication nor the proper therapy, however, she seems uninterested in treatment. (**See** N.T., 11/15/12, at 12).

Dr. Rotenberg noted that Mother continued to be involved and invested with her paramour, D.M., and that she was planning to resume

their relationship upon his release from prison. Dr. Rotenberg specifically stated, “[t]here is not one atom of insight by her into this situation and not one atom of appreciation for the fact that she needs to change[,] and she is not going to change” (*Id.* at 14). During his testimony, Dr. Rotenberg opined that Mother was not an appropriate resource for the Children; Mother is “good at having children[,] but not at being a mother.” (*Id.* at 12). He further testified that he had concerns regarding Mother when she continued to foster a relationship with D.M. He found this indicative of Mother’s inability to put aside her own needs. He believed that her sudden “conversion to virtue” (Mother had spoken against D.M. at his sentencing) was not credible and not based on a process, but rather on her immediate need to get the Children back and say certain things to make that happen. (*Id.* at 19-20).

On August 7, 2012, Mother’s domestic violence counselor, Julie Karaisz, M.S.W., issued a Treatment Progress Summary in which she noted that Mother still did not believe that D.M. had hurt D.L.A.M. Ms. Karaisz further noted that Mother admitted to being a compulsive liar and displayed minimal insight into safety issues regarding the Children.⁴ In addition,

⁴ Ms. Karaisz testified that she has been counseling Mother since May 17, 2012, and that they had had sixteen sessions. She testified that, although Mother’s attendance has been good, there continue to be barriers to Mother’s progress. (*See* N.T., 11/15/12, at 33).

Mother displayed personality characteristics consistent with borderline personality disorder including unstable interpersonal relationships, low self-image, instability of mood, and abrupt changeability between depression and anxiety. Mother focused on her own turmoil and suffering. In addition, Mother continued to demonstrate an inability to protect the Children. Ms. Karaisz testified that a child in Mother's care would be a nine on a safety risk scale of ten. (**See id.** at 36). Mother further demonstrated heightened anxiety and difficulty with recognizing internal and external stressors related to unhealthy behavior. Mother continued to utilize defense mechanisms such as denial, blame, minimization and compulsive lying. (**See** Treatment Progress Summary, BCCYS Exhibit 71, at 1-2).

At the hearing on November 15, 2012, Ms. Karaisz testified:

This is what I see. On February 12th, [D.M.] was arrested for child abuse. Not until recently [Mother] stopped communication with him . . . what she has demonstrated is a history of aligning herself with unhealthy men that have abused her children . . . she was making poor judgment calls and constantly putting her children in danger, in imminent danger. . . . It is my job to provide [Mother] information. It is [Mother's] job to utilize it and change.

(N.T., 11/15/12, at 38-39).

Ms. Karaisz further testified that Mother did not end contact with D.M. until after BCCYS became aware of the contact. She stated, "[t]here is no internal regulation going on at this point." (**Id.** at 42). Mother was discharged from treatment at the Berks Counseling Center on September 28, 2012, for her failure to attend counseling sessions. At the permanency

review hearing on August 16, 2012, the trial court changed the Children's primary permanency goal to adoption.

BCCYS recommended the termination of parental rights because Mother failed to remediate any of the issues that necessitated the placement of the Children. (**See id.** at 57). She has not obtained ongoing treatment or medication to stabilize her mental health. (**See id.** at 63). She has not made any progress with domestic violence counseling. (**See id.** at 33-36). Mother continually places herself above the emotional needs of the Children.⁵ (**See id.** at 56-57). In addition, for four months, Mother deceived BCCYS by letting them believe that she severed her relationship with D.M. Even after being confronted with the reports of contact with D.M., Mother adamantly denied both written and verbal communication. Ms. Orzechowski testified that she had to play back one of the telephone conversations for Mother before she finally admitted to the contact. (**See id.** at 55). Ms. Orzechowski testified that the termination of parental rights would not have a negative impact on the Children.

According to Ms. Orzechowski, the Children run to their foster parents at the end of visits and look to their foster parents to meet all of their needs.

⁵ At a visit with the Children in August of 2012, Mother told the Children that "they needed to forget her." (N.T., 11/15/12, at 56). She then gave them a photograph and stated that they would have to rip it up later. When C.M.K. began to cry, Mother made no attempt to comfort her. (**See id.** at 56-57).

(**See id.** at 84-85). Ms. Orzechowski specifically stated that the termination of parental rights would be in the Children's best interests so that they could move on and lead healthy, safe lives. (**See id.** at 70).

BCCYS filed its Petitions for the Involuntary Termination of Mother's Parental Rights to the Children on August 8, 2012. The trial court held a hearing on those petitions on November 15, 2012, and issued its decrees terminating Mother's parental rights on the same date. Mother filed her notice of appeal and statement of errors complained of on appeal on December 14, 2012.

Mother raises the following issues on appeal:

1. Did the trial court commit reversible error when it failed to consider the bond of the parent and child as well as whether severing the parent-child relationship is in the Children's best interest and welfare?
2. Did the trial court commit reversible error in changing the goal for the Children from reunification to termination of parental rights, where [Mother] complied with her permanency plan, the reason for original placement no longer existed?

(Mother's Brief, at 5).

We review the appeal in accordance with 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. 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 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.**, [*supra*] 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) (most citations omitted).

"[T]he burden is upon [the petitioner] to prove by clear and convincing evidence that its 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, we have explained that: "[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 hesitance, of the truth of the precise facts in issue." **Id.** (quoting **In re J.L.C.**, 837 A.2d 1247, 1251 (Pa. Super. 2003)).

Here, we conclude that the trial court properly terminated Mother's parental rights pursuant to subsection 2511(a)(1), which provides, in pertinent part:

§ 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.

* * *

(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)(1), (b).

To terminate parental rights pursuant to section 2511(a)(1), the person or agency seeking termination "must . . . demonstrate[] through clear and convincing evidence: that for a period of at least six months prior to the filing of the petition, the parent's conduct demonstrates [a] settled purpose to relinquish parental rights or that the parent has refused or failed

to perform parental duties.” ***In re Adoption of M.E.P.***, 825 A.2d 1266, 1272 (Pa. Super. 2003).

With respect to section 2511(a)(1), our Supreme Court has held,

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 Section 2511(b).

In re Adoption of Charles E.D.M., 708 A.2d 88, 92 (Pa. 1988) (citation omitted). Further,

the trial court must consider the whole history of a given case and not mechanically apply the six-month statutory provision. The court must examine the individual circumstances of each case and consider all explanations offered by the parent facing termination of his or her parental rights, to determine if the evidence, in light of the totality of the circumstances, clearly warrants the involuntary termination.

In re B., N.M., 856 A.2d 847, 855 (Pa. Super. 2004), *appeal denied*, 872 A.2d 1200 (Pa. 2005) (citations omitted).

Mother discusses the termination of her rights pursuant to section 2511(b) in her first issue and pursuant to subsection (a) in her second. We will analyze them in reverse order.

In her second issue, where she discusses section 2511(a), Mother argues that the trial court erred in terminating her parental rights where the

reason for the original placement of the Children no longer existed.⁶ (**See** Mother's Brief, at 14). Mother's argument is not relevant to our discussion, however, because she bases it on section 2511(a)(8), while BCCYS filed its petitions in each Child's case pursuant to sections 2511(a)(1) and (2). A review of the record reveals sufficient evidence to terminate Mother's parental rights pursuant to both of those subsections. We will discuss the evidence as it applies to section 2511(a)(1).

The evidence presented at trial, particularly the psychological evidence, demonstrated that Mother has refused or failed to perform her duty as a parent to keep the Children safe. The trial court summarized Ms. Karaisz' testimony as follows:

Mother's domestic violence clinician has been treating Mother since May 2012. She testified that Mother has not displayed any insight into managing the risk to her [C]hildren and has not displayed any improvement in her insight about aligning herself with violent men. Mother uses defensive techniques such as minimization, blame and denial and admitted that she is a compulsive liar. It was clear to the counselor that Mother's psychological diagnoses present barriers to successful treatment. Given the lack of progress in treatment and Mother's constantly putting the children in imminent danger, the counselor felt that on a scale of 1 to 10 for risk, Mother presented as a 9.

(Trial Court Opinion, 1/10/13, at 5-6).

⁶ In her second question presented, Mother claims that the trial court erred in "changing the goal for the Children from reunification to termination of parental rights[.]" (Mother's Brief, at 5). Despite her use of the phrase "changing the goal," Mother actually discusses the termination of her rights and not the change of the Children's goal, and we will thus not address the issue of goal change.

Mother's psychiatric evaluator, Dr. Rotenberg, also found Mother incapable of successful parenting. We again quote the trial court's succinct summary:

Because of her lack of insight into her situation, lack of appreciation for the fact that she needs to change, and lack of interest in treatment, [Dr. Rotenberg] found Mother to be a poor candidate for therapy. He stated his belief that there are no measures that could be taken to make Mother a better parent or to help her choose better men. She blames others for her situation and wants the world to change instead of her. She glosses over her flaws and in fact failed two MMPI [Minnesota Multiphasic Personality Inventory] lie scales. The evaluator pointed out the obvious by stating that the normal reaction of a mother would be to flee a man who almost killed her child, not to encourage an ongoing relationship with him as well as between him and the child. [Dr. Rotenberg] feared that since Mother went from bad to worse in her choice of men with whom to procreate, her next choice could be worse still. In short, Mother does not have the ability to put the needs of her [C]hildren before her own needs.

(Id. at 6).

There is sufficient clear and convincing evidence in the record to support the termination of Mother's parental rights pursuant to section 2511(a)(1). Mother's psychological condition, which she is uninterested in treating, is the root cause of her continuing failure to perform her parental duties in that she will not provide a safe home for the Children. The trial court did not abuse its discretion when it terminated Mother's parental rights pursuant to section 2511(a)(1). **See** 23 Pa.C.S.A. § 2511(a)(1).

We next turn to Mother's issue in which she alleges "that the court made reversible error when it terminated her parental rights without examining the status of the parent-child bond." (Mother's Brief, at 14).

The Adoption Act provides that a trial 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 Act does not make specific reference to an evaluation of the bond between parent and child, but our case law requires the evaluation of any such bond. **See *In re E.M.***, 620 A.2d 481 (Pa. 1993). However, this Court has held that the trial court is not required by statute or precedent to order a formal bonding evaluation performed by an expert. ***In re K.K.R.-S.***, 958 A.2d 529, 533 (Pa. Super. 2008).

In her argument regarding section 2511(b), Mother complains that, "no bonding evaluation was ever performed[,]" and that this lack was "contrary to case law[.]" (Mother's Brief, at 12). We disagree with Mother to the extent that she refers to a formal bonding evaluation, because no such evaluation is required. **See *In re K.K.R.-S.***, *supra* at 533. Section 2511(b) does require the trial court to consider the relationship between a parent and a child to determine the effect of the termination of a parent's rights on the "developmental, physical and emotional needs and welfare of the child." 23 Pa.C.S.A. 2511(b). In the case before us, the trial court found:

The [C]hildren are doing well in their foster placements. The [C]hildren are excited to see their foster parents at the end of visits with Mother. Given that Mother has told the [C]hildren that they need to forget her and did not even console C.M.K. when she began to cry, it is clear that it would be in their best interests physically as well as emotionally to remain out of Mother's care.

. . . Clearly the [C]hildren's right to grow up in a stable, permanent, healthy, safe environment where their developmental, physical and emotional needs can be met supersedes Mother's request to have her children returned to her or to have more time with them. The issue before the [c]ourt was the welfare of the [C]hildren, not the welfare of Mother.

(Trial Ct. Op., 1/10/13, at 7-8).

Ms. Orzechowski's testimony supports the court's conclusion regarding the Children's well-being. Ms. Orzechowski observed that the Children run to their foster parents and look to them for all their needs. (**See** N.T., 11/15/12, at 84-85). She specifically testified that the termination of Mother's parental rights would be in the Children's best interests. (**See id.** at 70). Mother's claim that the trial court did not consider the bond between Mother and the Children is without merit.

Accordingly, for the reasons stated, we affirm the trial court's decrees terminating Mother's parental rights pursuant to 23 Pa.C.S.A. §§ 2511(a)(1) and (b).

Decrees affirmed.

J-S22032-13

Judgment Entered.

Mary A. Graybill
Deputy Prothonotary

Date: 5/24/2013