NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: M.L.	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	
APPEAL OF: R.L., FATHER	
	No. 2305 EDA 2012

Appeal from the Order of July 23, 2012
In the Court of Common Pleas of Philadelphia County
Family Court at No(s): CP-51-AP-000319-2012
FID:51-FN-001066-2011

BEFORE: OLSON, J., WECHT, J., and COLVILLE, J.*

MEMORANDUM BY WECHT, J.: **FILED MAY 03, 2013**

Appellant, R.L. ("Father"), appeals from the order entered on July 23, 2012, in the Philadelphia County Court of Common Pleas, Family Court Division, terminating his parental rights to his son, M.L. (born in November of 2010) ("Child"). We affirm. Additionally, we grant the Motion for Leave to Withdraw as Counsel filed by Father's counsel.

The relevant facts and procedural history of this case are as follows. The Philadelphia Department of Human Services, Children and Youth Division ("DHS") received a General Protective Services ("GPS") report regarding T.O. ("Mother") and Child on December 1, 2010, due to the fact that, when Mother gave birth to Child in November of 2010, both tested positive for

---

* Retired Senior Judge assigned to the Superior Court.

cocaine. Child also was alleged to have been born several months premature, with a low birth weight. Trial Court Opinion ("T.C.O."), 11/6/12, at 1. The GPS report also alleged that Father has had twenty other children, and that he threatened DHS by stating that DHS was not going to take custody of Child. ***Id***.

In early December of 2010, Child was discharged from the hospital and began living with Mother's cousin ("S.S."). At that time, neither parent visited nor provided for Child. A Family Service Plan ("FSP") meeting was held on February 11, 2011. On February 24, 2011, an Order of Protective Custody ("OPC") was issued, in which Child was ordered to remain in the custody of S.S. On February 25, 2011, the trial court held a Shelter Care hearing and granted temporary custody of Child to DHS. ***Id.*** at 2. Following a hearing, the trial court adjudicated Child dependent on March 14, 2011. The trial court referred both parents to the Clinical Evaluation Unit ("CEU") for drug screening, assessment, and monitoring. Father and Mother were also offered biweekly supervised visits at DHS. ***Id***.

On February 13, 2012, Child's permanency goal was changed from reunification to adoption. On July 5, 2012, DHS filed a petition for involuntary termination of parental rights of Father to Child.[1] The trial court held a hearing on July 23, 2012.

---

[1] The trial court also involuntarily terminated Mother's parental rights on July 23, 2012. Mother filed an appeal from the trial court's decision on
(Footnote Continued Next Page)

Marquis Mosley, a DHS social worker, testified at the termination hearing that, although Father and Mother were a couple at the time of Child's birth, they did not live together. Notes of Testimony ["N.T."], 7/23/12, at 7. She determined that, at the time of Child's birth, Mother did not have suitable housing or the skills necessary to care for Child, and Father also did not have the appropriate knowledge and skills to care for Child on his own. ***Id***. Both parents were again referred to CEU for drug screens and for assessments and treatments. They also were referred to the Achieving Reunification Center ("ARC") for all other appropriate services. ***Id.*** at 9.

Ms. Mosley testified that Father was referred to ARC on two separate occasions for the completion of his FSP objectives, which included anger management classes, parenting classes, and domestic violence classes. ***Id.*** at 14. However, Father stated that he was not going to attend ARC sessions "because no one was going to tell [him] what [he] needed to do." ***Id***. On December 16, 2011, ARC sent a letter to DHS indicating that Father refused to accept services. ***Id***. Ms. Mosely further stressed that DHS referred Father to Menergy for free domestic violence counseling, but Father refused to attend the sessions. ***Id.*** at 15.

(Footnote Continued) ———————————

August 22, 2012, at 2358 EDA 2012. This Court affirmed the trial court's decision by memorandum opinion filed February 7, 2013.

Moreover, Ms. Mosely observed that anger management and domestic violence were FSP objectives for Father because he is "very hostile and aggressive." ***Id.*** at 14. Parenting classes also were required because Father's hostility could impact his ability to parent Child. ***Id***. Ms. Mosely noted that Father was hostile and aggressive to her on three separate occasions. ***Id.*** at 15-16. Furthermore, Ms. Mosely testified that Father told her that she was "not an adult," and that he would not listen to anything that she had to say. Father also reported her to the Commissioner's Office. ***Id.*** at 16. Father informed Ms. Mosely that the "crackers" could not tell him what to do since he was the Father of twenty-seven children and thirty-one grandchildren. ***Id.*** Next, Ms. Mosely expressed her own feelings of fear when around Father, and always made sure that DHS security staff was present when she met Father. ***Id.*** Ms. Mosely also testified that the trial court had issued a stay-away order protecting Child's caregiver, S.S., as Father threatened her during the first permanency review hearing that was held on June 14, 2011. ***Id.*** at 18.

Father also had FSP objectives to receive drug and alcohol treatment. ***Id.*** at 14. Ms. Mosely testified that DHS referred Father to both ARC and CEU for drug and alcohol treatment. ***Id.*** at 17. On September 14, 2011, DHS received a report indicating that Father had failed to comply with CEU's recommendations. ***Id.*** at 23. On October 3, 2011, Father tested positive for cocaine and marijuana at CEU, and, when DHS attempted to take Father back to CEU, he refused to go. ***Id.*** at 17. As a result, CEU issued a report

of non-compliance on December 14, 2011, indicating that Father had not followed the trial court's orders with respect to drug and alcohol assessment and treatment at CEU. ***Id.*** at 23.

Ms. Mosely also verified that visitation with Child was a FSP objective for Father. ***Id.*** at 14. She testified that Father attends both of his two-hour weekly visits with Child, and that the interaction between Father and Child is appropriate. ***Id.*** at 17-18. Ms. Mosely asserted that she was concerned for Child's safety during the beginning of Father's visits, since "anything could have happened" when Father took Child from the provider worker. ***Id.*** at 18.

Ms. Mosely opined that Child's interests would be best served if Child's goal was changed to adoption, and if he remained in the care of S.S, whom he refers to as "Mom." ***Id.*** at 25-26. Ms. Mosely testified that S.S.'s home is suitable, that S.S. meets Child's basic needs and medical necessities, and that Father has not been compliant in achieving any of his FSP goals. ***Id.*** at 25.

Keri Lynn Hammond, a supervisor at Children's Choice, who supervised the visits between Child and Father, also testified at the termination hearing. ***Id.*** at 28-29. Ms. Hammond opined that Child would suffer no detrimental effect if Father's parental rights were terminated. ***Id.*** at 37. She further testified that Father's Individual Service Plan ("ISP") objectives, which were similar to his FSP objectives, were communicated to Father at ISP meetings. ***Id.*** at 38. Father refused to sign the ISP

paperwork. ***Id.*** at 37. Ms. Hammond testified that Father did not comply with any of his ISP objectives, with the exception of visitation. ***Id.*** at 38.

Ms. Hammond conceded that Father's visits were appropriate in most cases. ***Id.*** at 31-32. However, she had to redirect Father during the visits because he would use inappropriate language, speak negatively about Mother or S.S., and engage in "heated" discussions with her or Child's case worker in front of Child. ***Id.*** at 31. Father did not always stop his inappropriate language. ***Id.*** As a result, Child now is able to repeat the curse words and inappropriate language. ***Id.*** Ms. Hammond explained that her presence had been requested during Father's visits with Child as an "extra measure" of security, because Father "tends to be very hostile in his interaction with the case workers." ***Id.*** at 31-32. Ms. Hammond recognized that past potential domestic violence issues existed between Father and Mother. ***Id.*** at 36.

Ms. Hammond also agreed with Ms. Mosely that Child has a parent/child bond with S.S. instead of with Father. ***Id.*** at 32. Child seeks attention, love, security, affection, and a safe place with S.S. rather than with Father. ***Id.*** Ms. Hammond testified that Child's relationship with Father is focused on "engaging in play activities, that sort of thing, but not in terms of strength of bond." ***Id.*** at 32-33. Ms. Hammond opined that Child looks to S.S. as the caregiver and parent figure. ***Id.*** at 34.

In addition, Marcus Ford, a DHS case worker, testified that Child regards S.S. as his real mother and looks to her for love and affection. ***Id.***

at 41. Mr. Ford further emphasized that, during two of the five visits that he supervised between Father and Child, Father refused to bring Child indoors during weather that reached 100-degree heat. ***Id.*** at 45-46. Mr. Ford's supervisor was forced to go outside and convince Father to come indoors with Child. ***Id.*** at 46. Mr. Ford opined that, while Child and Father love each other, it is not a father/son relationship. ***Id.*** at 44-45.

Finally, Mother testified at the hearing that Father "destroyed all of [her] paperwork and assaulted [her], which prevented her from producing documentation of FSP objective completion." ***Id.*** at 48. Mother further contended that Father "ran up on [her] yesterday and threatened that if [she] came to court and tell the truth, that he would hang [her]." ***Id.*** Mother noted that she would rather have Child in the care and presence of somebody who loves him and is not physically abusing him. ***Id.*** at 49-50. Mother also alleged that Father previously had assaulted her, and she served Father with a restraining order at the conclusion of the termination hearing. ***Id.*** at 48-49.

Following a hearing, the trial court granted DHS's petition and involuntarily terminated Father's rights on July 23, 2012. T.C.O. at 3. In response to the order terminating his parental rights, Father filed a timely notice of appeal on August 22, 2012, along with a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and Pa.R.A.P. 1925(b). Subsequently, Father's counsel filed with this Court a

motion to withdraw as counsel pursuant to ***Anders v. California***, 386 U.S. 738 (1967), accompanied by an ***Anders*** Brief on behalf of Father.

Initially, before considering the merits of the issue raised on appeal in the ***Anders*** Brief, we must address Father's counsel's Motion to Withdraw. ***See In re V.E.***, 611 A.2d 1267, 1273 (Pa. Super. 1992). Where counsel appointed to represent an indigent parent on a first appeal from a decree terminating parental rights seeks to withdraw pursuant to ***Anders***, counsel must: 1) petition this Court for leave to withdraw, certifying that after a thorough review of the record, counsel has concluded that the issues to be raised are wholly frivolous; 2) file a brief referring to anything in the record that might arguably support the appeal; and 3) furnish a copy of the brief to the appellant and advise him of his right to obtain new counsel or file a *pro se* brief to raise any additional points that the appellant deems worthy of review. ***In re V.E.***, 611 A.2d at 1273, 1275. Thereafter, this Court must conduct an independent examination of the record and determine whether the appeal is, in fact, wholly frivolous. ***Id.***

The Pennsylvania Supreme Court has explained that a proper ***Anders*** brief must:

> (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.

Commonwealth v. Santiago, 978 A.2d 349, 361 (Pa. 2009).

In the instant case, our review of the ***Anders*** Brief and the motion to withdraw reveals that Father's counsel has complied with each of the requirements of ***Anders***/***Santiago***. The record reflects that counsel has (1) provided Father with a copy of both the ***Anders*** Brief and Motion to Withdraw, (2) sent a letter to Father advising him of his right to retain new counsel or proceed *pro se* and raise any additional points that he deems worthy of this Court's attention, and (3) attached a copy of this letter to the Motion to Withdraw, as required under ***Commonwealth v. Millisock***, 873 A.2d 748, 751-52 (Pa. Super. 2005).

The issues that counsel states might arguably support Father's appeal[2] are as follows:

1. Whether counsel has satisfied all the requirements established in ***Anders v. California*** and its progeny for withdrawal on the grounds that the appeal is "wholly frivolous"?

2. Whether the appeal is, in fact, "wholly frivolous"?

3. Is the decree of involuntary termination of parental rights based on 23 Pa.C.S. § 2511(a)(1) supported by clear and convincing evidence?

4. Is the decree of involuntary termination of parental rights based on 23 Pa.C.S. § 2511(a)(2) supported by clear and convincing evidence?

---

[2] We note that Father neither filed a response to his counsel's motion to withdraw nor retained new counsel for this appeal.

5. Is the decree of involuntarily termination of parental rights based on 23 Pa.C.S. § 2511(a)(5) supported by clear and convincing evidence?

6. Is the decree of involuntary termination of parental rights based on 23 Pa.C.S. § 2511(a)(8) supported by clear and convincing evidence?

7. Did the trial court abuse its discretion, and/or is there sufficient evidentiary support, with regard to the finding that terminating parental rights is in the best interests of the developmental, physical, and emotional needs and welfare of the children [*sic*] pursuant to 23 Pa.C.S. § 2511(b)?

Anders Brief at 3-4.

We review a decree terminating parental rights in accordance with the following standard:

> 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.

In re R.N.J., 985 A.2d 273, 276 (Pa. Super. 2009) (citation 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. ***See id.*** 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 hesitance, of the truth of the precise facts in issue." ***Id.*** (citation and quotation marks omitted). The trial court is free to believe all, part, or none of the evidence presented, and likewise is free to make all credibility determinations and resolve conflicts in the evidence. ***In re M.G.***, 855 A.2d 68, 73-74 (Pa. Super. 2004). If competent evidence supports the trial court's findings, we will affirm even if the record could also support the opposite result. ***In re Adoption of T.B.B.,*** 835 A.2d 387, 394 (Pa. Super. 2003). Finally, this Court may affirm the trial court's termination of parental rights with regard to any one subsection of Section 2511(a), provided due consideration of the requirements set forth in Section 2511(b). ***See In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*).

Initially we note, as the trial court does in its opinion, that Father's counsel did not raise any issue with respect to the trial court's Section 2511(a) finding in his Rule 1925(b) Statement, and thus the trial court did not set forth a separate Section 2511(a) analysis. ***See*** Concise Statement of Matters Complained of on Appeal; T.C.O. at 11 n.3. The Pennsylvania Supreme Court has held that issues not raised in a Rule 1925(b) statement or concisely identified therein are deemed waived. ***Commonwealth v. Lord***, 719 A.2d 306, 309 (Pa. 1998). Despite failing to preserve any arguments pertaining to Section 2511(a), Appellant does present issues and arguments concerning Sections 2511(a)(1), (2), (5), and (8) in his ***Anders*** Brief. ***Anders*** Brief at 9-13. We cannot review Appellant's Section 2511(a) arguments because they are waived. ***Lord***, 719 A.2d at 309.

Appellant does preserve issues related to Section 2511(b). Concise Statement of Matters Complained of on Appeal ¶2. We conclude that the trial court properly terminated Father's parental rights pursuant to Sections 2511(a)(1) and (b), which provide as follows:

> **§ 2511. Grounds for involuntary termination**
>
> (a) General rule.--The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds:
>
> (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.

Appellant has preserved his seventh issue claiming that the trial court abused its discretion in finding that termination of Father's parental rights is in the best interests of Child pursuant to Section 2511(b). With respect to Section 2511(b), we have explained:

> [Section] 2511(b) focuses on whether termination of parental rights would best serve the developmental, physical, and emotional needs and welfare of the child. In ***In re C.M.S.***, 884 A.2d 1284, 1287 (Pa. Super. 2005), this Court stated, "Intangibles such as love, comfort, security, and stability are involved in the inquiry into the needs and welfare of the child." In addition, we instructed that the trial 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***. However, in cases where there is no evidence of a bond between a parent and child, it is reasonable to infer that no bond exists. ***In re K.Z.S.***, 946 A.2d 753, 762-63 (Pa. Super. 2008). Accordingly, the extent of the bond-effect analysis necessarily depends on the circumstances of the particular case. ***Id***. at 63.

In Re: Adoption of J.M., 991 A.2d 321, 324 (Pa. Super. 2010).

Father argues that the record does not support the termination of his parental rights because the evidence of his visits with Child demonstrates the existence of a bond between Father and Child. Father asserts that, despite his failure to complete each and every one of his FSP objectives, it can be inferred from the record that Father and Child have a positive relationship. Father further argues that a bonding evaluation should be conducted in order to assess the bond between Father and Child. Father's Brief at 14. We disagree.

The record shows that Child has been in the care of S.S. almost his entire life. DHS has introduced evidence that Child has a parent/child bond with S.S., not Father. Ms. Mosely, Ms. Hammond, and Mr. Ford all opined that Child's best interests would be served if Child's goal was changed to adoption, and Child remained in the care of S.S., whom he referred to as

"Mom." S.S.'s home is suitable and family-like, and S.S. meets Child's basic needs. It is evident that Child has found attention, love, security, affection and a safe place with S.S. rather than Father. ***In Re Adoption of J.M.***, 856 A.2d at 855. In addition, as Ms. Hammond opined, that relationship with Father is focused on "engaging in play activities, that sort of thing, but not in terms of strength of bond." N.T., 7/23/2012, at 32-33.

After a review of the record and the evidence presented, the trial court found that the Commonwealth had met its burden of proof by clear and convincing evidence that Child has lived with S.S. for his entire life, and that Child's basic and medical needs were best met by S.S., and not by Father. After reviewing evidence of the strong bond that existed between Child and S.S., the trial court determined that it was in Child's best interest to remain with S.S., and that Child would suffer no detrimental effect if Father's parental rights were terminated.

Father also argues that a formal bond evaluation was not ordered by the trial court. This Court has held that Section 2511(b) does not require a formal bonding evaluation. ***See In re Z.P.***, 994 A.2d 1108, 1121 (Pa. Super. 2010). Thus, we conclude that competent evidence supports the trial court's involuntary termination of Father's parental rights pursuant to Section 2511(b). ***In re: Adoption of J.M.***, 991 A.2d at 324.

Accordingly, we affirm the order of the trial court involuntarily terminating Father's parental rights. Having conducted an independent

examination of the record, we agree that this appeal is in fact wholly frivolous pursuant to our ***Anders*** analysis.

Order affirmed. Petition to withdraw granted. Jurisdiction relinquished.

Colville, J., concurs in the result.

Judgment Entered.

Prothonotary

Date: 5/3/2013