

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: Z.C.B., A MINOR :	IN THE SUPERIOR COURT OF
:	PENNSYLVANIA
:	
APPEAL OF: C.B., FATHER	
:	No. 2312 EDA 2012
:	
:	

Appeal from the Decree entered July 19, 2012
in the Court of Common Pleas of Philadelphia County,
Family Court Division, Adoption Branch,
No. CP-51-AP-0000121-2011

BEFORE: GANTMAN, OLSON, and PLATT*, JJ.

MEMORANDUM BY: PLATT, J.

FILED MAY 10, 2013

C.B., an alleged father, appeals from the decree of the Philadelphia County Court of Common Pleas entered on July 19, 2012, that involuntarily terminated his parental rights to his female alleged child, Z.C.B. (Child), and authorized the adoption of Child by E.J. and S.J. (Petitioners), a married couple, without further notice to or consent of C.B.¹ We affirm.

Child, who was six years of age at the time of the May 9, 2012 termination of parental rights hearing, has been in the continuous care and custody of Petitioners since she was three months old. Petitioners filed their petition to terminate the parental rights of the biological mother, E.B., C.B.,

* Retired Senior Judge assigned to the Superior Court.

¹ Child's birth certificate lists the father as unknown. C.B. is one of two men who Child's biological mother, E.B., has alleged to be Child's father.

and one other alleged father of Child, R.W., on March 17, 2011. The trial court terminated the parental rights of E.B., C.B., and R.W.²

The trial court made the following relevant findings regarding C.B.:

6. The Petitioners have had continuous and [sic] custody and care of [Child] since March of 2007.

* * *

8. [C.B.] is currently incarcerated at SCI Huntingdon where he has been since October 27, 2011 where he is serving a sentence of 5 – 10 years.

9. [C.B.] allegedly received a letter on January 4, 2011 from [E.B.] for [sic] which he learned that he may be the father of [Child].

10. [Child] was a little over six (6) years old at the time of the hearing in the current case.

11. [Child] has been in the care of the Petitioners since she was three (3) months old.

12. [Child's] birth certificate lists the father as unknown.

* * *

² E.B. failed to appear at the termination hearing. Because she was represented by counsel and had notice of the termination hearing, the trial court found "mother's failure to appear serves as her withdrawal of her opposition to the petition to terminate her parental rights and a waiver of her issues at trial." Trial Court Opinion, 11/13/12, at 3, Findings of Fact ¶ 20. R.W. appeared at the hearing telephonically from prison but "voluntarily ended his participation in these proceedings during the direct examination of Petitioner S.J. [] (N.T. 5/9/2012, pgs. 15-17)." **Id.** at 3, Findings of Fact ¶ 17. The trial court found further that this "voluntary conclusion of participation by [R.W.] serves as his withdrawal of his opposition to the petition to terminate his parental rights and a waiver of his issues during this trial." **Id.** at 3, Findings of Fact ¶ 18. Neither E.B. nor R.W. filed an appeal.

22. [Child] has formed a strong bond with the Petitioners and has been successfully integrated as a well-adjusted member of their family unit.

23. [Child] is an honor roll student who is flourishing in her current setting.

24. Prior to the filing of the termination petitions, there has been no contact by and between [Child] and [C.B.].

25. There has been no offer or provision of support financial or otherwise from [C.B.].

26. Although [C.B.] was allegedly notified by [E.B.] that he was the alleged father of [Child] in January of 2011, he did not file a petition for custody of [Child] until November of 2011.

27. [C.B.] testified that he sent two (2) birthday cards, two (2) drawings and a picture of himself for [Child] to his sister's house where he believed [E.B.] was residing at the time[.]

28. [C.B.] testified that when he learned of another address for [E.B.] in Bethlehem, he sent a gift and \$150.00 in hopes that it would reach [Child].

29. [C.B.] testified that he believes he possibly may be [Child's] father but acknowledged he possibly may not be [Child's] father.

30. [C.B.] testified that he sent [a] gift and a card for [Child] in January and February of 2012 to a location in Norristown believed to be the address for [E.B.].

31. [C.B.] testified that he continued to send items for [Child] in care of [E.B.] although he knew [E.B.] did not have [Child] in her care.

32. [C.B.] has never met [Child].

33. [C.B.] has no bond with [Child].

34. [C.B.] has *crimen falsi* convictions.

35. [C.B.] offered no witness or independent evidence at trial to corroborate his testimony as to him sending pictures, cards, money and gifts.

Trial Court Opinion, 11/13/12, at 2-5 (record citations omitted).

The trial court entered its decree involuntarily terminating the parental rights of C.B. pursuant to 23 Pa.C.S.A. § 2511(a)(1) and (b), and authorizing Child's adoption by Petitioners without further notice to C.B., on July 19, 2012. C.B. filed his notice of appeal and statement of errors complained of on appeal on August 20, 2012.³

C.B. raises the following question on appeal:

Did the Trial Court err in terminating the parental rights of the Appellant/putative father in that clear and convincing evidence for terminating his parental rights did not exist?

C.B.'s Brief, at 6.⁴

Our standard of review is as follows:

In an appeal from an order terminating parental rights, our scope of review is comprehensive: we consider all the evidence presented as well as the trial court's factual findings and legal conclusions. However, our standard of review is narrow: we will reverse the trial court's order only if we conclude that the trial court abused its discretion, made an error of law, or lacked competent evidence to support its findings. The trial judge's decision is entitled to the same deference as a jury verdict.

In re L.M., 923 A.2d 505, 511 (Pa. Super. 2007) (citations omitted).

Further, we have stated:

³ Because the thirtieth day of the appeal period fell on August 18, 2012, which was a Saturday, Appellant's notice of appeal filed on Monday, August 20, 2012, was timely. **See** Pa.R.A.P. 903(a); **see also** 1 Pa.C.S.A. § 1908.

⁴ Both Petitioners and the Child Advocate failed, without explanation, to file briefs in this matter.

Where the hearing court's findings are supported by competent evidence of record, we must affirm the hearing court even though the record could support an opposite result.

We are bound by the findings of the trial court which have adequate support in the record so long as the findings do not evidence capricious disregard for competent and credible evidence. The trial court is free to believe all, part, or none of the evidence presented, and is likewise free to make all credibility determinations and resolve conflicts in the evidence. Though we are not bound by the trial court's inferences and deductions, we may reject its conclusions only if they involve errors of law or are clearly unreasonable in light of the trial court's sustainable findings.

In re M.G., 855 A.2d 68, 73-74 (Pa. Super. 2004) (citations omitted).

Requests to have a natural parent's parental rights terminated are governed by 23 Pa.C.S.A. § 2511, 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).⁵

It is well-settled that a party seeking termination of a parent's rights bears the burden of proving the grounds to so do by "clear and convincing evidence," a standard which requires evidence 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." ***In re T.F.***, 847 A.2d 738, 742 (Pa. Super. 2004) (citation omitted). Further,

The statute permitting the termination of parental rights outlines certain irreducible minimum requirements of care that parents must provide for their children, and a parent who cannot or will not meet the requirements within a reasonable time following intervention by the state may properly be considered unfit and have [his] parental rights terminated.

* * *

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 his or her physical and emotional needs.

⁵ In order to affirm the termination of parental rights, this Court need only agree with a trial court's decision with respect to any one subsection of Section 2511(a). ***See In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*), *appeal denied*, 863 A.2d 1141 (Pa. 2004).

In the Interest of K.Z.S., 946 A.2d 753, 759 (Pa. Super. 2008) (citations and quotation marks omitted).

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) as follows:

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.

* * *

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 Z.S.W., 946 A.2d 726, 730 (Pa. Super. 2008) (quotation marks and citations omitted).

In the context of an incarcerated parent, in ***In re Adoption of S.P.***, 47 A.3d 817 (Pa. 2012), our Supreme Court reiterated the standard of analysis pursuant to section 2511(a)(1) for abandonment, as follows.

Applying in [***In re: Adoption of McCray***, 331 A.2d 652 (Pa. 1975)] 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." ***Id.*** at 655.

* * *

“Where the parent does not exercise reasonable firmness in declining to yield to obstacles, his other rights may be forfeited.”
[***Id.***]

Id. at 828.

Regarding Section 2511(b), we inquire whether the 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, 1286-87 (Pa. Super. 2005), *appeal denied*, 897 A.2d 1183 (Pa. 2006). “Intangibles such as love, comfort, security, and stability are involved in the inquiry into needs and welfare of the child.” ***Id.*** at 1287 (citation omitted). We “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.*** (citation omitted).

This Court has stated:

Once the statutory requirement for involuntary termination of parental rights has been established under subsection (a), the court must consider whether the child’s needs and welfare will be met by termination pursuant to subsection (b). ***In re D.W.***, 856 A.2d 1231, 1234 (Pa. Super. 2004). In this context, the court must take into account whether a bond exists between child and parent, and whether termination would destroy an existing, necessary and beneficial relationship. ***In re C.S.***, [761 A.2d 1197, 1202 (Pa. Super. 2000)].

In re Z.P., 994 A.2d 1108, 1121 (Pa. Super. 2010).

In support of his claim that the trial court abused its discretion when it terminated his parental rights, C.B. restates the claim he made at the

hearing that “he immediately began to send cards and gifts to the last known address of the natural mother[,]” after E.B. sent him a letter indicating that he was Child’s father. C.B.’s Brief, at 9. The trial court, however, found “[C.B.] offered no witness or independent evidence at trial to corroborate his testimony as to him sending pictures, cards, money and gifts.” Trial Court Opinion, 11/13/12, at 5, Findings of Fact ¶ 35.

With regard to the considerations set forth in Section 2511(a)(1), the trial court found that C.B., by his conduct continuing for a period of at least six months immediately preceding the filing of the petition, had failed to perform his parental duties. Moreover, the trial court considered C.B.’s post-abandonment contact with the Child, rejected his explanations for his conduct, finding that they lacked credibility, and afforded them no weight.

The trial court reasoned as follows:

9. [C.B.’s] alleged communication and support, if deemed credible, falls well short of what the law requires. The fact that a respondent may have provided financial support and communication for a brief or limited period of time is not enough to prevent termination of parental rights. Parental duties require continuing interest in the child and a genuine effort to maintain communication and association with the child. Parental duties require that the parent assert himself to take and maintain a place of importance in the child’s life. The parental obligation is viewed as a positive duty that requires and [sic] affirmative performance. ***In Re Burns***, 474 Pa. 615, 379 A.2d 535 (1977).

10. The evidence proved that [C.B.] failed to establish a parental relationship with [Child] before he was incarcerated and failed to establish a relationship after his incarceration. . . .

Id. at 8, Applicable Law and Analysis ¶¶ 9 and 10.

After our careful review of the record, we conclude that the trial court's decision to terminate C.B.'s parental rights pursuant to Section 2511(a)(1) is supported by competent evidence in the record with regard to the first two prongs of the test set forth in ***In re Z.S.W.*** As we find competent evidence in the record to support the trial court's determinations, we will not disturb its conclusion. ***See In re M.G.***, 855 A.2d at 73-74.

Next, we turn our attention to the termination of C.B.'s parental rights pursuant to Section 2511(b). C.B. failed to raise the question of subsection (b) in his statement of errors complained of on appeal, and he has therefore waived that issue. ***See*** Pa.R.A.P. 1925(b)(4)(vii); ***Yates v. Yates***, 963 A.2d 535, 542 (Pa. Super. 2008). Even though C.B. has waived the issue, we will visit it briefly, in accordance with our case law.

In ***In re L.M.***, this Court stated:

Our case law has made clear that under Section 2511, the court must engage in a bifurcated process prior to terminating parental rights. Initially, the focus is on the conduct of the parent. The party seeking termination must prove by clear and convincing evidence that the parent's conduct satisfies the statutory grounds for termination delineated in 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.

In re L.M., 923 A.2d at 511 (citations omitted).

Moreover,

Before granting a petition to terminate parental rights, it is imperative that a trial court carefully consider the **intangible** dimension of the needs and welfare of a child—the love, comfort, security, and closeness—entailed in a parent-child relationship, as well as the tangible dimension. Continuity of relationships is also important to a child, for whom severance of close parental ties is usually extremely painful. The trial court, in considering what situation would best serve the child[ren]’s needs and welfare, must examine the status of the natural parental bond to consider whether terminating the natural parents’ rights would destroy something in existence that is necessary and beneficial.

In re C.S., 761 A.2d 1197, 1202 (Pa. Super. 2000) (*en banc*) (citations and quotation marks omitted) (emphasis in original).

C.B. claims, “there was nothing in the record [] which would indicate any beneficial effect for [Child] by terminating his parental rights.” C.B.’s Brief, at 9. We disagree. Child has been in the continuous care and custody of the Petitioners since she was three months old. The trial court found:

22. [Child] has formed a strong bond with the Petitioners and has been successfully integrated as a well-adjusted member of their family unit.

23. [Child] is an honor roll student who is flourishing in her current setting.

Trial Court Opinion, 11/13/12, at 3, Findings of Fact ¶¶ 22-23 (record citations omitted).

We find that the evidence supports the conclusion that the termination of C.B.’s parental rights to permit Child’s adoption by Petitioners will have the beneficial effect of assuring that Child will continue her life as “a well-

adjusted member” of Petitioners’ family “who is flourishing in her current setting.” **Id.**

Moreover, with regard to the parent-child bond, the trial court found:

32. [C.B.] has never met [Child].

33. [C.B.] has no bond with [Child].

Id. at 5, Findings of Fact ¶¶ 32, 33 (record citations omitted).

This Court has stated, “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 Adoption of J.M.**, 991 A.2d 321, 324 (Pa. Super. 2010) (citation omitted). The trial court’s finding that no bond exists between C.B. and Child is supported by competent evidence in the record. Thus, we will not disturb it. **See In re M.G.**, 855 A.2d at 73-74.

Accordingly, for the reasons stated, we find that the decision to terminate C.B.’s parental rights under Section 2511(a)(1) and (b) is supported by competent evidence in the record, and that, therefore, the trial court did not commit abuse of discretion.

Decree affirmed.

Judgment Entered.



Prothonotary

Date: 5/10/2013