

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN RE: K.A.S., JR., A MINOR

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: M.J. A/K/A M.P., MOTHER

No. 2318 EDA 2012

Appeal from the Decree July 26, 2012  
In the Court of Common Pleas of Lehigh County  
Orphans' Court at No(s): A2011-0075

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IN RE: A.T.S., A MINOR

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: M.J. A/K/A M.P., MOTHER

No. 2319 EDA 2012

Appeal from the Decree July 26, 2012  
In the Court of Common Pleas of Lehigh County  
Orphans' Court at No(s): A2011-0076

BEFORE: FORD ELLIOTT, P.J.E., LAZARUS, J., and MUSMANNNO, J.

MEMORANDUM BY LAZARUS, J.

Filed: February 21, 2013

M.J. (Mother), a/k/a M.P., appeals<sup>1</sup> from the trial court's decree involuntarily terminating her parental rights<sup>2</sup> to her minor son, K.A.S., Jr.

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<sup>1</sup> Putative father's parental rights have also been terminated with regard to K.A.S., Jr., and A.T.S. He has an appeal, also contending that the trial court's decision to terminate his parental rights was in error, pending with this Court at 2343 & 2344 EDA 2012.

<sup>2</sup>

In a proceeding to terminate parental rights involuntarily, the burden of proof is on the party seeking termination to establish by clear and convincing evidence the existence of grounds for  
*(Footnote Continued Next Page)*

(born 8/4/1999), and daughter, A.T.S. (born 3/29/2001). On appeal, Mother contends that the trial court erred in finding that Lehigh County Office of Children and Youth Services (Agency) met its burden of proving by clear and convincing evidence that her parental rights should be terminated under 23 Pa.C.S. § 2511(a)(1), (2) & (b). After careful review, we affirm.

We review a trial court's decision to involuntarily terminate parental rights for an abuse of discretion or error of law. *In re A.R.*, 837 A.2d 560, 563 (Pa. Super. 2003). Our scope of review is limited to determining whether the trial court's decree is supported by competent evidence. *Id.*

Mother has given birth to nine children, none of whom are in her physical custody. In July 2002, Mother left Children with their maternal grandmother (Grandmother); she never returned for them. The Children

(Footnote Continued) \_\_\_\_\_

doing so. 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." It is well established that a court must examine the individual circumstances of each and every case and consider all explanations offered by the parent to determine if the evidence in light of the totality of the circumstances clearly warrants termination.

*In re adoption of S.M.*, 816 A.2d 1117, 1122 (Pa. Super. 2003) (citation omitted). *See also In re C.P.*, 901 A.2d 516, 520 (Pa. Super. 2006) (party seeking termination of parental rights bears burden of proving by clear and convincing evidence that at least one of eight grounds for termination under 23 Pa.C.S.A. § 2511(a) exists and that termination promotes emotional needs and welfare of child as set forth in 23 Pa.C.S.A. § 2511(b)).

resided with Grandmother for two years until she was awarded guardianship on September 24, 2004. The matter was referred to the Agency in March 2010 following allegations of physical abuse. On June 11, 2010, the Agency took emergency custody of Children after they were left at home alone by Grandmother.<sup>3</sup> On June 22, 2010, the children were adjudicated dependent and removed from Grandmother's home; Mother's whereabouts were unknown at the time. The Agency provided Grandmother mental health services, in-home parenting services and visitation, all with the goal of reunification. Children were then placed in foster care.

Several permanency review hearings were held throughout 2010 and 2011. Once Mother was located, she participated via telephone in an October 2010 permanency hearing. At the time of the hearing, Mother did not have a residence of her own. Children indicated that they did not want to visit with Mother. In January 2011, Mother participated again, telephonically, in a permanency hearing; it was noted that she had increased contact with the Children through sending them letters since the last hearing.

In April 2011, the court noted that Mother was not a viable resource due to the fact that she had two other children in the custody of the New

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<sup>3</sup> Grandmother told Children she would be back in thirty minutes. She never returned. Ultimately, she was located in the psychiatric unit at Muhlenberg Hospital.

Jersey Division of Family and Services (New Jersey Agency); Mother continued to send Children letters, however. A court order also indicated that Grandmother no longer wished to be a resource for Children.

On September 21, 2011, the Agency filed its petition to terminate Mother's parental rights to Children.<sup>4</sup> The Agency gave Mother additional time before holding the termination hearing, so that she could proceed with reunification services for the possible return of Children to her care. Two more permanency review hearings were held, during which the court was informed that Mother was living in a homeless shelter in New Jersey and was unable to secure adequate housing. On July 19, 2012, the court held the termination hearing. On July 26, 2012, the Honorable Michele A. Varricchio entered a final decree terminating Mother's parental rights. This appeal follows.

Mother claims that the trial court should have given her additional time to make progress toward reunification with Children "due to the improved circumstances of her housing and income which existed at the time of the Termination Hearing in addition to her compliance with aforesaid requirements imposed by New Jersey Division of Youth and Family Services." Appellant's Brief, at 10.

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<sup>4</sup> The Agency also filed a petition to terminate putative father's parental rights on the same date.

First, with respect to any termination 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. § 2511(b) (other considerations). Here, the Agency filed its petitions to terminate in September 2011.<sup>5</sup> A New Jersey Agency caseworker testified that Mother secured appropriate housing only *three weeks before* the instant termination hearing. N.T. Termination Hearing, 7/19/2012, at 164.

The record does indicate that Mother completed parenting classes and underwent individual counseling, therapy and psychotherapy as required by the New Jersey Agency. However, even Mother acknowledges her contact with Children is minimal, at best. The court found that Mother failed to comply and complete all of her goals outlined in the Agency’s service plan.<sup>6</sup> While her New Jersey Agency caseworker may have testified that she completed all the services and requirements of the New Jersey Agency and

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<sup>5</sup> By agreement and court approval, the termination hearing was continued from March 16, 2012 (its originally scheduled date) until July 19, 2012 (date of actual hearing), a period of almost four months.

<sup>6</sup> Mother had been ordered to obtain and maintain appropriate legal income and stable housing for at least six months, cooperate with the Agency, complete parenting education, obtain psychological and mental health evaluations, visit the children, and cooperate with an in-home study. N.T. Termination Hearing, 7/19/2012, at 30-31.

will be recommending the return of an older child to Mother's care, that case is not before us.

Mother spent most of 2004-2008 incarcerated for forgery and probation violations. She has had no contact with Children since August 2011 – a period of almost one year at the time of the instant termination hearing. Mother was given ten months to put her life in order and demonstrate to the court that she was capable of parenting Children. Although Mother made progress toward her goals, *id.*, at 53-56, the fact still remains that Mother failed to visit with the children, despite being offered the opportunity to do so. Moreover, at the time of the termination hearing Mother's alleged housing had not yet been deemed "appropriate" by the Agency, nor had she been living in the residence for a period of six months as was required by the Agency's service plan. *Id.* at 57.

While we commend Mother for her diligent efforts in complying with the New Jersey Agency's requirements to regain custody of two of her seven other children, this does not relieve her of the duty to parent K.A.S., Jr., and A.T.S. Their lives have been placed on hold long enough. Despite the fact that Mother may have been in a shelter and had considerable financial difficulties throughout much of her life, it does not excuse her failure to fulfill her parental duties to Children. *See In re E.M.*, 908 A.2d 297, 304 (Pa. Super. 2006) (parental rights not preserved by waiting for more suitable or convenient time to perform parental responsibilities while others provide for child's physical and emotional needs). Accordingly, we find that the record

supports the trial court's decree terminating Mother's parental rights under 23 Pa.C.S. § 2511(a)(1) (parent, for at least six months before filing of termination petition, has evidenced settled purpose of relinquishing parental claim to child or refused or failed to perform parental duties).

With regard to section 2511(b), the Agency was required to prove, by clear and convincing evidence, that termination of Mother's parental rights would best serve the developmental, physical and emotional needs of Children. *In re C.M.S.*, 884 A.2d 1284, 1286-87 (Pa. Super. 2005). The trial court must also consider the nature and status of any parent-child bond, concentrating on the effect that permanently severing the bond would have on the child. *Id.*

Instantly, the evidence shows that, but for one visit, a letter and a few phone calls, Mother had no contact with Children for almost ten years. Mother has not been the Children's primary caretaker since 2002 – more than twelve years – when she left Children with Grandmother, never to return. An Agency caseworker testified that the Children had no attachment with Mother. N.T. Termination Hearing, 7/19/2012, at 119. Moreover, a different Agency caseworker testified that the maternal bond with Children was broken in July 2002 and that, in her professional opinion, termination would best serve the needs and welfare of Children. *Id.* at 41.

Children are currently in a kinship foster home, which is considered a stable and permanent placement. They are thriving and wish to remain there. *Id.* at 40-41. Accordingly, we find that the trial court correctly

determined there was clear and convincing evidence to support termination under section 2511(b). *In re C.M.S., supra.*

The trial court's decree is supported by competent evidence of record. Accordingly, we find no abuse of discretion or error of law in the trial court's decision to involuntarily terminate Mother's parental rights to K.A.S., Jr. and A.T.S. *In re A.R., supra.*

Decree affirmed.