

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37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: K.A.S., FATHER

No. 2343 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

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

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: K.A.S.

No. 2344 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: March 12, 2013

K.A.S., biological father (Father) of K.A.S., Jr.,¹ and A.T.S. (Children),
appeals² from the trial court's decree involuntarily terminating his parental

¹ K.A.S., Jr., was born on August 4, 1999; A.T.S. was born on March 29, 2001.

rights³ to Children. On appeal, Father contends that the trial court erred in finding that Lehigh County Office of Children and Youth Services (Agency) presented clear and convincing evidence to warrant termination of his parental rights 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, (Footnote Continued) _____

² Mother's parental rights have also been terminated with regard to K.A.S., Jr., and A.T.S. She has an appeal, also contending that the trial court's decision to terminate her parental rights was in error, pending with this Court at 2318 & 2319 EDA 2012.

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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 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 hesitation, 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)).

563 (Pa. Super. 2003). Our scope of review is limited to determining whether the trial court's decree is supported by competent evidence. *Id.*

Father is the biological father to fourteen children, none of whom are in his physical custody. Father currently resides in a nursing home; he has been battling cancer, undergoing rounds of chemotherapy and now suffers from benign brain tumors. He is confined to a wheelchair. In July 2002, Mother left Children with their maternal grandmother (Grandmother); she never returned for them. The Children 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.⁴

On June 22, 2010, the children were adjudicated dependent and removed from Grandmother's home. 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 in 2010. In August 2010, Father contacted the Agency to tell them that because of significant health issues,

⁴ Grandmother told Children she would be back in thirty minutes. She never returned. Ultimately, she was located in the psychiatric unit at Muhlenberg Hospital.

he was not an available resource for Children. However, he expressed an interest in visiting with them and being active in their lives.

In April 2011, Grandmother indicated that she no longer wished to be a resource for Children. On September 21, 2011, the Agency filed its petition to terminate Father's parental rights.⁵ On July 19, 2012, the court held a termination hearing before the Honorable Michele A. Varricchio; seven days later, the court entered a final decree terminating Father's parental rights. This appeal follows.

On appeal, Father claims that the court erred in terminating his parental rights without "examin[ing] the totality of the circumstances and fail[ing] to examine Father's explanations." Appellant's Brief, at 15.

For the better part of Children's lives, Father has suffered from significant health issues which have severely limited his physical ability to visit with Children. He has resided in rehabilitative facilities located outside of the Commonwealth. Notably, Father has made efforts to maintain contact with Children by sending them letters and contacting their Agency caseworker to arrange visits.

While Father may not have intentionally refused to perform his parental duties, when a parent's repeated and continued incapacity to parent has caused a child to be without essential parental care, control or

⁵ The Agency also filed a petition to terminate Mother's parental rights on the same date.

subsistence necessary for his or her physical or mental well-being and the conditions and causes of the incapacity cannot or will not be remedied by the parent, termination is proper. **See** 23 Pa.C.S. § 2511(a)(2). Simply put, affirmative parental misconduct is not necessary to terminate a parent's rights to his or her children. **Id.**

The following goals were set for Father at the February 2012 permanency review hearing:⁶ (1) obtain and maintain stable housing; (2) attend visitation as deemed appropriate by the Agency; and (3) cooperate with Agency recommendations and services, if necessary. At that hearing, the Master found that the Father is unable to independently care for himself. Findings of Fact Permanency Hearing, 2/22/2012, at ¶ii. Father did not participate in the final review hearing held before termination was ordered; however, at that hearing the Master noted that Father had not made any progress toward his goals. Master's Recommendation/Permanency Review, 5/8/2012, at 1.

Here, Father's physical infirmities make him incapable of providing Children with the essential parental care, control or subsistence necessary for their present and future physical or mental well-being. 23 Pa.C.S.A. § 2511(a)(2). Father has only visited with Children one time since Grandmother became their guardian in 2004. Father indicated at an August

⁶ Father participated in the hearing via teleconference from his Vorhees, New Jersey, nursing home. He has never physically appeared for any hearings.

2011 review hearing that he would be released from the rehabilitation center soon and would reside with his mother. However, at the time of the termination hearing, Father was still residing in the Voorhees nursing home. N.T. Termination Hearing, 7/19/2012, at 43. Even assuming that Father will soon be released from the home, an agency caseworker testified that he still remains physically unable to care for himself. *Id.* at 35. Accordingly, we find that the record supports the trial court's decree terminating Father's parental rights under 23 Pa.C.S. § 2511(a)(2). *See In re William L.*, 383 A.2d 1228, 1232 n. 5 (Pa. 1978) (when parent demonstrates continued inability to conduct life in fashion that would provide safe environment for child, and behavior of parent is irremediable, termination of parental rights is justified).

With regard to section 2511(b), the Agency was required to prove, by clear and convincing evidence, that termination of Father'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 while Father sends Children letters, he has only visited with them once in the past seven years. An agency caseworker testified that the parental bond was broken in July 2002 when Children were placed with Grandmother. Moreover, another caseworker

testified that, in her professional opinion, termination would best serve the needs and welfare of Children. N.T. Termination Hearing, 7/19/2012, at 41.

Children, ages eleven and thirteen, 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. We, therefore, find no abuse of discretion or error of law in the trial court's decision to involuntarily terminate Father's parental rights to K.A.S., Jr. and A.T.S. *In re A.R., supra.*

Decree affirmed.