

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN THE INTEREST OF: P.S. : IN THE SUPERIOR COURT OF  
: PENNSYLVANIA  
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APPEAL OF: D.B., MOTHER : No. 2348 EDA 2012

Appeal from the Decree August 7, 2012  
In the Court of Common Pleas of Philadelphia County  
Juvenile Division at No(s): CP-51-AP-0000265-2011;  
CP-51-DP-0062841-2010

BEFORE: BOWES, J., GANTMAN, J., and MUSMANNNO, J.

MEMORANDUM BY GANTMAN, J.: Filed: March 5, 2013

Appellant, D.B. ("Mother"), appeals from the decree entered in the Philadelphia County Court of Common Pleas, which granted the petition of Appellee, Philadelphia County Department of Human Services ("DHS"), for involuntary termination of Mother's parental rights as to her minor child, P.S. ("Child"). We affirm.

The relevant facts and procedural history of this appeal are as follows. DHS received a report on June 3, 2010, that Mother and Child were living in a roach-infested home. The report also alleged that Mother, a paranoid schizophrenic, hoarded items in the home. The resulting clutter created a fire hazard for both Mother and her newborn. DHS conducted a home visit and confirmed the deplorable conditions. DHS obtained a protective custody order on June 8, 2010, and placed Child in a foster home. Shortly thereafter, DHS placed Child in a kinship care home with a maternal aunt,

and Child has resided there ever since.

The court conducted a dependency hearing on June 18, 2010. At the conclusion of the hearing, the court adjudicated Child dependent. On August 10, 2010, DHS conducted a Family Service Plan ("FSP") meeting. DHS developed FSP objectives, including participation in mental health treatment, supervised visits with Child, employment, and regular follow-up with DHS. Additionally, the FSP required Mother to obtain suitable housing.

The court conducted permanency review hearings on September 30, 2010, October 5, 2010, and February 8, 2011. Mother, however, made minimal progress toward achieving the FSP objectives. Specifically, Mother did not obtain employment. Mother failed to participate in visits with Child for the first year of Child's life. After Mother began participating in visits, Child would cry uncontrollably in Mother's presence. Social workers observed that Mother was overwhelmed by Child's behavior. Further, Mother had trouble with basic parenting skills, such as changing Child's diaper and feeding Child. Regarding housing, Mother obtained an apartment from a program that assists homeless and mentally ill individuals. The program, however, does not permit residents to live with their children. Consequently, DHS deemed the apartment unsuitable for Child.

DHS filed a petition on June 21, 2011, for involuntary termination of Mother's parental rights. That same day, DHS filed a petition for goal change to adoption. The court conducted a termination hearing on August

7, 2012. At the conclusion of the hearing, the court entered a final decree terminating Mother's parental rights to Child. Mother timely filed a notice of appeal on September 6, 2012, which included a concise statement of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(a)(2)(i).

Mother raises one issue for our review:

WHETHER THE COURT ERRED IN TERMINATING [MOTHER'S] PARENTAL RIGHTS AND IN CHANGING THE FSP GOAL TO ADOPTION WHERE EVIDENCE WAS NOT CLEAR AND CONVINCING TO TERMINATE [MOTHER'S] PARENTAL RIGHTS AND EVIDENCE WAS INSUFFICIENT FOR [THE] COURT TO DETERMINE THE EFFECT TERMINATION WOULD HAVE ON THE CHILD?

(Mother's Brief at 3).

On appeal, Mother concedes she did not complete the FSP objectives of obtaining suitable housing and employment. Nevertheless, Mother emphasizes that she completed parenting classes, visited Child consistently for a year, and complied with all mental health treatment recommendations. In light of her partial compliance with the FSP objectives, Mother asserts DHS should have presented evidence of the dates for the adjudication of dependency and the termination petition, which Mother claims were essential for the court to gauge her progress toward reunification. Further, Mother argues that DHS did not present evidence detailing the quality of her visits with Child, and the social workers provided inadequate testimony regarding the bond between Mother and Child. Mother concludes the court erroneously terminated her parental rights. We disagree.

Appellate review in termination of parental rights cases implicates the following principles:

In cases involving termination of parental rights: “our standard of review is limited to determining whether the order of the trial court is supported by competent evidence, and whether the trial court gave adequate consideration to the effect of such a decree on the welfare of the child.”

*In re Z.P.*, 994 A.2d 1108, 1115 (Pa.Super. 2010) (quoting *In re I.J.*, 972 A.2d 5, 8 (Pa.Super. 2009)).

Absent an abuse of discretion, an error of law, or insufficient evidentiary support for the trial court’s decision, the decree must stand. ... 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 B.L.W.*, 843 A.2d 380, 383 (Pa.Super. 2004) (*en banc*), *appeal denied*, 581 Pa. 668, 863 A.2d 1141 (2004) (internal citations omitted).

Furthermore, we note that the trial court, as the finder of fact, is the sole determiner of the credibility of witnesses and all conflicts in testimony are to be resolved by [the] finder of fact. The burden of proof is on the party seeking termination to establish by clear and convincing evidence the existence of grounds for doing so.

*In re Adoption of A.C.H.*, 803 A.2d 224, 228 (Pa.Super. 2002) (internal citations and quotation marks omitted). The standard of clear and convincing evidence means 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. *In re J.D.W.M.*, 810 A.2d 688, 690 (Pa.Super. 2002). We may uphold a termination decision if any proper basis exists for the result reached. *In re C.S.*, 761 A.2d 1197,

1201 (Pa.Super. 2000) (*en banc*). If the court's findings are supported by competent evidence, we must affirm the court's decision, even if the record could support an opposite result. *In re R.L.T.M.*, 860 A.2d 190, 191[-92] (Pa.Super. 2004).

*In re Z.P., supra* at 1115-16 (quoting *In re Adoption of K.J.*, 936 A.2d 1128, 1131-32 (Pa.Super. 2007), *appeal denied*, 597 Pa. 718, 951 A.2d 1165 (2008)).

DHS sought the involuntary termination of Mother's parental rights on the following grounds:

**§ 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.

(2) The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.

\* \* \*

(5) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or

placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.

\* \* \*

(8) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency, 12 months or more have elapsed from the date of removal or placement, the conditions which led to the removal or placement of the child continue to exist and termination of parental rights would best serve the needs and welfare of the child.

\* \* \*

**(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), (2), (5), (8); (b). “Parental rights may be involuntarily terminated where any one subsection of Section 2511(a) is satisfied, along with consideration of the subsection 2511(b) provisions.” *In re Z.P., supra* at 1117.

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...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.

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

"A court may terminate parental rights under subsection 2511(a)(1) when the parent demonstrates a settled purpose to relinquish parental claim to a child or fails to perform parental duties for at least six months prior to the filing of the termination petition." *In re I.J., supra* at 10.

Although it is the six months immediately preceding the filing of the petition that is most critical to the analysis, 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...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*, 582 Pa. 718, 872 A.2d 1200 (2005) (internal citations omitted).

"The bases for termination of parental rights under Section 2511(a)(2), due to parental incapacity that cannot be remedied, are not limited to affirmative misconduct; to the contrary, those grounds may include acts of refusal as well as incapacity to perform parental duties." *In*

*re S.C.B.*, 990 A.2d 762, 771 (Pa.Super. 2010). "Parents are required to make diligent efforts towards the reasonably prompt assumption of full parental responsibilities." *In re A.L.D.*, 797 A.2d 326, 340 (Pa.Super. 2002). The fundamental test in termination of parental rights under Section 2511(a)(2) was long ago stated in *In re Geiger*, 459 Pa. 636, 331 A.2d 172 (1975), where the Pennsylvania Supreme Court announced that under what is now Section 2511(a)(2), "the petitioner for involuntary termination must prove (1) repeated and continued incapacity, abuse, neglect or refusal; (2) that such incapacity, abuse, neglect or refusal caused the child to be without essential parental care, control or subsistence; and (3) that the causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied." *In Interest of Lilley*, 719 A.2d 327, 330 (Pa.Super. 1998).

"Termination of parental rights under Section 2511(a)(5) requires that: (1) the child has been removed from parental care for at least six months; (2) the conditions which led to removal and placement of the child continue to exist; and (3) termination of parental rights would best serve the needs and welfare of the child." *In re Z.P.*, *supra* at 1118.

"[T]o terminate parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(8), the following factors must be demonstrated: (1) the child has been removed from parental care for 12 months or more from the date of removal; (2) the conditions which led to the removal or placement of the child continue to exist; and (3) termination of parental rights would best serve the needs and

welfare of the child.” *In re Adoption of M.E.P.*, 825 A.2d 1266, 1275-76 (Pa.Super. 2003).

Under Section 2511(b), the court must consider whether termination will best serve the child’s needs and welfare. *In re C.P.*, 901 A.2d 516 (Pa.Super. 2006). “Intangibles such as love, comfort, security, and stability are involved when inquiring about the needs and welfare of the child.” *Id.* at 520. “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 Z.P., supra* at 1121.

When conducting a bonding analysis, the court is not required to use expert testimony. Social workers and caseworkers can offer evaluations as well. Additionally, Section 2511(b) does not require a formal bonding evaluation.

*Id.* (internal citations omitted).

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 her parental rights terminated. *In re B.L.L.*, 787 A.2d 1007 (Pa.Super. 2001). This Court has said:

There is no simple or easy definition of parental duties. Parental duty is best understood in relation to the needs of a child. A child needs love, protection, guidance, and support. These needs, physical and emotional, cannot be met by a merely

passive interest in the development of the child. Thus, this court has held that the parental obligation is a positive duty which requires affirmative performance.

This affirmative duty encompasses more than a financial obligation; it requires continuing interest in the child and a genuine effort to maintain communication and association with the child.

Because a child needs more than a benefactor, parental duty requires that a parent exert himself to take and maintain a place of importance in the child's life.

Parental duty requires that the parent act affirmatively with good faith interest and effort, and not yield to every problem, in order to maintain the parent-child relationship to the best of...her ability, even in difficult circumstances. 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 [the child's] physical and emotional needs.

*In re B.,N.M., supra* at 855 (internal citations and quotation marks omitted). “[A] parent’s basic constitutional right to the custody and rearing of...her child is converted, upon the failure to fulfill...her parental duties, to the child’s right to have proper parenting and fulfillment of...her potential in a permanent, healthy, safe environment.” *Id.* at 856.

Instantly, the court adjudicated Child dependent on June 18, 2010. On June 21, 2011, DHS filed the petition for involuntary termination of Mother’s parental rights and a petition for goal change to adoption. The

court conducted a hearing on the termination petition on August 7, 2012. DHS presented Anna Stanchak, the caseworker, who testified that Child had been in the custody of DHS since June 2010, shortly after Child's birth. At that time, "[a] home evaluation was done of Mother's home and the results...were that Mother's home was cluttered, roach-infested, it was a fire hazard." (*See* N.T. Termination Hearing, 8/7/12, at 59.) Consequently, DHS deemed the home unsafe for Child.

In August 2010, DHS established Mother's FSP objectives, which included the procurement of employment and suitable housing. Over the course of the next two years, Mother failed to achieve these two objectives. Regarding housing, Ms. Stanchak stated that Mother's current apartment was not suitable, because Mother had obtained the apartment through a program called Pathways, which provides housing for the homeless and mentally ill. Pathways, however, "does not allow the adults to have children while in that program." (*Id.* at 63). Regarding employment, Ms. Stanchak testified that Mother had received job training, but Mother had "yet to obtain the employment." (*Id.* at 64).

Additionally, Ms. Stanchak opined that termination of Mother's parental rights would not have a negative effect on Child:

[WITNESS]: I believe it would not be detrimental to [Child] because she has lived with her aunt since she was a newborn, and she has never lived with [Mother], therefore, the bond is not there that would be a mother/child bond.

[DHS' COUNSEL]: What does [Child] call her current foster parent?

[WITNESS]: It's a kinship parent.

[DHS' COUNSEL]: What does she call her?

[WITNESS]: Mom.

(*Id.* at 66).

DHS presented testimony from Kiyona Dobson-Crabbe, who served as a social worker for Child's case beginning in 2010. Significantly, Ms. Dobson-Crabbe supervised the visits between Mother and Child. During the initial visits, Child cried uncontrollably. Ms. Dobson-Crabbe, her co-workers, and the directors at her agency recognized that the visits were overwhelming for Mother, who had problems with basic aspects of parenting. Ms. Dobson-Crabbe expressed her concerns about Mother to parenting coordinators:

[CHILD ADVOCATE]: And did you ever conference your concerns regarding her parenting with the parenting coordinators?

[WITNESS]: Yes.

[CHILD ADVOCATE]: And, what did you relate to them...?

[WITNESS]: Just the concerns of her, you know, not being able to consistently continue with preparing for [Child's] daily needs [like] changing the diaper, making sure that she was safe, feeding her the bottle. And also that [Child] was crying, so there were different ways that we would try to get her to stop crying and find options and solutions for that.

(*Id.* at 82-83). Although Child stopped crying during the visits as she grew older, Ms. Dobson-Crabbe testified that Child did not develop any affection for Mother. Rather, Child remained “very clingy, very connected” to the maternal aunt. (*Id.* at 91).

Further, DHS presented testimony from Dr. William Russell, the psychologist who conducted Mother’s parenting capacity evaluation in September 2011. Dr. Russell confirmed Mother’s diagnosis of paranoid schizophrenia. Regarding treatment, Dr. Russell recommended psychotherapy and monitoring by a licensed psychologist, as well as continued housing, employment, parenting classes, and “other types of psychosocial interventions that would help [Mother] better provide for the needs of the child.” (*Id.* at 115). When asked whether Mother could care for Child, Dr. Russell opined, “At the time I evaluated her, the inability to provide for herself adequately would preclude her from being able to provide safety for a child.” (*Id.* at 121).

Contrary to Mother’s arguments, the court received adequate testimony to evaluate Mother’s attempts to comply with the FSP objectives. Significantly, the court reasoned as follows:

Mother’s failure to maintain a relationship with...Child when in foster care demonstrated her incapacity and refusal to parent. Mother did not visit...Child during the first year of...Child’s life. When she finally began to visit, the quality of her visits were characterized as poor. Mother made no effort to change...Child’s diaper and was unable to bottle-feed...Child. Mother was unable to bond with...Child who

cried throughout the visits. Mother was described as lethargic and would "zone out" at times.

[The trial court] was not persuaded that Mother could resolve her...issues in the near future. The original reason for the involvement of DHS with...Child, in June 2010, was due to the fact that Mother's home was roach-infested and cluttered to a point that it constituted a fire hazard. A home evaluation took place in August 2011 at which time roaches were observed crawling in the cabinets, in a playpen, in a bassinette and on the walls. At the time, Mother was attempting to clean the floor with a hairbrush. Again on January 24, 2012, Mother's home was observed as still having a lot of clutter which posed a safety threat to...Child. Finally, in April 2012, a visit was made to Mother's apartment which was not suitable for...Child. The apartment had been obtained through a mental health program, from which Mother was receiving treatment, that did not allow patients to have their children reside with them while under care.

[The trial court] gave great weight to the testimony of Doctor William Russell. Dr. Russell concluded, as a result of a parenting capacity exam, that Mother was not able to care for...Child. Mother's own therapist, [Ms. Krause], conceded that Mother was not yet ready to care for a child and indicated that it would be a slow process before Mother would even potentially be in a position to care for a child.

Mother's lack of capacity to care for...Child and to provide adequate housing led to the initial placement with DHS. There was no evidence, during the two years that...Child was in placement, that Mother developed the capacity to care for...Child, nor did Mother ever demonstrate that she was even close to obtaining safe and adequate housing for...Child.

\* \* \*

[Child] was two years old at the time of the hearing, and was living in the pre-adoptive foster home with the maternal aunt. [Child] was very much attached to her maternal aunt, who...Child refers to as "Mother" or "Mom."

[Child] is very affectionate and clingy with maternal aunt. In light of Mother's mental health condition and limited capacity, it would be in the best interest of...Child to be adopted. The testimony of the DHS and agency workers was that there would be no negative effect upon...Child if Mother's parental rights were terminated. The court accepted the testimony that there would be no detriment to...Child and it would be in [her] best interest if Mother's rights were terminated.

The [c]ourt thus found that there was no meaningful bond between Mother and...Child. At the end of visitations with Mother, ...Child was quick to go back to her maternal aunt with whom she has a very strong bond. In contrast, Mother's relationship with...Child was that of an occasional visitor. It is the maternal aunt, and not...Mother, who provides...Child with stability, care and affection on a daily basis. [The trial court] accepted the testimony that terminating...Mother's parental rights would not be detrimental to...Child, but rather would best serve...Child's welfare and developmental, physical and emotional needs.

(*See* Trial Court Opinion, filed October 22, 2012, at 12-14, 15-16) (internal citation to the record omitted).

The record supports the court's conclusion that Mother could not provide the irreducible minimum parental care for Child.<sup>1</sup> *See In re Z.P.*,

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<sup>1</sup> Mother has filed a motion to remand for a supplemental Rule 1925 statement. In it, Mother argues that prior counsel prepared the original Rule 1925 statement without the benefit of the termination hearing transcript. The court subsequently appointed current counsel, who reviewed the transcript, discovered additional appellate arguments, and included these arguments in Mother's appellate brief. Mother seeks remand for the sole purpose of avoiding waiver under to Rule 1925. *See Yates v. Yates*, 963 A.2d 535 (Pa.Super. 2008) (reiterating issues not raised in Rule 1925 statement are deemed waived for purposes of appellate review); *In re L.M.*, 923 A.2d 505 (Pa.Super. 2007) (explaining Rule 1925 waiver applies in context of family law cases). Our ability to conduct effective appellate review, however, was **not** hampered by Mother's original Rule 1925 statement. We emphasize that the trial court's Rule 1925(a) opinion

*supra; In re B.L.L., supra.* Based upon the foregoing, we affirm the decree terminating Mother's parental rights to Child.

Decree affirmed.

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comprehensively addressed all aspects of the decision to terminate Mother's parental rights. In the interest of judicial economy, and given our disposition, we deny Mother's motion to remand as moot.