

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: M.M.L., A MINOR

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: T.W.O. A/K/A T.O., MOTHER

Appellant

No. 2358 EDA 2012

Appeal from the Order of July 23, 2012,
in the Court of Common Pleas of Philadelphia County,
Family Court at Nos. CP-51-AP-0000319-2012,
FID: 51-FN-001066-2011

BEFORE: OLSON, WECHT and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.:

Filed: February 7, 2013

T.O. ("Mother") appeals from the decree that involuntarily terminated her parental rights to M.L., a minor, born in November of 2010 ("Child").¹ We affirm.

The relevant facts are as follows. Child came to the attention of the Philadelphia Department of Human Services ("DHS") in December of 2010, after DHS received a report that Mother gave birth to Child in November of 2010, at which time both Mother and Child tested positive for cocaine. It was also reported that Child was born several months premature, with low

¹ By separate decree entered on the same date, the trial court involuntarily terminated the parental rights of R.L., Child's father. Father's appeal of this decree is pending before a different panel of this Court.

*Retired Senior Judge assigned to the Superior Court.

birth weight. Upon Child's discharge from the hospital, he was voluntarily placed with Mother's cousin, Ms. Stewart. On February 24, 2011, an order of protective custody was issued, whereupon Child was ordered to remain in the care of Ms. Stewart. Following a shelter hearing on February 25, 2011, temporary custody of Child was granted to DHS and Child was ordered to remain with Ms. Stewart. Child was adjudicated dependent on March 14, 2011. On July 5, 2012, DHS filed a petition for the involuntary termination of Mother's parental rights to Child. A hearing on the petition was held on July 23, 2012.

At the hearing, DHS caseworker, Ms. Mosley, testified as follows. Mother's family service plan ("FSP") objectives were to complete drug and alcohol treatment; complete parenting, anger management and domestic violence classes; and maintain visits with Child. The clinical evaluation unit ("CEU"), recommended that Mother attend intensive outpatient drug and alcohol treatment, but Mother failed to follow through with the recommended treatment. CEU generated several reports of non-compliance with respect to Mother. Mother tested positive for cocaine on October 3, 2011, and cocaine and marijuana on March 13, 2012. At the time of the hearing, Mother was not involved in any drug and alcohol treatment program. Mother was referred to the Achieving Reunification Center ("ARC") for completion of her FSP objectives, which included parenting, anger management and domestic violence classes. Mother never completed any classes for parenting, anger management or domestic violence and was discharged from ARC due to non-compliance.

Ms. Mosley testified that Mother had only attended two or three of the weekly supervised visits between the December 22, 2011, and March 22, 2012, court hearings. Mother did not attend any visits between the prior court hearing on March 22, 2012, and the July 23, 2012, termination hearing. Ms. Mosley testified that it was in Child's best interest for his goal to be changed to adoption and for him to remain with Ms. Stewart. She further testified that Child has been in the care of Ms. Stewart most of his life; Child has a loving and affectionate relationship with Ms. Stewart, who he refers to as "Mom;" Ms. Stewart's home is the most suitable and family-like setting in regards to Child; Ms. Stewart meets Child's basic and medical needs; and Mother has not been compliant with achieving any of her FSP objectives.

Ms. Hammond, the supervisor of Child's case at Children's Choice, testified that Mother has visited Child less than five times since he has been in the custody of DHS. Ms. Hammond testified that several times a month, Mother would call to confirm visits with Child, but would not show up for the visits. Ms. Hammond testified that Child has a parent-child bond with Ms. Stewart, who he calls "Mom" and to whom he has a very close attachment. Ms. Hammond further testified that Child would suffer no detrimental effect if Mother's parental rights were terminated as Mother has not maintained a relationship with Child, has not participated in visitation with Child on a consist basis, and has not followed through with any of her FSP objectives.

DHS caseworker Mr. Ford, echoed the testimony of Ms. Mosley and Ms. Hammond that Child regards Ms. Stewart as his mother and looks to her for love and affection.

Mother testified that she has not been “in compliance” as far as Child is concerned, that she would rather Child be with someone who loves and cares for him, and that she is thankful to Ms. Stewart for caring for Child through her “very hard drug addiction and mental and emotional abuse.” N.T., 07/23/12, at 49. Mother testified that her current housing situation would not be conducive to raising Child in the manner in which he should be raised. Mother also stated that she would accept whatever the court decides is in the best interests of Child.

By decree of July 23, 2012, the trial court involuntarily terminated Mother’s parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(1), (2), (5), (8), and (b). Mother’s timely appeal followed.

As a preliminary matter, Mother’s counsel seeks to withdraw representation pursuant to ***Anders v. California***, 386 U.S. 738 (1967). ***Anders*** principles apply to appeals involving termination of parental rights. ***See In re S.M.B.***, 856 A.2d 1235 (Pa. Super. 2004). Having reviewed counsel’s petition and brief, we conclude counsel has substantially complied with the requirements of ***Anders***; however, he has failed to meet the requirements of ***Commonwealth v. Santiago***, 978 A.2d 349 (Pa. 2009).² However, because the frivolity of Appellant’s appeal is apparent from the

² We direct counsel to familiarize himself with the requirements of ***Santiago***.

record, we have proceeded to conduct our own review of this matter. **See Santiago**, 978 A.2d at 354-55, 361 (discussing **Anders** process).

The **Anders** brief raises the following issues: whether the evidence supports the termination of Mother's parental rights pursuant to Section 2511(a)(1), (2), (5), (8) and (b).

Our standard of review is as follows:

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) (quoting **In re S.H.**, 879 A.2d 802, 805 (Pa. Super. 2005)).

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. **In re R.N.J.**, 985 A.2d at 276. We have explained that:

[t]he 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., 985 A.2d at 276 (quoting **In re J.L.C.**, 837 A.2d 1247, 1251 (Pa. Super. 2003)). 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. *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).

Termination of parental rights is controlled by Section 2511 of the Adoption Act. *In re L.M.*, 923 A.2d 505, 511 (Pa. Super. 2007) (citing 23 Pa.C.S.A. § 2511).

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).

This Court may affirm the trial court's decision regarding the termination of parental rights with regard to any one subsection of Section 2511(a). *See In re B.L.W.*, 843 A.2d 380, 384 (Pa. Super. 2004).

Instantly, we conclude the trial court properly terminated Mother's parental rights pursuant to Section 2511(a)(1) and (b), which provide as follows:³

§ 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).

With respect to Section 2511(a)(1), we have explained:

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

³ Based on this disposition, we need not consider Mother's claims relating to the remaining subsections of Section 2511(a).

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) (citations omitted).

Regarding the definition of "parental duties," we have stated, in part,

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. . . .

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 his or 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 his or her physical and emotional needs.

In re B., N.M., 856 A.2d 847, 855 (Pa. Super. 2004) (citations omitted).

With respect to Section 2511(b), we have explained:

Subsection 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).

Mother argues there is no evidence indicating she showed a settled purpose of relinquishing her parental claim to Child or failed or refused to perform parental duties with respect to Child in the six months preceding the filing of the termination petition, from approximately January 5, 2012, to July 5, 2012, or any other time. Mother argues she asserted her parental claim by visiting Child and that she may have visited Child within six months of the filing of the termination petition.

We note the record indicates that Mother attended visits with Child two or three times between the December 22, 2011, and March 22, 2012, court hearings. Thus, these visits may have occurred in the six months preceding the filing of the termination petition. Nevertheless, even assuming Mother's visits occurred in the relevant period, the record demonstrates Mother's conduct for the duration of the time Child has been in care, including the six

months preceding the filing of the termination petition, evidenced a settled purpose of relinquishing her parental claim to Child and/or a failure to perform her parental duties. Despite two or three visits with Child between December 22, 2011, and March 22, 2012, the record indicates Mother has visited Child less than five times since he has been in care. Moreover, Mother has not visited Child at all since, at least, March 22, 2012. Thus, the record indicates that for the entire time Child has been in care, Mother has not participated in consistent visitation with Child and has not maintained a relationship with Child. Mother also failed to utilize the assistance available from DHS to perform her parental duties because she failed to follow through with any of the recommended services and treatment in order to achieve reunification with Child. As such, the record supports the trial court's conclusion that Mother, for more than six months prior to the filing of the termination petition, evidenced a settled purpose of relinquishing her parental claim to Child and/or failed to perform her parental duties with respect to Child.

With respect to Section 2511(b), Mother argues the record does not support termination because the evidence demonstrates the existence of some type of bond between Mother and Child. Mother argues that it can be inferred from the fact that she visited Child, that Mother and Child have a positive relationship. Mother further argues there was no evidence of the effect that a termination of contact with Mother would have on Child and that a bonding evaluation should have been conducted in order to assess the bond between Mother and Child. We disagree.

The record indicates that Child, who was approximately twenty months old at the time of the hearing, has resided in the care of Ms. Stewart for almost his entire life and that Mother has had only ever had minimal visitation with Child. DHS introduced evidence that Child has a parent-child bond with Ms. Stewart. The record was devoid of any evidence of the existence of a bond between Mother and Child. As this Court has recognized, when there is no evidence of a parent-child bond, it is reasonable to infer that none exists. ***See In Re: Adoption of J.M.***, 991 A.2d at 324. DHS also introduced evidence that it was in Child's best interest for his goal to be changed to adoption and for him to remain with Ms. Stewart and that Child would suffer no detrimental effect if Mother's parental rights were terminated. To the extent Mother argues a bonding assessment was necessary to terminate her parental rights, we disagree. 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). Upon a comprehensive review of the record, we conclude competent evidence supports the court's termination of Mother's parental rights pursuant to Section 2511(b). Accordingly, we affirm the decree of the trial court terminating Mother's parental rights pursuant to 23 Pa.C.S.A. §§ 2511(a)(1) and (b).

Decree affirmed. Petition to withdraw granted.