

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: K.W.,

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: D.G., MOTHER,

Appellant

No. 2359 EDA 2012

Appeal from the Order August 3, 2012
In the Court of Common Pleas of Philadelphia County
Family Court at No(s): CP-51-AP-0000639-2011, CP-51-DP-0106375-2006,
FID-51-FN-375733-2009

BEFORE: BENDER, BOWES, and LAZARUS, JJ.

MEMORANDUM BY BOWES, J.:

FILED MAY 08, 2013

D.G. ("Mother") appeals from the order entered in the Court of Common Pleas of Philadelphia County that involuntarily terminated her parental rights to her son, K.W., born in August of 1999.¹ We affirm.

On December 6, 2011, the Philadelphia Department of Human Services, Children and Youth Division ("DHS"), filed a petition for a goal change to adoption and a petition for the involuntary termination of Mother's parental rights. The trial court held a hearing on the petitions on August 3, 2012. Mother was incarcerated at the time of the hearing, but counsel appeared on her behalf. The sole witness during the hearing was James Hood, the DHS caseworker. Further evidence during the hearing

¹ K.W.'s biological father died in January of 2000.

included the statement of facts attached to DHS's petitions as Exhibit "A" and the forensic psychological parenting/bonding evaluation performed by Stephen Miksic, Ph.D., on March 22, 2012, both of which were stipulated to by all counsel.

The pertinent facts and procedural history are as follows. DHS first became involved with this family in 2003 due to Mother's incarceration relating to a charge involving theft.² On October 4, 2006, DHS filed a dependency petition due to Mother's refusal to authorize medical treatment for K.W.'s behavioral problems. On October 17, 2006, the trial court adjudicated K.W. dependent and placed him in kinship care with his paternal grandmother ("Grandmother"), with whom he had been residing since April of 2006. The trial court discharged K.W.'s adjudication in August of 2007, and he returned to Mother's care. **See** N.T., 8/3/12, at 10.

On October 8, 2010, DHS received a report alleging, in part, that Mother was incarcerated for violating her probation; K.W. was residing with Grandmother; and, in July of 2010, Mother had hit K.W. on the knee with a baseball bat and he had difficulty walking. The report was indicated. DHS filed a dependency petition on October 29, 2010. On November 9, 2010, the trial court adjudicated K.W. dependent and placed him in kinship care with

² K.W. has three siblings. Mother's parental rights to K.W.'s sister were involuntarily terminated by decree dated January 12, 2006.

Grandmother. DHS established a placement goal of reunification and fashioned the following Family Service Plan ("FSP") goals for Mother, including, in relevant part: participate in a mental health evaluation; participate in a drug and alcohol evaluation at the Clinical Evaluation Unit ("CEU") and follow all recommendations; locate suitable housing; and participate in supervised biweekly visitation at the Achieving Reunification Center ("ARC").

On January 26, 2011, following her release from prison, the CEU conducted a drug and alcohol evaluation of Mother and recommended that she participate in intensive outpatient treatment at Sobriety Through Outpatient Treatment ("STOP"). Mother failed to attend her intake appointment at STOP.

Mother was re-incarcerated in September of 2011. On March 22, 2012, while still incarcerated, Mother participated in a psychological parenting/bonding evaluation performed by Dr. Miksic. Dr. Miksic diagnosed Mother with a mood disorder not otherwise specified with bi-polar features and an anti-social personality disorder. **See** Psychological Evaluation, 3/22/12, at 9. Dr. Miksic opined that it would be in K.W.'s best interest for Mother's parental rights to be terminated, and that K.W.'s "emotional development in the long-term will not be significantly harmed" by doing so. **Id.** at 9-10. He explained as follows:

[K.W.] would be distressed by the prospect of his mother's parental rights being terminated, as any child in his

circumstances has the wish or fantasy that he may have a healthy or positive relationship with a parental figure in the future. . . . However, the risk is greater, given [Mother's] history, that her availability and interactions with [K.W.] will continue to cause him higher levels of anxiety, stress and frustration that can disrupt his behavioral and emotional functioning in a chronic way; preventing him from engaging in adequate education, social and vocational development.

Id. at 9.

Moreover, during the termination and goal change hearing, Mr. Hood testified that K.W. told him he desires to be adopted by Grandmother. N.T., 8/3/12, at 6. Mr. Hood stated that K.W. has a "very strong" bond with Grandmother. ***Id.*** at 7-8. Grandmother first expressed the desire to adopt K.W. in September of 2011. At the time of the hearing, K.W. was being held in a delinquent center due to felony charges involving sexual assault. N.T., 8/3/12, at 4. Mr. Hood testified that Grandmother recently told him that, despite K.W.'s felony charges, "she has no misgivings about having him return [to her] home and be adopted." ***Id.*** at 6. Finally, Mr. Hood testified that K.W. will miss Mother, but he agreed with Dr. Miksic that K.W. will have no "longterm [sic] detrimental effects" if Mother's parental rights are terminated. ***Id.*** at 7.

By order dated and entered on August 3, 2012, the trial court involuntarily terminated Mother's parental rights pursuant to 23 Pa.C.S.

§ 2511(a)(1), (2), (5), (8), and (b).³ Mother timely filed a notice of appeal and a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b).

On appeal, Mother presents the following issues for our review:

A. Whether the trial court erred in involuntarily terminating the Mother's parental rights where there was undisputed testimony that there was a bond between the Mother and [K.W.] and the termination of parental rights would have a negative effect on the developmental, physical and emotional needs of [K.W.]?

B. Whether the trial court erred in involuntarily terminating the [Mother's] parental rights where it was not supported by clear and convincing evidence that it was in the best interest of [K.W.] was made [sic] an orphan and was in delinquent custody at the time of the order?

Mother's brief, at 5.

We review this appeal according to the following standard:

[A]ppellate courts must apply an abuse of discretion standard when considering a trial court's determination of a petition for termination of parental rights. As in dependency cases, our standard of review requires an appellate court to accept the findings of fact and credibility determinations of the trial court if they are supported by the record. ***In re: R.J.T.***, 608 Pa. 9, 9 A.3d 1179, 1190 (Pa. 2010). If the factual findings are supported, appellate courts review to determine if the trial court made an error of law or abused its discretion. ***Id.; R.I.S.***, [36 A.3d 567, 572 (Pa. 2011) (plurality opinion)]. As has been often stated, an abuse of discretion does not result merely because the reviewing court might have reached a different

³ In addition, by separate order dated August 3, 2012, the trial court changed K.W.'s placement goal to adoption. On appeal, Mother does not allege any error with respect to the goal change order. Therefore, we do not address it.

conclusion. *Id.*; *see also Samuel Bassett v. Kia Motors America, Inc.*, 34 A.3d 1, 51 (Pa. 2011); *Christianson v. Ely*, [575 Pa. 647, 654-655], 838 A.2d 630, 634 (Pa. 2003). Instead, a decision may be reversed for an abuse of discretion only upon demonstration of manifest unreasonableness, partiality, prejudice, bias, or ill-will. *Id.*

As we discussed in *R.J.T.*, there are clear reasons for applying an abuse of discretion standard of review in these cases. We observed that, unlike trial courts, appellate courts are not equipped to make the fact-specific determinations on a cold record, where the trial judges are observing the parties during the relevant hearing and often presiding over numerous other hearings regarding the child and parents. *R.J.T.*, [608 Pa. at 28-30], 9 A.3d at 1190. Therefore, even where the facts could support an opposite result, as is often the case in dependency and termination cases, an appellate court must resist the urge to second guess the trial court and impose its own credibility determinations and judgment; instead we must defer to the trial judges so long as the factual findings are supported by the record and the court's legal conclusions are not the result of an error of law or an abuse of discretion. *In re Adoption of Atencio*, [539 Pa. 161, 165,] 650 A.2d 1064, 1066 (Pa. 1994).

In re Adoption of S.P., 47 A.3d 817, 826-827 (Pa. 2012).

Termination of parental rights is governed by Section 2511 of the Adoption Act, which requires a bifurcated analysis.

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 505, 511 (Pa.Super. 2007) (citing 23 Pa.C.S. § 2511).

The burden is upon the petitioner to prove by clear and convincing evidence that the asserted statutory grounds for seeking the termination of parental rights are valid. ***In re R.N.J.***, 985 A.2d 273, 276 (Pa.Super. 2009).

Instantly, the relevant provisions of the Adoption Act are as follows:

(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. § 2511(a)(1),(2), (5), (8), (b).

On appeal, Mother does not assert an abuse of discretion with respect to § 2511(a). Therefore, we review the order pursuant to § 2511(b) only. **See *Krebs v. United Refining Company of Pennsylvania***, 893 A.2d 776, 797 (Pa.Super. 2006) (stating that any issue not set forth in or suggested by an appellate brief's Statement of Questions Involved is deemed waived).

This Court has interpreted Section 2511(b) as follows:

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.***

In Re: Adoption of J.M., 991 A.2d 321, 324 (Pa.Super. 2010).

In her first issue, Mother argues the record evidence was insufficient to terminate her parental rights pursuant to Section 2511(b). Specifically, Mother argues the testimonial evidence demonstrates that she has maintained telephone contact with K.W., and that she and her son share a bond. We discern no abuse of discretion by the trial court in concluding that DHS had satisfied the requirements of § 2511(b) by clear and convincing evidence.

The testimonial evidence demonstrates that K.W. has affection for Mother and will miss her if her parental rights are terminated. Nevertheless, affection, on its own, is not sufficient to demonstrate a beneficial bond for purposes of § 2511(b). This Court has explained:

[C]oncluding a child has a beneficial bond with a parent simply because the child harbors affection for the parent is not only dangerous, it is logically unsound. If a child’s feelings were the dispositive factor in the bonding analysis, the analysis would be reduced to an exercise in semantics as it is the rare child who, after being subject to neglect and abuse, is able to sift through the emotional wreckage and completely disavow a parent. . . . Nor are we of the opinion that the biological connection between [the parent] and the children is sufficient in of itself, or when considered in connection with a child’s feeling toward a parent, to establish a *de facto* beneficial bond exists. The psychological aspect of parenthood is more important in terms of the development of the child and its mental and emotional health than the coincidence of biological or natural parenthood.

In re K.K.R.-S., 958 A.2d 529, 535 (Pa.Super. 2008) (internal citations and quotation marks omitted).

In this case, based on the report of Dr. Miksic and the testimony of Mr. Hood, the trial court found that K.W.'s bond with Mother is not so beneficial as to prevent termination pursuant to § 2511(b). In fact, not only did the court find that K.W. will suffer no long-term detriment by permanently severing his bond with Mother, but that maintaining the bond will cause him "to have greater levels of anxiety, stress and frustration which would prevent [K.W.] from engaging in adequate education, social and vocational development." Trial Court Opinion, 1/3/13, at 13. The record evidence supports the court's findings. **See** Psychological Evaluation, 3/22/12, at 9-10; N.T., 8/3/12, at 6-8. Therefore, Mother's first issue fails.

In her second issue, Mother argues the trial court abused its discretion in terminating her parental rights pursuant to § 2511(b) because K.W. was in a delinquent placement with felony charges pending against him and not in the placement of DHS at the time of the hearing. Mother states in her brief that, "[w]ithout a parent, [K.W.] has been left to deal with a difficult situation alone." Mother's brief at 11. Mother states that K.W. "may require benefits or even the emotional support or resources that only a parent can provide." ***Id.*** at 12. However, there is no record evidence that K.W. has a beneficial bond with Mother. Rather, the record reveals that K.W. has a beneficial bond with Grandmother, who seeks adoption even though K.W.

has felony charges pending against him. Accordingly, based on the totality of the record evidence, we conclude the trial court did not abuse its discretion in terminating Mother's parental rights pursuant to § 2511(a) and (b).

Order affirmed.

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambett", written over a horizontal line.

Prothonotary

Date: 5/8/2013