

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: H.I.C., H.H.A.C. AND H.B.C. : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
APPEAL OF: D.C., MOTHER OF :
CHILDREN : No. 2505 EDA 2012

Appeal from the Decrees Entered August 20, 2012
In the Court of Common Pleas of Philadelphia County
Family Court at Nos.:
CP-51-AP-0000386-2011
CP-51-AP-0000387-2011
CP-51-AP-0000388-2011

BEFORE: BENDER, J., BOWES, J. AND LAZARUS, J.

MEMORANDUM BY BENDER, J.:

FILED MAY 03, 2013

D.C. ("Mother") appeals from the decrees entered on August 20, 2012 in the Court of Common Pleas of Philadelphia County, terminating her parental rights to her daughter, H.I.C., born in July of 2008, her son, H.H.A.C., born in June of 2006, and her daughter, H.B.C., born in July of 2005, (collectively "Children"), pursuant to 23 Pa.C.S. § 2511(a)(1), (2), (5), (8), and (b).^{1,2} We affirm.

¹ Initially, we note that the trial court terminated Mother's parental rights to the three children at issue by way of three separate, though largely identical, decrees. Mother purports to appeal the several decrees by way of a single notice of appeal. This Court has consistently noted, "[T]aking one appeal from separate judgments is not acceptable practice and is discouraged." **TCPF Ltd. Partnership v. Skatell**, 976 A.2d 571, 574 n.4 (Pa. Super. 2009) (citing **General Electric Credit Corp. v. Aetna Casualty & Surety Co.**, 437 Pa. 463, 469, 263 A.2d 448, 452 (1970); Pa.R.A.P. 512, Note). On October 10, 2012, this Court directed Mother to show cause why her appeal should not be quashed. In her response, Mother argued that, although the trial court did not formally consolidate Children's cases, the trial court handled the cases as a single matter. We are not persuaded that we are bound to accept this explanation. Nevertheless, we decline to quash

The trial court provided the following factual history:

An evidentiary hearing was held before this Court on August 20, 2012. The City Solicitor presented testimony from [Philadelphia Department of Human Services (“DHS”)] social worker Tiffany Dever. Ms. Dever testified that she was assigned to the family’s case the entire time that the Children were in placement. Ms. Dever testified that DHS had been involved with the family prior to her involvement but that the case had been closed out. The case was subsequently reopened in July of 2008 due to medical concerns with the Child, H.I.C. (N.T. p. 33-34). Ms. Dever related that all of the Children were placed due to concerns of medical neglect, specifically failure to thrive, involving the Child, H.I.C. (N.T. p. 34). The Child, H.I.C., spent a week in the hospital, where a series of tests were ordered to determine why he was not gaining weight. (N.T. p. 34). Ms. Dever testified that the Child, H.H.A.C., was placed with DHS due to allegations of physical abuse. (N.T. p. 35-36). Ms. Dever stated that there was a report of an incident where Mother had beaten the Child, H.H.A.C. over the head, causing a lump. This report was substantiated. (N.T. p. 36). The Child, H.B.C. was an infant at the time. Due to Mother’s erratic behavior, the Child, H.B.C., was placed due to risk of harm. (N.T. p. 36). Although all of the Children were placed in December 2008, the Child, H.H.A.C., was briefly reunified with Mother in May 2009, before being replaced with DHS in October 2009 after the above referenced report of physical abuse. (N.T. p. 36). FSP [reviews] were held every six months since the Children were placed. Mother’s most recent FSP objectives were to maintain visitation, comply with the Individual Service Plans (ISPs) as designated by the agency, maintain contact with DHS, provide housing for the Children, seek parenting skills and anger management through therapy. (N.T. p. 36-37).

Ms. Dever testified that Mother’s housing was not appropriate for reunification with the Children. Mother was living with other family members and there was no space available for the Children. Additionally, the home had not been cleared based

Mother’s appeal, but continue to discourage the taking of a single appeal from separate judgments.

² The trial court decreed the involuntary termination of the parental rights of R.T.W. (“Father”) on the same date. Father did not appeal.

upon Mother's request. (N.T. p. 37). Mother had also been referred several times to the Achieving Reunification Center ("ARC") for housing services. Ms. Dever testified that Mother did not do whatever she could to obtain appropriate housing. Specifically, Mother was told that she could obtain appropriate housing by staying[] in a shelter and going thru O.S.H.A. and getting her name on a waiting list for housing. However, Mother chose to stay with family members instead. (N.T. p. 38).

Although Mother completed parenting classes two times, she was asked to leave anger management class due to her behavior and explosive acting out during which time she made threats to facility staff. (N.T. p. 37). Consequently, anger management was never completed by Mother.

Regarding the FSP objective of visitation, Ms. Dever testified that Mother had biweekly supervised visits at the agency with the [C]hildren, H.I.C. and H.B.C. These visits were suspended in November 2011 at the recommendation of the therapist for reasons discussed below. (N.T. p. 37-38). Mother had been attending therapy sessions with the Child[,] H.H.A.C.[,] at the Tree of Life. However, Mother's behavior became very erratic. She became very defensive, was cursing and yelling, all in the presence of other children in the waiting area. (N.T. p. 38-39). Mother was cursing, screaming loudly and making threats toward staff to the extent that they needed to escort her out of the building and not allow her back in. (N.T. p. 56). The Child[,] H.H.A.C.[,] would display fearfulness in the presence of Mother such that she would completely shut down and wouldn't be able to fully participate in her therapy. (N.T. p. 39-40). Consequently, the Child, H.H.A.C., was not making any progress in therapy sessions where Mother was present. (N.T. p. 56). Regarding visitation with the Child[,] H.B.C., Ms. Dever testified that the quality of visits were inconsistent. (N.T. p. 52). Ms. Dever testified that there were a couple of instances where mother hit the Child[,] H.B.C., even during supervised visits. (N.T. p. 53). Additionally, Mother would make statements directed towards the Child[,] H.B.C.[,] such as, "Don't bring her next time, she doesn't listen." Because of Mother's behavior, and at the recommendation of the therapist, Mother's visits with the Children[,] H.H.A.C and H.B.C.[,] were suspended in November 2011. (N.T. p. 39-40, 54-56).

Ms. Dever testified that [H.H.A.C.] was receiving therapy from the Tree of Life from November 2011 until March 2012. In March 2012, JJPI became involved with the case of the Child[,] H.I.C. JJPI policy does not allow anyone who has an indicated incident or who is considered to be a perpetrator on a case to enter their facility. (N.T. p. 54). As a result, Mother's contact with the Child[,] H.I.C.[,] ended in March 2012.

The City Solicitor also presented expert testimony from Dr. William Russell, a licensed psychologist, who was qualified as an expert in bonding and parenting capacity evaluations. The Trial Judge found Dr. Russell to be a credible witness. (N.T. p. 9). Dr. Russell testified regarding a parenting capacity evaluation which was conducted upon Mother. (N.T. p. 11-12). Dr. Russell testified that he reviewed various DHS records, results from a Minnesota Multiphasic Personality Inventory ("MMPI") test conducted on Mother, along with a previous evaluation done by a Doctor Wagner. Additionally, Dr. Russell consulted on several occasions with the clinician who had been assigned to conduct a face-to-face interview with Mother. (N.T. p. 12-14). As a result of this process, Dr. Russell testified that Mother could benefit from treatment to increase her parenting skills, her psycho educational sources such as parenting classes and that Mother could benefit from anger management. (N.T. p. 13-14). Dr. Russell testified that all the recommendations were geared toward addressing the anger issues that were noticed in the evaluation and in the record. (N.T. p. 14). Specifically, Dr. Russell stated in his report as follows:

"Given [Mother]'s history of aggressive acting out, limited ability to identify triggers to her acting out, and minimal effort to make changes in her violent behaviors, it is advisable that the Court seek long term placement for her children, as [Mother] does not appear to be receptive to interventions made thus far and is resistant to changing her current behaviors and thought patterns."

"[Mother] could benefit from additional intervention, such as individual therapy, psycho education about anger management, and parenting skills at this time. She does not seem willing or able to integrate those services into her daily behaviors."

(N.T. p. 14-15)

Doctor Russell further noted that the previous evaluation conducted by Doctor Wagner contained numerous references to aggressive behavior and acting out. Approximately two years after this evaluation, Dr. Russell testified to seeing the same symptoms and behavior. Additionally, Dr. Russell noted that Mother was not receptive to change in that she did not see herself as having any problems. (N.T. p. 15). Doctor Russell diagnosed Mother with Intermittent Explosive Disorder ("IED"). Dr. Russell testified that during the evaluation of Mother, she displayed a pattern of behavior that was consistent with IED, namely the presence of oppositionality, moodiness and irritability. (N.T. p. 23). Dr. Russell's diagnosis was based upon Mother's presentation during the evaluation, the fact that Mother had a significant history of acting out, aggressive behavior, multiple arrests and demonstrated difficulty in controlling her emotions and behavior. (N.T. p. 20). Dr. Russell characterized Mother's behavior as belligerent, noting that she refused to complete any paperwork presented to her both at intake and during a bonding evaluation: Mother would not offer an explanation; she just said that she wouldn't complete the paperwork. (N.T. p. 20). Mother was unwilling or unable to explain her explosive behavior and additionally was unable or unwilling to accept that this behavior had been a problem in her life. (N.T. p. 19, 21).

Mother testified briefly and expressed her desire that her parental rights not be terminated. Mother acknowledged that she had neglected her children, but attempted to attribute her behavior to the fact that her grandmother had passed away and that she had been kicked out of her house with nowhere to go. She admitted that she moved around a lot and was angry, upset and hurting. (N.T. p. 63). Additionally, Mother did not dispute the DHS reports and records that contained [H.H.A.C.'s] diagnosis of "failure to thrive". (N.T. p. 64). The trial judge did not find Mother to be a credible witness. While the trial judge believed Mother loved her Children, the Court found clear and convincing evidence that Mother did not have the capacity to care for her Children. (N.T. p. 111-112).

Trial Court Opinion, 1/16/13, at 2-7.

DHS filed petitions for the involuntary termination of Mother's parental rights to each of the Children on August 11, 2011. As noted above, on August 20, 2012, the trial court held a hearing on the petition, wherein Dr. William Russell, a licensed psychologist; Tiffany Dever, a DHS social worker; Mother; and Father testified.³ That same date, the trial court entered its decrees, terminating Mother's parental rights to the Children, pursuant to 23 Pa.C.S. § 2511(a)(1), (2), (5), (8), and (b). On September 13, 2012, Mother simultaneously filed her notice of appeal and concise statement of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b).

On appeal, Mother raises two issues for our review:

A. Whether the trial court committed reversible error when it involuntarily terminated [M]other's parental rights where such determination was not supported by clear and convincing evidence under the Adoption Act[,], 23 Pa. C.S.A. §2511 (a)(1), (a)(2), (a)(5), and (a)(8) as mother made progress towards working and meeting her FSP goals?

B. Whether the trial court committed reversible error when it involuntarily terminated [M]other's parental rights without giving primary consideration to the effect that the termination would have on the developmental physical and emotional needs of the child as required by the Adoption Act 23 Pa. C.S.A. §2511(b)?

Mother's Brief at 2.

We review appeals from the involuntary termination of parental rights 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

³ Father participated by telephone.

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.***; [***In re R.I.S.***, [___ Pa. ___, 6 A.3d 567, 572 (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 conclusion. ***Id.***; ***see also Samuel Bassett v. Kia Motors America, Inc.***, [___ Pa. ___], 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. 9, 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, 650 A.2d 1064, 1066 (Pa. 1994).

In re Adoption of S.P., 47 A.3d 817, 826-27 (Pa. 2012).

Section 2511 of the Adoption Act provides in pertinent part:

(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:

* * *

(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.

23 Pa.C.S. § 2511(a)(8), (b). “[W]e need only agree with [a trial court’s] decision as to any one subsection [of 2511(a), along with 2511(b),] in order to affirm the termination of parental rights.” *In re B.L.W.*, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*).

To 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. Section [2511] (a)(8) sets a 12-month time frame for a parent to remedy the conditions that led to the children’s removal by the court. Once the 12-month period has been established, the court must next determine whether the conditions that led to the child’s removal continue to exist, despite the reasonable good faith efforts of [the Agency] supplied over a realistic time period. Termination under Section 2511(a)(8) does not require the court to evaluate a parent’s current willingness or ability to remedy the conditions that initially caused placement or the availability or efficacy of [Agency] services.

In re K.Z.S., 946 A.2d 753, 758-59 (Pa. Super. 2008) (internal citations omitted).

We have observed as follows regarding the “needs and welfare” analysis pertinent to Sections 2511(a)(8) and (b):

[I]nitially, the focus in terminating parental rights is on the parent, under Section 2511(a), whereas the focus in Section 2511(b) is on the child. However, Section 2511(a)(8) explicitly requires an evaluation of the “needs and welfare of the child” prior to proceeding to Section 2511(b), which focuses on the “developmental, physical and emotional needs and welfare of the child.” Thus, the analysis under Section 2511(a)(8) accounts for the needs of the child in addition to the behavior of the parent. Moreover, only if a court determines that the parent's conduct warrants termination of his or her parental rights, pursuant to Section 2511(a), does a 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.” Accordingly, while both Section 2511(a)(8) and Section 2511(b) direct us to evaluate the “needs and welfare of the child,” we are required to resolve the analysis relative to Section 2511(a)(8), prior to addressing the “needs and welfare” of [the child], as proscribed by Section 2511(b); as such, they are distinct in that we must address Section 2511(a) before reaching Section 2511(b).

In Re Adoption of C.L.G., 956 A.2d 999, 1009 (Pa. Super. 2008) (*en banc*) (citations omitted).

[U]nder 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 after determining that the parent's conduct warrants termination of his or her parental rights must the court engage in the second part of the analysis: determination of the needs and welfare of the child under the standard of best interests of the child. Although a needs and welfare analysis is mandated by the statute, it is distinct from

and not relevant to a determination of whether the parent's conduct justifies termination of parental rights under the statute. One major aspect of the needs and welfare analysis concerns the nature and status of the emotional bond between parent and child.

In re Adoption of R.J.S., 901 A.2d 502, 508 (Pa. Super. 2006).

In her first issue, Mother argues that she met her affirmative duty to the Children, through showing a continuing interest in the Children and through participation in consistent visits with the Children. She emphasizes her attachment with the Children, and asserts that she exhibited a genuine effort to reunify with them. Mother argues that she complied with various FSP goals, including parenting classes, anger management classes, and mental health treatment. Mother submits that her income inhibited her ability to obtain proper housing, but notes that economic factors should not motivate the termination of parental rights. Mother's Brief at 5-6.

Mother also argues that the trial court erred in its analysis of section 2511(a)(8), because DHS failed to present the trial court "with any evidence regarding a bond or lack thereof between [M]other and her children [and] did not rely on an expert report to show the lack of a bond between [M]other and her children." Mother's Brief at 7.

Turning to the application of Section 2511(a)(8), Mother does not contest that the Children were removed from the care of Mother by the court, and does not contest that all three of the Children have been in placement since October 2009 at the latest, a period of more than twenty

months at the time of the filing of the termination petition. **See** N.T., 8/20/12, at 35.

The trial court heard testimony that the Children were removed from Mother's care due to medical neglect, physical abuse, and Mother's erratic behavior, which posed a risk of harm to her infant child. N.T., at 34-36. The trial court found that the conditions that gave rise to placement continue to exist. The court found that "Mother failed to comply with her FSP objectives, which centered on issues relating to her anger," and that Mother's anger problems caused her visitation with her Children to be suspended. Trial Court Opinion, 1/16/13, at 9. The court explained, "Mother made inappropriate remarks to Children during visitation. Mother's explosive anger problems caused a safety concern for her children and led to a suspension of her visitation with the Children. Mother's failure to acknowledge and address her FSP objectives prevented reunification with the Children." **Id.** at 11.

Contrary to Mother's assertion that DHS provided no evidence on the bonding issue, the trial court received into evidence a parenting evaluation report and a bonding evaluation, and heard testimony from Dr. Russell. N.T., at 10-16. Dr. Russell testified that

Based on our observation of the [C]hildren's behavior before the evaluation in the waiting room, during the observations of the [C]hildren and [Mother], as well as our observations subsequent to that of the [C]hildren's behavior in the waiting room when they were returned to the foster parent,

it was our finding that the [C]hildren would not suffer any irreparable harm if termination were to be instituted.

Id. at 16. Dr. Russell's testimony was consistent with the reports introduced into evidence. **See** DHS Exhibit 2; DHS Exhibit 3. Accordingly, after review of the trial court's opinion, the certified record, including its transcripts and exhibits, as well as Mother's appellate brief, we determine that the trial court did not abuse its discretion or err as a matter of law in its application of Section 2511(a)(8). **See In re Adoption of S.P.**, 47 A.3d at 826-27. Accordingly, we proceed to address Mother's issue as to Section 2511(b). **See In re Adoption of R.J.S.**, 901 A.2d at 508.

In her second issue, Mother argues that the trial court failed to give "primary consideration to the effect that the termination would have on the developmental, physical and emotional needs of the child as required by the Adoption Act[,], 23 Pa.C.S.A. § 2511(b)." Mother's Brief at 7. She argues that the trial court "was never presented with evidence that a bond did not exist," and that, as a result, the trial court erred in its application of law. Mother's Brief at 8. Mother proceeds to argue that the trial court failed to consider "the bond of parental affection," asserted to be present here, and the effect that severing that bond would have on the needs and welfare of the Children. Mother's Brief at 9.

In reviewing the evidence in support of termination under Section 2511(b), we consider whether termination of parental rights would best

serve the developmental, physical and emotional needs and welfare of the child. **See *In re C.M.S.***, 884 A.2d 1284, 1286-1287 (Pa. Super. 2005).

Intangibles such as love, comfort, security, and stability are involved in the inquiry into the needs and welfare of the child. The 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. at 1287 (citations omitted).

As noted above, the trial court received into evidence an expert report, created pursuant to a bonding evaluation. The court heard testimony from Dr. Russell, who supervised the evaluation. Dr. Russell provided testimony consistent with the report, which indicated that some bond exists, but that the bond was such that the Children would not suffer any irreparable harm if Mother's parental rights were terminated.

Moreover, contrary to Mother's assertions, our review reveals that the trial court considered the bond that exists between Mother and the Children, as well as the effect that severing that bond would have on their needs and welfare. The trial court explained,

As stated above, Ms. Dever testified that all of the children had formed appropriate relationships with their current caretakers who were meeting all of their needs. (N.T. p. 45). Ms. Dever, who had observed each of the Children with their foster parents, testified that there was a strong bond between them. (N.T. p. 45). Ms. Dever further testified that the foster parents are completely involved in the lives of the Children. They attend meetings, come to school, transport the Children for appointments and are on top of any services that the Children require. (N.T. p. 46). Ms. Dever specifically testified regarding the Child H.I.C. who had been in his current foster home for over three years. She testified that the Child H.I.C. and the foster

parents definitely have the type of relationship that a mother and father would have towards a son. (N.T. p. 46). Finally, the City Solicitor introduced evidence of a bonding evaluation performed by Dr. Russell. Dr. Russell testified that based upon his observations of the Children' behavior before the evaluation in the waiting room, observations of the Mother and the Children as well as observations of the Children when they were returned to their foster parents, he concluded that the Children would not suffer any irreparable harm if Mother's parental rights were terminated.

Since the Children have spent approximately 3-5 years in foster care, Mother has demonstrated little interest in taking steps which would allow her to care for the Children, and the fact that the Children are in nurturing and loving foster homes, the developmental physical and emotional needs and welfare of the Children are best served by terminating Mother's parental rights.

* * * *

The trial judge accepted the testimony of Dr. Russell that Mother was unable to provide on a day-to-day basis for the care and welfare of the children. The trial judge found [credible] the testimony of Ms. Dever who stated that the children would have no ill effects if Mother's parental rights were terminated. As stated above, Dr. Russell also was of the opinion that the children would not suffer any irreparable harm if Mother's parental rights were to be terminated.

Trial Court Opinion, 1/16/13, at 14-15.

Our review of the record reveals that the trial court's application of Section 2511(b) is supported by the record. In light of our standard of review, we find no abuse of discretion in the trial court's conclusion.

Accordingly, for the reasons stated above, we affirm the trial court's decrees, terminating Mother's parental rights to the Children, pursuant to 23 Pa.C.S.A. § 2511(a)(8) and (b).

Decrees affirmed.

J-S21015-13

Judgment Entered.

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

Prothonotary

Date: 5/3/2013