

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: ADOPTION OF R.C., A MINOR
APPEAL OF: R.C., FATHER

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2527 EDA 2012

Appeal from the Decree of August 21, 2012,
in the Court of Common Pleas of Monroe County,
Domestic Relations at No. 27 OCA 2012

BEFORE: BENDER, LAZARUS and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.:

Filed: February 20, 2013

R.C. ("Father") appeals from the decree in the Court of Common Pleas of Monroe County granting the petition for the involuntary termination of his parental rights filed by J.D. ("Mother"), with respect to his daughter, R.C. ("Child"), born in February of 2004. We affirm.

On April 12, 2012, Mother filed a petition for the involuntary termination of Father's parental rights to Child pursuant to 23 Pa.C.S.A. § 2511(a)(1) and (b). On the same date, Mother's husband, W.V., filed a petition for adoption of Child. The trial court held a hearing on Mother's petition on August 16, 2012.¹

At the hearing, Mother testified as follows. Child was born in the state of Georgia. At the time of Child's birth, Mother and Father were living

¹ The court also heard testimony on W.V.'s petition to adopt Child.

*Retired Senior Judge assigned to the Superior Court.

together; they never married. When Child was approximately eight months old, Mother's and Father's relationship ended and Mother relocated with Child to Florida, where she remained for two months. Mother then moved with Child to New York to live with Mother's sister, E.T. In October of 2005, Father visited Child in New York and Mother permitted Father to take Child to his home in Georgia for a visit.²

In October of 2006, Mother, E.T., and Child relocated to Pennsylvania. Father was notified of Mother's and Child's whereabouts in 2008, when Mother filed a petition for child support against Father in Monroe County.³ Father subsequently initiated a custody action against Mother in Monroe County. The trial court issued a custody order in April of 2008, granting Father supervised visitation, telephone contact with Child, and requiring him to obtain background checks.⁴

² Mother testified she agreed Father could have Child in Georgia for two weeks; Father testified the parties agreed Father would have Child for a month. When Father refused to return Child at the end of two weeks, Mother filed a petition seeking the return of Child and Mother and E.T. went to Father's home and retrieved Child.

³ A child support order was issued against Father. By the time of the instant proceedings, Father was in arrears in the amount of \$2,914.84. Mother testified Father had not paid child support since 2008.

⁴ In October of 2009, Mother filed a contempt petition, wherein she alleged Father failed to obtain the required background checks. Following a custody conciliation in October 2009, the court adopted the conciliator's recommendation that no changes be made to the existing order, *i.e.*, that Mother have legal and physical of Child and that Father have supervised visits with Child pending further court order and completion of required background checks.

Following the April 2008 custody order, Father telephoned Child on four occasions. On August 24, 2008, Father attended a two-hour supervised visit with Child in Pennsylvania. After the August 2008 visit, Father never telephoned or visited Child again. Mother testified her telephone number has remained the same since Father's contact with her in 2008. After Mother filed the petition for the involuntary termination of parental rights, Father sent two birthday cards to Child in the summer of 2012.⁵ Child had not received any other birthday cards from Father during her life.

Mother and W.V. have resided together since 2006 and were married in May 2008. Mother testified W.V. has known Child since she was six months old. Mother testified that W.V. and Child do activities together, have a father/daughter relationship, and Child refers to W.V. as her father.

At the time of the hearing, Father was incarcerated following a federal conviction for a crime relating to making a false claim regarding his citizenship.⁶ Father testified he was arrested for this crime in February of 2011. Father further testified that an order exists for his deportation, but an appeal of the order was pending.

Father testified that from the time of the custody conciliation in 2009, he did not have Mother's contact information. Father testified that since 2009, he tried to contact Child by telephoning E.T., but E.T. never returned his calls.

⁵ Child's birthday is in February.

⁶ Father is a citizen of Haiti; he is not a citizen of the United States.

By decree of August 21, 2012, the trial court granted Mother's petition for the involuntary termination of Father's parental rights. Father's timely appeal followed.

On appeal, Father raises one question for our review:

Was clear and convincing evidence provided of the statutory grounds necessary to terminate father's parental rights?

Father's Brief, at 4.

We review this appeal according to the following standard:

Appellate 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)]. 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.*, 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.*, 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) (internal citations omitted). 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 trial court terminated Father's parental rights pursuant to Section 2511(a)(1) and (b), which provide as follows:

§ 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), our Supreme Court has held,

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 Adoption of Charles E.D.M., 708 A.2d 88, 92 (Pa. 1998). This Court has explained:

A court may terminate parental rights under Section 2511(a)(1) where the parent demonstrates a settled purpose to relinquish parental claim to a child or fails to perform parental duties for at least the six months prior to the filing of the termination petition. The court should consider the entire background of the case and not simply:

. . . 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 his . . . parental rights, to determine if the evidence, in light of the totality of the circumstances, clearly warrants the involuntary termination.

In the Interest of: A.S., 11 A.3d 473, 482 (Pa. Super. 2010) (internal citations omitted).

Regarding the definition of “parental duties,” we have stated:

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 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 . . . her physical and emotional needs. Where a parent is incarcerated, the fact of incarceration does not, in itself, provide grounds for the termination of parental rights. However, a parent's responsibilities are not tolled during incarceration. The focus is on whether the parent utilized resources available while in prison to maintain a relationship with his or her child. An incarcerated parent is expected to utilize all available resources to foster a continuing close relationship with his . . . children.

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

In addition, with respect to Section 2511(b), this Court has explained the requisite analysis 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.* 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).

On appeal, Father argues that he never demonstrated a settled purpose to relinquish his parental rights. Father asserts he attempted to remain in Child's life, but Mother thwarted his attempts to contact Child. We discern no abuse of discretion by the trial court in its conclusions to the contrary.

Upon review, the evidence demonstrates that since Mother and Father separated in October 2004, Father has only visited with Child twice. Father visited with Child in October 2005 when she was 20 months old. Father last saw Child on August 24, 2008, when she was four years old. Father telephoned Mother on four occasions in 2008. However, the trial court found that since the August 2008, visit, Father has not exercised any custody time with Child or contacted her by telephone. The trial court further found that Father has not sent any birthday cards, letters or presents to Child, with the exception of two cards he sent subsequent to the filing of the termination petition. Thus, the trial court found grounds for termination of Father's parental rights pursuant to Section 2511(a)(1). The record supports this determination.

We further find no record support for Father's assertion that Mother prevented him from having contact with Child. Although Father claimed at the hearing that he did not have Mother's telephone number after the 2009 custody conciliation, Mother testified that her phone number has remained the same. Regardless, Father never sought to exercise his custody rights. Father is entitled to no relief on his claim.

With respect to Section 2511(b), Father concedes he has not been a part of Child's life, but reiterates that Mother prevented him from doing so. As we have already stated, we find no support for Father's assertion that Mother prevented him from having contact with Child. Further, the trial court found that Child has no bond with Father. The record indicates that Child, who was eight years old at the time of the hearing, has had limited contact with Father throughout her life and has not seen or spoken with him since 2008. Thus, the record supports the trial court's finding that Child has no bond with Father. 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. Rather, the trial court found that Child is bonded with W.V. who she has known most of her life and knows as her father. The trial court found that terminating Father's parental rights would serve Child's developmental, physical and emotional needs and welfare pursuant to Section 2511(b). The record supports this determination. Accordingly, we affirm the decree terminating Father's parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(1) and (b).

Decree affirmed.