

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: D.F.B., A MINOR : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
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:
:
APPEAL OF: D.B., FATHER : No. 270 EDA 2013

Appeal from the Decree December 20, 2012
In the Court of Common Pleas of Philadelphia County
Family Court at No(s): CP-51-AP-0000078-2012

BEFORE: GANTMAN, J., SHOGAN, J., and MUSMANNO, J.

MEMORANDUM BY GANTMAN, J.:

FILED JUNE 04, 2013

Appellant, D.B. ("Father"), 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 Father's parental rights as to his minor child, D.F.B. ("Child"). We affirm.

The relevant facts and procedural history of this appeal are as follows.

On August 11, 2009, [DHS] obtained an Order of Protective Custody due to parents' deplorable housing conditions, failure to provide safe living environment, and parents' history of mental illness and history of drug and alcohol abuse.

On August [20], 2009, after a hearing, the child was adjudicated dependent and committed to [DHS] by [the court]. The [c]ourt specifically ordered parents of [Child] to be referred to the Clinical Evaluation Unit for an evaluation and a drug and alcohol screen.

A Family Service Plan [("FSP")] meeting was held. The [FSP] objectives for parents were (1) to obtain stable

housing, (2) complete parenting class, (3) mental health treatment and (4) drug and alcohol treatment.

The matter was then listed on a regular basis before [the court] and evaluated for the purpose of determining or reviewing the permanency plan of the child with the goal of reunification of the family.

In subsequent hearings, [the domestic relations orders] reflect the [c]ourt's review and disposition as a result of evidence presented addressing the lack of compliance with suitable housing, employment and drug and alcohol treatment.

(Trial Court Opinion, filed March 4, 2012, at 1-2).

On February 29, 2012, DHS filed a petition for involuntary termination of Father's parental rights. The court conducted termination hearings on July 23, 2012, October 15, 2012, and December 20, 2012. Immediately following the final hearing, the court entered a decree terminating Father's parental rights to Child. Father timely filed a notice of appeal on January 18, 2013, which included a concise statement of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(a)(2)(i).

Father raises two issues for our review:

WHETHER THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT INVOLUNTARILY TERMINATED FATHER'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 FATHER MADE PROGRESS TOWARDS WORKING AND MEETING HIS FSP GOALS[?]

WHETHER THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT INVOLUNTARILY TERMINATED FATHER'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)?

(Father's Brief at 2).

On appeal, Father contends he did not demonstrate a settled purpose of relinquishing his parental rights during the period immediately preceding termination. Father asserts he maintained contact with DHS, showed a continuing interest in Child, and consistently participated in supervised visits. Father insists he made a genuine effort to reunite with Child, attempting to eliminate obstacles to reunification. Specifically, Father argues he participated in mental health treatment, completed an anger management and parenting class, and obtained suitable housing. Father further argues he completed the classes prior to the filing of the termination petition, which constituted an attempt to comply with the FSP objectives within a reasonable amount of time. Moreover, Father claims DHS failed to offer expert evidence regarding the lack of a bond between Father and Child; rather, the testimony actually proved the existence of a beneficial bond worthy of preservation. Father emphasizes that Child recognized him, greeted him with hugs, called him "Dad," and played with him during their visits. Father concludes the court erroneously terminated his 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 Father'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 his...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 his...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).

"It is universally agreed that the bond of parental affection is unique and irreplaceable." ***In re Diaz***, 669 A.2d 372, 377 (Pa.Super. 1995).

When parents act in accordance with the natural bonds of parental affection, preservation of the parent-child bond is ***prima facie*** in the best interest of the child, and the state has no justification to terminate that bond. On the other hand, a court may properly terminate parental bonds which exist **in form** but not **in substance** when preservation of the parental bond would consign a child to an indefinite, unhappy, and unstable future devoid of the irreducible minimum parental care to which that child is entitled.

Id. (quoting ***In re J.W.***, 578 A.2d 952, 958 (Pa.Super. 1990)) (emphasis in original).

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 his 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 his...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 his...child is converted, upon the failure to fulfill his...parental duties, to

the child's right to have proper parenting and fulfillment of his...potential in a permanent, healthy, safe environment." **Id.** at 856.

Instantly, the court adjudicated Child dependent on August 20, 2009. On February 29, 2012, DHS filed the petition for involuntary termination of Father's parental rights. Thereafter, the court conducted multiple hearings on the termination petition. At the first hearing, DHS presented April Coker-Elliott, the social worker assigned to Child's case. Regarding the FSP objectives, Ms. Coker-Elliott testified that Father's participation in mental health treatment was "somewhat consistent" over the life of the case. (**See** N.T. Hearing, 7/23/12, at 13.) Although Father completed anger management and one parenting class, Father did not complete additional court-ordered parenting classes. Ms. Coker-Elliott indicated that Father commenced courses at Family School, but he was discharged due to "inappropriate behaviors...such as outbursts or aggression towards staff and inappropriate interaction with the child." (**Id.** at 14). Father also failed to obtain a job or attend employment programs. Likewise, Father had yet to find permanent housing at the time DHS filed the termination petition. (**See** N.T. Hearing, 10/15/12, at 44.)

Ms. Coker-Elliott admitted that Father consistently attended supervised visits, but she had concerns over Father's insistence on using physical discipline with Child:

[WITNESS]: It appears that Father has issues with

inappropriate discipline, and not really understanding that he should not physically discipline a two-year-old child.

[DHS ATTORNEY]: Have you had any conversations with Father about what you believe to be inappropriate discipline?

[WITNESS]: Yes.

[DHS ATTORNEY]: What was the nature of those conversations?

[WITNESS]: Basically, he would say that that's the way that he was raised so, he believed that is the way he should raise his child.

* * *

[DHS ATTORNEY]: Do you believe at this time Father has learned adequate and safe alternatives for physical discipline for [Child]?

[WITNESS]: No.

(**See** N.T. Hearing, 7/23/12, at 16-17.) Regarding the existence of a bond between Father and Child, Ms. Coker-Elliott stated that Child had primarily bonded with the foster parent, and Child would suffer no permanent and irreparable harm if the court terminated Father's parental rights.

At the second hearing, DHS presented expert testimony from William Russell, Ph.D., who performed Father's parenting capacity evaluation in December 2011. At the time of the evaluation, Dr. Russell concluded Father was "not in any position to provide a safe and nurturing environment for his son, nor [does he have an] understanding of appropriate parenting." (**See** N.T. Hearing, 10/15/12, at 5.) Dr. Russell explained Father's lack of housing

and employment rendered him unable to maintain the stability and consistency necessary for Child's healthy development. Dr. Russell also expressed concerns over Father's preoccupation with discipline:

Well, there seemed to be extensive focus during his interview on disciplining his child and that all the child really needed was his discipline. There seemed to be a lot of focus on just that issue, as opposed to all the other aspects of the child's development.

According to the reports we were provided, there were some delays and some concerns about the child's functioning at the time of the interview. And during the interview, [Father] downplayed any type of delay or concern.

(*Id.* at 6). Consequently, Dr. Russell opined that Father should not receive unsupervised visits with Child. Moreover, Father required additional parenting classes and mental health treatment.

Despite the recommendation of additional parenting classes, Dr. Russell did not have confidence that Father could reform his attitudes on parenting. Dr. Russell indicated, "[C]onsidering [Father's] history in attending such classes, attitude towards the materials being taught, and personality characteristics, it is questionable how much he might actually gain from them." (*Id.* at 8). Dr. Russell also testified that additional mental health treatment would have little impact on Father:

[Father] has poor impulse control, limited frustration tolerance, and is a poor candidate for treatment as he is likely to terminate early and lacks insight into his own motivations, feelings and behaviors.

(*Id.* at 35).

Additionally, DHS presented testimony from Alverine Hoyt, an agency social worker who supervised Father's visits with Child. Ms. Hoyt confirmed that Father consistently visited Child, and some bond existed between them. Nevertheless, Ms. Hoyt opined that Child's "primary" bond was with the foster parent, and Child would not suffer harm if the court terminated Father's parental rights. (*Id.* at 55). Ms. Hoyt stated that Child had the same foster parent during his entire placement, and the foster parent provided for all of Child's physical and emotional needs.

Based upon the foregoing, the court concluded sufficient evidence supported the termination of Father's parental rights:

The testimony indicated that Mother and Father were not in compliance with their [FSP] Objectives.^[1] Mother and Father do not have adequate housing. Furthermore, the parents did not complete mental health treatment and drug and alcohol treatment. Lastly, neither parent is employed.

* * *

In the instant matter, the testimony established that..the child would not suffer any irreparable emotional harm if...parental rights were terminated. [Child] has bonded with his foster parent. [Child's] primary source of care, love and comfort, food and protection is his foster parent.

(**See** Trial Court Opinion at 4) (internal citations to the record omitted). In light of the applicable scope and standard of review and the relevant case law, we accept the court's conclusions. **See *In re Z.P., supra***. The court

¹ Although the trial court opinion refers to both Father and Mother, Mother is not a party to the instant appeal.

reasonably determined Father was unable to meet the irreducible minimum requirements of parental care for Child. ***See In re B.L.L., supra.*** To the extent Father provided testimony to the contrary, the court found Father incredible. (***See*** Trial Court Opinion at 4.) The record supports the court's credibility determination, which we decline to disturb. ***See In re Z.P., supra.*** Accordingly, we affirm.

Decree affirmed.

Judgment Entered.

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

Prothonotary

Date: 6/4/2013