

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: T.T., A MINOR : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
:
APPEAL OF: D.T., MOTHER : No. 2886 EDA 2012

Appeal from the Decree entered September 6, 2012
in the Court of Common Pleas of Philadelphia County
Juvenile Division, No. CP-51-AP-0000356-2011

BEFORE: LAZARUS, OLSON, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.:

FILED MAY 10, 2013

D.T. ("Mother") appeals from the decree entered in the Philadelphia County Court of Common Pleas involuntarily terminating her parental rights to her male child, T.T. ("Child"), born in August of 2003.¹ We affirm the order pursuant to 23 Pa.C.S. § 2511(a)(8) and (b). We affirm.

The Philadelphia Department of Human Services, Children and Youth Division ("DHS") first became involved with this family in 2006, when it received three separate reports alleging, *inter alia*, Mother's use of illegal drugs, purchase of drugs in Child's presence, and lack of supervision of Child, as well as multiple cats and dogs and their urine and feces in the home. N.T., 8/28/12, at 9-12. The reports were substantiated. Child was

* Former Justice specially assigned to the Superior Court.

¹ By decree entered the same date, the court also involuntarily terminated the parental rights of Child's father, J.T. J.T. did not file a notice of appeal.

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placed in foster care on October 26, 2006. *Id.* at 12. In May of 2007, DHS discharged Child's case and returned him to Mother's care. *Id.* at 12-13.

DHS received another report on February 16, 2010, alleging that Mother and her boyfriend were walking in and out of traffic with Child, and that Mother and her boyfriend appeared to be under the influence of drugs. *Id.* at 13; DHS Exhibit 4. The police arrested Mother for possession of drugs, and Child was placed in DHS' custody on the same date. *Id.* at 14. Child's foster care placement has changed a few times because of his inappropriate sexual behavior. *Id.* at 14-15. Child was placed in the current pre-adoptive foster home approximately eighteen months before the subject proceedings.²

The family service plan ("FSP") goals for Mother were to: participate in drug and alcohol treatment, maintain a drug-free status, participate in mental health treatment, participate in family therapy, comply with all treatment recommendations, participate in a parenting class, locate and occupy suitable housing, meet regularly with the agency worker regarding visitation, and maintain visits with Child. *Id.* at 17-18.

On July 27, 2011, DHS filed a petition for the involuntary termination of Mother's parental rights. The trial court held hearings on August 28 and September 5, 2012; Child was nine years old at this time. DHS called to

testify: Andre Glover, DHS caseworker; Lisa Whelan, program supervisor at Carson Valley Children's Aid ("CVCA"), the foster care agency through which Child is placed; Sonja Johnson, parent supervisor at CVCA; Stephen Plugfelder, a licensed professional counselor who conducted a parenting capacity evaluation of Mother; and Colleen Madden, Child's counselor.

DHS caseworker Mr. Glover testified to the following. Although Mother was compliant throughout this case with her FSP goal of obtaining drug and alcohol services, she did not complete the objective because her treatment is ongoing. N.T., 8/28/12, at 22, 33. For at least two years leading to the August 28, 2012 hearing, Mother was in an intensive outpatient program for drug and alcohol treatment, and there was no recommendation "for a stepdown." *Id.* at 23. *Id.* Mother is prescribed methadone, Benzos, and another medication that contains cannabis. *Id.* Mother continues to receive mental health services. *Id.* at 32. Although she completed a parenting class in 2010, Mother's parenting skills have not improved. *Id.* at 35, 45.

Mr. Plugfelder conducted a parenting capacity evaluation of Mother in May of 2012. At the termination hearing, he responded to the question of whether he believed Mother was now "in a position to provide care for" Child as follows: "[A]t the time of my evaluation she did not appear to be able to provide a safe, consistent, structured environment for her children and I

² Child resides in the same foster home as his younger half-brother, A.T., born in November of 2010. N.T., 8/28/12, at 29-30. A.T. is not a subject of

haven't heard anything that said that she is better equipped to do that today." **Id.** at 145.

We note the following evidence concerning Mother's visits with Child. Mother initially had weekly supervised visits at DHS. **Id.** at 24. However, because of Mother's "erratic behavior," Child's counselor, Ms. Madden, referred Mother for supervised therapeutic visits, which is the highest level of visitation. **Id.** at 24, 26, 161. Mr. Glover described Mother's "erratic behavior" as being overbearing with Child and asking him inappropriate questions about his foster home, all of which agitated Child. **Id.** at 36-37. Ms. Madden testified "it was clear" there were "some problems with the supervised visits," "it was difficult to intervene between" Child and Mother, and "it seemed they might benefit from the support of a therapist in the room with them." **Id.** at 161-62. Ms. Madden further explained: (1) Child "was reportedly told not to speak in therapy[and] not to share anything about what happened to him;" (2) Mother sometimes spoke negatively about Child's current foster mother; (3) "[t]here were several concerns about inappropriateness;" and (4) Child "had pretty marked changes in his behavior" after telephone calls with Mother. **Id.** at 162.

The therapeutic visits lasted less than six months and ended because Mother's parenting skills were not improving. **Id.** at 25. The visits then resumed on a weekly supervised basis. **Id.** at 26, 63-64. Following a

this termination matter.

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hearing on April 2, 2012, the trial court reduced Mother's visits to biweekly due to Mother's continuing "erratic behavior" and appearing intoxicated at a visit in March of 2012. **Id.** at 44, 45-46.

Child's foster agency, CVCA, had also supervised Mother's visits with Child. Ms. Johnson supervised more than twenty visits between Mother and Child beginning in February of 2012. **Id.** at 97. She testified about two incidents that caused concern. One was Mother telling Child that she was aware of and had read a letter, written by Child to the trial court, concerning where he wanted to live. **Id.** at 99-100. However, Ms. Johnson subsequently learned from Child's therapist that Child had not written such a letter. **Id.** at 99-100. In the second incident, Ms. Johnson dropped \$10 on the floor. She saw Child show Mother something and heard Mother say, "That better not be mine . . . because if it is, give me back what I gave you." **Id.** at 101. When Ms. Johnson asked Child if he picked up her \$10, Mother "immediately stepped in and said, I gave him ten dollars. . . . That's my ten dollars." **Id.** at 101-02. Subsequently, Child's foster mother informed Ms. Johnson that Child told her that he did pick up Ms. Johnson's \$10 bill. Ms. Johnson testified, "That was troubling to me because we . . . felt there was a message being sent to [Child] about lying and stealing." **Id.** at 103.

Ms. Johnson testified as follows with respect to the effect of the April of 2012 reduction of visits on Child:

As it relates to school, prior to the reduced visits . . . I would [receive] a call [from Child's school] at least every

Monday or every Tuesday about his behavior. This was prior to the reduction. Since the visits have been reduced in April, I had two calls about his behavior. . . . [S]ince the reduction in visits, there hasn't been many school issues. There has been some, but not to the level that they were, I would say in March and February. It was at least twice a week, they were calling about some outburst or tantrum or something and it was always on the same two days, Mondays or Tuesdays.

Id. at 104-05. Further, Ms. Johnson testified Child had no reaction to the reduction of visits, aside from "when the reduction first started" and "[h]e asked what happened." **Id.** at 105. Ms. Johnson further testified that since that time, Mother missed two visits but was otherwise "consistent with the visits." **Id.**

With respect to Child's relationship with Mother, Ms. Johnson described it as a "friendly relationship," but not a mother-child relationship. **Id.** at 106. Ms. Johnson testified that instead, Child has a parent-child relationship with his foster mother. **Id.** at 111-14. Further, she stated that Child told her he wants to remain living with his foster mother because "he loves her and she loves him." **Id.** at 116-17. Moreover, Ms. Johnson opined that removal from his foster home "would have a big effect" on Child. **Id.** at 109. Ms. Johnson opined that Child does not currently have a healthy relationship with Mother. **Id.** at 177-78. She testified:

This is a child who carries a deep feeling of worry for his Mom's emotional health, his Mom's physical health and his Mom in general. And it is unique among children that I work with. And he feels a great deal of responsibility for her happiness. So, it's a different bond than he shares with his foster [m]other.

Id. at 176-77.

Ms. Madden has been Child's counselor since September of 2010. She testified to the following. Child was referred to her by a psychiatrist who reported Child was exposed to the following trauma: adult drug use, adult sexual activity, violent behavior, including Mother stabbing a drug dealer, and physical abuse in foster care. **Id.** at 159. Moreover, Ms. Madden testified, Child told her he wants to live with his foster family. **Id.** at 173.

Ms. Madden testified on cross-examination as follows:

The way that [Child] generally talks about [staying with his foster mother] is that he's recognized—he often says he would have loved to have gone home to his Mom, if she could have—what he says—got it together. But he recognizes that she hasn't been able to and that he likes where he is and he feels safe and supported there.

Id. at 185. With respect to the effect of termination on Child, Ms. Madden testified:

This is a child who knows his Mom. And it would be very difficult for that bond to be broken, but I think he would have a more difficult time if the bond with his foster family were broken.

Id. at 175. Ms. Madden also stated that Child's removal from his foster home "would be a major destruction for him." **Id.** at 174.

Finally, Ms. Madden testified that Child has made consistent progress in counseling:

Since being placed in the care of his current foster [m]other, [Child has] shared that he feels safe and supported there. He has gotten to a place where he

recognizes some of the reasons why his Mother wasn't able to be an everyday Mom at the time he was taken into care. He has fairly clear insight into that, and he feels very support[ed] where he is. And so, I can see changes in that capacity.

Id. at 171. However, Ms. Madden testified that a barrier to Child's progress was "that he doesn't have a sense of where he will live forever . . . because he is just at a point where he kind of wants to know. . . ." **Id.** Ms. Madden believed it would be in Child's best interest to be adopted by his current foster mother. **Id.** at 190-91.

Mother testified to the following. She "graduated from Intensive to just regular" outpatient drug and alcohol treatment, and regularly attends appointments. N.T., 9/5/12, at 27, 31. She has "been clean for years," but "will be labeled an addict for the rest of [her] life." **Id.** at 51. Mother completed parenting classes and was currently attending mental health appointments through Philadelphia Fight. **Id.** at 31-33. Mother personally obtained all of Child's services for him, including "house therapy through NHS[,]" "the Big Brothers Program," a psychiatrist appointment once a month, trauma therapy, an "IEP," "CCTC at school, [and] wraparound."³ **Id.** at 34-35. Mother was not employed, was receiving SSI, and was "taking classes so that [she] can get [a] part-time job" as a "peer specialist." **Id.** at 36-37.

³ The meanings of the acronyms NHS, IEP, and CCTC were not immediately explained on the record.

Mother testified that her visits with Child “used to be great,” but described the therapeutic visits as “[not] that great.” *Id.* at 37. The “only thing [she and the therapist⁴] had a disagreement about was tickling[;]” whereas Mother disagreed that Child should not be tickled, she nevertheless abided by the instructions to not do it. *Id.* at 37-38. Child was “more clingy to [Mother] lately,” and had “snuck [her] a call after the last visit,” telling her that he missed her. *Id.* at 38.

Furthermore, Mother stated that she currently only had one cat and she cleaned the litter box every morning. *Id.* at 39-40. There were, however, male cats in the backyard and a hole under her house, and she “had to get PHA to board up, so [she] could get rid of the male cats because they weren’t” hers. *Id.* at 40. Mother also had a female cat who had a litter, and she “brought them straight to the SPCA.” *Id.* at 41.

With respect to Ms. Johnson’s allegation that Mother had told Child that she knew about a letter he wrote to the judge concerning where he wanted to live, Mother explained the following. At the visit, Child ran to her and said he had “great news” and that he “asked to talk to the Judge.” *Id.* at 45. Mother responded, “Huh?” and looked at Ms. Johnson, and Ms. Johnson confirmed it. *Id.* Mother asked Child what he wanted to tell the

⁴ While Mother did not identify the person to whom she referred as “she,” we presume she meant the person supervising the therapeutic visits. *See* N.T., 9/5/12, at 37-38.

judge, and Child said, "I want to tell him I want to go home." **Id.** Mother then changed the subject. At the termination hearing, she denied mentioning anything to Child about a letter. Mother stated that she completed all of her family service goals: "I have done everything they have asked me and more." **Id.** at 36.

Mother presented two witnesses. The first was the instructor of "an educational program for people living with HIV," from which Mother recently graduated. **Id.** at 5-6. The second was her case manager from Philadelphia Fight, an HIV/AIDS organization, who provided mental health services to Mother. **Id.** at 12. Finally, Child's father, J.T., testified.

At a hearing on September 6, 2012, the trial court stated that it found the testimony of DHS' witnesses was credible, Father's testimony generally credible,⁵ and Mother's testimony was not "credible, with the exception of the fact that she loves her child." N.T., 9/6/12, at 3-4. The court provided its rationale to terminate involuntarily Mother's parental rights. **Id.** at 5-10. By decree dated and entered on the same date, the trial court terminated Mother's parental rights pursuant to 23 Pa.C.S. § 2511(a)(1), (2), (5), (8), and (b). Mother timely filed a notice of appeal and a Pa.R.A.P. 1925(a)(2)(i) statement of errors complained of on appeal.

⁵ The court found not credible Father's "testimony concerning his calls to his child during the period of time that the child was in the care of DHS[.]" N.T., 9/6/12, at 4.

Mother's statement of questions involved presents eight claims for our review.⁶ However, some of them overlap, and we identify these central issues: (1) whether the evidence was sufficient for termination under 23 Pa.C.S. § 2511(a); (2) whether the trial court adequately considered the bond between Mother and Child, termination was in Child's best interests, and the evidence was sufficient under 23 Pa.C.S. § 2511(b); (3) whether the court adequately considered permanent legal custody; (4) whether Mother was represented by ineffective counsel; and (5) whether the court erred in not finding DHS made reasonable efforts to assist Mother.

Preliminarily, we note:

[O]ur 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. We have always been deferential to the trial court as the fact finder, as the determiner of the credibility of witnesses, and as the sole and final arbiter of all conflicts in the evidence.

In re I.J., 972 A.2d 5, 8-9 (Pa. Super. 2009) (citation omitted)

In her first issue, Mother argues the evidence was insufficient to terminate her parental rights pursuant to 23 Pa.C.S. § 2511(a)(1), (2), (5), and (8). With respect to sub-section (a)(1), she avers that to the contrary, she "asserted her parental claim by visiting her child to maintain close

⁶ Mother raises an eighth issue: whether the court had jurisdiction to terminate her parental rights. Mother's Brief at 4. However, in the

association with him, involving herself in the child's school meetings, and meeting with school personnel and his counselor." Mother's Brief at 10. Mother also contends that she completed parenting classes in July of 2010.

With respect to sub-section (a)(2), Mother maintains there was no evidence that she continues to use illegal drugs "other than the statements of several witnesses that [she] 'appeared to be intoxicated.'" **Id.** at 13. Mother reasons that "[t]hese opinions are just suspicions based on [her] prior history." **Id.** Furthermore, she claims she has never tested positive for illegal drug use, is compliant with her drug and alcohol counseling, attends group and individual therapy, and has maintained a home in a quiet neighborhood. Mother argues that cats, odor, kitty litter, and a broken screen door—"the issues related to [her] home"—"do not impact" whether her home is stable. **Id.** at 14.

Regarding sub-section (a)(5), Mother acknowledges the trial court's consideration of Mr. Plugfelder's testimony that "in his expert opinion, Mother does not appear to be able to provide a safe, consistent, structured environment for her child at the current time." **Id.** at 15 (quoting Trial Ct. Op., 12/10/12, at 13). Mother responds, "While this may be true it does not address the primary inquiry under [subsection (a)(5),] which is whether [she] can or will be able to remedy such conditions within a reasonable

argument section of her brief, she concedes the court had jurisdiction under 23 Pa.C.S. § 2301. **Id.** at 29.

amount of time.” Mother’s Brief at 15. Mother also asserts the court misstated or neglected “the crucial part of” Mr. Plugfelder’s testimony, “I think it is possible. I think everyone can change and you know, I think anyone can achieve. I don’t know the time frame in which she can accomplish it, given that she has had two and a half years.” **Id.** at 16. In alleging there was insufficient evidence for termination under sub-section (a)(8), Mother incorporates all of these arguments. **Id.** at 17.

At this time, we also consider Mother’s arguments that the evidence was insufficient to terminate her parental rights pursuant to subsection 2511(b). She alleges that while the trial court noted she had a bond with Child, it “minimize[d] the strength of” the bond” and “clearly understate[d certain] testimony.” **Id.** at 19. In support, Mother cites the testimony of foster care agency supervisor Lisa Whelan, that Mother and Child love each other, “termination would be hard,” and Child “wants to live with both foster mom and [Mother] in one big house.” **Id.** at 19-20. Mother also refers to the testimony of Child’s counselor Ms. Madden, that “it would be very difficult for [their] bond to be broken[.]” **Id.** at 20.

Finally, we consider Mother’s separately-raised claim that the evidence relied upon by the trial court, as set forth in its opinion, was insufficient to support termination. **See id.** at 22-24. Specifically, Mother argues Mr. Glover’s testimony about her ongoing drug and alcohol treatment and his testimony that her problems continue to exist even though she complied

with obtaining services, was vague. She also avers Mr. Glover's testimony about her inappropriate conduct during several visits with Child was improper hearsay. Mother also alleges Ms. Johnson's testimony concerning the effect of termination on Child was contradictory, and that Ms. Johnson improperly expressed an expert opinion on the future effect of termination on Child. Finally, Mother asserts the court misstated the testimony of Ms. Madden. We find no relief is due.

"Termination of parental rights is governed by statute. 23 Pa.C.S.A. § 2511." *In re I.J.*, 972 A.2d at 9. Section 2511 states 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. 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)(8), (b).

Before filing a petition for the termination of a parent's rights, the Commonwealth is required to make reasonable efforts to promote reunification between a child and her parents. The Commonwealth's obligation in this regard is not indefinite, however, because in addition to the parents' interests the Commonwealth must also respect the child's right to a stable, safe, and healthy environment. When reasonable efforts at reunification have failed, then the child welfare agency must work towards terminating parental rights and placing the child with adoptive parents. As we have repeatedly acknowledged, "[a] child's life simply cannot be put on hold in the hope that the parent will summon the ability to handle the responsibilities of parenting."

In re I.J., 972 A.2d at 9 (citations omitted).

Under section 2511, the trial court must engage in a bifurcated process. The initial 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 at least one of the nine statutory grounds delineated in section 2511(a). If the trial court determines that the parent's conduct warrants termination under section 2511(a), then it must engage in an analysis of the best interests of the child analysis under section 2511(b), taking into primary consideration the developmental, physical, and emotional needs of the child.

Id. at 10 (citations omitted).

Under subsection 2511(a)(8), the county child welfare agency must

show only that (1) the child has been removed from the care of the parent for at least twelve months; (2) the conditions that 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. . . .

. . . [S]ubsection (a)(8) “requires only that the conditions continue to exist, not an evaluation of parental willingness or ability to remedy them.”

As a result, the relevant inquiry in this regard is whether the conditions that led to removal have been remedied and thus whether reunification of parent and child is imminent at the time of the hearing. . . .

Id. at 11 (citations omitted).

“[A] best interest of the child” analysis under both 2511(a)(8) and 2511(b) requires consideration of “[i]ntangibles such as love, comfort, security, and stability.” To this end, this Court has indicated that the trial court “must also discern the nature and status of the parent-child bond, paying close attention to the effect on the child of permanently severing the bond. Moreover, in performing a “best interests” analysis:

The court should also consider the importance of continuity of relationships to the child, because severing close parental ties is usually extremely painful. The court must consider whether a natural parental bond exists between child and parent, and whether termination would destroy an existing, necessary and beneficial relationship. Most importantly, adequate consideration must be given to the needs and welfare of the child.

Id. at 12 (citations omitted).

In the instant matter, Child was removed from Mother’s care on February 16, 2010. DHS filed a petition to terminate Mother’s parental rights on July 27, 2011. Accordingly, Child had been removed for longer than the requisite twelve month period required in sub-section 2511(a)(8).

See 23 Pa.C.S. § 2511(a)(8). At the final termination hearing, the court

found, “[Mother’s] incapacity due to drugs is one that has no end in sight.”

N.T., 9/6/12, at 7. In its opinion, it stated:

[Child] was placed in care because of Mother’s drug[,]
alcohol and mental health issues, as well as issues with
Mother’s housing. These issues continue to exist to this
day and Mother’s stability remains to be questionable.
Specifically, this Court heard from various witnesses,
including Mother herself, that stated that Mother’s drug
and alcohol treatment is ongoing and that she will need to
attend drug and alcohol treatment indefinitely. Mr.
Plugfelder[, the counselor who conducted a parenting
capacity evaluation of Mother,] testified that he had
concerns about Mother’s sobriety because of the length of
time that she had been in drug and alcohol treatment and
stated that he would have expected Mother to be in a
lower level of care at this point than the intensive
outpatient level after . . . treatment for over two years.
There was also testimony presented that Mother’s stability
cannot be guaranteed in that she needs the daily
emotional, psychological, and physical support of
Philadelphia Fight or some other agency to deal with her
sobriety and her basic functioning. Mr. Plugfelder testified
that, in his expert opinion, Mother does not appear to be
able to provide a safe, consistent, and structured
environment for her child at the current time.

There was also competent testimony presented by [DHS
caseworker] Mr. Glover that although Mother completed
parenting classes, she has not made any improvement in
her parenting skills. There was also testimony presented
that while Mother consistently visited the child, there
continued to be issues during some of the visits. . . .

There was also testimony by [CVCA supervisor] Ms.
Johnson that there were still issues with Mother’s housing
as of April 2012, as her home was not safe for a child due
to numerous cats being in the home and issues with odor
and cat litter.

[Child’s counselor] Ms. Madden further testified that
Mother has refused to accept the trauma that has
happened to [Child]. Mother herself denied using drugs

around the child despite the child's and Father's statements to the contrary. Based on the foregoing, the Court concluded that DHS had presented clear and convincing evidence to support the termination of Mother's parental rights under 23 Pa.C.S. §[] 2511(a)(1), (2), (5), and (8) of the Adoption Act.

Trial Ct. Op. at 13-14. Incorporating all of the evidence summarized *supra*, we find no error in the trial court's determination that the conditions that led to Child's placement continued to exist despite Mother's cooperation in obtaining services. **See** 23 Pa.C.S. § 2511(a)(8); **In re I.J.**, 972 A.2d at 11.

With respect to Child's needs and welfare, the trial court stated at the final termination hearing:

While a bond does exist between Mother and [C]hild, it is not a parent/child bond. In this case, the Court is clear that the bond that exists is not one that is healthy. It is one where a nine-year old sees [himself] as protector and worries for the parent. . . .

The Court determines that if this bond were to be severed would the child suffer some harm? Testimony indicates that the child would be sad, there would be some difficult times, but the testimony also indicates that the child would recover and get over it. However, and looking at the bond that exists between [the foster mother] and the child, it's a different bond. It's a bond between a loving parent and a child. A bond that gives stability, love and protection. A bond that if it is destroyed or terminated will cause irreparable harm to the child.

Therefore, this Court finds that a true parent bond exists between [the foster mother] and the child. A true parent bond does not exist between the child and [Mother]. . . .

N.T., 9/6/12, at 8-9.

The testimonial evidence supports the trial court's findings. We discern no abuse of discretion by the court in terminating Mother's parental rights pursuant to sub-section 2511(a)(8). Accordingly, we need not consider Mother's arguments concerning sub-sections (a)(1), (2), and (5). **See In re B.L.W.**, 843 A.2d at 384 (stating this Court need only agree with trial court's decision as to any one subsection to affirm termination of parental rights).

With respect to the court's findings under sub-section (b), we find that Mother's arguments that the court overlooked or improperly minimized Ms. Whelan's and Ms. Madden's testimony go to the weight of the evidence. We decline to reweigh the testimony, and instead defer to the trial court, who, as the finder of fact, determines the credibility of the witnesses and is "the sole and final arbiter of all conflicts in the evidence." **See In re I.J.**, 972 A.2d at 8-9. Accordingly, we hold that the court's findings are supported by the record, and we find no error in its conclusions.

In her next issue on appeal, Mother argues the court erred in failing to consider permanent legal custody ("PLC").⁷ In support, she cites the

⁷ In contravention of Pennsylvania Rules of Appellate Procedure 2117(c) and 2119(e), Mother's brief fails to cite to a place in the record where she requested PLC before the trial court. **See See** Pa.R.A.P. 2117(c) (requiring statement of case to specify state of proceedings at which issue sought to be reviewed on appeal was raised), 2119(e) (requiring same of argument section of appellate brief); Mother's Brief at 2-3, 20-21. We remind counsel, "[I]t is not the responsibility of this Court to scour the record to prove that an appellant has raised an issue before the trial court, thereby preserving it

following testimony: (1) DHS caseworker Mr. Glover's response, "I can't say,"⁸ to the question of what effect termination would have on Child, **see** N.T., 8/28/12, at 41; (2) Ms. Whelan's statement that Mother and Child "definitely love each other," "termination would be hard," and Child told her that he wished to live with both Mother and his foster mother; and (3) Ms. Madden's testimony that "it would be very difficult for that bond to be broken, but I think [Child] would have a more difficult time if he the bond with his foster parent were broken." Mother's Brief at 21. Mother contends this evidence established that Child would suffer emotional harm if either his bond with Mother or bond with his foster mother were broken, and thus Child's needs and welfare would best be served by PLC. We disagree.

This Court has discussed the alternatives of termination and permanent legal custody as follows:

Section 6351(f.1) of the Juvenile Act lists the alternatives available to the juvenile court for the permanent placement of a dependant child. Upon a child's adjudication of dependency, the juvenile court may order reunification with the child's parent, guardian, or custodian. 42 Pa.C.S.A. § 6351(f.1)(1). If reunification

for appellate review." **See *Schultz v. MMI Prods.***, 30 A.3d 1224, 1230 (Pa. Super. 2011). Nevertheless, our review of the notes of testimony reveals that Mother's trial counsel requested PLC during his closing argument. N.T., 9/5/12, at 148-50. Accordingly, we will not find waiver in this instance.

⁸ We note that Mother quotes Mr. Glover's testimony as, "I don't know." Mother's Brief at 21 (citing N.T., 8/28/12, at 41). However, our review of the notes of testimony reveals his response was, "I can't say." N.T., 8/28/12, at 41.

with the child's parent, guardian, or custodian is not best suited to the child's safety, protection and physical, mental and moral welfare, the court may terminate parental rights and place the child for adoption. 42 Pa.C.S.A. § 6351(f.1)(2). . . .

In 2001, Pennsylvania created a subsidy program, SPLC, which provides financial support for families willing to become permanent legal custodians pursuant to section 6351(f.1)(3). SPLC transfers permanent legal custody to the dependent child's legal custodian without requiring the termination of natural parental rights. When deemed appropriate, the trial court has the power to permit continued visitation by the dependent child's natural parents. . . .

Upon the filing of a SPLC petition that alleges the dependant child's current placement is not suited to the safety, to the protection, and to the physical, mental, and moral welfare of the child, the trial court must conduct a permanency hearing within 30 days. 42 Pa.C.S.A. § 6351(e)(3)(ii)(D). At the hearing, the trial court must make numerous findings, most of which focus on the best interests of the dependent child. **See** 42 Pa.C.S.A. § 6351(f). Additionally, **before the trial court may order SPLC, the trial court must find that neither reunification nor adoption is best suited to the child's safety, protection and physical, mental and moral welfare of the child.** 42 Pa.C.S.A. § 6351(f.1)(3).

In re B.S., 861 A.2d 974, 976-77 (Pa. Super. 2004) (emphasis added).

In the instant matter, Mother's trial counsel requested PLC in his closing argument to the trial court, claiming that PLC would give Child stability. N.T., 9/5/12, at 148. Trial counsel acknowledged Ms. Madden's testimony that she did not think Mother and Child's relationship was healthy, but argued "it can be" and that termination would prevent the "opportunity for Mother and [C]hild to grow back together within their bonding." ***Id.*** at

149. Counsel also conceded it was in Child's "best interests to have the stability that [the foster mother and a stable home] can provide," but maintained it was "short sighted" "to completely cut his Mother away on the hope that treatment will help him get over it." *Id.* at 150.

Pursuant to 42 Pa.C.S. § 6351(f.1)(3), however, the trial court could not consider PLC as an alternative unless it first found that adoption was not best suited to Child's welfare. *See In re B.S.*, 861 A.2d at 977. For the reasons stated above, we do not disturb the court's finding that termination was proper, and thus, we find no relief due on Mother's PLC claim.

In her next issue, Mother argues the trial court failed to find that her trial counsel was ineffective.⁹ She states that "[w]hile there [was] no single gross omission or error . . . , there [were] many instances during the evidentiary hearings where . . . counsel failed to raise an appropriate objection [and thus] inadmissible evidence was introduced[.]" Mother's Brief at 25. Specifically, Mother cites several instances of hearsay in Mr. Glover's and Ms. Whelan's testimony to which trial counsel allegedly should have objected. She maintains that these errors "in total [were] severely prejudicial to [her] attempt to retain her parental rights." *Id.* Mother

⁹ "This issue is appropriately raised on direct appeal from the trial court's final dispositional order. Since the Juvenile Act does not require or even permit the filing of post trial motions, appellants had no duty to preserve this issue through such motions in the trial court." *In re S.M.*, 614 A.2d 312, 315 n.1 (Pa. Super. 1992).

further contends that the court erred in relying on the hearsay evidence in its opinion. We find no relief is due.

The Pennsylvania "Supreme Court held that an indigent parent in a termination of parental rights case has a constitutional right to counsel. The right to counsel in parental termination cases is the right to effective assistance of counsel even though the case is civil in nature." ***Interest of J.T.***, 983 A.2d 771, 774 (Pa. Super. 2009) (citations omitted). This Court has stated,

Under the criminal standard, in order to prevail on an ineffectiveness of counsel challenge, the appellant must show that she had a claim of arguable merit, that counsel handled the claim unprofessionally and that counsel's action caused her prejudice. We hold that in the context of a dependency proceeding, before counsel can be deemed ineffective, under the above stated criminal standard, the appellant must make a **strong showing** of ineffectiveness of counsel. Under this heightened test the parent must come forward with evidence that indicates to a high degree of likelihood that but for an unprofessional error on the part of counsel, the child would not have been found to be dependent.

In re S.M., 614 A.2d at 315-16 (citation omitted). "We . . . review the record as a whole to determine whether or not the parties received a 'fundamentally fair' hearing; a finding that counsel was ineffective is made only if the parent demonstrates that counsel's ineffectiveness was 'the cause of the decree of termination.'" ***Interest of J.T.***, 983 A.2d at 774.

Instantly, we find no relief is due on Mother's ineffective assistance of counsel claim. While she avers that trial counsel failed to object to several

instances of hearsay and she was prejudiced by this omission, she does not articulate that, and in light of our foregoing discussion we do not find that counsel's action "was the cause of the decree of termination." **See id.** Instead, we adopt our discussion above and hold that the totality of the record evidence supports the court's order of termination pursuant to sub-section 2511(a) and (b).

In her final issue, Mother argues the trial court failed to find that DHS did not provide family therapy, which was an FSP goal, to her. Mother's Brief at 27-28. In support, Mother cites Mr. Glover's testimony that DHS did not refer her to family therapy services because it was not recommended by the therapist. Mother concludes that this was a "cache-22 [sic] situation," where DHS required her to comply with her FSP goals but did nothing to assist her in achieving that goal. **Id.**

As stated above, sub-section 2511(a)(8) "requires only that the conditions continue to exist, not an evaluation of parental willingness or ability to remedy them." **See In re I.J.**, 972 A.2d at 11. Accordingly, we find no merit to Mother's claim.

For the foregoing reasons, we affirm the trial court's order terminating Mother's parental rights to Child.

Decree affirmed.

J. S14045-13

Judgment Entered.

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

Prothonotary

Date: 5/10/2013