

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: TERMINATION OF PARENTAL
RIGHTS OF M.B. AND S.M. IN AND TO
S.B., MINOR

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: M.B., NATURAL FATHER,

Appellant

No. 2888 EDA 2012

Appeal from the Decree of September 10, 2012,
in the Court of Common Pleas of Carbon County,
Orphans' Court at No. 10-9332

BEFORE: STEVENS, P.J., WECHT and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.:

FILED MAY 30, 2013

M.B. ("Father") appeals from the decree entered September 10, 2012, in the Court of Common Pleas of Carbon County, terminating his parental rights to his daughter, S.M. ("Child"), born in August of 2005, pursuant to 23 Pa.C.S.A. § 2511(a)(1), (2), (5), and (b).1 We affirm.

The trial court provided the following background:

For the first few years of her life, Child resided in her parents' home. During this period, Child was severely neglected. Neither her physical nor her emotional needs were being met, including essential parental care, control, housing, nutrition, hygiene, parental affection and attentiveness, and support and substance.

¹ The parental rights of Child's mother ("Mother") were also terminated on the same date. Mother did not appeal.

*Retired Senior Judge assigned to the Superior Court.

Petitioner, the Carbon County Office of Children and Youth Services (the "Agency"), first became involved with the family on May 13, 2008, when Child and her half-brother, [Ma.B.], were taken into emergency shelter care and placed under the custody of Father's parents, ["Paternal Grandparents"].³ Both children were returned to the parents on August 19, 2008. A short time later, on September 18, 2008, the children were again taken into emergency shelter care due to housing and parenting concerns as well as an allegation of abuse. They were again placed in the custody of the [Paternal Grandparents], and were adjudicated dependent on October 24, 2008. Child's adjudication was terminated on March 9, 2009, three days after she was returned to Father.⁴ On December 2, 2009, Father voluntarily placed Child with the Agency as a result of being evicted from his home.⁵ Child was adjudicated dependent on January 9, 2010 and placed once more with the [Paternal Grandparents].

Following this last placement, Child was in the custody of the [Paternal Grandparents] until March 22, 2010, when they requested that she be removed because they were unable to control her behavior.⁶ Child was subsequently placed with her paternal aunt and uncle ["Paternal Aunt and Uncle"]. [Paternal Aunt and Uncle] also encountered difficulties controlling her behavior. As a consequence, on July 6, 2010, Child underwent an evaluation with Dr. John Seasock, who diagnosed Child as a special needs child with a myriad of emotional and behavioral difficulties. Specifically, she was diagnosed with Attention Deficient [sic] Hyperactivity Disorder and Reactive Attachment Disorder.⁷

In the meantime, a Family Service Plan ("FSP") was established requiring both parents to: (1) maintain contact with Child, (2) obtain and maintain suitable housing, (3) obtain and maintain suitable employment; and (4) submit to a mental health evaluation. Father was further required to submit to random urine screens. Due to both parents' inability to fulfill the requirements set forth by the FSP, on July 19, 2010, Child's placement goal was changed from reunification to termination and adoption. Neither parent was present at the permanency review hearing. In addition, neither parent appealed this determination.

On July 23, 2010, Child was placed in foster care with [H.M. and A.M. (collectively "foster parents")], with whom she now resides

and who are prospective adoptive parents. While in the custody of [foster parents], Child has been developmentally on target and has had all her needs met.

³. [Ma.B.] is the biological child of [Mother and S.McF.]. However, [Father] is named on the birth certificate as the child's father.

⁴. The parents separated on or about July of 2008, when the [Mother] moved to New York, and Father remained in Lehighton. [Ma.B.] remained in the care of [Paternal Grandparents] and continues to be under their custody as of the present time.

⁵. Father was evicted due to his failure to pay for certain court ordered damages, and his failure to pay rent.

⁶. According to [Paternal Grandparents], Child was starting to become a danger to her younger half-brother.

⁷. Reactive Attachment Disorder arises from a failure to form normal attachments to primary care-giving figures in early childhood.

Trial Court Opinion, 11/06/12, at 1-3

On September 22, 2010, the Agency filed a petition for the involuntary termination of parental rights of Father and Mother. After a series of continuances, on August 24, 2012, the trial court held a hearing on the Agency's petition. Following the hearing, the trial court entered its decree, terminating Father's parental rights, pursuant to 23 Pa.C.S.A. § 2511(a)(1), (2), (5) and (b). Father's timely appeal followed.

On appeal, Father presents the follow issues for our review:

1. Whether the trial court erred as a matter of law and/or abused its discretion in granting the agency's petition to terminate parental rights where Father demonstrated compliance with some of the requirements of the family service plan, where Father was willing to reunify [sic] with the child, where Father's lack of contact with the child arose from Father's lack of a car,

where Father's lack of telephone contact arose from circumstances beyond Father's control and where testimony of record did not establish that the agency provided meaningful services to Natural Father to aid in his reunification with the child? (Statement of Matters Complained on Appeal #1 through #4 from 1925(b) Statement)

2. Whether the trial court erred as a matter of law and/or abused its discretion in granting the petition to terminate Natural Father's (M.B.'s) parental rights where no evidence of record properly assessed the bond between the Natural Father and the child, and to what extent the granting of the termination of parental rights petition would have upon the needs and welfare of the child? (Statement of Matters Complained on Appeal 5 from 1925(b) Statement)

Father's Brief at 5 (capitalization and suggested answers omitted).

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 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.***, [36 A.3d 567, 572 (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, 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:

(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.

23 Pa.C.S.A. § 2511(a)(1), (b). Although the trial court entered its order terminating Father's parental rights under section 2511(a)(1), (2), and (5),

“we 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).

We have interpreted section 2511(a)(1) as follows:

To satisfy the requirements of section 2511(a)(1), the moving party must produce clear and convincing evidence of conduct, sustained for at least the six months prior to the filing of the termination petition, which reveals a settled intent to relinquish parental claim to a child or a refusal or failure to perform parental duties.

In re Z.S.W., 946 A.2d 726, 730 (Pa. Super. 2008).

Regarding the definition of “parental duties,” this Court has stated the following:

[Our] Supreme Court has defined parental duty as follows:

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 his or her physical and emotional needs.

* * *

Although a parent is not required to perform the impossible, he must act affirmatively to maintain his relationship with his child, even in difficult circumstances. A parent has the duty to exert himself, to take and maintain a place of importance in the child's life.

Thus, a parent's basic constitutional right to the custody and rearing of his or her child is converted, upon the failure to fulfill his or her parental duties, to the child's right to have proper parenting and fulfillment of his or her potential in a permanent, healthy, safe environment. A parent cannot protect his parental rights by merely stating that he does not wish to have his rights terminated.

In re: B., N.M., 856 A.2d 847, 855-56 (Pa. Super. 2004) (quotations and citations omitted). "Parents are required to make diligent efforts toward the reasonably prompt assumption of full parental responsibilities." ***In the Interest of A.L.D.***, 797 A.2d 326, 340 (Pa. Super. 2002). "Thus, a parent's vow to cooperate, after a long period of uncooperativeness regarding the necessity or availability of services, may properly be rejected as untimely or disingenuous." ***Id.***

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 the Matter of the Adoption of Charles E.D.M., II, 708 A.2d 88, 92 (Pa. 1998).

This Court has additionally held:

Before filing a petition for termination of parental rights, the Commonwealth is required to make reasonable efforts to promote reunification of parent and child. However, the Commonwealth does not have an obligation to make such efforts indefinitely. The Commonwealth has an interest not only in family reunification but also in each child's right to a stable, safe, and healthy environment, and the two interests must both be considered.

In re Adoption of R.J.S., 901 A.2d 502, 507 (Pa. Super. 2006) (citations omitted).

In his first issue, Father argues the court erred in terminating his parental rights as he demonstrated compliance with some of the requirements of his FSP, including obtaining stable housing and employment. Father argues that he desired and was willing to reunify with Child, but that circumstances beyond his control prevented him from complying completely with the requirements of his FSP. Specifically, Father argues that his difficulty with reading contributed to his employment and housing problems, his economic difficulties and geographic distance from Child impacted his ability to exercise meaningful visitation with Child, and he was unable to maintain consistent telephone contact with Child because he

did not have Child's telephone number and was often unable to maintain a telephone. Additionally, Father argues the Agency failed to provide meaningful services to assist in his reunification with Child because they did not provide him with resources in his new residence in Schuylkill County, to facilitate visitation between Father and Child.

The trial court explained that, prior to the filing of the termination petition, Father had not provided the Agency with any documentation of employment, and at the time of the hearing, Father admitted he was unemployed, although he testified that he has had several temporary jobs through an agency for the past three years. Thus, the trial court found Father had not obtained and maintained a stable job. With regard to housing, the trial court found that Father appeared recently to have obtained housing for himself, his wife and another child through the assistance of Schuylkill County's Office of Children and Youth Services, however, he did not obtain suitable housing until November of 2011, more than a year after the filing of the petition. The court noted that since being evicted in December of 2009, Father lived with various friends until January of 2011, when he moved into a studio apartment, which was not suitable housing. Moreover, the court found that throughout Child's placement, Father failed to comply with the requirement that he submit to a mental health evaluation

and urine screenings and failed to maintain contact with Child.² Thus, the trial court concluded that Father had not diligently worked towards the reasonably prompt assumption of his full parental responsibilities.

The record supports the trial court's conclusion that Father failed to perform his parental duties throughout Child's placement. In addition, the trial court rejected Father's reasons for his failure to maintain contact with Child as follows:

The evidence introduced at the hearing established that in 2011 Father moved from Carbon County to Schuylkill County. Following the move, and at Father's request, three visits were scheduled at the Catholic Social Services in Hazleton, because of the facility's proximity to him. However, Father was a no-show to all. At the hearing, Father indicated that he missed the visits because he "was either working or . . . didn't have enough time to make it there before they closed because [of] how far [his] work was." Yet, . . . [the] caseworker with Catholic Social Services, testified that the visits were scheduled based upon Father's recommended times and dates.

. . . Father requested that phone contact between him and Child be increased. Accordingly, as of February 2011, phone calls were scheduled for every other Wednesday at a specified time. At first, the phone calls occurred on a consistent basis. But,

² Father testified that he had a mental health evaluation approximately nine months prior to the termination hearing and that he was willing to submit to urine screenings. The Agency caseworker testified that Father advised her he had an evaluation, but Father would only sign a release for Schuylkill County's Office of Children and Youth Services in order for them to send the evaluation to the caseworker. The caseworker testified that as of July 2012, she had not received a copy of the evaluation from Schuylkill County's Office of Children and Youth Services because they had not yet received a copy of said evaluation. Additionally, the testimony established that Father's last physical contact with Child was on January 7, 2011, and Father had participated only sporadically in scheduled phone calls with Child.

over[]time, the phone contact became sporadic as Father would go weeks without answering his phone.

. . . In respect to his transportation issues, they were addressed by the testimony of [the Agency caseworker] who indicated that Father's wife was a source of transportation and had, in fact, volunteered to provide him with such. Further, [the caseworker] testified that her attempts to schedule visits with Father at another location of his choosing were unsuccessful, as he failed to answer her calls and return her voicemails.

In regards to the phone contact, we . . . see no reason why Father would have to know his daughter's phone number in order to maintain contact with her. This is particularly so in light of the fact that [foster father] was responsible for contacting Father, and Father had been made aware of the dates and times that the phone calls were to take place.

We are not convinced that Father exercised reasonable firmness in maintaining a relationship with Child. Rather, we find his actions are devoid of any attempt to maintain either physical or phone contact. . . .

Trial Court Opinion, 11/06/12, at 8-9 (citations to record omitted).³

With respect to Father's claim that the Agency did not provide him with sufficient services in order to enable him to reunify with Child following his move to Schuylkill County, the trial court concluded:

Father chose to move away from his child. Father . . . has not worked diligently in overcoming his problems in visiting his child,

³ Although Father argues that his difficulty with reading limited his ability to comply with his FSP goals, he does not cite to any record support for this contention. Instead, the record supports the conclusion that Father failed to avail himself of available services in order to meet the requirements of his FSP goals, including maintaining stable housing, employment, and a relationship with Child. Thus, we find no merit to Father's argument that his failure to perform parental duties was excused by circumstances beyond his control.

has not contacted the Agency to explain why he missed scheduled visits, and has not communicated to the Agency his transportation issues. Accordingly, we also find that Father “has not demonstrated a serious intent to cultivate and maintain a parent/child relationship with [Child].”

Id. at 10 (citing **In the Interest of K.Z.S.**, 946 A.2d 753, 761 (Pa. Super. 2008)) (dismissing the mother’s claim that she had difficulty making visits with her child because of transportation problems due to the fact she had no money where the mother chose to move from Pennsylvania to Baltimore, did not work diligently to overcome her transportation problems, and did not contact any of the agencies involved to explain why she was missing visits or communicate her transportation problems). Moreover, as the trial court noted, Child’s placement goal was changed to adoption on July 19, 2010, a little more than a year prior to Father’s move to Schuylkill County. Thus, the adequacy of the Agency’s efforts toward reunification was not a valid consideration in the termination proceedings. **See In the Interest of A.L.D.**, 797 A.2d at 339, 341 (holding that “[b]y allowing [the Agency] to change its goal to adoption, the trial court has decided that [the Agency] has provided adequate services to the parent but that he/she is nonetheless incapable of caring for the child and that, therefore, adoption is now the favored disposition. . . . The adequacy of [the Agency’s] efforts toward reunification is not a valid consideration at [the termination] stage, as the law allows [the Agency] to give up on the parent once the service plan goal has been changed to adoption.”) (quotations omitted).

The competent evidence of record supports the trial court's determination that the statutory requirements for termination of Father's parental rights were met under Section 2511(a)(1). Father provides no meaningful explanation for his conduct in failing to perform his parental duties with respect to Child and the record demonstrates Father made insufficient efforts towards post-abandonment contact with Child. To the extent Father argues that the Agency was required to provide services in the county of Father's choosing, Father provides no legal support for this argument. Moreover, the adequacy of the Agency's efforts towards reunification was not a valid consideration for the court as Child's goal had already been changed to adoption. Nonetheless, the record supports the trial court's conclusion that reasonable efforts towards reunification were provided to Father. Accordingly, we discern no abuse of discretion in the trial court's application of Section 2511(a)(1) and we proceed to address the trial court's application of Section 2511(b).

In his second issue, Father argues that the trial court erred "by failing to properly assess the bond between Father and the Child, and to what extent the granting of the Termination of Parental Rights Petition would have upon the needs and welfare of the [C]hild." Father's Brief at 16. Father argues that no witness testified to a recent, personal, observation of Child in the presence of Father. Father argues that although Child has bonded with the foster parents, she also demonstrated a bond with Father by including

Father's last name when signing her name, recognizing Father as a parent, and indicating an interest in continuing communications with him. Lastly, Father, again, argues that his previously discussed personal difficulties excuse his failure to perform fatherly tasks for Child.

As this Court has stated:

Intangibles such as love, comfort, security, and stability are involved when inquiring about the needs and welfare of the child. The 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. . . . 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.

In the Interest of K.Z.S., 946 A.2d at 760 (citations omitted). Moreover, “[i]n cases where there is no evidence of any bond between the parent and child, it is reasonable to infer that no bond exists. The extent of any bond analysis, therefore, necessarily depends on the circumstances of the particular case.” ***Id.*** at 762-63.

[I]n addition to a bond examination, the trial court can equally emphasize the safety needs of the child, and should also consider the intangibles, such as the love, comfort, security, and stability the child might have with the foster parent. Additionally, this Court stated that the trial court should consider the importance of continuity of relationships and whether any existing parent-child bond can be severed without detrimental effects on the child.

In the Interest of: A.S., 11 A.3d 473, 483 (Pa. Super. 2010).

Child was initially removed from her parents when she was approximately three years old due to severe neglect. Although Child was returned to Father for approximately nine months, she was removed for the last time in December 2009, when she was four years old. Child has been in continuous placement since that time and has lived with her pre-adoptive foster parents since July 2010. Father last saw Child on January 7, 2011 and has participated only sporadically in telephone calls with Child since that time.

The Agency caseworker testified that Child stated that she likes speaking with Father, however, Child stated that she wants to continue living with the foster family. The caseworker testified that termination of Father's rights would best serve the needs and welfare of Child based on Father's lack of consistent contact with Child and inability to meet his treatment goals and the fact that Child is in a stable home with pre-adoptive foster parents who love her and are able to meet her special needs. The caseworker testified to a lack of a bond between Father and Child as compared to the strong bond between Child and the foster parents. Additionally, Dr. Seasock, who performed a psychological evaluation of Child in July 2010 and evaluated her again prior to the hearing, testified that it is crucial that Child have stability and continuity with her environment and caregivers. Dr. Seasock testified that Child has made significant improvement since July 2010, which he attributed to the stable, consistent

environment she has had with her foster parents who are able to meet her emotional needs. Dr. Seasock testified that in his recent evaluation with Child, Child did not mention Father and could not identify having had recent contact with Father. Dr. Seasock further testified there would not be any adverse effect on Child if Father's parental rights were terminated given that Child has not had regular consistent contact with Father for an extended period of time and is extremely attached to her foster parents.

In its analysis of section 2511(b), the trial court explained:

It is evident that little to no emotional ties exist between Father and Child, and that no serious bond has developed. Although Child recognizes Father as a parent and has indicated an interest in continuing communications with him, Father has not performed any fatherly tasks for Child.

In contrast, [the Agency caseworker] testified that the [foster parents] have satisfied the Child's physical and emotional needs as well as ensured that she receives the services needed to address her behavioral issues. According to [the Agency caseworker], Child's primary relationship is with the [foster parents], whom she often refers to as mom and dad. Further, [the Agency caseworker] testified to Child referring to the [foster parents'] children as her brother and sister, and to writing her name [using her foster parents' last name]. Lastly, [the Agency caseworker] testified that the Child had indicated to her a desire to remain in the care of the [foster family], and views herself as part of their family.

Whether a child's primary emotional attachment is with a foster parent rather than with a birth parent is a significant factor in evaluating the child's developmental and emotional needs and welfare, and may dictate that the parental bond be terminated. **See In [the Interest of] K.Z.S.**, [946 A.2d] at 764 ("the bond between [the child] and the [foster parents] is the primary bond to protect, given [the child's] young age and his very limited contact with Mother"). The Agency is of the opinion that

termination of Father's parental rights would best serve the needs and welfare of Child. (N.T. 08/24/12, p.50). We concur.

Trial Court Opinion, 11/06/12, at 11-12.

Contrary to Father's claim, the trial court properly assessed the bond between Father and Child and the effect of the termination of his parental rights upon Child. The record supports the trial court's conclusion that no significant bond has developed between Father and Child, that Child's primary bond is with her foster parents, and that there would be no adverse consequences to Child if Father's parental rights were terminated. Father complains that no witness was able to testify to a recent observation of Father and Child's interactions, however, Father has not attended visitation with Child since January 7, 2011. To the extent Father argues such evidence was necessary in order for the court to properly assess the parent-child bond, Father cites to no legal support for this claim. Nonetheless, this Court has held that when conducting a bonding analysis, the court is not required to use expert testimony and Section 2511(b) does not require a formal bonding evaluation. ***In re Z.P.***, 994 A.2d 1108, 1121 (Pa. Super. 2010). There was sufficient evidence of record in order for the court to assess the bond between Father and Child. Lastly, as we have already concluded, Father's personal difficulties did not excuse his failure to perform parental duties with respect to his Child, including maintaining meaningful contact with Child throughout her placement.

Accordingly, for the reasons stated above, we discern no abuse of discretion in the trial court's determination under section 2511(b), and affirm the trial court's decree, directing the involuntary termination of Father's parental rights to Child, pursuant to 23 Pa.C.S.A. § 2511(a)(1) and (b).

Decree affirmed.

Judgment Entered.

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

Prothonotary

Date: 5/30/2013