

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37**

IN THE INTEREST OF: S.A.M., A Minor : IN THE SUPERIOR COURT OF  
: PENNSYLVANIA  
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APPEAL OF: A.M., Biological Father : No. 3081 EDA 2012

Appeal from the Order entered October 17, 2012,  
Court of Common Pleas, Philadelphia County,  
Juvenile Division at No. CP-51-AP-0000502-2011

BEFORE: DONOHUE, MUNDY and OLSON, JJ.

MEMORANDUM BY DONOHUE, J.:

**FILED MAY 14, 2013**

A.M. (“Father”) appeals from the order of court terminating his parental rights to S.A.M. (“Child”). Following our review, we affirm.

The facts underlying this appeal may be summarized as follows. Child was born to Father and A.M.C. (“Mother”) in December 2005. The parties were 18 years old at the time and unmarried. Mother resided with Child in the maternal grandmother’s home for the majority of the first year of Child’s life. Father visited Child twice in this location, the last visit occurring when Child was approximately 9 months old. Father brought diapers and wipes for Child on one of these occasions.

Around the time Child turned one, Mother moved in with I.C., who is now Mother’s husband.<sup>1</sup> Father last saw Child in 2008 or 2009, when she

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<sup>1</sup> At the time of the hearing in his matter in October 2012, Mother and I.C. had been married for three years and were the parents of a two-year-old son.

was approximately three and a half years old.<sup>2</sup> In 2010, Mother contacted Father to ask whether he would agree to terminate his parental rights to Child so that I.C. could adopt her. Father refused. Mother and Father remained in contact for approximately two months after this discussion, but at no time did Father inquire about Child or ask to see Child.

Mother and I.C. filed a petition seeking the involuntary termination of Father's rights in October 2011. A hearing was held on this petition on October 17, 2012, following which the trial court granted the petition and terminated Father's parental rights to Child pursuant to 23 Pa.C.S.A. § 2511(a)(1) and (b). Trial Court Order, 10/17/12. Father filed this timely appeal, and presents one question for our review: "Did the [t]rial [c]ourt err in terminating the parental rights of [Father] in that clear and convincing evidence for terminating his parental rights did not exist?" Appellant's Brief at 5.

The standard and scope of review applicable in termination of parental rights cases are as follows:

When reviewing an appeal from a decree terminating parental rights, we are limited to determining whether the decision of the trial court is supported by competent evidence. Absent an abuse of discretion, an error of law, or insufficient evidentiary support for the trial court's decision, the decree must stand. Where a trial court has granted a petition to involuntarily terminate parental rights, this Court

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<sup>2</sup> Child was almost 7 years old at the time of the hearing in this matter.

must accord the hearing judge's decision the same deference that it would give to a jury verdict. 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*) (internal citations omitted). If the trial court's findings are supported by competent evidence, we must affirm the trial court's decision, even though the record could support an opposite result. ***In re R.L.T.M.***, 860 A.2d 190, 191 (Pa. Super. 2004). "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." ***In re Adoption of A.C.H.***, 803 A.2d 224, 228 (Pa. Super. 2002) (internal citations omitted).

Section 2511 of the Adoption Act governs termination of parental rights. Under Section 2511, the trial court must engage in a bifurcated process. ***In re C.L.G.***, 956 A.2d 999, 1004 (Pa. Super. 2008). The initial focus is on the conduct of the parent, and the burden of proof is on the petitioner to establish by clear and convincing evidence the existence of grounds for termination under Section 2511(a). ***Id.*** If the trial court finds that termination is warranted under Section 2511(a), it must then turn to Section 2511(b), and determine if termination of the parent's rights is in the child's best interest. ***Id.***

The trial court found termination of Father's parental rights appropriate under Section 2511(a)(1), which provides as follows:

**§ 2511. Grounds for involuntary termination**

**(a) General rule.**--The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds:

- (1) The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.

23 Pa.C.S.A. § 2511(a)(1).

Under this provision, there is no requirement that both a settled purpose to relinquish parental claim and a failure to perform parental duties must be found in order to find termination proper; rather, “parental rights may be terminated pursuant to Section 2511(a)(1) if the parent either demonstrates a settled purpose of relinquishing parental claim to a child **or** fails to perform parental duties.” *In re Adoption of Charles E.D.M., II*, 550 Pa. 595, 602, 708 A.2d 88, 91 (1998) (emphasis in original).

Furthermore,

[a]lthough it is the six months immediately preceding the filing of the petition that is most critical to the analysis, the 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 K.Z.S.***, 946 A.2d 753, 758 (Pa. Super. 2008).

This Court has discussed the concept of parental duties as follows:

In ***In re Burns***, 474 Pa. 615, 379 A.2d 535 (1977), the [Pennsylvania] Supreme Court stated:

There is no simple or easy definition of parental duties. Parental duty is best understood in relation to the needs of a child. A child needs love, protection, guidance, and support. These needs, physical and emotional, cannot be met by a merely passive interest in the development of the child. Thus, this court has held that the parental obligation is a positive duty which requires affirmative performance.

This affirmative duty encompasses more than a financial obligation; it requires continuing interest in the child and a genuine effort to maintain communication and association with the child.

Because a child needs more than a benefactor, parental duty requires that a parent 'exert himself to take and maintain a place of importance in the child's life'.

***Id.*** at 624–25, 379 A.2d at 540 (citations omitted).

A parent is required to exert a sincere and genuine effort to maintain a parent-child relationship; the parent must use 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. ***In re Shives***, 363 Pa. Super. 225, 525 A.2d 801, 803 (1987). This court has repeatedly recognized that '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 immediate physical and

emotional needs.’ ***In re Adoption of Godzak***, 719 A.2d 365, 368 (Pa. Super. 1998) (citation omitted).

***In re C.M.S.***, 832 A.2d 457, 462 (Pa. Super. 2003).

It is undisputed that the last time Father made any effort to see Child was ***three and a half years*** before the hearing in this matter. N.T., 10/17/12, at 39-40. Father readily admits this. ***Id.*** This means that for two and a half years before the filing of the termination petition,<sup>3</sup> Father made absolutely no effort to “exert himself to take and maintain a place of importance in [Child’s] life” for far longer than the six months preceding the filing of the termination petition. ***See In re E.M.***, 908 A.2d 297, 305 (Pa. Super. 2006).

Our review with regard to Section 2511(a)(1) does not end here. “Before a trial court may terminate the parental rights of a non-custodial parent, the court must consider the non-custodial parent’s explanation, if any, for the apparent neglect,” including whether the custodial parent impeded the non-custodial’s efforts to maintain communication and association with the child. ***In re C.M.S.***, 832 A.2d 457, 463 (Pa. Super. 2003).

By way of explanation for his “apparent neglect” of Child, Father testified that Mother moved multiple times and that he did not always know

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<sup>3</sup> The record reveals that due to the granting of two continuances, a year passed between the time Mother and I.C. filed their petition to involuntarily terminate Father’s rights and the hearing on the petition.

where she and Child lived. N.T., 10/17/12, at 40. Father further testified that he asked Mother's cousin to act as a "go-between," because Mother would not speak to him. **Id.** at 39. According to Father, Mother changed her phone number, and would not allow her cousin to give her new phone number to him. **Id.** at 43.

The trial court rejected these reasons for Father's lack of involvement in Child's life. It found instead that Father "did not put forth the effort necessary to overcome any challenges presented by [Mother and I.C.'s] relocation[s]" to maintain a position of importance in Child's life. Trial Court Opinion, 2/11/13, at 2. The evidence of record supports this conclusion. Father testified that the last time he made any effort to contact Mother (either directly or through her cousin) was at least three and a half years prior to the hearing in this matter. N.T., 10/17/12, at 40-44, 51. Father acknowledged knowing where maternal grandmother lived, but never went to maternal grandmother's house to ask about Child or where Mother was living. **Id.** at 48. Furthermore, Father testified that he never hired a lawyer to assist him in obtaining visitation with Child because "I don't need a lawyer." **Id.** at 44. Yet, when Father when to Family Court to file for visitation rights *pro se*, he abandoned his efforts after one attempt because "nobody was helping me." **Id.** Because the evidence supports the trial court's conclusion, we may not disturb it. **In re R.L.T.M.**, 860 A.2d at 191.

Having found the requirements of Section 2511(a)(1) met, we now consider whether termination is proper under Section 2511(b). ***In re C.L.G.***, 956 A.2d at 1004. Father contends that it is not proper under Section 2511(b) because “there [is] nothing in the record[] which [sic] would indicate any beneficial effect for [Child] by terminating [Father’s] parental rights.” Appellant’s Brief at 8.

When considering the needs and welfare of a child pursuant to the Section 2511(b) inquiry, the trial court must consider whether termination of parental rights would best serve the developmental, physical and emotional needs of the child. ***In re C.M.S.***, 884 A.2d 1284, 1286-87 (Pa. Super. 2005), *appeal denied*, 587 Pa. 705, 897 A.2d 1183 (2006). “Intangibles such as love, comfort, security, and stability are involved in the inquiry into the needs and welfare of the child.” ***Id.*** at 1287 (citation omitted). The trial court must also discern the nature and status of the parent-child bond, with utmost attention to the effect on the child of permanently severing that bond. ***Id.***

The trial court found that termination of Fathers’ rights “is in the best interest of [Child] for her continued healthy development and emotional wellbeing.” Trial Court Opinion, 2/11/14, at 5. It based this conclusion on its finding that there is no evidence of a bond between Father and Child, but that “there is a clearly established parental bond ... between [Child] and



[I.C.] as evidenced by the activities in which they engage and the fact that [Child] refers to [I.C.] as dad and he welcomes the role.” **Id.** at 2.

The record supports the trial court’s conclusions. There is no evidence of a bond between Child and Father. Father and Child have never resided in the same residence. For a period of about six months during Child’s infancy, Father saw her approximately once a week. N.T., 10/17/12, at 16. He saw her only “a few” more time before she turned one. **Id.** at 18. Father has not seen Child since she was approximately three years old. **Id.** at 11, 40. In contrast, I.C. has lived with Child since she was about one year old. **Id.** at 28. I.C. has provided for her financially and emotionally since that time. **Id.** at 28-29. I.C. attends doctor appointments with Child as well as parent/teacher conferences at Child’s school. **Id.** at 31. I.C. refers to Child as his daughter and Child refers to him as her father. **Id.** at 30. Child sometimes identifies herself with I.C.’s surname instead of her own when writing her name in school. **Id.** at 30. I.C. has incorporated Child into his extended family, who see Child on a weekly basis. **Id.** at 30-31. I.C. testified that “whenever [Child] needs me, I am there,” and that “[Child] is able to talk to me about anything[;] I’m able to talk to her about anything.” **Id.** at 28, 29.

This evidence supports the trial court’s conclusion that Father has failed to provide the “[i]ntangibles such as love, comfort, security, and stability” to Child. **See In re C.M.S.**, 884 A.2d at 1287. It further supports

the trial court's conclusion that it is I.C. who provides these necessities for Child. Accordingly, we find no abuse of discretion in the trial court's determination that termination of Father's parental rights will "best serve the developmental, physical and emotional needs of the child." ***Id.***

Having found no error by the trial court, we affirm its decision.

Order affirmed.

Judgment Entered.

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

Prothonotary

Date: 5/14/2013