

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: ADOPTION OF T.D-W., A MINOR,

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: D.W., MOTHER,

Appellant

No. 334 MDA 2013

Appeal from the Decree of January 11, 2013,
in the Court of Common Pleas of Northumberland County,
Orphans' Court at No. 41-2012

BEFORE: DONOHUE, WECHT and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.:

FILED SEPTEMBER 03, 2013

D.W. ("Mother") appeals the decree in the Court of Common Pleas of Northumberland County that voluntarily terminated her parental rights to her child, T.D-W. ("Child"), born in May of 1999. We affirm the decree and grant the motion for leave to withdraw as counsel filed by Mother's counsel.¹

On August 1, 2012, the Northumberland County Children and Youth Social Service Agency ("the Agency") filed separate petitions for the involuntary termination of parental rights of Mother and Father pursuant to 23 Pa.C.S.A. § 2511 (a)(1), (2), (5), (8), and (b). In the petitions, the Agency alleged that Child has been in its custody since January 20, 2011. The trial court held a hearing on the petitions on January 9, 2013, during

¹ By separate decree, the trial court voluntarily terminated the parental rights of Child's natural father, M.D. ("Father"). He did not appeal.

*Retired Senior Judge assigned to the Superior Court.

which Mother appeared along with counsel. At the outset of the involuntary termination hearing, counsel for the Agency and Mother's counsel requested that the court "entertain a voluntary termination of parental rights of the natural mother. . . ." N.T., 01/09/13, at 3. On Mother's behalf, Mother's counsel waived any notice of a voluntary relinquishment proceeding and any receipt of formal documents, such as a filing of a voluntary relinquishment petition. Mother's counsel conducted a colloquy of Mother with respect to her voluntary relinquishment of parental rights and counsel for the Agency cross examined Mother. Mother testified, *inter alia*, that she understood the nature of the proceedings, that she was willing to voluntarily consent to relinquishment of her parental rights to Child, that her decision was voluntary, that she had the opportunity to discuss her rights with her counsel, that she believed this decision was in Child's best interest, and that she understood the ramifications of her decision. Upon inquiry by the court, Mother responded that she decided to voluntarily relinquish her parental rights because of her past and because she was "just now getting on [her] feet and [Child] only has five years until he's 18." ***Id.*** at 7. Child's Guardian *Ad Litem* stated that it was in Child's best interest for the court to accept Mother's voluntary relinquishment. Thereafter, the court stated it would make Mother's voluntary relinquishment an order. By decree dated January 11, 2013, the court voluntarily terminated Mother's parental rights. Mother timely filed a notice of appeal.

Mother's counsel has filed an application to withdraw as counsel and an **Anders**² brief. Initially, we address counsel's request to withdraw. **See Commonwealth v. Rojas**, 874 A.2d 638, 639 (Pa. Super. 2005) (stating, "[w]hen faced with a purported **Anders** brief, this Court may not review the merits of the underlying issues without first passing on the request to withdraw[.]") (citation omitted).

In **In re V.E.**, 611 A.2d 1267 (Pa. Super. 1992), this Court extended the **Anders** principles to appeals involving the termination of parental rights. We stated that counsel appointed to represent an indigent parent on a first appeal from a decree involuntarily terminating parental rights may, after a conscientious and thorough review of the record, petition this Court for leave to withdraw representation and must submit an **Anders** brief. **Id.** at 1275. To withdraw pursuant to **Anders**, counsel must perform each of the following tasks.

- (1) petition the court for leave to withdraw stating that after making a conscientious examination of the record and interviewing the defendant, counsel has determined the appeal would be frivolous;
- (2) file a brief referring to anything that might arguably support the appeal, but which does not resemble a "no merit" letter or *amicus curiae* brief; and
- (3) furnish a copy of the brief to defendant and advise him of his right to retain new counsel, proceed *pro se* or raise any additional points that he deems worthy of the court's attention.

² **Anders v. California**, 386 U.S. 738 (1967).

In re S.M.B., 856 A.2d 1235, 1237 (Pa. Super. 2004). Thereafter, this Court examines the record and determines whether the appeal is wholly frivolous. ***Id.***

Our Supreme Court, in ***Commonwealth v. Santiago***, 978 A.2d 349 (Pa. 2009), stated that an ***Anders*** brief must comply with the following four factors.

- (1) provide a summary of the procedural history and facts, with citations to the record;
- (2) refer to anything in the record that counsel believes arguably supports the appeal;
- (3) set forth counsel's conclusion that the appeal is frivolous; and
- (4) state counsel's reasons for concluding that the appeal is frivolous. Counsel should articulate the relevant facts of record, controlling case law, and/or statutes on point that have led to the conclusion that the appeal is frivolous.

Id. at 361. Mother's counsel has satisfied the requirements of ***Anders*** and ***Santiago***.

We now review the merits of Mother's appeal, which counsel states as follows:

Is there any basis to set aside [Mother's] Voluntary Relinquishment of Parental Rights?

Anders Brief at 5.

"Our standard in reviewing an appeal from an order relating to termination of parental rights is to determine if the record is free from legal

error and if the factual findings are supported by the evidence.” ***In the Interest of J.F.***, 862 A.2d 1258, 1260 (Pa. Super. 2004) (citations omitted).

The procedure for the voluntary relinquishment of parental rights to an agency is governed, in relevant part, by 23 Pa.C.S.A. § 2501 and § 2503.

§ 2501. Relinquishment to agency.

(a) Petition. --When any child under the age of 18 years has been in the care of an agency for a minimum period of three days or, whether or not the agency has the physical care of the child, the agency has received a written notice of the present intent to transfer to it custody of the child, executed by the parent, the parent or parents of the child may petition the court for permission to relinquish forever all parental rights and duties with respect to their child.

23 Pa.C.S.A. § 2501.

§ 2503. Hearing.

(a) General rule. --Upon presentation of a petition prepared pursuant to section 2501 (relating to relinquishment to agency) . . . , the court shall fix a time for hearing which shall not be less than ten days after filing of the petition. The petitioner must appear at the hearing.

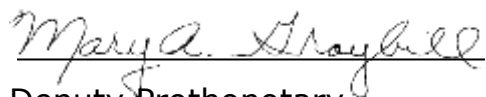
23 Pa.C.S.A. § 2503.

It is well settled that a hearing is required on a petition for voluntary relinquishment “to insure an intelligent, voluntary and deliberate consent to the termination of parental rights.” ***In re Adoption of Wolfe***, 312 A.2d 793, 796 (Pa. Super. 1973). In its opinion pursuant to Pa.R.A.P. 1925(a), the trial court stated, “[b]ecause Mother indicated she had deliberated the

nature and content of the decision she made on the record, the Court found credible her answers regarding coercion, voluntariness, and intelligence." Trial Court Opinion, 03/12/13, at 6. The court concluded that because the procedural requirements of the statute were satisfied, the decree of termination should be affirmed on appeal. On appeal, Mother seeks to set aside her voluntary relinquishment of her parental rights to Child on the basis that she has now changed her mind as to her voluntary relinquishment. However, even assuming that Mother's purported change of mind as to the voluntary relinquishment of her parental rights was a sufficient basis to set aside the termination decree, Mother failed to raise this issue to the trial court, resulting in waiver of this issue. **See** Pa.R.A.P. 302(a) (stating "[i]ssues not raised in the lower court are waived and cannot be raised for the first time on appeal."). Thus, we agree Mother's appeal is frivolous. Accordingly, we affirm the decree and grant the petition of Mother's counsel to withdraw.

Decree affirmed. Petition to withdraw as counsel granted.

Judgment Entered.


Deputy Prothonotary

Date: 9/3/2013