

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: J.R.A. & A.R.A.,
MINORS

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: M.L.C., MOTHER

No. 602 EDA 2013

Appeal from the Decrees entered January 18, 2013,
in the Court of Common Pleas of Philadelphia County,
Family Court, at No(s): CP-51-AP-0000038-2011, CP-51-AP-0000039-2011

BEFORE: ALLEN, MUNDY, and FITZGERALD*, JJ.

MEMORANDUM BY ALLEN, J.:

FILED DECEMBER 04, 2013

M.L.C. ("Mother") appeals from the decrees involuntarily terminating her parental rights with respect to her son, J.R.A., born in September of 2005, and her daughter, A.R.A., born in August of 2003 (collectively, "the children"). We affirm.

On January 28, 2011, J.R.A., Jr. ("Father"), and his wife, N.S.A. ("Stepmother"), filed petitions for the involuntary termination of Mother's parental rights.¹ On the same date, Stepmother filed petitions for adoption. The orphans' court held a hearing on the termination petitions on February 15, 2012, June 27, 2012, and September 25, 2012, during which the following witnesses testified: Father; Stepmother; Richard Farnum, Jr.,

* Former Justice specially assigned to the Superior Court.

¹ On January 18, 2012, Father and Stepmother filed motions to amend the petitions for the involuntary termination of Mother's parental rights that clarified the subsections of the Adoption Act., *i.e.*, 23 Pa.C.S.A. § 2511(a)(1), (a)(2), and (b), under which they were seeking relief.

Father's friend; Maryanne Chateau-Flagg, Mother's friend; Eleanor Engersoll-Koruba, Father's friend and neighbor; Mother; William Russell, Ph.D.; Steven Samuel, Ph.D.; and N.J., the children's maternal grandmother. In addition, counsel for the parties stipulated with respect to what Jessica Hurley, the children's nanny, would have testified if called as a witness.

Because the parties are well acquainted with the details of this case, and the orphans' court has ably recounted the facts as supported by the testimony of record, we adopt them here. **See** Order, 1/18/13, at 1-5.

By decrees dated and entered on January 18, 2013, the orphans' court terminated Mother's parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(1), (a)(2), and (b). Mother timely filed notices of appeal and concise statements of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b).

On appeal, Mother raises one issue for our review:

Whether the trial court committed reversible error when it involuntarily terminated Mother's parental rights where such determination was not supported by clear and convincing evidence under the Adoption Act, 23 Pa.C.S.A. § 2511 ([a]) and ([b]).

Mother's Brief at 7.

We review this appeal 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.**; **R.I.S.**, [___ Pa. ___, ___, 36 A.3d 567, 572 (Pa. 2011) (plurality opinion)]. 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.**, [___ Pa. ___], 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.**, [608 Pa. at 28-30], 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, 165,] 650 A.2d 1064, 1066 (Pa. 1994).

In re Adoption of S.P., ___ Pa. ___, ___, 47 A.3d 817, 826-827 (2012).

Termination of parental rights is governed by Section 2511 of the Adoption Act, which requires a bifurcated analysis.

Our case law has made clear that under Section 2511, the court must engage in a bifurcated process prior to terminating parental rights. Initially, the focus is on the conduct of the parent. The party seeking termination must prove by clear and convincing evidence that the parent's conduct satisfies the statutory grounds for termination delineated in Section 2511(a). Only if the court determines that the parent's conduct warrants termination of his or her parental rights does the court engage in

the second part of the analysis pursuant to Section 2511(b): determination of the needs and welfare of the child under the standard of best interests of the child. One major aspect of the needs and welfare analysis concerns the nature and status of the emotional bond between parent and child, with close attention paid to the effect on the child of permanently severing any such bond.

In re L.M., 923 A.2d 505, 511 (Pa. Super. 2007) (citing 23 Pa.C.S.A. § 2511). The burden is upon the petitioner to prove by clear and convincing evidence that the asserted statutory grounds for seeking the termination of parental rights are valid. ***In re R.N.J.***, 985 A.2d 273, 276 (Pa. Super. 2009).

Instantly, we conclude the orphans' court properly terminated Mother's parental rights pursuant to Section 2511(a)(1) and (b), which provide as follows:²

§ 2511. Grounds for involuntary termination

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

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

...

² ***See In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*) (stating that this Court need only agree with any one subsection of 23 Pa.C.S.A. § 2511(a) in order to affirm the termination of parental rights). As such, we need not review the decrees with respect to Section 2511(a)(2).

(b) Other considerations.—The court in terminating the rights of a parent shall give primary consideration to the developmental, physical and emotional needs and welfare of the child. The rights of a parent shall not be terminated solely on the basis of environmental factors such as inadequate housing, furnishings, income, clothing and medical care if found to be beyond the control of the parent. With respect to any petition filed pursuant to subsection (a)(1), (6) or (8), the court shall not consider any efforts by the parent to remedy the conditions described therein which are first initiated subsequent to the giving of notice of the filing of the petition.

23 Pa.C.S.A. § 2511(a)(1), (b).

With respect to Section 2511(a)(1), our Supreme Court has held,

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 re Adoption of Charles E.D.M., 550 Pa. 595, 602, 708 A.2d 88, 92

(1998). This Court has explained:

A court may terminate parental rights under Section 2511(a)(1) where the parent demonstrates a settled purpose to relinquish parental claim to a child or fails to perform parental duties for at least the six months prior to the filing of the termination petition. The court should consider the entire background of the case and not simply:

. . . 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 A.S., 11 A.3d 473, 482 (Pa. Super. 2010) (citations omitted).

Regarding the definition of “parental duties,” we have stated 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 . . . her physical and emotional needs.

In re B.,N.M., 856 A.2d 847, 855 (Pa. Super. 2004), *appeal denied*, 582 Pa. 718, 872 A.2d 1200 (2005) (internal citations omitted).

In addition, with respect to Section 2511(b), this Court has explained the requisite analysis as follows:

Subsection 2511(b) focuses on whether termination of parental rights would best serve the developmental, physical, and emotional needs and welfare of the child. In ***In re C.M.S.***, 884 A.2d 1284, 1287 (Pa. Super. 2005), this Court stated, “Intangibles such as love, comfort, security, and stability are involved in the inquiry into the needs and welfare of the child.” In addition, we instructed that 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.*** However, in cases where there is no evidence of a bond between a parent and child, it is reasonable to infer that no bond exists. ***In re K.Z.S.***, 946 A.2d 753, 762-63 (Pa. Super. 2008). Accordingly, the extent of the bond-effect analysis necessarily depends on the circumstances of the particular case. ***Id.*** at 63.

In re Adoption of J.M., 991 A.2d 321, 324 (Pa. Super. 2010).

On appeal, Mother argues the evidence of record does not support the termination of her parental rights pursuant to Section 2511(a) because her lack of contact with the children was due to mental illness, which “rendered her incapable of pursuing day-to-day activities, let alone legal remedies.” Mother’s Brief at 12. In addition, Mother argues that for most of her life, she was misdiagnosed. Upon being properly diagnosed with Bipolar II disorder, and treated for this disorder, Mother asserts “she began to resume daily activities.”³ ***Id.*** With respect to Section 2511(b), Mother argues, in relevant

³ Mother relies on only one case in the argument section of her brief, ***In the Matter of A.F.***, 482 A.2d 1076 (Pa. Super. 1984), for the proposition that “[m]ental illness cannot be a basis to terminate [] Mother’s parental rights, particularly if she can demonstrate that she can comply with treatment protocols, which she has done here.” Mother’s Brief at 12. In ***In the Matter of A.F.***, this Court reversed the decree terminating the parental rights of the mother, who suffered from schizophrenia, pursuant to Section 2511(a)(5) and (b). Our Supreme Court reversed and reinstated the trial court’s decree of termination. ***See In the Matter of A.F.***, 508 Pa. 78, 494

part, that “[n]o evidence was presented to show that the [c]hildren would be harmed in any way if [Mother] w[as] re-introduced into their lives.” *Id.* at 13. We disagree.

In its opinion pursuant to Pa.R.A.P. 1925(a), the orphans’ court found, pursuant to the testimony of forensic psychologists, Dr. Russell and Dr. Samuel, that:

[Mother] has been diagnosed and treated for psychological health issues and has had varying degrees of success and ability to function in her personal life over various time periods.

For the six months immediately preceding the filing of the Termination Petitions, [Mother’s] mental health did *not* constitute an obstacle preventing her from performing parental duties.

Trial Court Opinion, 5/7/13, at 6 (emphasis in original). With respect to Section 2511(b), the orphans’ court found:

Not only does [Stepmother] identify as their mother, but also the [c]hildren completely identify her as their mother. [J.R.A.] would not even know [Mother] if he saw her today, and does not refer to her at all. When the [c]hildren draw pictures of their family, they include [Stepmother] as the mother figure. [Stepmother] is heavily bonded with the [c]hildren, and [she] has not been away from them since she moved into [Father’s] residence in June 2008. The [children] consider [Stepmother’s] two older daughters to be their big sisters.

Pursuant to the stipulation between the parties, Ms. Hurley also would have testified that there has been a progression in the [c]hildren’s development, and that they have a bond with [Stepmother] and refer to her as “mommy.”

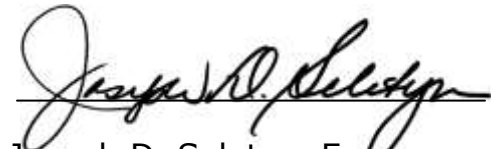
A.2d 1049 (1985). Because of the reversal of this Court’s order, we conclude that our decision in that case is wholly inapplicable to this matter.

Id. at 5 (citations to record omitted).⁴

Upon careful review, we conclude the record evidence overwhelmingly supports the decrees pursuant to 23 Pa.C.S.A. § 2511(a)(1) and (b). Thus, we discern no abuse of discretion. Accordingly, we adopt as dispositive of Mother's issue on appeal both the order/findings of fact and conclusions of law dated and entered on January 18, 2013, that accompanied the decrees, and the court's opinion pursuant to Pa.R.A.P. 1925(a). **See** Trial Court Order, 1/18/13; **see also** Trial Court Opinion, 5/7/13. The parties are directed to attach a redacted copy⁵ of the orphans' court's opinions in the event of further proceedings.

Decrees affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/4/2013

⁴ Further, we note that the record is devoid of any parent-child bond between the children and Mother. **See *In re Adoption of J.M., supra*** (stating that "in cases where there is no evidence of a bond between a parent and child, it is reasonable to infer that no bond exists").

⁵ The copies shall include the redacted names of Mother, Father, Stepmother, and the children.

IN THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS

IN RE: _____ : PHILADELPHIA COUNTY
: FAMILY COURT DIVISION
: ADOPTION BRANCH
: CP-51-AP-0000038-2011
IN RE: _____ : CP-51-AP-0000039-2011

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OPINION

Olszewski, J.

PROCEDURAL HISTORY

On January 28, 2011, Petitioners filed Petitions for Involuntary Termination of Parental Rights of _____ Subsequently, Petitioners filed an amended Petition clarifying the sections of the law under which they were seeking to terminate parental rights. On September 25, 2012, the trial court, after three trial dates, concluded the proceedings in this matter save for post-trial submissions ordered by the court. On January 18, 2013, after a careful review of the record inclusive of: recommendation(s) and bonding testimony from the Child Advocate, the legally admissible evidence, the competent law of the Commonwealth, post-trial submissions of all counsel, the trial court's assessment of the credibility of the witnesses and all relevant demeanor evidence, issued a final order terminating the parental rights of _____ On February 15, 2013, the Respondent, _____ by and through counsel filed a timely appeal. This appeal now follows.

STATEMENT OF MATTERS COMPLAINED OF ON APPEAL

1. The Trial Court did abuse its discretion and commit legal error in terminating mother's parental rights since the Petitioner's did not meet their burden by clear and convincing evidence of establishing sufficient grounds that mother has evidenced a settled purpose of

relinquishing claim to her children or had refused or failed to perform parental duties under 23 Pa.C.S.A. § 2511 (a)(1).

2. The Trial Court did abuse its discretion and commit legal error in terminating mother's parental rights since the Petitioner's did not meet their burden by clear and convincing evidence of establishing sufficient grounds under 23 Pa.C.S.A. § 2511 (a)(2) that mother lacks the present capacity to perform her parental responsibilities.
3. The Trial Court abused its discretion and committed legal error in terminating parental rights under 23 Pa.C.S.A. § 2511 (a)(5) because the Petitioners failed to prove by clear and convincing evidence the present and continued incapacity of mother to provide essential care necessary for her children's physical and mental wellbeing.
4. The Trial Court did err in terminating mother's parental rights since the Petitioners did not meet their burden by clear and convincing evidence of showing that the best interest of the children was served by terminating mother's parental rights pursuant to Section 2511 (b) of the Adoption Act.

FINDINGS OF FACT

a. Settled Purpose of Relinquishing Parental Claim/ Refusal or Failure to Perform Parental Duties

1. _____ is the natural father of _____, age 7 (DOB: _____) and _____, age 9 (DOB: _____) (collectively the "Children"). (N.T. 2/15/12, p. 11).
2. The natural mother of the children (Respondent) _____ (N.T. 6/27/12, p. 49).
3. _____ and _____ were married on January 6, 2007 and separated on July 11, 2007. (N.T. 2/15/12, p. 11).
4. They were finally divorced on February 15, 2008. (N.T. 2/15/12, p.15).
5. _____ has not seen the Children since January 2008, and has not spoken to or

had any contact with them since January 2009.

6. (Petitioner) is currently married to (Co-Petitioner).
7. and (collectively Petitioners) were married on February 14, 2009. (N.T. 2/15/12, p. 41).
8. and separated on July 11, 2007 when they were residing in Palm Beach, Florida with the Children, staying at premarital condominium. (N.T. 6/27/12, p. 12).
9. On that date, walked out of Florida condominium without the Children, and did not return. (N.T. 6/27/12, p. 12) (N.T. 6/27/12, p. 101). Respondent left and stayed with the mother of a friend from high school. (N.T. 6/27/12, pgs. 98-99).
10. did not provide with an address for where she was staying. (N.T. 6/27/12, p. 167). The next day, called an attorney, and retained him to represent her in the divorce and custody matters. (N.T. 6/27/12, pgs. 98-99). Respondent immediately filed for divorce, and Petitioner was served with the divorce complaint. (N.T. 2/15/12, p. 14) (N.T. 6/27/12, p. 101).
11. Petitioner and the Children returned to Philadelphia on July 15 or 16, 2007. (N.T. 2/15/12, p. 58). Respondent remained in Florida. (N.T. 2/15/12, p. 19). In the month after the Petitioner and Respondent separated, Respondent did not contact Petitioner to speak with or see the Children. (N.T. 6/27/12, p. 106).
12. The Children have lived with at his residence in Philadelphia since he and separated in July 2007. (N.T. 2/15/12, p. 19). Pursuant to the Property Settlement Agreement entered into by and on September 24, 2007 ("Property Settlement Agreement"), while both parties were represented by counsel, had primary physical custody of the Children. (N.T. 2/15/12, p. 16, p. 72, p. 87); (N.T. 6/27/12, p. 155). was entitled

to partial physical custody, and _____ agreed to pay for the Children's air travel to and from Florida. (N.T. 2/15/12, p. 18). _____ custody time, however, was to be supervised by her uncle _____ (N.T. 2/15/12, p. 76).

13. The specific terms of the Property Settlement Agreement regarding custody were codified separately into a formal custody agreement and entered as an order in February of 2008 ("Custody Agreement"). (N.T. 2/15/12, pgs. 16, 69).
14. _____ felt that it was best for _____ to have primary physical custody of the Children, so that they could stay in their home and "maintain the lives they had." (N.T. 6/27/12, p. 119).
15. After _____ and _____ separated in July 2007, _____ did not request to see the Children until January 2008. (N.T. 2/15/12, p. 58).
16. The last time that Respondent saw the Children to date was in January, 2008. (N.T. 2/15/12, p. 24).
17. Although _____ initially made some contact with the Children over the phone after January 2008, her calls became less and less frequent. (N.T. 2/15/12, p. 24). The last phone call that _____ made to the Children was in January 2009. (N.T. 2/15/12, p. 30).
18. Petitioner has not changed his telephone number since January 2009. (N.T. 2/15/12, p. 31).
19. _____ has not called the Children on their birthdays. (N.T. 2/15/12, p. 30).
20. _____ resides in the same house he did while married and in a relationship with _____ (N.T. 2/15/12, p. 33).
21. _____ has not sent the Children any Christmas cards, Valentine's Day cards, birthday cards, or any gifts. (N.T. 2/15/12, p. 80-81) (N.T. 6/27/12, p. 165).
22. Respondent has not sent any letters to the Children at Petitioners' residence.

(N.T. 6/27/12, p. 164). Respondent has not spoken with the Children since June 2010.

23. The testimony presented suggests Petitioner did not know where Respondent was residing until early 2011, when he saw on Facebook that she was living in Lakeville, Connecticut. (N.T. 2/15/12, p. 33).
24. The Petitioners testimony, in its entirety, was credible and aided the trial court in its fact-finding role.
25. The Respondent's testimony at points was incompatible with other evidence or testimony, inconsistent on occasion, and/or did not reconcile with other facts. Moreover, her demeanor during segments of her testimony was suggestive of calculation as opposed to candor.

b. Bonding Analysis

1. Not only does [redacted] identify as their mother, but also the Children completely identify her as their mother. (N.T. 2/15/12, p. 113). [redacted] would not even know [redacted] if he saw her today, and does not refer to her at all. (N.T. 2/15/12, p. 84). When the Children draw pictures of their family, they include [redacted] as the mother figure. (N.T. 2/15/12, p. 85). [redacted] is heavily bonded with the Children, and has not been away from them since she moved into residence in June 2008. (N.T. 2/15/12, p. 112). The Children consider two older daughters to be their big sisters. (N.T. 2/15/12, p. 98).
2. Pursuant to the stipulation between the parties [redacted] also would have testified that there has been a progression in the Children's development, and that they have a bond with [redacted] and refer to her as "mommy." (N.T. 2/15/12, p. 133).

c. Respondent's Mental Health/Expert Testimony

1. Respondent has had a diagnosis and a significant treatment history for psychological conditions.

2. Respondent's psychological history and treatment varied and some points requiring hospitalization and other points requiring out-patient treatment.
3. It is not clear that Petitioners are offering Respondents psychological history as evidence of her capacity to parent. It seems more apparent that this history and the attendant expert testimony are being offered as evidence of Respondent's periods or progress and her conduct and abilities during those periods.
4. Dr. William Russell is an expert in the field of forensic psychology. (N.T. 9/25/12 pgs. 6, 7). He reviewed records from [redacted] stay at the Charlotte Hungerford Hospital in 2010. (N.T. 9/25/12, p. 13). [redacted] spent a total of five hours in testing and interviews with Dr. Russell, over the course of two days. (N.T. 9/25/12, p. 15). Dr. Russell also met with [redacted] mother. (N.T. 9/25/12, p. 15).
5. Dr. Steven Samuel is an expert in the field of forensic psychology. (N.T. 9/25/12, pgs. 6, 68). Dr. Samuel worked at Harvard University specifically focusing on attachment relationships, bonding, and relationships between mothers and children. (N.T. 9/25/12, p. 68).
6. The experts have testified at length and offered various critiques and defenses of their respective approach to treatment and assessment of the Respondent.
7. The court, however, need not make determinations as to the strengths and weaknesses of the individual experts or their testimony or even try to resolve conflicts between their assessments.
8. What both experts clearly state and do not refute or contradict is that the Respondent has been diagnosed and treated for psychological health issues and has had varying degrees of success and ability to function in her personal life over various time periods.
9. For the six months immediately preceding the filing of the Termination Petitions, [redacted] mental health did *not* constitute an obstacle preventing her from performing parental duties.

CONCLUSIONS OF LAW

1. The grounds for involuntarily termination of parental rights are enumerated in the Adoptions Act at 23 Pa. C.S.A. § 2511(a). The Adoptions Act provides the following 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 six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.
- (2) The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.
 - (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...

2. In proceedings to involuntarily terminate parental rights, the burden of proof is on the party seeking termination to establish by clear and convincing evidence the existence of grounds for doing so. *In re Adoption of Atencio*, 539 Pa. 161, 650 A.2d 1064 (1994).

3. Under Pennsylvania law, to satisfy section § 2511(a)(1), the moving party must produce clear and convincing evidence of conduct sustained for a period of at least six (6) 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. The standard of clear and convincing evidence is defined as testimony that is so “clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conviction without hesitance, of the truth of the precise facts in issue.” *In re D.J.S.*, 1999 Pa. Super. 214 (1999).

4. The trial 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 involuntary termination. Where it is shown that the parent has failed to perform parental duties, the court should pursue three lines of inquiry: 1) the parent’s explanation for his/her conduct; 2) post abandonment contact between parent and child; and 3) effect of termination on the child pursuant to § 2511(b). *Charles E.D.M.*, 550 PA 595, 602, 708 A.2d. 88, 92 (1998).

5. A parent has an affirmative obligation to act in his child’s best interest. As stated in *Adoption of Hamilton*, 379 Pa. Super at 274, 549 A.2d at 1291, “to be legally significant, the contact must be steady and consistent over a period of time, contribute to the psychological health of the child, and must demonstrate a serious intent on the part of the parent to re-cultivate a parent-child relationship and must also demonstrate a willingness and capacity to undertake the parental role. *In re E.S.M.*, 424 Pa. Super. 296.

6. The evidence, in the instant case, establishes that there is clear and convincing evidence that Respondent had for a period of at least six (6) months immediately preceding the filing of the petition either evidenced a settled purpose of relinquishing parental claim to the child or has refused or failed to perform parental duties.

8. Petitioners have met their burden under 23 Pa. C.S.A. § 2511 (a)(1) because the testimony presented at trial proved that the Respondent has had no involvement with the child and that the Respondents' conduct continuing for a period of six (6) months immediately preceding the filing of the petition either had evidenced a settled purpose of relinquishing parental claim to the children or has refused or failed to perform parental duties pursuant to 23 Pa. C.S.A. § 2511(a)(1).

9. Biological mother has offered nothing to evidence parental communication or support of the children. Parental duties require continuing interest in the child and a genuine effort to maintain communication and association with the child. Parental duties require that the parent assert herself to take and maintain a place of importance in the child's life. The parental obligation is viewed as a positive duty that requires and affirmative performance. *In Re Burns*, 474 Pa. 615, 379 A.2d 535 (1977).

10. The evidence proved that Respondent failed to maintain a parental relationship with the children after her separation and divorce from the Petitioner.

11. Petitioners have also met their burden under 23 Pa. C.S.A. § 2511(b). Once the facts are established for involuntary termination, the Court must make a second inquiry to determine if the developmental, physical and emotional needs and welfare of the child will be served by the termination. 23 Pa.C.S.A. § and 2511(b). The evidence presented proved that no bond exists between the Respondent and the children. Respondent has had little, if any, contact with minor children since 2009.

Where the bond is not strong between parent and child and the relationship could even be detrimental to the child, this inquiry can be satisfied. *In re Adoption of K.J.*, 936 A.2d 1128 (Pa. Super. 2007). The evidence proved that the children are in a stable, loving home and the Petitioners have a serious bond with the children.

12. The Adoption and Safe Families Act, 42 U.S.C. §§ 671-675, imposes upon states the requirement to focus on the child's need for permanency rather than parent's actions and inactions.

13. It is in the best interest of the children for their health, welfare, growth, and continuing positive development that their need for permanency be vested in the family of the Petitioners and that stability is jeopardized by the parental claims of the Respondent.

CONCLUSION

Based on this trial court's findings of fact, (inclusive of its credibility determinations and evaluation of demeanor evidence) coupled with the application of the controlling law, finds that the weight and sufficiency of the evidence overwhelmingly establishes clear and convincing evidence for its decision at trial. Accordingly, Respondent/Appellant's averments of error # 1 and # 4 set forth hereinabove have been addressed and cannot stand. Thus, the trial court need not discuss Respondent/Appellant's averments of error #2, and #3 set forth hereinabove as satisfaction of 2511(a)(1) and 2511(b) are enough to sustain the trial court's decision to terminate parental right. Moreover, arguably, the evidence and trial record could sustain termination under other grounds, however, the trial court need not perform that analysis. The trial court's Order terminating parental right should be affirmed on appeal.

BY THE COURT:



J.