NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: D.A.	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: B.O.F., FATHER	:	No. 841 WDA 2012

Appeal from the Decree Entered April 26, 2012,
In the Court of Common Pleas of McKean County,
Orphans' Court Division, at No. 42-120027.

BEFORE: SHOGAN, OTT and COLVILLE*, JJ.

MEMORANDUM BY SHOGAN, J.: Filed: January 29, 2013

B.O.F. ("Father") appeals from the decree dated April 24, 2012, and entered April 26, 2012, granting the McKean County Children and Youth Services' ("CYS" or "Agency") petition to involuntarily terminate his parental rights to his male child, D.A., pursuant to 23 Pa.C.S.A. § 2511(a)(1), (2) and (b).[1] We affirm.

On February 1, 2011, CYS filed the petition seeking to involuntarily terminate Father's parental rights to Child, who was born in January 2010. The trial court held a hearing on the termination petition on March 23, 2012. At the hearing, CYS presented the testimony of Ms. Flickinger, its ongoing

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*Retired Senior Judge assigned to the Superior Court.

[1] The trial court notes that Child's mother, A.A. ("Mother"), voluntarily relinquished her parental rights, after a full colloquy, and the trial court entered an order terminating her parental rights on April 24, 2012. Mother is not a party to this appeal, nor has she filed a separate appeal.

caseworker assigned to the case, and Child's current Foster Mother ("Mrs. G."). Father presented the testimony of his pastor, Pastor K.A., and testified on his own behalf.

Based on the record, the testimony and other evidence at the hearing, the trial court made the following findings of fact:

> [Child's] Mother, [A.A.] [("Mother")], was incarcerated for drug[-]related convictions when [Child] was born [in January of 2010]. Mother believed that [Child's] father was one of two individuals, with [B.F.] (hereinafter "Father") being one of them. Mother had been involved in a relationship with Father for sometime [sic] [,] and the two of them were residing together and involved in a sexual relationship when she discovered that she was pregnant. Mother first became aware that she was pregnant in the summer of 2009. Father was waiting in the parking lot of the Country Fair, a gas station and convenience store in Bradford, McKean County, Pennsylvania, while Mother went inside, into the restroom, to utilize an over[-]the[-]counter pregnancy test. Mother immediately came out and told Father that she was pregnant. Therefore, Father was the first person that Mother told that [sic] she was pregnant. Mother and Father discussed the pregnancy and raising the child together. Mother testified that Father never raised any doubts with her about being the [f]ather.[2] Mother and Father separated when Mother was about seven (7) months['] pregnant. When they separated[,] Father told Mother that he was going to "take the baby because Mother would mess up."
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> > [2] The [c]ourt finds that Father's testimony about his doubt about being [Child's] natural father [is] incredible and motivated by his desire to justify his lack of early involvement in [Child's] life. Again, the [c]ourt finds that Father knew that he was, or that there was a very high probability that he was, [Child's] [f]ather as soon as Mother became aware that she was pregnant.
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> Father relocated to Buffalo, New York[,] after he and Mother separated. Despite knowing that Mother was 7 months[']

pregnant and it was highly likely he was the [f]ather, and, that[,] due to her drug and alcohol dependency issues, that [sic] Mother would have a difficult time caring for the child after he was born, Father made no meaningful effort to be involved in [Child's] life for almost two years.

On January 6, 2010, when [Child] was just two days old, CYS obtained custody of him and placed him in the [G.] foster home[,] where he has remained. [Child] has resided with the [G.s] since his initial placement there[,] and they have been his primary caretakers. As Mrs. [G.] testified "[Child] has never not been in our home." [Child] is extremely bonded to the [G.s] and their family[,] and he completely recognizes them as his parental figures (Mom and Dad). The [G.s] have provided exceptional care for [Child,] and they intend on adopting him if that option becomes available.

In March of 2010, McKean County Children and Youth Caseworker Marcy Flickinger contacted Father by telephone. She explained to him that: 1) [Child] was in placement; 2) the Agency was attempting to officially establish who his [f]ather was; and 3) Mother had named him and one other individual as the potential [f]ather. She explained that she wanted to schedule genetic testing for Father and the other named individual. Father did not request to have visits with [Child] when he spoke to [Ms.] Flickinger and, shortly after talking to her, he relocated without advising [Ms.] Flickinger or anyone at the Agency of his new address and contact information. Therefore, it was difficult for [Ms.] Flickinger to track him down again. On January 24, 2011, Ms. Flickinger located Father and spoke with him[,] at which time he again acknowledged the possibility of being Child's father[,] and [Ms.] Flickinger indicated that she wanted Father to provide a DNA sample for paternity testing. Father related that his address was 50 Ullman Street, Buffalo, New York. On January 25, 2011, CYS filed a motion for paternity testing and, by Order dated January 27, 2011, the [c]ourt directed Father to contact the McKean County Domestic Relations Office to arrange genetic testing. Father failed to appear for testing scheduled in February and March 2011 in Buffalo, New York. Father testified that he did not receive notice for either date. Having heard nothing from Father, in August 2011, Ms. Flickinger sent Father another letter inquiring about

his intentions. On August 29, 2011, Ms. Flickinger spoke with Father via telephone[,] during which time the [two] of them again discussed paternity testing. By letter dated September 7, 2011, Ms. Flickinger notified Father that paternity testing was scheduled for September 14, 2011, in Buffalo, New York. Father appeared and submitted to genetic testing on September 14, 2011.

On September 22, 2011, Ms. Flickinger contacted Father via telephone and informed him that CYS received the results of the testing[,] which revealed that he could not be excluded as Child's father. She also notified him of the permanency hearing scheduled for October 4, 2011. Father related that he intended to appear at the hearing.

On October 4, 2011, the permanency hearing was held approximately one-half hour after the scheduled time, but Father did not appear for the hearing. The [c]ourt ordered that neither parent be afforded visits and, that if either parent thereafter requested visits, CYS arrange for an immediate hearing to address the appropriateness of visits. Father arrived at the CYS office approximately one hour after the conclusion of the hearing[,] at which time Father was given information on how to obtain an attorney for the proceedings. By Order of October 4, 2011, the [c]ourt appointed counsel for Father. By letter dated October 19, 2011, Father[,] through [h]is court-appointed attorney[,] requested a hearing on the issue of permitting Father visits with Child. On November 15, 2011, another permanency hearing was held[,] at which Father participated by telephone. It was ordered that Father would not be permitted in-person visits with Child, but that he was permitted to contact CYS and the foster parents about Child. On February 1, 2012, CYS filed its petition seeking to terminate Father's rights to Child. On February 24, 2012, Ms. Flickinger served Father with the petition.

On March 1, 2012, after the petition was filed, Father contacted the foster parents to inquire about the Child[,] and the foster mother permitted him to speak with Child. The foster mother told Father that he could thereafter contact them on a weekly basis on Saturdays. After the March 1, 2012, telephone call, Father did not contact the foster home. Father did not offer

> an explanation for his lack of contact other than that he was told that someone else could possibly be Child's father[,] and that he didn't conclusively know he was the father until the paternity results were revealed to him in September 2011. He also related that he had been on probation and had a lot of "stuff" going on. Father related that he was willing and able to have visits with Child, but that he was not prepared to have Child reside with him due to housing issues.
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> Since he has not had any contact with Father, there is no bond between Father and [Child]. Therefore, there would be no emotional harm to [Child] to severe [sic] this non[-]existent bond.

Trial Court Opinion, 4/30/12, at 1-5 (footnote in original).

In the April 26, 2012 decree, the trial court terminated Father's parental rights to Child pursuant to section 2511(a)(1), (2), and (b) of the Adoption Act. On May 25, 2012, Father timely filed his notice of appeal, along with a Concise Statement of Errors Complained of on Appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b).

In his brief on appeal, Father raises the following issue:

> Did CYS fail to meet its burden of proving by clear and convincing evidence that grounds existed for terminating [Father's] parental rights to [Child] under 23 Pa.C.S.A. §2511(a)(1) or (2)?

Father's Brief at 5.[2]

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[2] The issues in the Statement of Questions Involved portion of Father's brief are not framed identically to those in his Concise Statement of Errors Complained of on Appeal. We, nevertheless, find that Father adequately preserved his issue for this Court's review as a general challenge to the sufficiency of the evidence under 23 Pa.C.S.A. § 2511(a)(1) and (2).

In reviewing an appeal from the termination of parental rights, we review the appeal in accordance with 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.***
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> 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).

The burden is upon the petitioner to prove by clear and convincing evidence that the asserted grounds for seeking the termination of parental rights are valid. ***In re R.N.J.***, 985 A.2d 273, 276 (Pa. Super. 2009).

Moreover, we have explained that:

> [t]he 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."

Id. at 276 (quoting ***In re J.L.C.***, 837 A.2d 1247, 1251 (Pa. Super. 2003)).

This Court may affirm the trial court's decision regarding the termination of parental rights with regard to any one subsection of section 2511(a). ***In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*). We will focus on sections 2511(a)(1) and (b), which provide, in relevant part, as follows:

> **§ 2511. Grounds for involuntary termination**
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> **(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:
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> > (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.
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> * * *
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> **(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.

We have explained this Court's review of a challenge to the sufficiency of the evidence to support the involuntary termination of a parent's rights pursuant to 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.
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> * * *
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>> 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 Z.S.W., 946 A.2d 726, 730 (Pa. Super. 2008) (quotation and citations omitted).

This Court has stated:

> Once the statutory requirement for involuntary termination of parental rights has been established under subsection (a), the

> court must consider whether the child's needs and welfare will be met by termination pursuant to subsection (b). ***In re D.W.***, 856 A.2d 1231, 1234 (Pa. Super. 2004). In this context, the court must take into account whether a bond exists between child and parent, and whether termination would destroy an existing, necessary and beneficial relationship. ***In re C.S.***, [761 A.2d 1197, 1202 (Pa. Super. 2000)].

In re Z.P., 994 A.2d 1108, 1121 (Pa. Super. 2010). Regarding section 2511(b), we inquire whether the termination of Father's parental rights would best serve the developmental, physical and emotional needs and welfare of the child. ***In re C.M.S.***, 884 A.2d 1284, 1286-1287 (Pa. Super. 2005). "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). We 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.***

With regard to the considerations set forth in section 2511(a)(1), the trial court found that Father, by his conduct continuing for a period of at least six months immediately preceding the filing of the petition, had failed to perform his parental duties. Trial Court Opinion, 4/30/12, at 9-12. Moreover, the trial court considered Father's post-abandonment contact with the Child, and rejected Father's explanations for his conduct, finding that they lacked credibility and affording them no weight.

The trial court reasoned as follows:

> Regarding § 2511(a)(1), Father asserts that, since he did not know with certainty that he was [Child's] [f]ather until September 22, 2011, that is when the applicable six (6) month time period should begin to run. In support of that position[,] Father cites to the case of ***In Re: Adoption of Stunkard***, [551] A.2d 331 (Pa. Super. 1988). However, in that case[,] the [a]gency involved attempted to assert that, since [the father] knew that [the mother] was pregnant with his child, a portion of her pregnancy – **before the child was actually born** – should count toward the 6 month period. In this case[,] the Agency is not asserting that any pre-birth time should be utilized in calculating the applicable six[-]month period. Therefore, ***Stunkard*** is completely distinguishable.
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> A case that is on point here is ***In Re: Adoption of M.R.B.***, 25 A.3d 1247 (Pa. Super. 2011). Although 23 Pa.C.S.A. §2511(a)(6) was at issue in that case, the ***M.R.B.*** Court addressed the specific issue of whether the time period for termination should be tolled when a potential father is uncertain that he is the actual father? [sic] In other words, that the clock shouldn't begin to run until a father has the DNA test results in his hands. The Superior Court rejected this assertion.
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>> The certified record reveals, however, that Father's predicament was not unmanageable. Father could have asserted his parental rights through [his counsel,] Attorney Banks, forwarded money to [Bethany Christian Services] (Children and Youth Agency) in care of [M.R.B.] (child), or attempted to have his mother establish contact with M.R.B. on his behalf. Father did not take any of these simple steps. Instead, Father did nothing.
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>> . . .
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>> Father's related argument that the four-month window did not commence until he accepted paternity of M.R.B. is equally untenable.
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>> . . .

> In contrast to [F]ather's action taken in ***T.J.B.*** (***T.J.B. v. E.C.***, 652 A.2d 936 (Pa. Super. 1995)), Father did absolutely nothing during the relevant period in the case at bar. As BCS accurately observes, Father did not contest paternity in this case when he was first informed of Mother's pregnancy and, although he may have discussed challenging paternity with Attorney Banks, his only request to confirm paternity occurred beyond the four-month window and after he received notice of BCS's petition to involuntarily terminate his parental rights.

M.R.B. at 125[7]-1259.

In this case[,] Father knew he was, or at least had strong reason to believe, that he was [Child's] father well before [Child] was born. He was the first one that Mother told about the pregnancy in that parking lot outside the Country Fair gas station as she was holding the positive pregnancy test in her hand. Mother testified that [ ] Father never raised any doubts with her about being the [f]ather, and, she and Father talked about raising the child. Since he was on notice prior to birth that he was [Child's] father, Father's responsibilities and duties started at birth – the clock started ticking then. If he had doubts, which the [c]ourt has found that he didn't, he at least had the duty to seek DNA testing himself instead of leaving his potential child in the placement of the Agency and in foster care. The undisputed facts are that he left the area, went to Buffalo[,] and focused on his own issues and concerns. This may have been what Father needed to do to address his own issues, but it still cannot be ignored that he made no effort to address his parental duties. He didn't send a card, didn't go to the hospital, didn't try to contact Mother or the Agency, [and] didn't make any financial payments toward his son's care. Even if there were merit to the assertion that, when [Child] was born, Father did not have sufficient notice that he was his [f]ather, when Marcy Flickinger called him in March of 2010, and told him that Mother was indicating that he or another individual were [sic] [Child's] [f]ather, he had clear notice then. Instead of addressing the situation at that point, Father relocated once again and didn't advise the Agency of his new address or contact information. Since Father failed to make any meaningful efforts to fulfill his parental duties for more than six (6) months preceding the filing

> of the Termination Petition, the Agency has demonstrated, by clear and convincing evidence, the grounds for termination.

Trial Court Opinion, 4/30/12, at 9-11 (emphasis in original).

In ***In re Adoption of S.P.***, ___ Pa. ___, 47 A.3d 817 (Pa. Super. 2012), the Supreme Court reiterated the standard of analysis pursuant to section 2511(a)(1) for abandonment, as follows:

> Applying [***In re: Adoption of McCray***] the provision for termination of parental rights based upon abandonment, now codified as § 2511(a)(1), we noted that a parent "has an affirmative duty to love, protect and support his child and to make an effort to maintain communication and association with that child." [460 Pa. 210, 217, 331 A.2d 652, 655].
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> * * *
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> Where the parent does not exercise reasonable firmness in declining to yield to obstacles, his other rights may be forfeited.

Id., at ___, 47 A.3d at 828 (quoting ***In re: Adoption of McCray***, 460 Pa. 210, 217, 331 A.2d 652, 655 (1975)) (footnotes and internal quotation marks omitted).

Father requests this Court to review the testimony, and to re-weigh the evidence and the facts and the credibility determinations made by the trial court. In particular, Father asserts that we should consider CYS's actions and inactions during the six months preceding the termination hearing, as opposed to his own actions and inactions. Father's Brief at 16-17.

This Court has reviewed the trial court's analysis of the evidence. We conclude that the trial court's findings of fact are supported by sufficient, competent evidence to support the termination of Father's parental rights pursuant to section 2511(a)(1). Further, we have reviewed the controlling case law. Father does not provide any case support for his argument, aside from a few general propositions. After our careful review of the trial court's application of that law to the facts of this case, we find no reason to disturb the trial court's conclusions. As we stated in ***In re Z.P.***, a child's life "simply cannot be put on hold in the hope that [a parent] will summon the ability to handle the responsibilities of parenting." ***In re Z.P.***, 994 A.2d at 1125. We conclude that the trial court's determinations regarding section 2511(a)(1) are supported by ample, competent evidence in the record. ***In re Adoption of S.P.***, ___ Pa. at ___, 47 A.3d at 826-827. Thus, we will not disturb the trial court's credibility and weight assessments. ***Id.***

Next, having found the requirements of subsection (a)(1) satisfied, we proceed to review whether the requirements of subsection (b) are satisfied. ***In re Z.P.***, 994 A.2d at 1121. We have stated that the focus in terminating parental rights under section 2511(a) is on the parent, but it is on the child pursuant to section 2511(b). ***In re Adoption of C.L.G.***, 956 A.2d 999, 1008 (Pa. Super. 2008) (*en banc*).

"In 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." ***In re K.Z.S.***, 946 A.2d 753, 762-763 (Pa. Super. 2008). In ***K.Z.S.***, this Court stated that there are some instances where direct observation of the interaction between the parent and the child is not necessary and may even be detrimental to the child. ***Id.*** at 762. Additionally, this Court instructed 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. ***Id.*** at 763.

With regard to section 2511(b), the trial court stated the following.

> [A]n issue remains whether termination of parental rights would best serve [Child's] needs and welfare?
>
> Father has presented evidence that he has recently changed the focus of his life, [and] that he is actively involved in his church and its ministry. Pastor [K. A.] testified that Father has a good work ethic and is "focused and growing in every aspect of his life." The [c]ourt accepts Pastor [A.'s] testimony and finds it commendable that Father has recently made some positive strides. However, Father's current living arrangement, which is apparently through his work with his Church, does not allow him to have children reside with him. He testified that "I am not prepared to have [Child] live with me today." The [c]ourt finds that, based on: 1) Father's past complete lack of involvement and contact with [Child] and the resulting non[-]existence of any relationship between [Child] and his Father; 2) the continuing issues that Father is facing and his continued and currently existing inability to provide proper care

> and control for [Child]; and, 3) the very strong and productive bond between [Child] and the [G.s], the Agency has also demonstrated by clear and convincing evidence that termination of parental rights would best serve [Child's] needs and welfare.

Trial Court Opinion, 4/30/12, at 11-12.

The competent evidence in the record supports the trial court's determination regarding the needs and welfare component of section 2511(b). Ms. Flickinger testified that Child has been placed with his foster family, the G.s since his birth in January of 2010, and that she has made numerous visits to the foster home. N.T., 3/23/12, at 23, 30, 33. Ms. Flickinger also testified that there is no bond between Child and Father. ***Id.*** at 33. The competent evidence in the record supports the trial court's determination regarding the needs and welfare, and the bond-effect analysis of section 2511(b).

We have stated that, when conducting a bonding analysis, the court is not required to use expert testimony, but may rely on the testimony of social workers and caseworkers. ***In re Z.P.***, 994 A.2d at 1121. Accordingly, we determine that the trial court properly relied on Ms. Flickinger's testimony regarding a lack of any bond between Child and Father. Additionally, it was reasonable for the trial court to conclude that, given Father's relocation to Buffalo despite his knowledge of Child, and his lack of contact with Child, who was two years old at the time of the hearing, there

would be no detrimental effect from the termination of his parental rights. ***See In re K.Z.S.***, 946 A.2d at 762-763.

We conclude that there was ample, competent testimony in the record to support the trial court's findings that the foster family is meeting Child's needs and welfare, and that the termination of Father's parental rights would serve Child's best interests and would not disturb any bond between Child and Father, as none exists. We discern no abuse of the trial court's discretion in its determination with regard to section 2511(b).

After careful review of the record, we conclude that there was competent evidence in the record to support the trial court's termination of Father's rights to the Child under section 2511(a)(1) and (b). Accordingly, we affirm the trial court's decree.

Decree affirmed.