

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: D.C., a Minor

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: D.C., Jr., Natural Father

No. 876 MDA 2013

Appeal from the Decree entered April 22, 2013,
in the Court of Common Pleas of Luzerne County,
Orphans' Court Division, No. A-7792

BEFORE: SHOGAN, ALLEN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED DECEMBER 24, 2013

D.C., Jr. ("Father"), appeals from the Decree that granted the Petition to involuntarily terminate his parental rights to his eight-year-old son, D.C. (or "Child"), filed by the Luzerne County Children and Youth Services ("CYS" or "Children and Youth"), pursuant to 23 Pa.C.S.A. § 2511(a)(2), (5), (8), and (b).¹ We affirm.

Child was born on August 9, 2005. Child was removed from Father's care and has been in placement since May 27, 2009. The reasons for Child's placement included Father's severe physical abuse of Child, extensive criminal history, and previous history with CYS. In August 2011, CYS filed a Petition for the involuntary termination of Father's parental rights to Child. The trial court conducted three separate hearings on this Petition, at which

¹ Child's mother, J.C. ("Mother"), voluntarily relinquished her parental rights to Child, and the trial court entered a Decree terminating her parental rights. Mother has not filed an appeal challenging the termination of her parental rights, nor is she a party to the instant appeal.

CYS presented numerous witnesses, and Father testified and presented witnesses on his behalf. Based upon the testimony presented, the trial court found that CYS had met its burden of proving, by clear and convincing evidence, that termination of Father's parental rights to Child was warranted pursuant to 23 Pa.C.S.A. § 2511(a)(2), (5), (8), and (b). **See** Trial Court Opinion, 6/12/13, at 2.

By a Decree entered on April 22, 2013, the trial court terminated Father's parental rights to Child. In response, Father timely filed a Notice of Appeal, along with a Concise Statement of Errors Complained of on Appeal, pursuant to Pa.R.A.P. 1925(a)(2)(1) and (b).

Father presents the following issues for our review:

I. Whether the trial court erred in finding that [CYS] proved the elements of termination with respect to 23 Pa.C.S.A. section[s] 2511(a)(2), ... 2511(a)(5), ... 2511(a)(8) and ... 2511(b) through clear and convincing evidence[?]

II. [Whether t]here was insufficient evidence presented at trial to establish [that] termination [of Father's parental rights to Child was warranted under] 23 Pa.C.S.A. section[s] 2511(a)(2), ... 2511(a)(5), ... 2511(a)(8) and ... 2511(b)[?]

Father's Brief at 3. We will address Father's essentially identical issues simultaneously.

In reviewing an appeal from the termination of parental rights, we are mindful of our standard of review:

[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. As has been often stated, an abuse of discretion does not result merely because the reviewing court might have reached a different conclusion. Instead, a decision may be reversed for an abuse of discretion only upon demonstration of manifest unreasonableness, partiality, prejudice, bias, or ill-will.

As [the Supreme Court] 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 S.P., 47 A.3d 817, 826-27 (Pa. 2012) (some citations omitted).

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). 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). ***See In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*). Further, the court must also consider the provisions of section 2511(b).

Here, we will confine our analysis to sections 2511(a)(2) and (b), which provide 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:

* * *

(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. 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)(2), (b).

Regarding the termination of parental rights under subsection 2511(a)(2), the Pennsylvania Supreme Court has observed as follows:

A decision to terminate parental rights, never to be made lightly or without a sense of compassion for the parent, can seldom be more difficult than when termination is based upon parental incapacity. The legislature, however, in enacting the [] Adoption Act, concluded that a parent who is incapable of performing parental duties is just as parentally unfit as one who refuses to perform the duties.

In re Adoption of S.P., 47 A.3d at 827 (citation omitted). The Supreme Court has further held that

incarceration is a factor, and indeed can be a determinative factor, in a court's conclusion that grounds for termination exist under § 2511(a)(2) where the repeated and continued incapacity of a parent due to incarceration has caused the child to be without essential parental care, control or subsistence and [] the causes of the incapacity cannot or will not be remedied.

Id. at 828.

Father argues that the trial court erred in terminating his parental rights under subsection 2511(a)(2) because CYS failed to offer him services and service providers that would have made it possible for him to remedy the issues that led to the placement of Child. ***See*** Father's Brief at 6, 11. He further alleges that he was "faithfully compliant" with all of the services that were offered to him. ***Id.*** at 11. Additionally, Father complains that the trial court improperly penalized him for his incarceration. ***Id.*** at 15-16.

With regard to subsection 2511(a)(2), the trial court made factual findings and credibility determinations based on the testimony of the witnesses, which it has thoroughly set forth in its Opinion. ***See*** Trial Court Opinion, 6/12/13, at 4-17. Our review reveals that the record contains sufficient clear and convincing evidence to support the trial court's determination that the termination of Father's parental rights to Child under subsection 2511(a)(2) was warranted. Accordingly, we adopt the court's sound analysis regarding subsection 2511(a)(2) as though set forth in full herein. ***See*** Trial Court Opinion, 6/12/13, at 4-17.

We must next review whether the requirements of section 2511(b) have been satisfied. **See *In re Adoption of C.L.G.***, 956 A.2d 999, 1009 (Pa. Super. 2008) (*en banc*) (observing that once the statutory grounds for termination have been met under section 2511(a), the court must consider whether termination serves the needs and welfare of the child, pursuant to section 2511(b)). 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). ***Id.*** at 1008.

In reviewing the evidence in support of termination under section 2511(b), the Pennsylvania Supreme Court recently stated as follows:

[I]f the grounds for termination under subsection (a) are met, a court “shall give primary consideration to the developmental, physical and emotional needs and welfare of the child.” 23 Pa.C.S. § 2511(b). The emotional needs and welfare of the child have been properly interpreted to include “intangibles such as love, comfort, security, and stability.” [T]he determination of the child’s “needs and welfare” requires consideration of the emotional bonds between the parent and child. The “utmost attention” should be paid to discerning the effect on the child of permanently severing the parental bond.

In re: T.S.M., 71 A.3d 251, 267 (Pa. 2013) (citations to case law and brackets omitted).

Initially, we observe that Father fails to set forth *any* argument in his appellate brief regarding section 2511(b). Instead, Father merely incorporates by reference his argument concerning section 2511(a); he does not set forth any separate argument regarding the best interests of Child. **See** Father’s Brief at 16.

Appellate Rule 2119(a) requires that a party must set forth in his brief, in relation to the points of his argument, pertinent discussion and citation to authority. Pa.R.A.P. 2119(a). Additionally, the Pennsylvania Supreme Court has unequivocally stated that “‘incorporation by reference’ is an unacceptable manner of appellate advocacy for the proper presentation of a claim for relief[.]” ***Commonwealth v. Briggs***, 12 A.3d 291, 342 (Pa. 2011) (finding the appellant’s claim waived where he “incorporated by reference” the argument set forth in a separate brief filed with the trial court). Accordingly, we could find that Father waived his challenge to the trial court’s determination regarding section 2511(b).

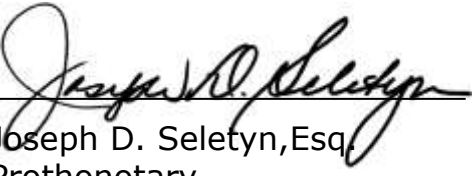
Nevertheless, because the trial court’s Opinion thoroughly sets forth the court’s rationale for finding that the termination of Father’s parental rights would best serve the needs and welfare of Child, and since this rationale is supported by the law and competent evidence of record, we affirm on this basis in determining that the requirements of section 2511(b) have been satisfied. **See** Trial Court Opinion, 6/12/13, at 19-25.

Based upon the foregoing, we discern no abuse of the trial court’s discretion in granting CY’s Petition to involuntarily terminate Father’s parental rights to Child pursuant to section 2511(a)(2) and 2511(b).

Decree affirmed.

J-S67031-13

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/24/2013