

J-S54014-13

J-S54015-13

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37**

IN THE INTEREST OF: C.K., MINOR : IN THE SUPERIOR COURT OF  
: PENNSYLVANIA

:  
:  
:  
:  
:  
:

APPEAL OF: J.S., FATHER : No. 909 EDA 2013

Appeal from the Decree entered February 26, 2013,  
Court of Common Pleas, Monroe County,  
Orphans' Court at No. 59 O.C.A. 2012

---

IN THE INTEREST OF: L.S., MINOR : IN THE SUPERIOR COURT OF  
: PENNSYLVANIA

:  
:  
:  
:  
:  
:

APPEAL OF: J.S., FATHER : No. 910 EDA 2013

Appeal from the Decree entered February 26, 2013,  
Court of Common Pleas, Monroe County,  
Orphans' Court at No. 60 O.C.A. 2012

BEFORE: DONOHUE, WECHT and STRASSBURGER\*, JJ.

MEMORANDUM BY DONOHUE, J.:

**FILED SEPTEMBER 09, 2013**

J.S. ("Father") appeals from the February 26, 2013 decrees entered by the Court of Common Pleas, Monroe County, granting the petitions filed by Monroe County Children and Youth Services ("CYS") to terminate his parental rights to his daughters, C.K. (born June of 2012) and L.S. (born January of 2011) (collectively "Children"). After careful review, we affirm.

\*Retired Senior Judge assigned to the Superior Court.

Father and S.K. ("Mother")<sup>1</sup> have a lengthy history with CYS, dating back to 2007. There have been ongoing concerns about parents' criminal activity, drug and alcohol use, and housing stability. When L.S. was born, two of Mother's older children, one of whom was also Father's child, were in foster care placements.

Following a shelter care hearing on November 15, 2011, L.S. was placed in foster care based upon Mother's positive urine screen for alcohol, which led to her incarceration for violating her parole. Father was also incarcerated at that time. On November 21, 2011, the dependency court adjudicated L.S. dependent pursuant to 42 Pa.C.S.A. § 6302(1).<sup>2</sup> At the time of the termination hearings, L.S. remained in her initial foster care placement.

On July 17, 2012, the dependency court adjudicated C.K. dependent pursuant to 42 Pa.C.S.A. § 6302(10)<sup>3</sup> based upon the termination of

---

<sup>1</sup> The orphans' court terminated Mother's parental rights to Children the same day. She has not appealed.

<sup>2</sup> 42 Pa.C.S.A. § 6302(1) defines a dependent child as one who "is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals. A determination that there is a lack of proper parental care or control may be based upon evidence of conduct by the parent, guardian or other custodian that places the health, safety or welfare of the child at risk, including evidence of the parent's, guardian's or other custodian's use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk[.]"

<sup>3</sup> 42 Pa.C.S.A. § 6302(10) defines a dependent child as one who "is born to a parent whose parental rights with regard to another child have been

parents' rights to C.K.'s older sister, D.D., and half-brother, J.C.,<sup>4</sup> and parents' continued failure to comply with their existing family service plan goals, which placed C.K. at risk. The dependency court further found the existence of aggravated circumstances as to Mother.<sup>5</sup> Although C.K. originally remained at home, she was placed in foster care shortly after her adjudication when Father was arrested for failure to pay child support and CYS was unable to locate Mother. C.K. was placed in the same foster home as L.S., where she remained at the time of the termination hearings. After C.K.'s removal from parents, CYS learned that she had missed several doctor appointments. CYS also learned that C.K. was underweight – at five weeks old, she weighed the same as she did at birth.

Father and Mother continued to have unstable housing following Children's removal from their care. They had several apartments, but were evicted from each for nonpayment of rent. At the time of the termination hearings, Father was living with a coworker and Mother was living first with her sister in a two-bedroom apartment and then with her mother in a hotel.

---

involuntarily terminated under 23 Pa.C.S. § 2511 (relating to grounds for involuntary termination) within three years immediately preceding the date of birth of the child and conduct of the parent poses a risk to the health, safety or welfare of the child."

<sup>4</sup> Termination occurred with respect to D.D and J.C. in February 2012.

<sup>5</sup> The Juvenile Act defines aggravated circumstances, in relevant part as: "The parental rights of the parent have been involuntarily terminated with respect to a child of the parent." 42 Pa.C.S.A. § 6302(5). Paternity had not yet been established, and thus the dependency court did not find aggravated circumstances as to Father.

At the second of the two termination hearings, Father presented a lease for a three-bedroom residence to the orphans' court that he and Mother entered into three days prior to the hearing. They had not yet moved in.

Mother and Father attended supervised visits with Children fairly consistently at the CYS office.<sup>6</sup> During a visit in August of 2012, however, Father threatened a CYS caseworker, which resulted in his arrest and incarceration for violating his parole.<sup>7</sup> He remained incarcerated until October of 2012.

CYS filed petitions to terminate parents' rights to Children on November 7, 2012. CYS also filed a petition for a finding that aggravated circumstances existed as to Father with respect to C.K. The orphans' court held a hearing on the petition on November 19, 2012. At the conclusion of the hearing, it found the existence of aggravated circumstances as to Father regarding C.K. **See supra**, n.5. The court deferred ruling on the termination petition, giving parents an additional three months "to show a little more consistency[.]" N.T., 2/25/13, at 5. At the continued termination hearing on February 25, 2013, testimony revealed that Mother lost her job and was

---

<sup>6</sup> Prior to C.K.'s birth, L.S. was visiting parents at their apartment, but that was terminated when, during an unannounced visit, CYS observed a bottle of alcohol and a urine cup in the apartment, and Father tested positive for ETG.

<sup>7</sup> The basis for Father's parole violation was not presented at the termination hearings, as the orphans' court sustained parents' counsel's objection to that testimony. Nonetheless, Father included this information in his brief on appeal, making it an uncontested matter. **See** Father's Brief at 8.

facing incarceration on new criminal charges. Father had been incarcerated for 30 days for failing to pay child support and did not contact the CYS caseworker to resume visits with Children until a month after his release. Testimony further revealed that Children remained in their foster care placement together, were doing very well, and were bonded with their foster parents.

On February 26, 2013, the orphans' court entered decrees terminating parents' rights to L.S. pursuant to 23 Pa.C.S.A. § 2511(a)(1), (2), (5), (8), and (b), and terminating parents' rights to C.K. pursuant to 23 Pa.C.S.A. § 2511(a)(2) and (b). Father filed timely notices of appeal from both decrees. Because the two appeals raise the same questions, we consolidate the cases for a single decision pursuant to Pa.R.A.P. 513.

Father raises the following issues for our review:

- [1.] Did [CYS] fail to present clear and convincing evidence that termination of [F]ather's parental rights served the emotional needs and welfare of his daughters, C.K. and L.S.?
- [2.] Did [the] [orphans'] court err in terminating [Father's] parental rights without clear and convincing evidence that termination best served C.K.'[s] and L.S.'s emotional needs and welfare?

Father's Brief at 9.<sup>8</sup> We consider the issues together.

---

<sup>8</sup> Citations to Father's brief refer to the brief filed in support of his appeal relating to C.K. at 909 EDA 2013.

We review decrees terminating a parent's rights to his or her children according to the following standard:

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

***In re B.L.W.***, 843 A.2d 380, 383 (Pa. Super. 2004) (*en banc*), *appeal denied*, 581 Pa. 668, 863 A.2d 1141 (2004) (internal citations omitted).

Furthermore, we note that the [orphans'] 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. 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 A.C.H.***, 803 A.2d 224, 228 (Pa. Super. 2002) (internal citations omitted).

The standard of clear and convincing evidence means testimony that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitation, of the truth of the precise facts in issue. ***In re J.D.W.M.***, 810 A.2d 688, 690 (Pa. Super. 2002). We

may uphold a termination decision if any proper basis exists for the result reached. ***In re C.S.***, 761 A.2d 1197, 1201 (Pa. Super. 2000) (*en banc*). The orphans' court is free to believe all, part, or none of the evidence presented. ***In re M.G.***, 855 A.2d 68, 73-74 (Pa. Super. 2004). If the orphans' court's findings are supported by competent evidence, we must affirm its decision, even though the record could support an opposite result. ***In re R.L.T.M.***, 860 A.2d 190, 191 (Pa. Super. 2004).

The termination of parental rights is controlled by statute. ***In re Adoption of R.J.S.***, 901 A.2d 502, 507 (Pa. Super. 2006). Under Section 2511 of the Adoption Act, the orphans' court must engage in a bifurcated process. First, the orphans' court must examine the parent's conduct under 2511(a). ***Id.*** at 508. If termination is found by the orphans' court to be warranted under section 2511(a), it must then turn to section 2511(b), and determine if termination of the parent's rights serves the children's needs and welfare. ***In re K.M.***, 53 A.3d 781, 791 (Pa. Super. 2012).

In the case at bar, Father concedes that CYS presented adequate proof to support terminating his parental rights to Children under Section 2511(a). Father's Brief at 16-17. We therefore turn our attention to Section 2511(b), which states, in relevant part:

**(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(b).

A needs and welfare analysis involves the consideration of “the presence of any parent-child emotional bond, which encompasses intangibles such as love, comfort, security, and stability. When an emotional bond is present between parent and child, the court must consider the effect of its permanent severance on the child.” ***In re Adoption of R.J.S.***, 901 A.2d at 514. This is based upon the understanding that continuity of relationships is very important to a child, and severing close parental ties can be painful. ***See In re William L.***, 477 Pa. 322, 348, 383 A.2d 1228, 1241 (1978).<sup>9</sup> Our Supreme Court has recognized that “[t]he ‘continuity of relationships’ consideration [] is equally applicable where, as here, the child has lived with one foster family for a considerable period of time. Removal of the children from their foster homes, or inflicting upon them the fear that they might be removed at any time, could create psychological and emotional distress similar to that caused by their removal from their natural

---

<sup>9</sup> ***In re William L.*** was decided prior to the current version of the Adoption Act subsection (b). ***See*** 1 P.S. 311 (repealed effective Jan. 1, 1981). Nonetheless, the ***William L.*** Court, and others before it, expressly considered the needs and welfare of the child when deciding whether to terminate a parent’s rights. ***See In re William L.***, 477 Pa. at 339, 383 A.2d at 1237; ***see also*** 1 P.S. 311 (Joint State Government Commission, Official Comment, Adoption Act) (stating that the Adoption Act “centers judicial inquiry upon the welfare of the child rather than the fault of the parent”).



parent.” ***Id.***; ***see also In re T.S.M.***, \_\_\_ Pa. \_\_\_, \_\_\_ A.3d \_\_\_, 2013 WL 3795190, \*13 (Pa. July 22, 2013) (“Common sense dictates that courts considering termination must also consider whether the children are in a pre-adoptive home and whether they have a bond with their foster parents.”). Thus, we are also required to consider the child’s bond with his or her caregivers when determining whether the child’s needs and welfare are served by termination.

In resolving this question, the orphans’ court found as follows:

At [the] hearing[s], there was some evidence of a bond between Father and the children, especially L.S. who is older. Both children lived with Father and Mother, or at least Mother, for short periods after their births, and C.K. remained at home for an even shorter period after she was adjudicated dependent. However, Father was not with Mother during all of these periods, was in and out of jail during portions of this time, and the family never really had a permanent residence. For the most part, since each child came into care, there have only been supervised visits.

On the other hand, both of the children are doing well living together in their pre[-]adopt[ive] foster home[] and are bonded with their foster famil[y]. Their foster parents have provided the children with the love, support, nurturing, and care that Father has been unable to provide.

Under these facts, we found that whatever bond exists between [F]ather and the children is not strong, while the bond that exists between the children and their foster famil[y] is both healthy and strong. Consistently, we found that severing parental ties with Father would not harm the children mentally, emotionally, or spiritually, while breaking

the bond with the foster famil[y] would do them significant harm.

Simply, under the facts and circumstances of this case, we found that termination of Father's parental rights, and ultimately adoption of the children by their foster parents, would best serve the developmental, physical, and emotional needs and welfare of the children and at once promote their best interests and provide permanency.

Orphans' Court Opinion, 4/26/13, at 25-26.

The record reflects that L.S. was removed from her parents' care when she was approximately 11 months old. N.T., 11/19/12, at 4. Father was incarcerated at that time. **Id.** at 5. C.K. was placed in foster care when she was only a month old. **Id.** at 18. Father's visits with Children were somewhat sporadic because of his periods of incarceration and his work schedule. **Id.** at 39; **see** CYS Exhibit 28. CYS would attempt to have visits around his work schedule, but Father did not always let the caseworker know when he was available for visits. N.T., 11/19/12, at 39. The caseworker observed Father holding Children during the visits and believed there to be "some bond there." **Id.** at 40.

Children have been living with the same foster family for the majority of their lives. The caseworker testified that Children are in a pre-adoptive home and are "very much" bonded to their foster parents, and their foster parents love and are bonded with Children as well. **Id.** at 33; N.T., 2/25/13,

J-S54014-13

J-S54015-13

at 22. Children are happy, healthy, and doing well, with no behavioral, medical, or developmental problems. N.T., 2/25/13, at 22.

Although the record unquestionably reveals that Father loves Children and does not want his rights to Children terminated, the record does not reflect that Children would be harmed by the termination. To the contrary, CYS presented clear and convincing evidence that termination of Father's rights would best serve Children's needs and welfare. As the record supports the orphans' court's determination, we are compelled to affirm the decrees.

Decrees affirmed.

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambetti", written over a horizontal line.

Prothonotary

Date: 9/9/2013