

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: ADOPTION OF K.J., A MINOR	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
APPEAL OF M.G., NATURAL FATHER,	:	
	:	
	:	
	:	No. 978 MDA 2012

Appeal from the Decree entered April 25, 2012, in the Court of Common Pleas of York County, Orphans' Court Division, at No. 2011-0084

IN RE: ADOPTION OF K.J.	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
APPEAL OF M.G., NATURAL FATHER	:	
	:	
	:	
	:	No. 982 MDA 2012

Appeal from the Order entered April 25, 2012, in the Court of Common Pleas of York County, Orphans' Court Division, at No. CP-67-DP-64-2010

BEFORE: BOWES, OLSON, and WECHT, JJ.

MEMORANDUM BY OLSON, J.:

Filed: January 11, 2013

M.G. ("Father") appeals from an Order and Final Decree entered by the Court of Common Pleas of York County on April 25, 2012, wherein the court

granted the Petition to Confirm [Father's] Consent for Adoption and the Petition to Change Court Ordered Goal [to Adoption]. We affirm.

Father is the biological father of minor child, K.J. ("Child"), who was born in May 2010. The trial court adjudicated Child dependent on August 10, 2012. The record revealed that T.J. ("Mother") neglected Child since birth, and the York County Children and Youth Services ("CYS") intervened and placed Child with Mother's sister and her husband. At the time, Father was incarcerated at a Maryland state correctional facility. Father was released for a short time on home detention, but returned to the correctional facility for an undetermined period of time. In addition, Mother ceased having contact with Child and went on the run from the police in January of 2011, due to criminal charges filed against her and outstanding warrants for failure to appear. Trial Court Opinion, 6/12/2012, at 2.¹

On October 17, 2012, CYS sought to terminate Mother's parental rights through a Petition to Involuntarily Terminate her rights, and to terminate Father's rights through a Voluntary Consent to Terminate. On October 20, 2012, in response to CYS's petitions, the trial court scheduled a hearing for December 8, 2011. The hearing was continued to January 9, 2012, at which time Father, through his counsel, indicated via videoconferencing a willingness to execute a Consent by Parent of Adoptee

¹ The trial court did not paginate its opinion. Accordingly, we have provided the page numbers for ease of reference and citation.

in which his parental rights would be voluntarily terminated. A request was made by CYS, which was unopposed by all counsel, that the hearing be continued for the purpose of securing the execution of a Consent by Parent of Adoptee by Father. *Id.*

On January 13, 2012, Father executed the Consent by Parent of Adoptee. Father's consent was witnessed Kerry Boley, Child's caseworker, as well as Mark Semke, Father's counsel. The record shows that a nine-page document containing the instructions regarding the consent to adoption was attached to the consent. The instructions were reviewed by counsel and signed by Father, in order to verify that he read and understood the instructions. At the time, Father was also provided with a form from the Baltimore County Department of Social Services, "wherein he indicated that he had spoken with his counsel and was ready to consent to the guardianship with the right to consent to adoption." *Id.* at 2-3. In addition, a portion of the form was checked by Father, indicating that he voluntarily, and of his own free will, consented to the ending or termination of his parental rights to Child. The document was signed by Father and a representative of the Baltimore County Department of Social Services. *Id.* at 3. Prior to executing his consent, Father was advised that he had 30 days to withdraw his consent if he changed his mind. *Id.*

On February 13, 2012, CYF petitioned to confirm Father's consent to adoption. On March 19, 2012, the trial court scheduled a hearing for April

25, 2012. At the conclusion of the hearing, the trial court granted the Petition to Change Court Ordered Goal to Adoption, the Petition for Involuntarily Termination of Mother's Parental Rights,² and the Petition to Confirm Father's Consent for Adoption.

On May 24, 2012, Father filed timely notices of appeal, docketed at 978 MDA 2012 and 982 MDA 2012. On May 25, 2012, the trial court ordered Father to file concise statements of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b). Father filed his concise statements on the same date. ***See In re K.T.E.L.***, 983 A.2d 745, 747 (Pa. Super. 2009). On July 17, 2012, this Court *sua sponte* consolidated Father's appeals at 978 and 982.

With respect to his appeal at 978 MDA 2012, Father raises one issue:

1. Does the record below support a finding by the trial court that [Father's] consent to terminate his parental rights was knowing, voluntary, and not made under duress or coercion, and if not, did the trial court [err] by not permitting [Father] to withdraw his consent?

Father's Brief, at 8.³

² Although the trial court involuntarily terminated Mother's parental rights to Child, Mother did not file an appeal and is not a party herein.

³ With respect to his appeal at 982 MDA 2012, concerning the change of the permanency goal from reunification to adoption, Father did not file a new concise statement of errors complained of on appeal dealing with the issue of change of goal, and has not filed a brief discussing the issue. Rather, Father has presented to this Court a duplicate copy of the concise statement of errors complained of on appeal filed at 978 MDA 2012, and has provided no additional discussion. Thus, we dismiss Father's appeal at 982 MDA 2012 as duplicative.

In this appeal, Father contends that the record does not support the trial court's finding that Father voluntarily consented to the termination of his parental rights. Father asserts that his consent was contingent on his having post-adoption contact with Child, which he was promised, but did not receive. *Id.* at 9. Father argues that he was coerced by his counsel, and his consent was obtained by fraud.

Father contends that, on September 30, 2011, a notice was sent to him informing him that he could, if he would so choose, commit to a voluntary termination of his parental rights, but still have a right to contact with Child. Father asserts that, at a hearing on January 9, 2012, there was a discussion of post-adoption contact with Child but the adoptive parents wanted to think over the proposition. On February 10, 2012, Father's counsel advised him that the adoptive parents had agreed to a limited schedule of contact between Father and Child post-adoption, but no written agreement had been finalized. *Id.* at 5-6. Counsel relayed the above-mentioned information to Father several days prior to the 30-day expiration period for him to revoke his consent. *Id.* Father assumed that he would receive a post-adoptive contact agreement. *Id.* At that time, Father advised his counsel that he did not wish to withdraw his consent, and counsel advised CYD of the same. Trial Court Opinion, 6/12/12, at 4.

The evidence further revealed that, following the expiration of the 30-day time limit, Father forwarded requests to CYS seeking the withdrawal of his consent and the vacation of the appointment of counsel on February 18, 2012 and March 26, 2012, respectively. N.T., 4/25/2012, 12-14.

After a review of the record and the evidence, the trial court found that Father's consent signed on January 13, 2012, was not coerced or forced, but was knowing, voluntary and willing. In addition, the trial court determined that because more than 30 days had passed since the execution of Father's consent, the consent was irrevocable. 23 Pa.C.S.A. § 2711(c)(1)(i) ("For a consent to an adoption executed by a birth father or a putative father, the consent is irrevocable more than 30 days after the birth of the child or the execution of the consent, whichever occurs later."). Therefore, the court confirmed Father's consent and Father's rights were voluntarily terminated. Trial Court Opinion, 6/12/2012, at 5.

We review the trial court's determination for an abuse of discretion or legal error. *In re Adoption of K.G.M.*, 845 A.2d 861, 863 (Pa. Super. 2004).

When reviewing a decree entered by the Orphans' Court, this Court must determine whether the record is free from legal error and the court's factual findings are supported by the evidence. Because the Orphans' Court sits as the fact-finder, it determines the credibility of the witnesses, and on review, we will not reverse its credibility determinations absent an abuse of that discretion.

Id. (quoting *In re A.J.B.*, 797 A.2d 264, 266 (Pa. Super. 2002)).

In *In re Adoption of J.A.S.*, 939 A.2d. 403, 408-409 (Pa. Super. 2007), this Court applied the time constraints outlined in Section 2711(c) strictly and held that a person could not assail the validity of his or her assent before the trial court unless he or she first satisfied the relevant time limitations as a threshold matter. Specifically, we reasoned,

[t]he statute does not explicitly state it is subject to strict construction; but it does plainly provide for time constraints to revoke and/or challenge the validity of a consent to adoption. The practical consequence of the court's [contrary] interpretation effectively permitted [b]irth mother to challenge the validity of her consent to adoption at any time, based upon the existence of a technical omission in the form of the initial consent. This lack of finality is exactly the mischief the legislature intended to remedy with the revision to Section 2711 of the Adoption Act in 2004, the purpose of which was to afford finality to the adoption process. Hence the statute renders a consent to adoption irrevocable more than thirty (30) days after execution. **See** 23 Pa.C.S.A. § 2711(c)(1)(ii). Additionally, the statute precludes a challenge to the validity of the consent to adoption after sixty (60) days following the birth of the child or the execution of the consent, whichever occurs later, and only upon the grounds of fraud or duress. **See** 23 Pa.C.S.A. § 2711(c)(3)(i)(A). Thus, the unambiguous language of the statute required the [trial] court in this case to consider the timeliness of [b]irth mother's petition to revoke and/or challenge the validity of her consent before it considered the merits of her claim. Contrary to the court's interpretation, the threshold act that triggers these provisions of Section 2711 is the timely filing of the petition to revoke and/or challenge the validity of the consent to adoption. Whether [b]irth mother's consent to adoption was valid could be addressed only if her petition had been timely filed. Essentially, the untimeliness of [b]irth mother's petition precluded the court from addressing the issue of validity.

Id. (footnotes omitted). Thus, pursuant to *In re Adoption of J.A.S.*, the trial court must first review the timeliness of a parent's petition to revoke a consent to adoption prior to addressing whether the consent is valid.

Herein, Father signed his consent to the adoption of Child on January 13, 2012, thus, pursuant to Section 2711(c)(1)(i), Father had an unfettered ability to revoke this agreement until February 13, 2012.⁴ As Father's letters seeking withdrawal of consent and vacation of appointment of counsel were dated February 18, 2012 and March 26, 2012, the record clearly shows that Father failed to revoke his consent within the statutory period. *See In re Adoption of J.A.S.*, 939 A.2d at 408-409.

Moreover, Father could later challenge the validity of the consent only through the filing of a petition alleging fraud or duress which had to be filed within sixty days of the date of execution. *Id.*; *see also* 23 Pa.C.S.A. § 2711(c)(3)(i)(A) ("An individual who executed a consent to an adoption may challenge the validity of the consent only by filing a petition alleging fraud or duress within[s]ixty days after the birth of the child or the execution of the consent, whichever occurs later."). The record shows that no such petition was filed.

Having found that Father failed to comply with the time constraints outlined in Section 2711(c), we affirm the decree granting the Petition to

⁴ The thirtieth day actually fell on February 12, 2012, which was a Sunday.

J. A34026/12

Confirm Father's Consent to Adoption. We also affirm the order that granted the Petition to Change Court Ordered Goal to Adoption.

Final Decree and Order affirmed. Appeal at 982 MDA 2012 dismissed as duplicative.