

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN RE: ADOPTION OF K.M.G.

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: N.G., BIOLOGICAL FATHER

No. 982 WDA 2012

Appeal from the Order Entered May 29, 2012  
In the Court of Common Pleas of Fayette County  
Orphans' Court at No(s): Case No. 12 Adopt of 12

BEFORE: SHOGAN, J., OTT, J., and COLVILLE, J.\*

MEMORANDUM BY OTT, J.

Filed: February 26, 2013

N.G., ("Father") appeals from the order entered on May 29, 2012 which terminated his parental rights to his minor child, K.M.G.. Upon review of the record, submissions of the parties, and the applicable law, we affirm.

K.M.G., a female was born in January 2002 during the marriage of N.G. and T.D. ("Mother"). In 2003, Father moved to the state of Washington where he continues to reside. Child lived with him there for approximately one month and then returned to Pennsylvania. K.M.G. has since lived continuously with Mother. Mother and Father divorced in May 2006, and in 2008, Mother married M.W.D. ("Step-Father"). Father last visited with K.M.B. in January 2006, his last telephone conversation with her was in March 2010, followed shortly thereafter by a package sent to Child.

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\* Retired Senior Judge assigned to the Superior Court.

On March 2, 2012, Mother filed a petition seeking to terminate Father's parental rights.<sup>1</sup> A hearing was held on May 15, 2012 at which Father, represented by counsel, was permitted to testify by telephone.<sup>2</sup> Thereafter, by order entered on May 29, 2012, the orphans' court terminated Father's parental rights.

Our standard of review regarding orders terminating parental rights is as follows:

When reviewing an appeal from a decree terminating parental rights, we are limited to determining whether the decision of the trial court is supported by competent evidence. Absent an abuse of discretion, an error of law, or insufficient evidentiary support for the trial court's decision, the decree must stand. Where a trial court has granted a petition to involuntarily terminate parental rights, this Court must accord the hearing judge's decision the same deference that we would give to a jury verdict. We must employ a broad, comprehensive review of the record in order to determine whether the trial court's decision is supported by competent evidence.

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<sup>1</sup> Concurrently, Step-Father seeks to adopt K.M.G. should Father's parental rights be terminated. A guardian *ad litem* was never appointed to represent Child during this litigation.

<sup>2</sup> In his May 3, 2012, motion for permission to testify by telephone Father stated as a result of his relocation from Vancouver, Washington to Boston, Massachusetts on May 13, 2012 he would be unable to attend the May 15, 2012 termination hearing. At the time of the hearing, Father testified his current address was 10800 Southeast 17<sup>th</sup> Circle, Unit 333, Vancouver, Washington. During his testimony, Father never referenced an impending move. In fact, in his brief, filed with this Court in August 2012, he avers one reason for his continued inability to communicate easily with Child is due to his living in Washington state.

In termination cases, the burden is upon the petitioner to prove by clear and convincing evidence that its asserted grounds for seeking the termination of parental rights are valid.

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 Adoption of M.R.B.***, 25 A.3d 1247, 1251 (Pa. Super. 2011) (internal citations omitted).

The termination of parental rights is controlled by statute, 23 Pa.C.S. § 2511 *et seq.* ***See also, In re Adoption of R.J.S.***, 901 A.2d 502, 507 (Pa. Super. 2006). Under Section 2511, the trial court must engage in a bifurcated process. The initial focus is on the conduct of the parent. ***In re A.L.D.***, 797 A.2d 326, 339 (Pa. Super. 2002). If the trial court determines that the parent's conduct warrants termination under Section 2511(a), it must engage in an analysis of the best interests of the child under Section 2511(b), taking into primary consideration the developmental, physical, and emotional needs of the child. ***R.J.S.***, 901 A.2d at 508, see also ***In re I.J.***, 972 A.2d 5, 10 (Pa. Super. 2009).

The petition herein sought termination under 23 Pa.C.S. § 2511 (a)(1) and (b). The trial court terminated Father's parental rights under each of the sections. However, because Father appeals only the court's findings regarding Section 2511(a)(1), the court's termination of his rights pursuant to Section 2511(b) is final and we need not consider it herein. We will focus

only on whether the orphans' court erred in terminating Father's rights pursuant to Section 2511(a)(1).

The statutory basis for termination pursuant to Section 2511(a)(1) is 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:

\* \* \*

(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.

23 Pa.C.S. § 2511.

This Court stated that termination relative to Section 2511(a)(1) is proper where the parent "either demonstrates a settled purpose of relinquishing parental claim to a child **or** fails to perform parental duties."

*In re Z.S.W.*, 946 A.2d 726, 730 (Pa. Super. 2008) (emphasis added).

At the time of filing of the termination petition in March 2012, Father had not had contact of any kind with K.M.G. in two years. Father last visited with Child in January 2006, spoke with her by telephone in early 2010, and sent her a gift in March 2010. *Id.* at 22, 14, 24. Father challenges termination of his rights contending Mother "deliberately created obstacles

intended to impede free communication and regular association between [Father], the non-custodial parent, and his daughter.” Father’s Brief at 6.

Father testified Mother told him in 2009 that she was “getting rid of all her emails.” N.T., 5/15/2012 at 32. On cross-examination, he confirmed he never verified whether the accounts were ever cancelled. In answering questions posited to her by the court, Mother testified she has continuously maintained the same email address since 2001. *Id.* at 48.

Father testified that until he was served with the termination petition he did not know Mother and Child’s current address. *Id.* at 33. Although Mother acknowledged she and K.M.G. have changed homes in Fayette County since parents separated, they have lived at their present address since July 2009. Mother testified she contacted Father by phone and provided him with the new address as well as that of Maternal Grandmother who has resided in her home for approximately 38 years, and that Father had been there many times while living in Pennsylvania. *Id.* at 7. Mother testified in March 2010, Father mailed a small package to Child at their home. *Id.* at 8-9, 47. Father agrees he sent a package but could not remember the date or the address he used. *Id.* at 32.

The trial court in its Findings of Fact stated, “[t]he court finds [M]other’s testimony to be more credible in those instances where her testimony conflicts with the testimony of [F]ather. Moreover, the court finds [F]ather’s claims regarding his inability to do more to maintain contact to be

inherently incredible, even where there was no other evidence directly contradicting his self-serving testimony." Trial Court Opinion, 5/29/2012, at 3.

The trial court is free to believe all, part, or none of the evidence presented and is likewise free to make all credibility determinations and resolve conflicts in the evidence. If competent evidence supports the trial court's findings, we will affirm even if the record could also support the opposite result.

***In re Adoption of M.R.B.***, 25 A.3d 1247, 1251 (Pa. Super. 2011) (internal citations omitted). We are bound by the credibility finding of the trial court as to this issue.

Our independent review of the record and testimony confirms the orphans' court's findings. Father offered no proof of his efforts to locate and contact Child since March or April 2010. Father argues, "because of [Father's] location in the state of Washington, he had few means by which to contact his daughter." Father's Brief at 6. There is no evidence in the record to support this bald assertion. First we note Father has access to a telephone which can link him to Fayette County, Pennsylvania, as evidenced by his participating by telephone at the hearing. Secondly, there was no testimony Father does not have access to email or the internet. Finally, Father testified he knew maternal grandmother and that she lives in

Uniontown,<sup>3</sup> Pennsylvania. While he knew of her whereabouts, he testified he chose not to contact her because, “I just didn’t think it was [other family members’] responsibility to tell me where my daughter was.” N.T., 5/15/2012 at 28. Instead, he stated he contacted the Domestic Relations Office (“DRO”) and K.M.G.’s dance teacher to ask for Mother’s contact number or to have Mother contact him. *Id.* at 28, 33, 34. When Mother did not respond, Father never came to Pennsylvania or sought custody or visitation in the Court of Common Pleas of Fayette County. Additionally, Father testified he never conducted a Google or any computerized search for Mother or Child in order to locate them.

The record does not support Father’s claim that Mother placed obstacles between him and Child, which prevented him from performing his parental duties. Rather, the evidence shows Father knew Mother and Child were in Fayette County, Pennsylvania, and did not take the initiative to maintain any contact with Child. He sent no cards or presents after early 2010. He never tried to use the email address he was given by Mother, which has been continuously active since 2001, and he took no action in the Fayette County courts to protect his parental rights.

***In the Matter of the Adoption of A.M.B.***, 812 A.2d 659, 675 (Pa. Super. 2002), this Court held a child’s life, happiness, and vitality cannot be

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<sup>3</sup> Fayette County.

put on hold until a parent finds it convenient to perform parental duties. Father has failed to maintain contact with Child for more than two years. Child was four years old when she last saw Father and is now eleven years, one month old.<sup>4</sup> While Father argues Mother refused to communicate with him Father's failure to take action to overcome the silence does not absolve him of his lack of effort.

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 his or her physical and emotional needs.

***In re B.,N.M., supra*** at 855 (internal citations omitted). Father has never tried to verify whether Mother's email address was open. Father never attempted a computerized search to see if Mother's address or information regarding Child was on the internet. Moreover, Father never called maternal Grandmother seeking to find out the whereabouts of Child. Father has at most exerted minimal effort to preserve his relationship with K.M.G. and therefore Child should not be made to wait any longer for him to act as a parent. We also note the uncontradicted testimony of Step-Father is that

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<sup>4</sup> At the time of the termination hearing K.M.G. was 10 years', four months old.



Child has lived with him since she was six years old and knows him as "Dad" or "Daddy." N.T. 5/15/2012 at 59.

Based upon our review of the record, we conclude the trial court acted properly in determining Father's parental rights could be terminated pursuant to Section 2511(a)(1).

Order affirmed.

Shogan, J., concurs in the result.