

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN THE INTEREST OF: T.J., A MINOR

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: R.J. AND T.J.

No. 97 MDA 2014

Appeal from the Decree December 9, 2013  
In the Court of Common Pleas of Berks County  
Orphans' Court at No(s): 83318

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IN THE INTEREST OF: M.Y., A MINOR

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: T.J.

No. 98 MDA 2014

Appeal from the Decree December 9, 2013  
In the Court of Common Pleas of Berks County  
Orphans' Court at No(s): 83317

BEFORE: LAZARUS, J., WECHT, J., and MUSMANNO, J.

MEMORANDUM BY LAZARUS, J.:

**FILED JULY 24, 2014**

R.J. (Father) and T.J. (Mother) (collectively Parents) appeal from the trial court's final decrees involuntarily terminating their parental rights to their minor son, T.J. (born 2/2013). Mother files a separate appeal from the decree involuntarily terminating her parental rights to her minor son, M.Y., Jr. (M.Y.) (born 4/2008)<sup>1</sup> Due to Parents' failure to comply with court-

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<sup>1</sup> We have *sua sponte* consolidated these separately filed and docketed appeals in accordance with Pa.R.A.P. 513 (consolidation of multiple appeals).

ordered treatment and inability to provide a safe environment to fulfill T.J.'s and M.Y.'s needs, we affirm.

On appeal Parents present the following issue for our consideration: "Did the Honorable Trial Court err in terminating parental rights under 23 Pa.C.S. § 2[5]11 based on the evidence presented at the December 9, 2013, hearing"? Father raises the following additional issues on appeal:

- (1) Did the Honorable Trial Court err in scheduling and proceeding with the termination hearing while several appeals were pending in the Superior Court?
- (2) Has the Honorable Trial Court erred by terminating parental rights [to T.J.] based on Father's remote criminal history, and registration status on Megan's Law – a condition which he cannot change and of course, will be in place for his lifetime and during the lifetime of the child?

Father was arrested in Arizona on June 20, 2000; he pled guilty to five counts of attempted sexual assault of a minor (under the age of 14).<sup>2</sup> He was sentenced to 10 years of imprisonment.<sup>3</sup> Father was released from prison on March 19, 2009. Although not determined to be a "sexual predator," because of the nature of the offense, Father is a lifetime sex offender registrant under Megan's Law.<sup>4</sup> Father and Mother allegedly met on

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<sup>2</sup> Arguably, under 42 Pa.C.S. § 6302(3), Father's offense is considered an aggravated circumstance and BCCYS was not obligated to provide him services. **See *In the Interest of B.C.***, 36 A.3d 601 (Pa. Super. 2012).

<sup>3</sup> Arizona criminal records also indicate that Father was convicted as a juvenile of sexually offenses against a five-year-old and six-year old.

<sup>4</sup> **See** 42 Pa.C.S. § 9795.1(b).

Facebook in October 2001 and began a relationship. In February 2012, Father moved from Arizona to Pennsylvania where he married Mother.

In January 2013, Berks County Children and Youth Services (BCCYS) received a report that Mother and M.Y., T.J.'s step-sibling,<sup>5</sup> were residing with Father (a registered sex offender), that M.Y. was being inadequately parented, and that M.Y. was demonstrating significant developmental delays.<sup>6</sup> In February 2013, M.Y. was removed from Mother's home, subsequently declared dependent, and placed into a foster home. Following T.J.'s birth, the trial court entered an emergency protective custody order placing him in BCCYS's care upon his release from the hospital on March 19, 2013.<sup>7</sup> T.J. was subsequently declared dependent on March 30, 2013, following an adjudicatory hearing, and placed into the foster home where M.Y. was also residing.

BCCYS created a family service plan (FSP) for Parents which included the following court-ordered goals for reunification with T.J.:<sup>8</sup> (1) parenting

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<sup>5</sup> M.Y.'s biological father is not involved in this appeal.

<sup>6</sup> Father denied his criminal history with a minor under the age of 14 to BCCYS and was unable to provide the agency with documentation to confirm he had successfully completed a sex offender program. As a result, M.Y., Jr., was taken into emergency protective custody.

<sup>7</sup> T.J. spend more than one month in the hospital due to his premature birth.

<sup>8</sup> The same goals were ordered for Mother in order to reunite with M.Y.

education; (2) establishing and maintaining stable and appropriate housing and income; (3) undergoing domestic violence evaluations and any recommended treatment; and (4) supervised visitation. In addition, a non-offending parent evaluation was ordered for Mother and Father was ordered to obtain sex-offender treatment, an anger management evaluation, and any other recommended treatment.

Due to Parents' consistent failure to comply with the majority of the FSP goals, on August 30, 2013, BCCYS filed petitions to involuntarily terminate Father's and Mother's parental rights to T.J. pursuant to 23 Pa.C.S. §§ 2511(a)(1), (2), (5) and (b) of the Adoption Act.<sup>9</sup> After a hearing on December 9, 2013, the Orphans' Court entered final decrees terminating Parents' parental rights to T.J. and Mother's parental rights to M.Y. These timely notices of appeal were subsequently filed.

Father's first issue concerns a procedural matter. Specifically, Father contends that the Orphans' Court impermissibly proceeded with the instant termination matter while two appeals were pending before this Court.<sup>10</sup> The first appeal concerns a goal change in the matter (reunification to adoption). ***See In the Interest of T.J.***, No. 1661 MDA 2013 (Pa. Super. filed March 21, 2014) (goal change to adoption affirmed on appeal where Father failed

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<sup>9</sup> 23 Pa.C.S. § 2101-2938.

<sup>10</sup> These appeals are no longer pending in our Court.

to comply with BCCYS's recommendations, failed to make independent efforts towards assuring safety of children in his presence, and failed to make any demonstrable progress toward resolving issues which gave rise to placement). Instantly, BCCYS was permitted to file and proceed with its termination petition even without first having the goal changed to adoption. **See In re: Adoption of S.E.G.**, 901 A.2d 1017, 1026 (Pa. 2006); **In re N.W.**, 859 A.2d 501 (Pa. Super. 2004) (goal change from reunification to adoption not necessary prerequisite to initiation of involuntary termination proceedings).

In a termination proceeding, the focus of the Orphans' Court is whether the Agency has satisfactorily borne its statutory burden for termination under 23 Pa.C.S. § 2511; the court is not to review previous Juvenile Court proceedings or change a service plan goal because the service plan goal is not the issue before the Orphans' Court. **In the Interest of A.L.S.**, 797 A.2d 326 (Pa. Super. 2002). Rather, the Orphans' Court's jurisdiction to terminate parental rights is derived from a different statute and, therefore, the issues and purposes of the proceedings before the Juvenile Court and the Orphans' Court are wholly distinct. Thus, even had our Court determined that the Juvenile Court impermissibly changed the goal to adoption, it would not prevent the Orphans' Court from proceeding with the independent process of termination.

The second appeal concerns an order suspending Father's visitation until he obtains sex-offender treatment. **See In the Interest of T.J.**, No.

1205 MDA 2013 (Pa. Super. filed March 21, 2014) (order granting BCCYS's motion to suspend Father's supervised visitation with T.J. affirmed on appeal where visitation posed "grave threat" to child because Father, a lifetime registered sex offender, has significant juvenile criminal history with child sexual abuse, has discontinued sex-offender treatment, has anger issues, and severe mental or moral deficiencies). Suspension of Father's visitation in no way affected the Orphans' Court's ability to rule on BCCYS's petitions to terminate. In fact, one of the main reasons for terminating Father's parental rights to T.J. is also the same reason why his visitation rights were suspended and why that decision was affirmed on appeal – his refusal to attend and complete sex-offender treatment. Nothing in the Adoption Act or the Adoption and Safe Families Act (ASFA), 42 U.S.C. § 671 *et seq.*, prevented the trial court from proceeding in the underlying termination matter while our Court was ruling upon Father's appeal from the trial court's order suspending supervised visitation with T.J. Therefore, we find no merit to these procedural issues.

We now turn to Parents' substantive argument that BCCYS did not provide clear and convincing evidence under section 2511 to terminate their parental rights.

It is well established that:

[i]n a proceeding to terminate parental rights involuntarily, the burden of proof is on the party seeking termination to establish by clear and convincing evidence the existence of grounds for doing so. 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." It is well established that a court must examine the individual circumstances of each and every case and consider all explanations offered by the parent to determine if the evidence in light of the totality of the circumstances clearly warrants termination.

***In re adoption of S.M.***, 816 A.2d 1117, 1122 (Pa. Super. 2003) (citation omitted). ***See also In C.P.***, 901 A.2d 516, 520 (Pa. Super. 2006) (party seeking termination of parental rights bears burden of proving by clear and convincing evidence that at least one of eight grounds for termination under section 2511(a) exists and that termination promotes emotional needs and welfare of child set forth in section 2511(b)).

We review a trial court's decision to involuntarily terminate parental rights for an abuse of discretion or error of law. ***In re A.R.***, 837 A.2d 560, 563 (Pa. Super. 2003). Our scope of review is limited to determining whether the trial court's order or decree is supported by competent evidence. ***Id.***

#### Termination of Parents' Rights to T.J.

Despite Father's assertion that the Orphans' Court terminated his parental rights solely based on his sex offender status, his argument is specious. In fact, Father has not participated in any casework sessions, has not submitted to court-ordered domestic violence or anger management evaluations, failed to follow through with additional parenting education, has not obtained independent housing or verified his income, and has not completed his sex-offender treatment. The failure to complete sex-offender

treatment is especially significant because without a completed evaluation, the potential risk that Father poses to T.J. is unable to be assessed. Finally, Father's refusal to accept responsibility for his actions and his tendency to place blame on BCCYS is another troubling and significant aspect of this termination case. ***In the Interest of B.C.***, 36 A.3d 601 (Pa. Super. 2012) (Father's failure to receive treatment for prior child sexual abuse convictions, failure to provide information to agency regarding treatment for anger management, inability to demonstrate he could provide suitable home for child, as well as his status as recidivist sexual offender supported termination).

With regard to termination under section 2511(b), we note that T.J. had been in placement, at the time of the filing of the termination petition, for six months. In addition, T.J. has never lived with Mother or Father. In fact, T.J. has not seen Father since June 2013, when his visitation rights were suspended. ***See infra*** note 9.

The record reveals that T.J. is very bonded to his foster parents, the only parental figures he has known for most of his life. Foster Parents provide him a stable home where he resides with his sibling and where he is thriving. Although T.J. has seen Parents during supervised visitation<sup>11</sup>

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<sup>11</sup> Father's supervised visitation was suspended by court order on June 5, 2013.



periods, no established bond has been recognized. In fact, a CYS caseworker testified that there would be no detrimental effect on T.J. if Parent's rights were terminated. N.T. Termination Hearing, 12/9/13, at 35; **see *In re A.S.***, 11 A.3d 473, 483 (Pa. Super. 2010) (in addition to examining parent-child bond, trial court can equally emphasize safety needs of child and should consider intangibles, such as love, comfort, security, and stability child might have with foster parent).

With regard to Mother, her inability to perform basic parenting skills (properly put on a diaper; feed child a bottle), inability to recognize Father's criminal history, difficulty following through with parenting recommendations, failure to attend mental-health services or obtain a non-offending parent evaluation, and failure to progress beyond supervised visits<sup>12</sup> demonstrate her overall lack of compliance with BCCYS's FSP. Moreover, based on Mother's failure to recognize the potential risk of having Father live with T.J. and not having the desire to learn how to protect him, an expert opined that any child in Mother's care would be at very high risk. N.T. Termination Hearing, 12/9/13, at 64. In fact, as T.J.'s Guardian Ad Litem acknowledges in her brief:

[T]he means to remedy [T.J.'s risk of sexual assault] were readily available to Mother – she could have left [Father], she could have encouraged him to invest in and complete sexual

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<sup>12</sup> In fact, unsupervised visits with T.J. were never recommended for Mother.

offender treatment, she could have herself attended non-offender treatment so that she could learn to adequately protect her child. They were equally available to Father – he could have engaged in and completed offender treatment. Having completely failed to do any of these, the grounds for termination have been met.

Guardian Ad Litem's Brief, at 14.

Despite BCCYS's offer to pay for non-offender treatment for Mother and sex-offender treatment for Father, neither party took advantage of the opportunity to obtain those services and move toward accomplishing the goal of reunification with T.J. Their inaction speaks volumes. Accordingly, we find that the Orphans' Court properly terminated Parents' rights to T.J. pursuant to sections 2511(a)(2)<sup>13, 14</sup> ***In the Interest of K.Z.S.***, 946 A.2d

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<sup>13</sup> Pursuant to 23 Pa.C.S. § 2511(a)(2), the rights of a parent in regard to a child may be terminated after a petition filed on the following ground:

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.

23 Pa.C.S. § 2511(a)(2).

<sup>14</sup> Although we uphold the Orphans' Court's decision to terminate Parents' rights on the basis of section 2511(a)(2), we expressly decline to sanction BCCYS's attempt to terminate Parents' rights to T.J. under sections 2511(a)(2) and (a)(5), both of which were alleged in its petition. ***See In the Interest of B.C., supra*** at 606 (appellate court may uphold termination decision if any proper basis exists for result reached; court need only agree with trial court's decision as to any one subsection under section 2511(a) in order to affirm termination of parental rights).

*(Footnote Continued Next Page)*

753 (Pa. Super. 2008) (termination proper under section 2511(a)(2) where parent was given ample time to resolve issues and complete FSP goals; court determined child could not be kept in limbo any longer).

(Footnote Continued) \_\_\_\_\_

Sections 2511(a)(2) and (a)(5) require a six-month time period, at a minimum, within which either the child has been removed from the care of the parent or explicit parental conduct for six months immediately preceding the filing of the petition. Here, BCCYS alleges in its petition that T.J. has been in its care since March 19, 2013. BCCYS filed its petition to involuntarily terminate Parents' rights on August 30, 2013, just 5 months and 11 days after T.J. came into the Agency's care.

In ***In re Adoption of Infant Male M***, 401 A.2d 301, 303 (Pa. 1979), our Supreme Court explained that the "six-month limitation is not a jurisdiction fact which affects the power of the [trial court] to hear th[e] type of case, but rather a fact which must be alleged and proved before a court with proper subject matter jurisdiction can grant the necessary relief, i.e., the involuntary termination of parental rights." Therefore, while the Orphans' Court had jurisdiction to hold the instant termination hearing, it was BCCYS's burden to prove that it met every factor alleged in its petition to terminate Parents' rights to T.J. under sections 2511(a)(1) and 2511(a)(5), which included the six-month statutory limitation. Here, the court considered Parents' conduct *after the petition was filed and up to the time of the termination hearing*. **See** Trial Court Opinion, 2/20/2014, at 5-6 ("In over nine (9) months Parents have failed to substantially cooperate with any of the court-ordered services."). We believe this was not proper.

Our Court has stated that when a court conducts a section 2511(b) analysis, it shall not consider any effort by a parent to remedy the conditions described in subsections (a)(1), (a)(6) or (a)(8) if that remedy was initiated after the parent was given notice that the termination petition had been filed. **See *In re D.W.***, 856 A.2d 1231, 1234 (Pa. Super. 2004). Further, this evidentiary limitation has been applied to the entire termination analysis. ***Id.*** at 1235 (court may only consider post-petition efforts if efforts were initiated before filing of termination petition and continued beyond petition date; parent's avowed intent to comply with FSP goal at eleventh hour following long period of uncooperativeness can be rejected as untimely and/or insincere). Similarly, it would be inequitable to consider negative Parental (in)action after the filing of the petition to terminate in order to support termination under sections 2511(a)(1) and (a)(5) where BCCYS has not first proven the statutory six-month minimum requirement.

Termination of Mother's Rights to M.Y.

Despite being offered services to remediate the issues that brought M.Y. to the attention of BCCYS, Mother has failed to comply with recommended treatment and had not demonstrated that she is capable of providing for M.Y.'s physical, emotional or developmental needs.

It is well established that:

The duty of the court under the Juvenile Act to provide rehabilitative services to the parent of a dependent child is recognized as a correlative responsibility, *with that of the parent*, to satisfy the mandate contained in the Adoption Act, prior to CYS proceeding to petition for involuntary termination of parental rights pursuant to section 2511(a).

***In the Interest of Lilley***, 719 A.2d 327, 331 (Pa. Super. 1998) (emphasis added).

Again, Mother's inability to recognize the potential risk that Father poses to M.Y., as well as the necessity for her to receive non-offender treatment in order to have M.Y. safely returned to her is a self-imposed obstacle. The real cause of Mother's non-compliance has been her failure to come to terms with the unfortunate circumstances of Father's past sexual criminal history with minors, as well as her failure to even minimally meet BCCYS's reunification goals. Therefore, we find that the trial court properly

terminated Mother's parental rights to M.Y. pursuant to section 2511(a)(1)<sup>15, 16</sup>

Finally, M.Y. is thriving in his foster home, where he has been residing with T.J. for the greater part of his placement. Although Mother makes no section 2511(b) argument to support her issue on appeal, we agree with the trial court that the M.Y. would suffer no detriment from permanently severing his connection with Mother under section 2511(b). ***In re A.S., supra.***<sup>17</sup>

Decrees affirmed.

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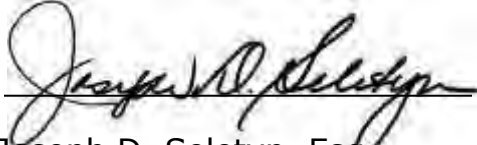
<sup>15</sup> Pursuant to 23 Pa.C.S. § 2511(a)(1), the rights of a parent in regard to a child may be terminated after a petition filed on the following ground:

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.

<sup>16</sup> There is no issue with the six-month limitation period under section 2511(a)(1) in terms of terminating Mother's parental rights to M.Y. M.Y. had been in BCCYS's care since February 1, 2013, at the time the termination petition was filed for a total of 6 months and 29 days.

<sup>17</sup> Counsel for Parents argued that BCCYS created insurmountable obstacles such that Parents could never have complied with the FSP. We find no evidence of such conduct in the record.

Judgment Entered.

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

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 7/24/2014