

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN INTEREST OF: P.D. AND E.D.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: D.D.

No. 1736 MDA 2013

Appeal from the Order Dated August 30, 2013
In the Court of Common Pleas of Lycoming County
Orphans' Court at No.: 6353 Adoption File

IN THE INTEREST OF: E.D. AND P.D.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: A.L.

No. 1737 MDA 2013

Appeal from the Order Dated August 30, 2013
In the Court of Common Pleas of Lycoming County
Orphans' Court at No.: 6353 Adoption File

BEFORE: MUNDY, J., WECHT, J., and FITZGERALD, J.*

MEMORANDUM BY WECHT, J.:

FILED APRIL 23, 2014

In these related appeals,¹ D.D. ("Father"), and A.L. ("Mother") appeal the August 30, 2013 order that involuntarily terminated their parental rights

* Former Justice specially assigned to the Superior Court.

¹ Because these appeals involve the same children and because the hearing involved the termination of both parents' rights, we consolidate the above-captioned cases *sua sponte*. **See Rhoades v. Pryce**, 874 A.2d 148, 150 (Pa. Super. 2005).

to their daughters, E.D., born in May of 2009, and P.D., born in October of 2011 (collectively "Children"), and changed the Children's permanency goal to adoption. We affirm.

The record supports the following summary of the facts of this case. Starting in April 2009 through June 2009, Lycoming County Children & Youth Services ("Agency") became involved with Mother and Father due to the unsafe and unsanitary condition of their home. During that time, E.D. was born. The Agency did not implement any services because Mother and Father improved their home's conditions. However, in January 2010, when the home returned to its former state, the Agency became involved again. The Agency provided services through the Outreach program, and the parents again cleaned up the home. Similarly, in early 2011, the Agency became involved again due to deplorable living conditions. During these periods, E.D. was removed voluntarily from the home three times at the Agency's request. E.D. was placed with family members on each occasion.

On April 12, 2011, the Agency filed a dependency petition on behalf of E.D. At a hearing on the petition on April 29, 2011, the trial court found E.D. to be a dependent child. The Agency took custody of E.D. and placed her in kinship care with her paternal uncle, Da.D., and his soon-to-be wife, D.S. ("Foster Parents"). The parents' goals were to maintain the home and to improve parenting.

Among the issues with the home, E.D.'s safety and sanitation were the primary concerns. At the time that E.D. was found to be dependent, the

trial court viewed photographs depicting plastic bags and other choking hazards on the floor, dirty plates with old food on them, overflowing garbage cans, and mold in the bathtub. Notes of Testimony ("N.T."), 6/5/2013, at 44. There was also old food sitting on the stove. The home was very cluttered; the hallways were nearly impassable. N.T., 6/4/2013, at 34. Tools were left out and accessible to E.D. *Id.* at 36. Crystal Minnier, an Agency caseworker, made numerous home visits and worked with the parents on maintaining their home and making it safe for the Children. *Id.* at 72-73.

At a permanency review hearing on August 23, 2011, the trial court found that Mother and Father had made minimal progress on their goals. However, on October 7, 2011, the trial court determined that both parents had substantially complied with the permanency plan and that they had maintained acceptable home conditions. E.D. was returned to Mother and Father's home, but the Agency was ordered to continue supervision of the family. P.D. was born on October 25, 2011.

At a permanency review hearing on January 31, 2012, the trial court, upon finding that the unsafe and unsanitary conditions that led to E.D.'s original removal from the parents had returned, again placed E.D. with Foster Parents, who were then married. Because P.D. was an infant and not yet mobile, the court determined that the unsanitary and cluttered condition did not pose a safety threat to P.D. She remained with Mother and Father.

At that point, the trial court added goals of attending couples' counseling, parenting classes, and anger management to the goals already established.

On July 2, 2012, P.D. was adjudicated dependent, although she remained in her parents' physical custody. On August 10, 2012, P.D. was placed with Foster Parents. During July 2012, domestic violence between Mother and Father was reported. The parties separated briefly, and Mother obtained a protection from abuse ("PFA") order against Father. Mother later withdrew the PFA, and the parents reconciled.

At a February 19, 2013 review hearing, the trial court reaffirmed the dependency and ordered the Children to remain with their Foster Parents. There was minimal progress on the parents' goals. E.D. had developed trichotillomania (hair pulling), which was caused by stress from environmental factors. The behavior increased during visitation with Mother and Father. A neuropsychologist examined E.D. and attributed her condition to the lack of safety, security, predictability, and structure. N.T., 6/5/2013, at 58. At one point, the parents shaved E.D.'s head to keep her from pulling out her hair. N.T., 6/4/2013, at 148, 159. In March 2013, Mother and Father separated, and in May, Mother moved into an apartment.

To facilitate cooperation and compliance with the parents' goals, Teresa Ross, an Outreach worker, developed a cleaning schedule with Mother and Father. *Id.* at 15-16. Ms. Ross helped the parents clear out clutter, but found the parents' efforts to be inconsistent, with rooms clean on one visit and then cluttered on the next visit. However, Ms. Ross stated

that, although the parents were willing to listen to her, they ultimately were unwilling to follow through with her recommendations. **Id.** Ms. Ross visited Father's home after Mother moved out and found that it was still a mess. **Id.** at 18. Mother's new home also was over-cluttered. **Id.** at 21. Ms. Ross noted that her appointments with the parents frequently were canceled or rescheduled. As a result, she met with them approximately twice per month, instead of the usual schedule of weekly appointments. **Id.** at 33.

Father attended a parenting program through the Salvation Army and the Men Against Abuse Program ("MAAP"). **Id.** at 65-66. However, Father did not complete all of the required counseling or the court-ordered anger management program. **Id.** at 66-68. Mother also missed appointments for counseling, and services were closed due to non-appearance. **Id.** at 70. Ms. Minnier sent the parents letters and provided information regarding the required parenting classes, counseling, medication management, anger management, and other available services, but the parents proved inconsistent with follow-through and attendance. **Id.** at 72. The parents continued to have relationship issues and would end and re-initiate their relationship, despite allegations of abuse. Even though Mother moved out and the parents maintained that they had ended their relationship, Father's belongings were in Mother's new home. **Id.** at 83. Also, Mother appeared at a community visit scheduled for Father and the Children, even though Mother was not supposed to be present. **Id.** at 80-82.

Meanwhile, the Children have done well with Foster Parents. The Children are more relaxed with Foster Parents. *Id.* at 85.

The Agency filed a petition to involuntarily terminate Mother's and Father's parental rights to E.D. on November 16, 2012, and to P.D. on March 4, 2013. The trial court held a hearing on the petitions on June 4 and 5, 2013.

The trial court summarized the testimony at the hearing as follows:

At the time of the Termination Hearing, the Agency presented the testimony of Theresa Ross, the Outreach Worker who worked with both parents. Ms. Ross was involved with this family since August, 2012. Prior to that, the family worked with a different Outreach Worker. Ms. Ross testified that from August, 2012, to the present, she only met with the parents about 50% of the time of the scheduled visits, that throughout the time she has worked with the parents, she has seen no follow up or consistency with the parents. The parents' goals throughout involvement with Outreach Services were to maintain home conditions. Ms. Ross testified that there was constant fluctuation in the conditions of the home, at times being good and at times being bad. She further testified that while the parents always listened to her when she spoke with them, the biggest problem was the parents' lack of follow through and lack of consistency.

Crystal Minnier, the Caseworker, testified that her involvement with the family began on April 29, 2011, when [E.D.] first came into care. Once [E.D.] was returned to her parents' custody in October, 2011, the case was transferred to another worker. Ms. Minnier again became involved with the case in February, 2012, when [E.D.] came back into care and remained involved in the case to the present. The focus of the case has been safety and home conditions, domestic violence, parenting deficits, and lack of counseling. Ms. Minnier testified that the same issues that brought the family to the Agency are those issues that the Agency is still currently working on with the family. She also pointed out the fact that [E.D.] was returned to her parents' home initially after being removed only to be returned back to [the] Agency's care four months later due to the fact that the

parents were never able to stabilize their home conditions. Ms. Minnier indicated that there have been on-going relationship issues between the parents which escalated to the point of a protection from abuse petition being filed. Though the parents, at this point, are separated, the status of the relationship remains questionable as they continue to frequently be seen together.

The Agency did arrange for a community visit for Father at the local library. Mother showed up during the visits. The parties allege that it was a coincidence. The Court does not find the parents' explanation credible. Ms. Minnier indicated that she could not be confident [that] in another month we wouldn't be right back here with the parents. She expressed frustration regarding the parents in light of the fact that she has tried in so many different ways to help the parents rectify those issues which led to the children being placed. Based upon her experience with the family, Ms. Minnier does not believe that if the girls were to, at some point in the future[,] go home to the parents, that they would remain in home, as the parents have never been able to demonstrate any long lasting changes.

Bruce Anderson, a Licensed Psychologist, testified that he had completed an evaluation of both parents in August, 2011. Mr. Anderson also completed a permanency/bonding assessment of the children. In his assessment, he reviewed the notes and reports from the case, as well as interviewed and observed both children as well as both biological parents and [Foster Parents]. Mr. Anderson found that both children were comfortable when he interviewed them with their parents and that there were no obvious concerns between the parents and the children during that interview. The children did not appear to be in distress. When he viewed the girls with [Foster Parents], he found the children to be very affectionate to both [Foster Parents]. It was not the same type of interaction as the children had with the parents.

Bruce Anderson stated that his concern with the biological parents was that they both continue to struggle with a lot of issues and cannot provide a selfless understanding of what is needed for the children. He raises concerns of the parents being able to maintain stability and based upon the history and his knowledge of the parents, his prediction that ultimately the consistency with the parents will not change. Mr. Anderson stressed the fact that the removal back and forth of the children

with their parents has not been good for the children as this ultimately leads to the breaks in their attachments. He indicated that this is especially true for [E.D.] in light of the symptoms that she is displaying.

Mr. Anderson discussed the significance of having a circular dialectic between a parent and child. He described it as a reciprocal connectedness between a parent and child with children expressing needs and parents responding appropriately to those needs. As a result, children become strongly attached to those who provide their care. While Mr. Anderson found that there was a bond between the biological parents and the children, he indicated that simply having a bond is not sufficient as there needs to be a circular bond between the child and parent where a child's needs are appropriately responded to. Mr. Anderson stated that he did not believe there would be irreparable harm to the children if the biological parents' rights were terminated.

Trial Court Opinion² ("T.C.O."), 8/30/2013, at 14-17.

On August 30, 2013, the trial court entered its orders terminating Mother's and Father's parental rights. The trial court found grounds to terminate pursuant to section 2511 (a)(1), (2), (5), (8), and (b) for E.D. and pursuant to section 2511 (a)(1), (2), (5), and (b) for P.D. Father filed his notice of appeal and statement of errors complained of on appeal on September 18, 2013. Mother filed her notice of appeal and statement of errors complained of on appeal on September 19, 2013.

Father presents the following question for our review:

WHETHER THE COURT ERRED IN DETERMINING THAT CLEAR AND CONVINCING EVIDENCE SHOWED THAT FATHER HAD A

² The trial court entered one consolidated opinion that addressed both appeals.

SETTLED PURPOSE TO RELINQUISH A PARENTAL CLAIM UNDER 23 PA.C.S. [§] 2511 (A)(1), (2), (5), AND (8) WHERE HE MAINTAINED REGULAR CONTACT WITH THE CHILDREN AND CONTINUED TO ATTEMPT TO REMEDY THE CONDITIONS THAT LED TO PLACEMENT.

Father's Brief at 5.

Mother presents the following questions for our review:

- I. WHETHER THE COURT ERRED IN ADJUDICATING TERMINATION UNDER 23 PA.C.S. [§] 2511 (A)(8) WHEN NEITHER CHILD WAS IN THE CARE OF THE AGENCY FOR A PERIOD OF 12 MONTHS PRIOR TO FILING.
- II. WHETHER THE COURT ERRED IN DETERMINING THAT CLEAR AND CONVINCING EVIDENCE SHOWED THAT MOTHER HAD A SETTLED PURPOSE TO RELINQUISH A PARENTAL CLAIM UNDER 23 PA.C.S. [§] 2511 (A)(1), (2), (5), AND (8) WHERE MOTHER HAS REMEDIED AND CONTINUES TO REMEDY THE CONDITIONS THAT LED TO PLACEMENT AND MAINTAINED A PARENT-CHILD [RELATIONSHIP] WITH HER CHILDREN.
- III. WHETHER THE COURT ERRED IN IT'S [ASSESSMENT] AS TO WHETHER A BOND EXISTS BETWEEN THE CHILDREN AND PARENT, WHETHER TERMINATION WOULD DESTROY AN EXISTING, NECESSARY AND BENEFICIAL RELATIONSHIP, AND IN GIVING ADEQUATE CONSIDERATION TO THE NEEDS AND WELFARE OF THE CHILD.

Mother's Brief at 7.

In reviewing an appeal from the termination of parental rights, we review the orders in accordance with the following standard.

[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.***, 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. *Id.*; *In re: R.I.S.*, 36 A.3d 567, 572 (Pa. 2011) (plurality opinion). As has been often stated, an abuse of discretion does not result merely because the reviewing court might have reached a different conclusion. *Id.*; *see also Samuel-Bassett v. Kia Motors America, Inc.*, 34 A.3d 1, 51 (Pa. 2011); *Christianson v. Ely*, 838 A.2d 630, 634 (Pa. 2003). Instead, a decision may be reversed for an abuse of discretion only upon demonstration of manifest unreasonableness, partiality, prejudice, bias, or ill-will. *Id.*

As we 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 Atencio*, 650 A.2d 1064, 1066 (Pa. 1994).

In re Adoption of S.P., 47 A.3d 817, 826-27 (Pa. 2012) (citations modified).

In order to affirm the termination of parental rights, this Court need only agree that grounds pursuant to any one subsection of Section 2511(a) has been established. *See In re B.L.W.*, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*). Therefore, although the trial court found grounds to terminate pursuant to multiple subsections, we will only address section 2511(a)(1).

Requests to have a natural parent's rights terminated are governed by 23 Pa.C.S.A. § 2511, which provides, in pertinent part:

§ 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.

* * *

(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. With respect to any petition filed pursuant to subsection (a)(1), (6) or (8), the court shall not consider any efforts by the parent to remedy the conditions described therein which are first initiated subsequent to the giving of notice of the filing of the petition.

23 Pa.C.S.A. § 2511.

It is well-settled that a party seeking termination of a parent's rights bears the burden of proving the grounds by "clear and convincing evidence," a standard which requires evidence 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 T.F.*, 847 A.2d 738, 742 (Pa. Super. 2004) (citation omitted). Further:

Parental duty is best understood in relation to the needs of a child. A child needs love, protection, guidance, and support.

* * *

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 the Interest of K.Z.S., 946 A.2d 753, 759 (Pa. Super. 2008) (internal citations omitted).

To terminate parental rights pursuant to section 2511(a)(1), the person or agency seeking termination must demonstrate through clear and convincing evidence that, for a period of at least six months prior to the filing of the petition, the parent's conduct demonstrated "a settled purpose to relinquish parental rights or that the parent has refused or failed to perform parental duties." ***In re Adoption of M.E.P.***, 825 A.2d 1266, 1272 (Pa. Super. 2003). Further:

[T]he trial court must consider the whole history of a given case and not mechanically apply the six-month statutory provision. The court must examine the individual circumstances of each case and consider all explanations offered by the parent facing termination of his or her parental rights, to determine if the evidence, in light of the totality of the circumstances, clearly warrants the involuntary termination.

In re B.,N.M., 856 A.2d 847, 854-55 (Pa. Super. 2004) (citations omitted).

Both Mother and Father challenge the sufficiency of the evidence presented by the Agency to sustain a determination that their parental rights

should be terminated pursuant to subsection (a)(1). Mother and Father argue that they have not refused to perform parental duties nor have they evinced a settled purpose of relinquishing their parental rights. Instead, the parents assert that they have maintained a relationship with the Children.

In finding termination appropriate pursuant to subsection (a)(1), the trial court relied upon the condition of the home and Mother and Father's failure to comply with the Agency's directives, particularly regarding counseling. While able to maintain their home for short periods, there was no sustained consistency and the parties have not been able to maintain a safe home environment for at least ninety days. The trial court determined that there was little hope that the parents would be able to maintain long-term consistency and stability, which is what the Children require. T.C.O. at 20.

We must accept the trial court's findings that are supported by competent evidence of record, and we defer to the trial court on issues of credibility and weight of 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 T.B.B.***, 835 A.2d 387, 394 (Pa. Super. 2003).

Our review of the record reveals that the trial court relied upon competent evidence to reach its conclusions. The testimony of the caseworker and the service providers demonstrates that Mother and Father have not been able to maintain a safe environment for the Children. While

the parents love their Children, parental duties encompass more than that. There is competent evidence in the record to support the trial court's determination that, for the six months preceding the filing of the Agency's termination petitions, Mother and Father refused or failed to perform their parental duties. The trial court did not abuse its discretion when it terminated Mother's and Father's parental rights pursuant to subsection (a)(1).

Mother claims that the trial court erred in finding that there would be no detriment to the Children if the bond that existed between them and their parents were severed pursuant to subsection (b). Father does not raise this question in his appeal.

The Adoption Act provides that a trial court "shall give primary consideration to the developmental, physical and emotional needs and welfare of the child." 23 Pa.C.S.A. § 2511(b). The Act does not make specific reference to an evaluation of the bond between parent and child, but our case law requires the evaluation of any such bond. **See *In re E.M.***, 620 A.2d 481, 484-85 (Pa. 1993). However, this Court has held that the trial court is not required by statute or precedent to order a formal bonding evaluation performed by an expert. ***In re K.K.R.-S.***, 958 A.2d 529, 533 (Pa. Super. 2008).³

³ Our Supreme Court has held that a trial court may not rely upon the "mere existence" of a bond between a parent and child to deny a petition to
(Footnote Continued Next Page)

We have examined the evidence presented to the trial court in regard to subsection (b), and we quote the trial court's conclusion in that regard with approval:

As Bruce Anderson testified, there is a bond between both parents and the children. The parents have maintained regular contact with the children through visitations. The [c]ourt, however, cannot find that the bond which exists is beneficial to the children. It is the [c]ourt's position that the bond is, in fact, detrimental to the well-being of the children. Though the parents have continued to have contact with the children while in placement, all of the children's developmental, physical and emotional needs have been met by [Foster Parents]. The [c]ourt further does not find that the parents will ever be able to develop a positive bond with [the Children] in light of their inability to provide a consistent safe and stable life for the children. The bond the children have with the parents as a result of maintaining contact is not the type of circular bond which is present between a child and parent where a child's needs are appropriately met and responded to. [Foster Parents], however, fulfill this bond for both children. The [c]ourt does not find that terminating Mother's and Father's parental rights would destroy a relationship that is necessary and beneficial to [the Children].

T.C.O. at 27-28. The trial court did not abuse its discretion when it determined that the termination of Mother's and Father's parental rights would serve the best interests of the Children pursuant to subsection (b).

Accordingly, we conclude that the trial court's decision to terminate Mother's and Father's parental rights under section 2511(a)(1) and (b), and to change the Children's goals to adoption, is supported by clear and

(Footnote Continued) _____

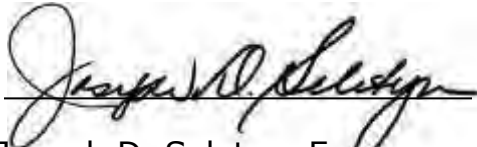
terminate parental rights if the bond is not beneficial to the child. ***In re T.S.M.***, 71 A.2d 251, 270-271 (Pa. 2013).

convincing evidence in the record, and that the trial court did not abuse its discretion.

Orders affirmed.

Fitzgerald, J. notes dissent.

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: 4/23/2014