

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN RE: ADOPTION OF P.H., A MINOR

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

v.

APPEAL OF: D.H., FATHER

No. 1666 MDA 2013

Appeal from the Order Dated August 28, 2013  
In the Court of Common Pleas of Northumberland County  
Orphans' Court at No(s): Adoptee #10-2013

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IN RE: ADOPTION OF P.S.H., A MINOR

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

v.

APPEAL OF: D.H., FATHER

No. 1667 MDA 2013

Appeal from the Order Dated August 28, 2013  
In the Court of Common Pleas of Northumberland County  
Orphans' Court at No(s): Adoptee #11-2013

BEFORE: GANTMAN, J., OTT, J., and MUSMANN, J.

MEMORANDUM BY OTT, J.

**FILED APRIL 15, 2014**

D.H. ("Father") appeals from the decrees in the Court of Common Pleas of Northumberland County involuntarily terminating his parental rights to his female children, P.H., born in April of 2010, and P.S.H., born in January of 2012. We affirm.

The pertinent facts and procedural history are as follows. In July of 2011, the Northumberland County Children and Youth Social Service Agency ("CYS") received a referral alleging domestic violence between Father and L.J. ("Mother"). N.T., 8/21/13, at 8. CYS first met Father, who has a history of alcohol abuse, in early January of 2012, shortly after his release from drug and alcohol rehabilitation without completing the program. *Id.* at 7, 63. Father was on probation at the time, a condition of which forbade him from living with Mother, but permitted him to reside with his aunt who had an apartment in the same building as Mother. *Id.* at 7.

In late February of 2012, a domestic violence incident occurred in the home in the presence of the children, whereby Mother stabbed Father in his leg several times. *Id.* at 10. The children were placed in the custody of CYS on the same date as the incident.

Prior to the children's placement, CYS had recommended that Father and Mother participate in relationship counseling, anger management classes, parenting classes, and that they follow-up with drug and alcohol and mental health services. *Id.* at 8. After the children's placement, CYS assigned Father the following Family Service Plan ("FSP") goals, in part: refrain from drug and alcohol use; complete intake for drug and alcohol outpatient therapy and follow all recommendations; follow all

recommendations of state parole/probation;<sup>1</sup> attend a mental health intake appointment and follow all recommendations; attend and successfully complete anger management classes; attend an intake appointment at the Northumberland County Family Center and follow all recommendations; attend supervised visits with the children; provide stable housing for the children; and maintain employment. *Id.* at 12-13.

Approximately four months later, on July 18, 2012, Father was incarcerated for a probation violation. *Id.* at 15, 24. By late November of 2012, he was residing in a halfway house. *Id.* at 27. By February 20, 2013, Father was residing with Mother. *Id.* at 28-29. Sometime after February 20, 2013, Father was re-incarcerated through the time of the subject proceedings. *Id.* at 40. The record reveals that Father's incarcerations were due to his violating his probation by residing with Mother. *Id.* at 40, 64.

On March 15, 2013, CYS filed petitions for the involuntary termination of Father's and Mother's parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(1), (2), (5), (8), and (b). A hearing was held on August 21, 2013, during which the following witnesses testified: Sheralyn Hess, CYS caseworker for the family from December 21, 2011, to August 9, 2012; Deanna Anderson, CYS caseworker from August of 2012, through the time of

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<sup>1</sup> The record does not clarify whether Father had both probation and parole conditions prohibiting him from residing with Mother. For purposes of this disposition, we refer to Father's failure in this regard as a probation violation.

the termination hearing; C.S., the children's foster mother; and Father, *via* video satellite from prison.

By decrees dated August 28, 2013, the court involuntarily terminated Father's parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(1), (2), (5), and (b). Father timely filed notices of appeal and concise statements of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b), which this Court consolidated *sua sponte*.<sup>2</sup>

On appeal, Father raises the following issues for our review:

- I. Whether the trial court erred in determining that [CYS] presented clear and convincing evidence that grounds for involuntary termination exist?
- II. Whether the trial court erred in determining that the best interests of the child[ren] would be served by terminating parental rights?

Father's brief at 10.

We review this appeal according to 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.***, 608 Pa. 9, 9 A.3d 1179, 1190 (Pa. 2010). If the factual findings are

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<sup>2</sup> Mother neither participated in the hearing on August 21, 2013, nor was she represented by counsel. The certified record includes a decree dated August 28, 2013, voluntarily terminating Mother's parental rights to P.S.H. There is no decree in the certified record voluntarily or involuntarily terminating Mother's parental rights to P.H. In any event, Mother did not file an appeal from any order involving her parental rights to P.H. or P.S.H.

supported, appellate courts review to determine if the trial court made an error of law or abused its discretion. **Id.**; **R.I.S.**, 614 Pa. 275, 284, 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.**, 613 Pa. 371, 34 A.3d 1, 51 (Pa. 2011); **Christianson v. Ely**, [575 Pa. 647, 654-655], 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.**, [608 Pa. at 28-30], 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**, [539 Pa. 161, 165,] 650 A.2d 1064, 1066 (Pa. 1994).

**In re Adoption of S.P.**, 47 A.3d 817, 826-827 (Pa. 2012).

Termination of parental rights is governed by section 2511 of the Adoption Act, which requires a bifurcated analysis.

Our case law has made clear that under Section 2511, the court must engage in a bifurcated process prior to terminating parental rights. Initially, the focus is on the conduct of the parent. The party seeking termination must prove by clear and convincing evidence that the parent's conduct satisfies the statutory grounds for termination delineated in Section 2511(a). Only if the court determines that the parent's conduct warrants termination of his or her parental rights does the court engage in the second part of the analysis pursuant to Section 2511(b):

determination of the needs and welfare of the child under the standard of best interests of the child. One major aspect of the needs and welfare analysis concerns the nature and status of the emotional bond between parent and child, with close attention paid to the effect on the child of permanently severing any such bond.

***In re L.M.***, 923 A.2d 505, 511 (Pa. Super. 2007) (citing 23 Pa.C.S. § 2511).

The burden is upon the petitioner to prove by clear and convincing evidence that the asserted statutory grounds for seeking the termination of parental rights are valid. ***In re R.N.J.***, 985 A.2d 273, 276 (Pa. Super. 2009).

Instantly, we conclude the trial court properly terminated Father's parental rights pursuant to section 2511(a)(5) and (b), which provide as follows:<sup>3</sup>

**(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:

. . .

(5) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental

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<sup>3</sup> This Court need only agree with any one subsection of section 2511(a), in addition to section 2511(b), in order to affirm the termination of parental rights. ***See In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*).

rights would best serve the needs and welfare of the child.

. . .

**(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(a)(5), (b).

To satisfy the requirements of section 2511(a)(5), the moving party must produce clear and convincing evidence regarding the following elements: (1) the child has been removed from parental care for at least six months; (2) the conditions which led to the child's removal or placement continue to exist; (3) the parents cannot or will not remedy the conditions which led to removal or placement within a reasonable period of time; (4) the services reasonably available to the parents are unlikely to remedy the conditions which led to removal or placement within a reasonable period of time; and (5) termination of parental rights would best serve the needs and welfare of the child. ***See In re Adoption of M.E.P.***, 825 A.2d 1266, 1273-1274 (Pa. Super. 2003).

With respect to section 2511(b), this Court has explained the requisite analysis as follows:

Subsection 2511(b) focuses on whether termination of parental rights would best serve the developmental, physical, and emotional needs and welfare of the child. In ***In re C.M.S.***, 884 A.2d 1284, 1287 (Pa. Super. 2005), this Court stated, "Intangibles such as love, comfort, security, and stability are involved in the inquiry into the needs and welfare of the child." In addition, we instructed that the trial court must also discern the nature and status of the parent-child bond, with utmost attention to the effect on the child of permanently severing that bond. ***Id.*** However, in cases where there is no evidence of a bond between a parent and child, it is reasonable to infer that no bond exists. ***In re K.Z.S.***, 946 A.2d 753, 762-63 (Pa. Super. 2008). Accordingly, the extent of the bond-effect analysis necessarily depends on the circumstances of the particular case. ***Id.*** at [7]63.

***In re Adoption of J.M.***, 991 A.2d 321, 324 (Pa. Super. 2010).

In his first issue on appeal, Father argues that CYS failed to satisfy its burden of proof under section 2511(a) because he was consistent and appropriate in his visits with the children prior to his first period of incarceration. Further, Father argues his conduct did not warrant termination of his parental rights because he completed specific programs while in prison, he anticipated having employment at an unspecified time after his release from prison, and he decided to end his relationship with Mother. Upon review of the testimonial evidence, we discern no abuse of discretion by the court in terminating Father's parental rights pursuant to section 2511(a)(5).

Ms. Hess, the CYS caseworker for the family from December of 2011, to August 9, 2012, testified that, prior to the children's placement, Father declined all recommended services. She testified that Father told her "he



didn't need to do anything, that everything was fine." N.T., 8/21/13, at 8. After the children's placement, Father participated in an intake appointment with Pennsylvania Treatment and Healing ("PATH"), which provided drug and alcohol counseling. However, Father was unsuccessfully discharged from PATH for failure to follow through with the appointments. *Id.* at 8-9, 14. Father attended one class titled "building your family" at the Northumberland County Family Center, but he did not follow through with the remaining classes, and he never attended any other parenting classes. *Id.* at 11, 16. Further, Father declined services regarding relationship counseling. Ms. Hess testified that, "[Father] just wasn't interested in the counseling. He felt that [he and Mother] were working it out themselves." *Id.* at 11. Father did not attend anger management classes. *Id.* at 16.

Ms. Hess testified that, during her tenure on the case, Father was in violation of his parole/probation by residing with Mother in her apartment. *Id.* at 14-15, 17-18. Ms. Hess testified that she would pick Father up at the apartment he shared with Mother for his supervised bi-weekly visits with the children because Father did not have a driver's license or a vehicle. *Id.* at 15, 17-19. Ms. Hess testified that Father was consistent in his visits. *Id.* at 18. Ms. Hess testified on cross-examination by Father's counsel that Father was appropriate during the visits with the children. *Id.* at 20.

Ms. Anderson, the CYS caseworker from August 9, 2012, through the time of the termination hearing, testified that Father telephoned her on

November 26, 2012, at which time he was residing in a halfway house, and requested visits with the children. *Id.* at 27. Ms. Anderson testified the visits did not occur because Father did not have transportation and did not contact her again to make arrangements regarding the visits. *Id.* at 27-28. She testified that Father contacted her for a second time by telephone in late February of 2013, this time together with Mother, with whom he was living at the time, to schedule a prehearing conference with respect to the next permanency review hearing. *Id.* at 28-29. Father was re-incarcerated shortly thereafter.

Ms. Anderson testified that Father provided a certificate indicating he completed a prison program on May 13, 2013, titled "Back on Track." *Id.* at 33. Counsel for CY5 introduced as an exhibit a document that outlined thirty sessions of the "Back on Track" program, which accompanied the certificate of completion. *Id.* at 34-35, 43. Ms. Anderson testified that none of the sessions involved parenting skills. *Id.* at 35. She testified on direct examination as follows:

Q. To the best of your knowledge, reading this [w]back on track["] . . . outline, do . . . these services show that [Father] is cooperating and becoming acclimated to being inside a facility while . . . incarcerated?

A. Yes.

*Id.* In addition, Father provided a certificate indicating he completed a drug and alcohol program in prison on June 3, 2013. *Id.* at 34.

Finally, Ms. Anderson testified that Father wrote her two letters, dated April 5, 2013, and June 4, 2013. In both letters, Father blamed Mother for his incarceration, and he indicated he was ending his relationship with Mother. *Id.* at 35-38, 42. In the second letter, Father told Ms. Anderson he was waiting to be released to a halfway house, and he requested an additional six months after his release to comply with his FSP goals. *Id.* at 37-38.

Father testified, *via* video satellite, that he was scheduled to be released to a halfway house the following day, where he will remain for thirty days. *Id.* at 59-60. He testified that, when he leaves the halfway house, "I want to relocate back down to Milton, Northumberland County. . . . I still have money in the bank, so I plan to get a place down there back down in Milton." *Id.* at 60. With respect to employment, Father testified on direct examination,

Q. Do you have employment lined up once you get out?

A. Yes. I will go back to Applebee's. I can work at any Applebee's because I stay – I stay in contact with my managers, and I was a good worker, point-blank, period. And they take care of you if you do well, and I did that.

*Id.* at 69. Further, Father testified he will not continue in a relationship with Mother, and he requested an additional six months to comply with his FSP goals. *Id.* at 68.

Father testified with respect to why his parental rights should not be terminated, as follows:

I've been fighting this, being in a relationship with [Mother] for some time, and that – with the way it looks, just like she superseded everything that I was trying to do, included in my life. So I made foolish mistakes in believing her and trying to be with her. . . .

. . .

But my focus and everything that I'm doing is for me to get right so I can bring my girls . . . back into my life.

I asked – I wrote a letter and I asked for six months after I get out tomorrow. And if I'm not ready by then, there's no reason for me to even have my kids, because that would be lying to you and lying to the courts, that I'm saying I will do this or I'm saying I will do that. I just want a chance to be able to prove that right now so I can bring my girls home with me.

*Id.* at 67-68.

At the time of the termination hearing, P.H. was three years old, and P.S.H. was nineteen months old. They had been in placement for eighteen months. For the last fifteen months, they had been residing together in the same foster home, which includes a husband, wife, and three female biological children, ages fourteen, eleven, and eight. *Id.* at 44, 53. The children refer to their foster parents as "mommy and daddy." *Id.* at 45. Ms. Anderson testified there would be no negative effect upon the children if Father's parental rights are terminated. *Id.* at 47.

C.S., the children's foster mother, testified as follows on direct examination:

Q. How have [the children] assimilated into your family? In other words, do you consider them as part of your family today?

A. Absolutely. . . . I mean, [P.H.] calls me mom. She calls my husband daddy. She . . . doesn't know that we're not technically her family. I mean, we are her family to her.

Q. And for [P.S.H.], with the except[ion] of four months of her life, you have been her family; is that correct?

A. Yes.

*Id.* at 54. C.S. testified as follows with respect to the positive development of P.H., the older child, since being in her care:

When [P.H.] first came to us, she really showed no emotion. She didn't talk much. She didn't smile. And I think within two months she became this, you know, fun, happy, two year old girl. I mean I've just seen a complete transformation in her.

*Id.* at 56. C.S. testified she and her husband are a permanent resource for the children, and, if the children left her home, "they would be traumatized, devastated." *Id.*

There is no testimony that P.S.H. had any problems when she began residing with the foster family. Ms. Anderson, the current CYS caseworker, testified that both children appear happy in the foster home, and that the foster parents are providing the children with love, supervision, and care. N.T., 8/21/13, at 46-47.

The foregoing testimonial evidence demonstrates that CYS satisfied its burden pursuant to section 2511(a)(5) in that the children have been in placement since February of 2012, far in excess of the requisite six months at the time of the termination hearing. The conditions that led to the children's removal continue to exist in that Father has failed to comply with

the vast majority of his service plan objectives. Father cannot or will not remedy his failures connected with the service plan objectives within a reasonable time, and the services reasonably available to him are unlikely to remedy his failures within a reasonable time. Finally, termination of Father's parental rights would best serve the children's needs and welfare in that they are happy and thriving with their foster family and have the chance for permanency with that family.

Indeed, it is well-established that a child's life "simply cannot be put on hold in the hope that [a parent] will summon the ability to handle the responsibilities of parenting." ***In re Z.S.W.***, 946 A.2d 726, 732 (Pa. Super. 2008). In this case, Father has evidenced a pattern of violating his probation resulting in his re-incarceration on more than one occasion since the children have been in placement. Although Father participated in programs during his most recent incarceration, and he believes he will be capable of parenting the children in six months from the date he is released from prison, which he alleged would be the day after the termination hearing, this does not require that the children's permanency be postponed. ***See In re Z.P.***, 994 A.2d 1108, 1125 (Pa. Super. 2010) (citation omitted) (concluding that child's need for consistency and stability cannot be ignored merely because father is "doing what [he] is supposed to do in prison"). Father's first issue fails.

In his second issue, Father argues that CYS failed to satisfy its burden of proof under section 2511(b) because an emotional bond exists between him and the children because he attended visits when not incarcerated, and he was appropriate during visits with the children. We disagree.

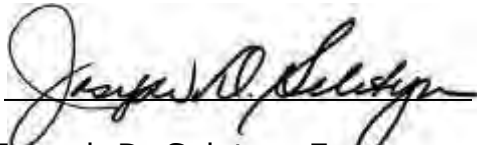
Ms. Anderson testified that Father's last visit with the children was in July of 2012, at which time P.H. was two years old, and P.S.H. was approximately six months old. N.T., 8/21/13, at 46. At the time of the termination hearing, the children had not seen Father in thirteen months. Ms. Anderson testified that P.H. does not ask about Father. *Id.* Although C.S., the foster mother, implied in her testimony that P.H. may have recognized Father at the time of his supervised visits, she testified P.H. does not ask about Father. *Id.* at 54. With respect to P.S.H., Ms. Anderson testified that she does not know Father. *Id.* at 46. As such, there is no record evidence of a bond between Father and either of the children, and, therefore, it is reasonable to infer that no bond exists. Rather, the evidence demonstrates that a parent-child bond exists between the foster parents and the children. ***See In re K.Z.S.***, 946 A.2d at 762-763 (holding that a formal bonding evaluation not required when child had limited contact with his mother, child's relationship with mother was fairly attenuated, and child shared a strong bond with his foster mother).

Based on the testimonial evidence, we discern no abuse of discretion by the court in concluding that terminating Father's parental rights "would

best serve the developmental, physical, and emotional needs and welfare” of the children. We further observe that the Guardian *Ad Litem* recommended to the orphans’ court on the record in open court that Father’s parental rights be terminated, in part, because it will not be detrimental to the children, but it “would be certainly detrimental to terminate their relationship with their current [foster] family. . . .” *Id.* at 82. Accordingly, we affirm the decrees terminating Father’s parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(5) and (b).

Decrees affirmed.

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: 4/15/2014