

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: K.D.L., A MINOR

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: K.D.

No. 1644 WDA 2013

Appeal from the Order entered September 11, 2013
in the Court of Common Pleas of Allegheny County
Orphans' Court, at No(s): TPR 082 of 2013

BEFORE: PANELLA, J., MUNDY, J., and STABILE, J.

MEMORANDUM BY PANELLA, J.

FILED: April 23, 2014

K.D. ("Mother") appeals from the order dated September 11, 2013, and entered on September 17, 2013, granting the petition filed by the Allegheny County Office of Children, Youth and Families ("CYF") to involuntarily terminate her parental rights to her female child, K.D.L. ("Child"), pursuant to Section 2511(a)(2), (5), and (b) of the Adoption Act. We affirm.

The trial court set forth the factual background and procedural history of this appeal as follows.

[Child] was born [in January of 2012]. Immediately after her birth[,] [Child] was hospitalized for methadone withdrawal, which brought [Child] and [Mother] to the attention of Allegheny County Children, Youth and Family ("CYF"). Child was ready to be discharged from the hospital on February 21, 2013. CYF determined that both parents were incapable of caring for [Child] upon discharge, and CYF removed [Child] from her parents' custody. The reasons for the removal were that the parents had a prior child that had been removed from their care[,] and they had not addressed the family service plan goals for that child. They had not addressed mental health issues, Father was not getting drug screened[,] and CYF believed that there were

ongoing domestic violence issues. CYF felt at that time that the safety of Child could not be assured while Father and Mother were living together. At that time, visits for Mother's and Father's other child were supervised.

When [Child] was returned to Mother's custody on May 23, 2012[,] subject to conditions [sic]. One of the conditions was that Father could not reside with Mother because of the allegations of domestic abuse. Child resided with Mother until August 17, 2012[,] when an emergency custody authorization was entered authorizing the return of Child to CYF's custody because there was evidence that Father was residing with Mother. CYF was, however, unable to locate (Child) and Mother until August 21, 2012[,] when CYF took [Child] into custody. CYF returned [Child] the following day with support services it provided. One week later on August 29, 2012, [Child] was again taken back into custody by CYF because CYF concluded that Father was living at the home while he was only to have supervised visits with [C]hild. [Child] never returned to Mother's custody after that date.

When [Child's] dependency proceedings commenced in January 2012, a Family Service Plan ("FSP") was created for Mother by CYF. The FSP's purpose was to reunite [Child] with Mother and Father. Mother's goals were to secure basic financial means to provide for [Child] and her own basic needs, such as adequate nourishment and shelter. The FSP also required Mother to improve her parenting skills and undergo mental health, drug and alcohol treatment and attend domestic violence classes. CYF provided support for Mother, directly or through other agencies. These goals remained in place throughout the proceeding.

Mother was inconsistently compliant with her FSP goals. Mother attended a parenting program, but it did not materially improve her parenting skill. Mother never found housing for herself that was independent of Father. The only residence that Mother had during these proceedings has been Father's house. Mother did apply for housing assistance through the Urban League to locate her own residence, but that application was terminated because she failed to cooperate with the agency. Mother participated in a parenting program, but she did not complete the program. She attended thirteen out of sixteen sessions, but she was terminated from the program. Later she

was referred to the same program, but she did not complete the program. She attended thirteen out of sixteen sessions, but she was terminated from the program. Later she was referred to the same program again and completed four out of six sessions. The program was incomplete at the time of the hearing.

Mother's contact with [Child] since August 2012 has been through supervised visits. Prior to August 2012, these visits were three times per week, but they were reduced to two times per week after August 29, 2012. [Mother missed many visits from August 29, 2012 until August of 2013. However, Mother made all of her visits in August of 2013.]

Mother's FSP had a mental health component. Mother admits suffering from depression and anxiety, but she denies that she needs treatment. Mother's only mental health treatment is one hour per month individual treatment and two hours of group therapy per month as part of her methadone program. Mother was previously addicted to heroin, but[,] for at least the past two years[,] she has been in a methadone program. Mother has been compliant with her methadone treatment, but her methadone dosage has been essentially the same for the past two years. While Mother's drug addiction has not regressed, she has made no real progress towards elimination of her addiction issues.

* * *

It was CYF's opinion that Mother had not complied with the family service plan[,] and there has been no significant change in her ability to parent or care for [Child] since [Child's] initial removal from Mother. In addition, CYF had contact with Mother since 2010 regarding her other child[,] and there was no progress seen over the longer period of time either.

The court appointed Neil D. Rosenblum, Ph.D., a licensed clinical psychologist, to evaluate Mother, Father and foster parents and [Child]. Dr. Rosenblum had sessions with all those parties either individually or collectively on February 9, 2012, February 15, 2012, March 5, 2012, February 11, 2013, February 15, 2013, July 29, 2013 and August 2, 2013. Dr. Rosenblum's opinion was that the three hours per month of mental health treatment that Mother received through her methadone program was insufficient to meet her needs. Dr. Rosenblum's opinion was

that any treatment would be ineffective because Mother denies or minimizes her problems. Mother believes that nothing is wrong with her relationship with Father. Mother projects her problems on CYF and others rather than accepting responsibility herself.

As noted above, Dr. Rosenblum observed that Mother's methadone dosage had remained essentially the same over the past two years. Methadone is intended to be a means to ending heroin addiction and not a substitute for it.

Mother has failed to move forward in any of the problem areas Dr. Rosenblum has identified. Dr. Rosenblum concluded, as does the court, that Mother just goes through the motions of complying with her goals without any real intention to address her problems, which she either denies or minimizes.

In addition to individual sessions Mother and others, Dr. Rosenblum conducted interactional sessions with Mother and [Child] and with foster parents and [Child]. Dr. Rosenblum testified that [Child] showed some familiarity with Mother, but [Child] was more comfortable with foster parents. [Child] does not seek Mother out for her needs, but looks to foster mother and father for those needs.

Dr. Rosenblum's prognosis for Mother is guarded. Mother does not recognize problems, therefore, it is difficult for a person to seek help or cooperate with help when problems are denied or minimized. Mother tends to resent and oppose suggestions to improve her circumstances and blame others for the difficulty she faces. One of the greatest difficulties Mother has is her co-dependent relationship with Father. Father showed no inclination to seriously address his drug dependence. Father insists his opioid dependence is related to prescribed drugs, but he never provided documentation to support his claim.

[Child's] present situation with her pre-adoptive foster parents is positive and stable. She is with a family that is responsive to her needs, and that is the only family she has known. This family also has custody of K.L. brother[,] and they have a baby of their own. Foster mother is a stay at home mother, who is attentive to [Child's] needs. [Child] has some developmental issues involving over stimulation, difficulty with

self-soothing and some dietary issues. Foster parents have sought professional assistance to address [Child's] needs.

Trial Court Opinion, 2/4/12, at 2-9.

CYF's Petition for Involuntary Termination of Parental Rights against Mother was filed on April 22, 2013. The termination hearing was held on August 22, 2013. By order dated September 11, 2013, and entered on September 17, 2013, the trial court terminated Mother's parental rights with regard to Child under Section 2511(a)(2), (5), and (b). On September 17, 2013, the trial court also terminated the parental rights of L.L. ("Father") of Child. Father is not a party to the appeal filed by Mother.

On October 11, 2013, Mother timely filed her Notice of Appeal, along with a Concise Statements of Errors Complained of on Appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b).

Mother raises the following issue:

1. Did the trial court abuse its discretion and/or err as a matter of law in concluding that CYF met its burden of proving by clear and convincing evidence that termination of Mother's parental rights would best serve the needs and welfare of [Child] pursuant to 23 Pa.C.S. § 2511(b)?

Mother's Brief, at 5.

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 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, 455], 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., 616 Pa. 309, 325-327, 47 A.3d 817, 826-827 (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.A. § 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. ***See In re R.N.J.***, 985 A.2d 273, 276 (Pa. Super. 2009).

Instantly, the relevant provisions of the Adoption Act are as follows:

(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:

* * *

(2) 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.

* * *

(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 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)(2), (5), (b).

On appeal, Mother does not assert an error of law or an abuse of discretion with respect to Section 2511(a). Therefore, we review the decree pursuant to Section 2511(b) only. ***See Krebs v. United Refining Company of Pennsylvania***, 893 A.2d 776, 797 (Pa. Super. 2006) (stating that any issue not set forth in or suggested by an appellate brief's Statement of Questions Involved is deemed waived). This Court has interpreted Section 2511(b) as follows:

[I]f the grounds for termination under subsection (a) are met, a court "shall give primary consideration to the developmental, physical and emotional needs and welfare of the child." 23 Pa.C.S. § 2511(b). The emotional needs and welfare of the child have been properly interpreted to include "[i]ntangibles such as love, comfort, security, and stability." ***In re K.M.***, 53 A.3d 781, 791 (Pa. Super. 2012). In ***In re E.M.***, [620 A.2d 481, 485 (Pa. 1993)], this Court held that the

determination of the child's "needs and welfare" requires consideration of the emotional bonds between the parent and child. The "utmost attention" should be paid to discerning the effect on the child of permanently severing the parental bond. ***In re K.M.***, 53 A.3d at 791.

See also In re: T.S.M., ___ Pa. ___, ___, 71 A.3d 251, 267 (2013).

The trial court found that Mother has had two years to do what is necessary to correct the problems that led to the removal of Child from her care. The trial court noted that Mother has made some progress as a parent, but not significant progress, and that Child has already spent almost all of her short life in foster care. The trial court determined that to leave Child's situation unresolved any longer would be unjust and contrary to the letter and the intent of the law. ***See*** Trial Court Opinion, 11/18/2013, at 11-12. In addition, the trial court found from the testimony that Mother would continue living with Father if her parental rights were not terminated. ***See id.***

The trial court found that Child views her foster parents as her parents, and she clearly loves and is comfortable with them. Child is comfortable with Mother as a familiar face; however, she looks to her foster parents as the people who provide for her needs since she has been with them for the majority of her life. The trial court also found that the termination of Mother's parental rights will not affect Child. Rather, the trial court determined that termination of Mother parental rights will have a positive effect on Child since Child has a need for permanency. ***See id.***

This Court has observed that no bond worth preserving is formed between a child and a natural parent where the child has been in foster care for most of the child's life, and the resulting bond with the natural parent is attenuated. ***In re K.Z.S.***, 946 A.2d 753, 764 (Pa. Super. 2008). Mother failed to "exhibit [the] bilateral relationship which emanates from the parent[']s willingness to learn appropriate parenting" ***In re K.K.R.S.***, 958 A.2d 529, 534 (Pa. Super. 2008). She did not put herself in a position to assume daily parenting responsibilities so that she could develop a real bond with Child. ***See In re J.L.C.***, 837 A.2d 1247, 1249 (Pa. Super. 2003).

Additionally, as part of its bonding analysis, the trial court appropriately examined Child's relationship with her caregivers, her foster parents, who have been her only constant parents. ***See In re: T.S.M.***, ____ Pa. at ____, 71 A.3d at 267-268 (stating that existence of a bond attachment of a child to a parent will not necessarily result in the denial of a termination petition, and the court must consider whether the child has a bond with the foster parents).

The trial court appropriately observed that, although Mother may love Child, a parent's own feelings of love and affection for a child will not preclude termination of parental rights. ***See In re Z.P.***, 994 A.2d 1108, 1121 (Pa. Super. 2010). We stated in ***In re Z.P.***, 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." ***Id.*** at 1125. Rather, "a parent's

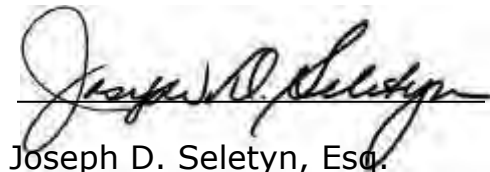
basic constitutional right to the custody and rearing of his child is converted, upon the failure to fulfill his or her parental duties, to the child's right to have proper parenting and fulfillment of his or her potential in a permanent, healthy, safe environment." ***In re B., N.M.***, 856 A.2d 847, 856 (Pa. Super. 2004).

As there is competent evidence in the record that supports the trial court's credibility and weight assessments regarding Child's needs and welfare and the bond analysis, we conclude that the trial court did not abuse its discretion in finding that Mother's appeal lacks merit as to section 2511(b). ***See In re Adoption of S.P.***, 616 Pa. at 325-26, 47 A.3d at 826-27.

Accordingly, as there is no merit to the challenge to the involuntary termination of Mother's parental rights, we affirm the trial court's order.

Order affirmed.

Judgment Entered.

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

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/23/2014

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