

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37**

IN RE: J.L.B., II, A MINOR : IN THE SUPERIOR COURT OF  
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APPEAL OF: C.T., BIRTH MOTHER : No. 1963 WDA 2013

Appeal from the Order November 13, 2013,  
Court of Common Pleas, Allegheny County,  
Orphans' Court at No. TPR 114 of 2013

BEFORE: GANTMAN, P.J., DONOHUE and FITZGERALD\*, JJ.

MEMORANDUM BY DONOHUE, J.: FILED: April 23, 2014

C.T. ("Mother") appeals from the order of court terminating her parental rights to J.L.B., Jr. ("Child"). Following our careful review, we affirm.

Child, who is autistic, was born in May 2009. He first came to the attention of Allegheny County Children, Youth and Family's ("CYF") in July of that year, with reports of developmental and growth issues. Child was receiving treatment for these issues at the Children's Home when CYF received a report that Mother was acting belligerently, screaming at the staff and allegedly punching a nurse. CYF did not provide services for Mother at that time. Just over a year later, in August 2010, CYF received a report that Child was left unattended after a fight between Mother and Child's biological father ("Father"). CYF did not investigate or offer services at this time, either.

\*Former Justice specially assigned to the Superior Court.

In March 2011, CYF received another report that Child was left alone following an argument between Mother and Father. At this point, CYF interviewed Mother and Father, who both admitted to having mental health issues and substance abuse problems. Child was left in his parents' custody, but CYF established FSP goals for the parents, requiring that they partake in services to help them with parenting, mental health issues, and budgeting. On December 31, 2011, Mother left Child with a woman she did not know so that she could go to New York City to celebrate the New Year. This woman called the police, who removed Child from her. In February 2012, Child was adjudicated dependent. The trial court left him in Mother's custody at that time, based upon consideration of Child's exceptional need, as autistic, for stability.

On September 4, 2012, CYF received yet another report that Child was left alone. CYF intake workers responded to Child's home, where they found the police waiting for Mother or Fathers' return. The CYF workers observed that Child, now three years old, had indeed been left alone with food set out for him. Child was removed from his parents' custody and placed with L.D., his paternal cousin. Child has remained with L.D. since that time. She intends to adopt Child.

On June 23, 2013, CYF filed a petition seeking to terminate Mother's and Father's parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(1),(2),(5)

and (b).<sup>1</sup> A hearing was held on November 13, 2013, following which the trial court terminated both parents' rights to Child. Mother then filed this timely appeal, in which she presents the following issues for our review:

1. Did the trial court abuse its discretion and/or err as a matter of law in granting the petition to involuntarily terminate Mother's parental rights pursuant to Pa.C.S.[A.] § 2511(a)?
2. 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 the child pursuant to 23 Pa.C.S.[A.] § 2511(b)?

Appellant's Brief at 5.

Our review of a decree terminating parental rights is highly deferential to the trial court. As this Court has stated:

When reviewing an appeal from a decree terminating parental rights, we are limited to determining whether the decision of the trial court is supported by competent evidence. Absent an abuse of discretion, an error of law, or insufficient evidentiary support for the trial court's decision, the decree must stand. Where a trial court has granted a petition to involuntarily terminate parental rights, this Court must accord the hearing judge's decision the same deference that we would give to a jury verdict. ... The trial court is free to make all credibility determinations, and may believe all, part, or none of the evidence presented. If the findings of the trial court are supported by competent evidence, we will

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<sup>1</sup> Although the petition sought termination under § 2511(a)(1),(2) and (5), during the hearing, CYF withdrew its claim with regard to subsection (a)(1). N.T., 11/13/13, at 80.

affirm even if the record could also support the opposite result.

***In re T.M.T.***, 64 A.3d 1119, 1124 (Pa. Super. 2013) (citations omitted). Furthermore, where the trial court has found that termination is appropriate under more than one sub-section of Section 2511(a), “this court need only agree with the trial court's decision as to any one subsection in order to affirm the termination of parental rights.” ***Id. at*** 1125.

Section 2511 of the Adoption Act governs termination of parental rights. Under Section 2511, the trial court must engage in a bifurcated process. ***In re C.L.G.***, 956 A.2d 999, 1004 (Pa. Super. 2008). The initial focus is on the conduct of the parent, and the burden of proof is on the petitioner to establish by clear and convincing evidence the existence of grounds for termination under Section 2511(a). ***Id.*** If the trial court finds that termination is warranted under Section 2511(a), it must then turn to Section 2511(b), and determine if termination of the parent’s rights is in the child’s best interest. ***Id.***

The trial court found termination of Mother’s right to be appropriate under Sections 2511(a)(2) and (5). Although trial court found termination appropriate under both of these provisions, “we need only agree with its decision as to any one subsection in order to affirm the termination of parental rights.” ***In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004)

(citation omitted). Accordingly, we focus on sub-section (a)(2), which provides 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:

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(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.

23 Pa.C.S.A. § 2511(a)(2). This Court has previously addressed termination under this provision, stating,

Parental rights may be terminated under Section 2511(a)(2) if three conditions are met: (1) repeated and continued incapacity, abuse, neglect or refusal must be shown; (2) such incapacity, abuse, neglect or refusal must be shown to have caused the child to be without essential parental care, control or subsistence; and (3) it must be shown that the causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied. ***In re Geiger***, 459 Pa. 636, 331 A.2d 172, 174 (1975).

***In re E.A.P.***, 944 A.2d 79, 82 (Pa. Super. 2008).

Presently, the trial court concluded that Mother's failure to meet her FSP goals has evidenced "repeated neglect and refusal to parent [that has] caused [Child] to be without necessary care for 14 months[,]" and that

"Mother cannot or will not remedy the conditions that led to [Child's] removal." Trial Court Opinion, 1/10/13, at 9.

We have thoroughly reviewed the record, and we conclude that it supports the trial court's conclusions. At the time of Child's removal in February 2012, CYF implemented the following goals for Mother: maintain contact and cooperate with CYF; achieve housing; stabilize mental health; get preventative health and dental care; prevent abuse and neglect; achieve and maintain recovery from substance abuse; and maintain visitation with Child. N.T., 11/13/13, at 9. Two CYF caseworkers that were assigned to Mother's case at different times both testified that Mother failed to maintain contact with the agency, in that Mother does not respond to letters, changes her phone number and does not inform CYF, does not answer her phone, and elects not to allow callers to leave voicemail messages. **Id.** at 10, 15, 60, 65. Mother failed to secure and maintain stable housing. **Id.** at 11. In September 2013, Mother told CYF that she had not been receiving mental health services since May 30, 2013. **Id.** CYF characterized Mother's history of attending mental health services as "sporadic" and did not consider that goal to have been met. **Id.** at 62. Mother has not attended any of Child's medical or dental appointments. **Id.** at 7, 13. To achieve the goal of preventing abuse and neglect, CYF wanted Mother to complete parenting classes. **Id.** at 13. Mother completed the intake procedure for a parenting course, but she was discharged from the

program because she missed two appointments. **Id.** at 13-14. Mother attended only two urine screenings for drugs and missed nine. **Id.** at 14, 65. Of the two screenings in which she participated, one revealed the presence of opiates in her system. **Id.** at 65. Visitation has been a particular problem, as two resources refused to host Mother's visitations with Child because of Mother's erratic and aggressive behavior. **Id.** at 68. The maternal grandmother agreed to allow visitations to occur in her home, but she, too, rescinded her offer because of Mother's hostile behavior toward her. **Id.** at 69. Mother's visits were suspended for a short while, until another location, the "Lexington office," was found. **Id.** at 69-70. At the Lexington office, Mother attended only six out of 12 scheduled visits. **Id.** at 15-16.

Thus, the evidence supports the trial court's conclusion Mother has demonstrated a repeating and continuing refusal to parent Child, and this refusal has caused Child to be without her essential parental care. Mother's failure to meet her FSP goals, especially over the length of time they have been in place, supports the trial court's conclusion that Mother refuses to remedy the conditions that led to Child's placement. We therefore cannot disturb the trial court's determination.

In support of her claim that the trial court abused its discretion in making this determination, Mother argues that the trial court placed too much emphasis on the fact that she has not met her FSP goals and that it

unfairly discounted Mother's "demonstrated good parenting skills." Appellant's Brief at 15. We do not disagree with Mother's claim that there is evidence that she possesses some capable parenting skills. However, as stated above, we cannot reweigh the evidence or make credibility determinations. ***In re E.A.P.***, 944 A.2d at 82. As such, because there is also evidence that supports the trial court's determinations, we must affirm.

Mother also challenges the trial court's determination under Section 2511(b). Specifically, Mother argues that she has a bond with Child, and that severing that bond would be detrimental to Child's best interests. Appellant's Brief at 20-21.

Section 2511(b) provides as follows:

**(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(b). When considering the needs and welfare of a child pursuant to the Section 2511(b) inquiry, the trial court must consider whether termination of parental rights would best serve the developmental,



physical and emotional needs of the child. ***In re C.M.S.***, 884 A.2d 1284, 1286-87 (Pa. Super. 2005), *appeal denied*, 587 Pa. 705, 897 A.2d 1183 (2006). “Intangibles such as love, comfort, security, and stability are involved in the inquiry into the needs and welfare of the child.” ***Id.*** at 1287 (citation omitted). 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.***

Considering Section 2511(b), the trial court did not deny the existence of a bond between Mother and Child, but focused on Child’s developmental, physical and emotional needs and welfare:

This [c]ourt’s concern with Mother’s ability to parent is compounded by the fact that [Child] is an autistic child. [Child’s] special needs are rather significant. He currently receives extensive care. He works with service providers and an occupational therapist for 11 hours a week, to say nothing of the involvement of foster mom, L.D. Because he is autistic, [Child] demands even more care than that of a typical four-year-old. Specifically, [Child] requires a great deal of stability and structure. Dr. O’Hara believes that permanency for any child would be urgent, but for [Child] and other autistic children, permanency, structure and consistency are essential to development. Disruption in any child’s environment can result in great anxiety, which in turn results in emotional difficulties. Because [Child] is autistic, these disruptions can have a severe effect. A child that is autistic is not able to understand contextual things as a result of not possessing language at a developmentally appropriate level. Dr. O’Hara testified that Mother’s infrequent visitation with [Child] can have a destructive effect on an attachment between child

and caregiver. Mother's visitation has never truly been consistent, and Mother has not participated in [Child's] treatment since his removal. Aggravating the problem further is [Child's] exposure to Mother's threatening behaviors. Dr. O'Hara believe [sic] that if [Child] were returned to Mother without Mother remedying the conditions that led to removal, then [Child] would be at risk for depression, anxiety, [and] aggression. He would also be more at risk for social and academic difficulties. Indeed, [Child] exhibited such aggressive behavior following Mother's altercation outside of the courtroom. The type of permanency that [Child] requires is experiential permanency. That is, continued experiences of security, safety, stability and structure. Neither Dr. O'Hara nor this [c]ourt could surmise if or when Mother could be able to provide this requisite care for [Child]. For the aforementioned reasons, it is clear to this Court that terminating Mother's parental rights would be in [Child's] best interests.

Trial Court Opinion, 1/10/13, at 9-10 (citations to record omitted).

Again, we must conclude that the trial court's conclusions are supported by the evidence of record. Child receives extensive services with multiple different providers for a total of approximately 11 hours each week. N.T., 11/13/13, at 6-7. Dr. Terry O'Hara, a licensed clinical psychologist, testified that all children, but especially autistic children, need "increased structure, [] a sense of permanency, [and] [] a routine." **Id.** at 122. Dr. O'Hara performed an evaluation of Mother with Child and an evaluation of L.D. with Child, as well as an evaluation of Mother alone. **Id.** at 104. He diagnosed Mother as having a mood disorder and post-traumatic stress disorder as a result of a "pretty significant history of

sexual abuse and ... exposure to domestic violence as a child and adolescent in addition to several domestic violence relationships as an adult.” **Id.** at 109-10. Dr. O’Hara testified that Mother’s mental health issues and the presence of domestic violence in her life cause her to be overwhelmed by, and therefore unable to effectively handle, Child’s developmental issues. **Id.** at 113-14. He opined that Mother would have to address these issues with regular therapy for a period of at least six to eight months before she could appropriately care for Child. **Id.** at 114, 121.

Dr. O’Hara further testified that L.D. showed “stability and ... no history of substance abuse, domestic violence ... or mental health issues[.]” **Id.** at 116. Dr. O’Hara found that L.D. “understands the importance of structure with ... [Child][.] She was actively involved in his wrap-around care and she interacts well with him[.]” **Id.** He opined that Child is securely attached to L.D., that this attachment is Child’s primary attachment, and that L.D. provides nurturing, a sense of trust ,and security for Child that Child did not receive from Mother. **Id.** at 117. He also testified that if Child were returned to Mother at this time, Child would be at risk for developing depression, anxiety, and aggression, as well as academic and social difficulties. **Id.** at 120. Dr. O’Hara ultimately opined that “it is in [Child’s] best psychological interest to be adopted by [L.D.],” that Child urgently needs a sense of permanency, and that it is not in

Child's best interest to make him wait any longer for Mother to be able to effectively parent. **Id.** at 120-22. He added that "the benefits of permanency, security and safety for [Child] ... outweigh any possible detriment in termination of [Mother's] parental rights." **Id.** at 123.

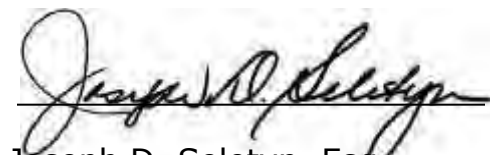
Mother points out that although Dr. O'Hara testified that Child needs permanency, he conceded that Child does not understand the concept of permanency. Appellant's Brief at 22. The record contains Dr. O'Hara's full statement on this issue, which is more nuanced than Mother lets on. When asked by Mother's counsel whether Child has "an awareness of the concept of permanency," Dr. O'Hara stated the following:

No, probably not, but I think that the permanency I am referring to in this case is an experiential permanency. It is a lived experience that he has of security and safety and stability and routine and structure and that sort of things [*sic*]. It is not a theoretical or intellectual understanding.

**Id.** at 130. In view of Dr. O'Hara's complete answer, which underscores his opinion that Child is in need of structure, stability and routine that Mother has not been able to provide, we are not swayed by Mother's point.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.  
Prothonotary

J-S20030-14

Date: 4/23/2014