

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: R.S., A MINOR

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: S.W., NATURAL MOTHER

No. 398 WDA 2014

Appeal from the Order February 10, 2014
in the Court of Common Pleas of Allegheny County
Orphans' Court at No.: TPR 149 of 2013

IN RE: D.H., A MINOR

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: S.W., NATURAL MOTHER

No. 399 WDA 2014

Appeal from the Order February 10, 2014
in the Court of Common Pleas of Allegheny County
Orphans' Court at No.: TPR 151 of 2013

IN RE: F.W., A MINOR

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: S.W., NATURAL MOTHER

No. 400 WDA 2014

Appeal from the Order February 10, 2014
in the Court of Common Pleas of Allegheny County
Family Court at No.: TPR 150 of 2013

BEFORE: BENDER, P.J.E., WECHT, J., and PLATT, J.*

MEMORANDUM BY PLATT, J.:

FILED JULY 28, 2014

In these consolidated appeals,¹ S.W. (Mother), appeals from the orders² of the Court of Common Pleas of Allegheny County that terminated her parental rights to her son, R.S., born in August of 2001, and her daughters, D.H., born in November of 2002, and F.W.,³ born in June of 2006 (Children).⁴ We affirm.

All three children came into the care of the Allegheny County Office of Children, Youth and Families (CYF) on March 5, 2012. They have not been in Mother's care since that date. The trial court adjudicated the Children

* Retired Senior Judge assigned to the Superior Court.

¹ This Court consolidated the appeals *sua sponte*, on March 26, 2014.

² Although the orders are dated February 7, 2014, the signature dates and the respective docket entries confirm that the orders were filed on February 10, 2014. We have amended the caption accordingly.

³ F.W. is also referred to in the record as "F.W.C."

⁴ The trial court also terminated the parental rights of A.L.C., the named father of R.S., and any unknown fathers of F.W. and D.H. pursuant to 23 Pa.C.S.A. § 2511(a)(1), (2), (5), (8) and (b). The named father and any surviving unknown fathers have not appealed. (**See** Trial Court Opinion, 4/07/14, at 1 n.1). D.H.'s father, B.H., died on August 24, 2005. (**See id.** at 2 n.2).

dependent on April 18, 2012, and placed them in their current kinship/pre-adoptive homes. CYF filed petitions to terminate the parental rights of Mother and the Children's known and unknown fathers on September 18, 2013, pursuant to 23 Pa.C.S.A. § 2511(a)(1), (2), (5), (8) and (b).

The primary factors that led CYF to petition to remove the Children from Mother in March of 2012 included her lack of housing, her drug use, her lack of cooperation with in-home services, and the fact that there were no fathers to assume care of the Children. (**See** Trial Ct. Op., at 2; **see also** N.T. Contested TPR Hearing, 2/05/14, at 11, 14, 17, 19, 25). Mother is single and has never been married. (**See** Trial Ct. Op., at 2). At the hearing, all counsel stipulated to the incorporation of Mother's CYF record for the purposes of the hearing. (**See** N.T. Contested TPR Hearing, 2/05/14, at 7). CYF also knew from Mother's prior involvement with the agency that she had a history of mental health problems, substance abuse and unstable housing.

Mother's Family Service Plan goals were to: 1) ensure supervision of the Children at all times; 2) obtain preventive medical and dental care for the Children; 3) achieve and maintain recovery for substance abuse problems; 4) obtain treatment for and stabilize her mental health; and, 5) obtain stable housing. (**See** Trial Ct. Op., at 2). The trial court found that Mother had never achieved any of these goals. (**See id.**). In five of the seven permanency review hearings the trial court conducted, it found that Mother had not complied with her permanency plan and had made no

progress towards alleviating the circumstances that necessitated the Children's placement. In the other two hearings, the trial court found that Mother's compliance and progress were minimal.

The trial court held a hearing on CYF's petitions on February 5, 2014. CYF Family Services Caseworker, Jennifer Joy Suber, was the only person who testified at that hearing. Ms. Suber testified, among other things, that Mother's visits with her Children were very infrequent. (**See** N.T. Hearing, at 37). On court order, Ms. Suber developed a visitation plan. Mother did not attend any of the scheduled visits. (**See id.**). Mother's last visit was in September of 2013. (**See id.**). Counsel also stipulated to the admission of the Psychological Evaluation Reports prepared by clinical psychologist, Neil D. Rosenblum, Ph.D. (**See id.** at 51).

On February 10, 2014, the trial court entered its orders terminating Mother's parental rights to the Children pursuant to subsections 2511(a)(2), (5), (8) and (b). Mother filed a timely notice of appeal and concise statement of errors complained of on appeal, on March 6, 2014. **See** Pa.R.A.P. 905(a)(2), 1925(a)(2)(i).

Mother raises the following single question on appeal:

Did the trial court abuse its discretion and/or err as a matter of law in concluding that termination of [Mother's] parental rights would serve the needs and welfare of the Children pursuant to 23 Pa.C.S. §2511(b)?

(Mother's Brief, at 9).

Mother asserts the trial court abused its discretion and erred as a matter of law by shifting the focus to her fault, and failing to analyze the emotional effect termination of her rights would have on the Children. (**See *id.*** at 17). We disagree.

Our standard and scope of review are well-settled:

In an appeal from an order terminating parental rights, our scope of review is comprehensive: we consider all the evidence presented as well as the trial court's factual findings and legal conclusions. However, our standard of review is narrow: we will reverse the trial court's order only if we conclude that the trial court abused its discretion, made an error of law, or lacked competent evidence to support its findings. The trial judge's decision is entitled to the same deference as a jury verdict.

In re L.M., 923 A.2d 505, 511 (Pa. Super. 2007) (citations omitted).

Further, we have stated:

Where the hearing court's findings are supported by competent evidence of record, we must affirm the hearing court even though the record could support an opposite result.

We are bound by the findings of the trial court which have adequate support in the record so long as the findings do not evidence capricious disregard for competent and credible evidence. The trial court is free to believe all, part, or none of the evidence presented, and is likewise free to make all credibility determinations and resolve conflicts in the evidence. Though we are not bound by the trial court's inferences and deductions, we may reject its conclusions only if they involve errors of law or are clearly unreasonable in light of the trial court's sustainable findings.

In re M.G., 855 A.2d 68, 73-74 (Pa. Super. 2004) (citations omitted).

Preliminarily, we note that in this appeal Mother only challenges the trial court's conclusion that termination of her parental rights would best

serve the needs and welfare of the Children. (**See** Mother's Brief, at 9). Mother expressly concedes that CYF "clearly and convincingly establish[ed] threshold grounds for termination pursuant to 23 Pa.C.S. § 2511(a)(2)."⁵ (**Id.** at 13). Therefore, Mother has abandoned any challenge to the involuntary termination of her parental rights based on evaluation of her own conduct under the provisions of § 2511(a).⁶

23 Pa.C.S.A. § 2511(b) provides, in pertinent part:

§ 2511. Grounds for involuntary termination

* * *

⁵ Subsection 2511(a)(2) provides that 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.A. § 2511(a)(2).

⁶ In any event, our review of the record confirms that under our standard and scope of review, such a challenge would not merit relief. We would defer to the factual findings of the trial court which found that "CYF provided clear and convincing evidence to prove all elements necessary to terminate under 23 Pa. C.S.A. § 2511(a)(2)[,] (5) and (8)." (Trial Ct. Op., at 4 n.3). Further, the trial court noted that "[M]other has done nothing to remedy the conditions which led to the [C]hildren's removal and continues to be incapable to parent these [C]hildren." (**Id.** at 8). **See In re M.G., supra** at 73-74.

(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).

The Adoption Act does not make specific reference to an evaluation of the bond between parent and child, but our case law has long required the evaluation of any such bond. **See *In re E.M.***, 620 A.2d 481, 484 (Pa. 1993); **see also *In re: T.S.M.***, 71 A.3d 251, 267 (Pa. 2013).⁷ In this case, we also note the trial court’s finding that “[M]other never attended any of the court ordered interactional evaluations with her [C]hildren[, so] there is no evidence that there is a bond.” (Trial Ct. Op., at 7).

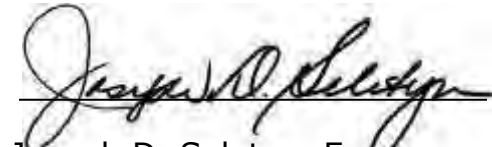
After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the trial court we conclude that there is no merit to the issue Appellant has raised on appeal. The trial court opinion properly disposes of the question presented. (**See** Trial Ct. Op., at 4-9) (finding that termination of Mother’s parental rights would best

⁷ Nevertheless, 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. **See *In re K.K.R.-S.***, 958 A.2d 529, 533 (Pa. Super. 2008).

serve the needs and welfare of the Children pursuant to 23 Pa.C.S.A. § 2511(b), as established by the testimony of Family Services Caseworker Suber, and the expert reports of Dr. Rosenblum). Accordingly, we affirm on the basis of the trial court's opinion.

Orders 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: 7/28/2014

THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
ORPHAN'S COURT

IN RE: D.H. a, minor

TPR No. 151-2013
399 WDA 2014

IN RE: F.W.C. a, minor

TPR No. 150-2013
400 WDA 2014

IN RE: R.S. a, minor

TPR No. 149-2013
398 WDA 2014

HONORABLE JOHN T. MCVAY, JR.

COPIES SENT TO:

Diann McKay, Esquire
OCYFS Legal Unit Adoption
Fort Pitt Commons
455 Fort Pitt Boulevard, Suite 101
Pittsburgh, Pa. 15219

Cynthia Moore, Esquire
Kids Voice
437 Grant Street, Suite 700
Pittsburgh, Pa. 15219

Kiersten Frankowski, Esquire
ACBA Juvenile Court Project
Suite 1100 Koppers Building
436 Seventh Avenue
Pittsburgh, Pa. 15219

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
ORPHAN'S COURT

In Re: D.H.
a, minor

TPR No: 151-2013
399 WDA 2014
JV Docket No.: -12-000561

F.W.C.
a, minor

TPR No: 150-2013
400 WDA 2014
JV Docket No.: 12-000560

R. S.
a, minor

TPR No: 149-2013
398 WDA 2014
JV Docket No.: 12-000563

OPINION

S.W., the mother of D.H. (D.O.B. 11/20/2002), F.W.C. (D.O.B. 8/19/2001) and R.S. (D.O.B. 6/2/2006), appeals the February 7, 2014 order of this court terminating her parental rights.¹

All three children came into the care of CYF on March 5, 2012, and have been out of the care of their parents since that time. The children were adjudicated dependent on April 18, 2012 and were placed into their current kinship care placements in April 2012.

CYF filed TPR petitions on September 18, 2013, that sought termination against the mother, A.L.C., the father of R.S., and the unknown fathers of all three

¹ At the same termination hearing on February 5, 2014, the parental rights of A.L.C., the father of R.S., were terminated pursuant to 23 Pa. C.S.A. § 2511 (a)(1)(2)(5) and (b) and the unknown fathers of R.S., F.W.C. and D.H. were terminated pursuant to 23 Pa. C.S.A. § 2511(a)(1)(2)(5)(8) and (b). The father and unknown fathers have not appealed and therefore this opinion addresses the facts related to the mother, S.W.

children pursuant to the Adoption Act of 1980, as amended under the following sections of 23 Pa. C.S.A. § 2511 (a)(1),(2)(5)(8) and (b).²

HISTORY

The mother is single and has never been married. CYF records indicate that the mother named B.H. as the father of D.H., who died on 8/24/2005. The mother named N.C. as the father of F.W.C., who was excluded by a paternity test in July of 2007, with no other fathers named. The mother named R.G.S. as the father of R.S., who was excluded by a paternity test in March of 2013. The mother had also named A.L.C. as the father of R.S.

The conditions which led to the removal and placement of the children in March of 2012 were the mother's lack of housing, concerns with her drug use and her lack of cooperation with in home services. CYF also had concerns due to the mother's prior history with the agency dating back to 2002. CYF's concerns included the mother's mental health, substance abuse and unstable housing. In addition, there were no fathers willing, able or available to care for the children. All three children were adjudicated dependent on April 18, 2012.

The mother's FSP goals were as follows: (1.) The mother was to ensure supervision of the children at all times. (2) The mother was to obtain preventive health and dental care for the children. (3.) The mother was to achieve and maintain recovery for substance abuse problems. (4.) The mother was to obtain treatment and stabilize her mental health issues. (5.) The mother was to obtain stable housing.

Throughout this case, the record is clear that the mother has not achieved any of her FSP goals. Since the children's removal from the mother in March of

² F.W.C. did not have any known fathers and paternity was never established. D.H.'s father, B.H died on 8/24/2005, and no other fathers were identified.

2012, the court conducted seven permanency review hearings. The court found that the mother had not complied with her permanency plan and had made no progress towards alleviating the circumstances which necessitated the children's original placement in five out of seven hearings. In the other two hearings the court found the mother to have minimal compliance and progress (see CYF exhibit 1 certified court orders and CYF exhibit 2, family service plans).

Caseworker, Jennifer Suber testified that since the removal of the children, the mother had received numerous referrals for mental health and drug treatment which the mother has failed to complete. The mother was referred to the Mon-Yough dual diagnosis program in September of 2012 and February of 2013 and failed to complete the treatment program, either time. CYF had made two referrals for POWER evaluations which the mother failed to complete. In addition, the mother was court ordered to have an IMACT/D&A evaluation which she failed to complete in November of 2013 (see H.T. 2/5/2014, pp. 26-32)

The caseworker also testified that the mother was referred to A Second Chance, Inc. to a parenting class which she never completed. The record also reflects that CYF had referred the mother to the Urban League on three separate occasions (February 2012, February 2013, and December 2013) to assist her to obtain housing in which she failed to follow up with the appointments (see H.T. 2/5/2014 pp. 33-36).

Ms. Suber also testified that the mother's visitation with her children was infrequent since their removal in March of 2012, with her last visit with her children being in September of 2013 (see H.T. 2/5/2014, pp. 36-38)

After the TPR hearing on February 5, 2014, and review of the exhibits, this court granted CYF's petition and found that CYF had met its burden of proof by

clear and convincing evidence that grounds for termination against the mother existed under 23 Pa. C.S.A. § 2511(a)(2)(5) and (8) and the termination met the needs and welfare of the children pursuant to 23 Pa. C.S.A. § 2511(b).

On March 6, 2014, the mother filed a Notice of Appeal along with the following Concise Statement of Matters Complained on Appeal:

1. The trial court abused its discretion and/or erred as a matter of law in concluding that termination of Natural Mother's parental rights would serve the needs and welfare of the child pursuant to 23 Pa. C.S. § 2511(b).

DISCUSSION

First and foremost, the mother concedes that CYF has provided clear and convincing evidence to prove elements necessary to terminate under at least one of the following sections of 23 Pa. C.S.A. § 2511 (a)(2)(5) and (8).³ The mother alleges that this court erred as a matter of law or abused its discretion when it found that termination of her parental rights would serve the needs and welfare of the child.

Once the statutory requirement for involuntary termination of parental rights has been established under subsection (a), the court must consider whether the child's needs and welfare will be met by termination pursuant to subsection (b), citing In re D.W., 856 A.2d 1231, 1234 (Pa. Super 2004). In assessing the needs and welfare of the child, the court must determine whether a bond exists between the child and parent, and whether termination would destroy an existing, necessary and

³ This court finds that CYF provided clear and convincing evidence to prove all elements necessary to terminate under 23 Pa. C.S.A. § 2511(a)(2)(5) and (8).

beneficial relationship, In re C.S., 761 A.2d 1197,1202 (Pa. Super 2000). Before granting the petition to terminate the parental rights it is imperative that the court consider the intangible dimension of needs and welfare of a child – the love, comfort, security, and closeness – entailed in a parent/child relationship as well as the tangible dimension, In re C.S., Supra at 1202.

In re K.J. 936 A.2d 1128, 1134 (Pa. Super 2007)

This court finds CYF has provided clear and convincing evidence that the requirements of 23 Pa. C.S.A. § 2511 (b) have been met. CYF caseworker, Jennifer Suber provided credible evidence that the mother's visits with the children from January 2013 to January of 2014 were minimal at best and that since June of 2013, the mother had only one visit with the children which occurred in September of 2013 (see H.T. pp. 36-37). Dr. Rosenblum's reports indicated that all three children love their mother, but all have feelings of anger, rejection, disappointment and loss due to the mother's failure to visit them. Based on the mother's reported inability to address her FSP goals or maintain contact with the children, Dr. Rosenblum opined that the most appropriate permanency goal for all three children would be adoption (see Dr. Rosenblum's reports dated 12/14/2013, and 1/30/2014).⁴

In D.H.'s case, Dr. Rosenblum's clinical opinion was that adoption would eventually help D.H. achieve closure and come to terms or acceptance with the fact that she will not be returning to her mother. Dr. Rosenblum opined that D.H. will realize that she will have stability and a permanent home with her Aunt A. for the duration of her childhood and adolescent years. D.H. needs to be able to give herself permission to move on with her life and hopefully accept the goal of adoption as giving her the best opportunity for future developmental growth and

⁴ All parties stipulated to the admission of Dr. Rosenblum's reports into evidence.

happiness in the years to come (see Dr. Rosenblum's report dated 1/30/2014, pp. 5-6).

Dr. Rosenblum opined that for both R.S. and F.W.C., termination and adoption would meet the needs and welfare of both children at this time. Based on the fact that the mother has visited with the children infrequently, Dr. Rosenblum believes that the mother would not even be capable of understanding the developmental and emotional needs of the children. Dr. Rosenblum also indicates and the court emphasizes that both children had expressed to him a desire to remain in their court placements and be adopted (see Dr. Rosenblum's report dated 2/14/2013 to 12/20/2013).

Dr. Rosenblum's reports also indicate that the children experience emotional problems after being contacted by their mother. Specifically, F.W.C. worries at times she is not going to get enough and doesn't always trust that people will keep their word due to the mother's many broken promises. F.W.C. recalls times in her life when she was not always as safe or predictable as they are now and that talking with her mother will stir up these concerns and worries. In addition, Aunt A. reported to Dr. Rosenblum that D.H. tends to act up after contact with her mother and that she is emotionally hurt by the absence of her mother (see Dr. Rosenblum's report dated 1/30/2014, 12/14/2013 and 12/20/2014).

This court found clearly and convincingly that the children's pre-adoptive/kinship care homes and foster parents are providing the children with both the tangible and intangible dimensions of the needs and welfare of these children. Caseworker Suber, testified that the children's welfare and needs are being met in their respective pre-adoptive/kinship placements. Based on Ms.

Suber's personal observations, she testified that all three children are comfortable and relaxed in their pre-adoptive homes and that the foster parents provide them with a stable home environment (see H.T. 2/5/2014, pp. 43-47).

Dr. Rosenblum noted in his report dated 1/30/2014, that D.H. is doing well in the care of her foster mother whom she refers to as Aunt A. and she is doing well in school and is helpful at home. Dr. Rosenblum opined that Aunt A. has done a good job in giving D.H. a positive direction and providing her with a stable, supportive family environment (see Dr. Rosenblum's report dated 1/30/2014).

Dr. Rosenblum's individual and interactional evaluation reports of R.S. and his Uncle W. and F.W.C. and her Aunt D, dated 12/4/2013, 12/5/2013, 12/16/2013, 12/20/2013, indicates that both R.S. and F.W.C. are doing well in their pre-adoptive foster homes and doing well in school. R.S. is involved with community activities and sports and spends time with his Uncle W. Dr. Rosenblum noted that F.W.C. has confidence in her Aunt D. to take care of her (see Dr. Rosenblum's report dated 12/14/2013-12/20/2013, pp. 2-9).

The court recognizes that the children love and miss their mother, but since the mother never attended any of the court ordered interactional evaluations with her children there is no evidence that there is a bond. A proper section 2511(b) analysis focuses on whether termination of parental rights would best serve the developmental, physical and emotional needs and welfare of the child. In Re T.D., 949 A2d 910, 920 (Pa. Super 2008). In Re C.M.S., 884 A2d, 284, 1287, (Pa. Super, 2005), the court stated, "Intangibles, such as love, comfort, security and stability are included in the inquiry into the needs and welfare of the child." The evidence was clear to the court that the mother has failed to provide her

children with the security, love, comfort and stability, required to meet their needs and welfare.

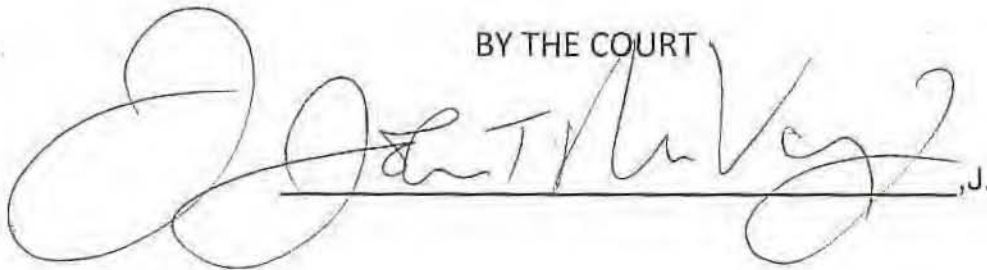
In this case, the court finds clear and convincing evidence that termination of the mother's parental rights would best serve the developmental, physical and emotional needs and welfare of the children based on the totality of the circumstances in this case. In addition, the court also finds that severance of the bond will not be harmful for the children since it is evident to the court that the mother's lack of visits and broken promises continues to cause the children emotional pain that will diminish if they are permitted to move forward.

First and foremost, all three children are in pre adoptive kinship homes which provide them with stabile, loving homes. Two of the children D.S. and F.W.C. have expressed their desire to remain with their pre-adoptive homes and be adopted. The third child, D.H. has been more ambivalent to adoption, but Dr. Rosenblum has provided his expert opinion that she needs termination and adoption to be able to move forward and that the goal of adoption meets the needs and welfare of all the children.

The record is clear that the mother has done nothing to remedy the conditions which led to the children's removal and continues to be incapable to parent these children. It clearly does not meet their needs and welfare to continue to wait for the mother to address her FSP goals. Thus, due to the mother's lack of progress, it is clear that termination meets the needs and welfare of the children.

CONCLUSION

The averment of error claims the court abused its discretion in concluding that CYF had met its burden of proving that termination of the mother's parental rights would best serve the needs and welfare of the children pursuant to 23 Pa. C.S. § 2511(b). Based on clear and convincing evidence, this court finds that termination of the mother's parental rights and adoption will meet the children's needs and welfare and no reversible error occurred and the court's findings should be affirmed.

BY THE COURT

J.