

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: C.C., A MINOR

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: C.L., MOTHER

No. 347 MDA 2015

Appeal from the Order Entered January 5, 2015
In the Court of Common Pleas of Mifflin County
Orphans' Court at No(s): Parental Action No. 16 of 2014

BEFORE: ALLEN, J., OTT, J., and STRASSBURGER, J.*

MEMORANDUM BY OTT, J.:

FILED JULY 31, 2015

C.L. ("Mother") appeals from the order entered January 5, 2015, in the Court of Common Pleas of Mifflin County, which involuntarily terminated her parental rights to her minor daughter, C.C. ("Child"), born in February of 2003.¹ We affirm.

The orphans' court summarized the relevant factual and procedural history, as follows.

Mother has two prior indicated reports of abuse. In 1999, Mother and Father . . . were indicated as perpetrators for

* Retired Senior Judge assigned to the Superior Court.

¹ The parental rights of Child's father, R.C. ("Father"), were terminated by a separate order entered on December 16, 2014, after Father agreed to relinquish his rights to Child voluntarily. Father is not a party to the instant appeal.

medical neglect of one of their sons, and in 2005, Mother was indicated as a perpetrator by omission and [Father] was indicated as a perpetrator for sexual abuse with [Child's] sister, D.C.

Since 1999, [M]other has received a plethora of family services from Cumberland County, Perry County and Mifflin County. Cumberland County Children and Youth were involved with the family from approximately 1999 through August of 2003. In October of 2008, when the family moved from Cumberland County to Perry County, Perry County Children and Youth had an open case with the family to provide assistance with Mother and Mother's present husband, [Husband], to help meet the basic and special needs of each child. [Mifflin County Children and Youth Social Services Agency ("the Agency")] began working with the family, through referral received October 4, 2010, when the family moved to Mifflin County.

On November 10, 2010, the Agency made a referral to Family Based Services, on the assertion by Mother and [Husband] that the children were bad and needed assistance. The Agency's Intake Unit also transferred the case to the In-Home Unit on December 3, 2010 based on a history of sexual abuse and the resulting trauma of that abuse and Perry County CY's concern about the family requesting assistance with parenting. During this time, Family Based Services reported that Mother and [Husband] had unrealistic expectations for their four children. On February 21, 2011, due to a lack of commitment to participate in the offered services, Family Bases Services advised Mother and [Husband] that they would be closing services with the family.

In June 2011, the Agency made a referral to Family Intervention Crisis Services (hereinafter "FICS") with the Family Preservation Unit, after several referrals from Highland Park Elementary. The first report from Highland Park Elementary came on March 1, 2011, when [Child] reported [Husband] had hit her. Two days later, on March 3, 2011, Highland Park Elementary reported that [Child] had a scratch on her nose due to [Husband] hitting her in the face with a remote, to which [Husband] admitted. The last referral from Highland Park Elementary came on June 1, 2011, when [Child] went to school dirty and dressed in pajamas.

FICS opened with the family on June 27, 2011. During these parental education sessions with FICS, Mother was resistant to any services for herself. Instead, Mother saw herself as a victim and blamed the four children for the chaos in the home. Mother and [Husband] would focus on the bad things the children had done and how it made their life miserable. Throughout the sessions, FICS had the following concerns: inappropriate discipline and inactive parenting; failure of Mother and [Husband] to put their own needs aside in order to effectively parent; Mother and [Husband's] negative parenting, such as labeling the children as the devil, bad, or whore and seeing the children as a burden and troublesome. Due to Mother's argumentative nature and refusal to accept help, FICS unsuccessfully closed services with the family on November 30, 2011. Mother and [Husband] reported to the Agency that FICS was the problem, not them. The Agency closed its case shortly thereafter on December 21, 2011.

The current case began when the Agency received a call from D.C., [Child's] sister, on July 10, 2012, after she had been kicked out and locked out of the home by [Husband]. Mother and [Husband] admitted to calling D.C. derogatory names and telling D.C. it was her fault that she was sexually assaulted by her natural father. The Agency was also concerned by reports from [Child] that she was required to wear a dirty pull-up on her head when she wet the bed, and made to take ice cold showers or was sprayed with a water hose or spray bottle for punishment. Both D.C. and [Child] reported that they were made to stand in the corner for hours at a time.

All four of the children residing at Mother and [Husband's] residence were later taken into protective custody when the police were called to the home. On July 11, 2012, Mother and [Husband] stated that they wanted [Child] to return to the home, but did not want her sister, D.C., to return. On that same date, Mother signed a Voluntary Placement Agreement for D.C. and [Child].

Orphans' Court Opinion, 1/5/2015, at 1-4 (citations to the record omitted).

On July 30, 2012, the Agency filed a dependency petition. ***Id.*** at 103.

Child was adjudicated dependent by order dated August 27, 2012. ***Id.*** at

103; Exhibit P-3. On September 17, 2014, the Agency filed a petition to terminate Mother's parental rights to Child involuntarily. A termination hearing was held on December 15, 2014, during which the orphans' court heard the testimony of psychologist, David Ray; Agency caseworker, Jessica Baumgardner; FICS Family Preservation Program Director, Chuck Pepper; and former FICS Family Service Aide, Erin McNaulty. On January 5, 2014, the court entered its order terminating Mother's parental rights. Mother timely filed a notice of appeal on February 4, 2015, along with a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b).

Mother now presents the following issues for our review:

I. Did the [orphans'] court err in ordering involuntary termination of Mother's parental rights under 23 Pa.C.S.[A.] §[]2511(a)(2), (a)(5), and (a)(8) when there was a lack of clear, convincing and sufficient evidence in support of those grounds for termination, particularly when Mother's capability and capacity to perform parental duties had been amply demonstrated by her care of the children that remained in her custody and care?

II. Did the [orphans'] court err in ordering involuntary termination of Mother's parental rights per 23 Pa.C.S.[A.] §[]2511(b) as serving the child's needs and welfare, when there was a lack of clear, convincing and sufficient evidence that the severing of the mother-child bond was in the child's best interest?

Mother's brief at 3 (orphans' court answers and suggested answers omitted).

We review this appeal according to the following standard:

The standard of review in termination of parental rights cases requires appellate courts to accept the findings of fact and

credibility determinations of the trial court if they are supported by the record. If the factual findings are supported, appellate courts review to determine if the trial court made an error of law or abused its discretion. A decision may be reversed for an abuse of discretion only upon demonstration of manifest unreasonableness, partiality, prejudice, bias, or ill-will. The trial court's decision, however, should not be reversed merely because the record would support a different result. We have previously emphasized our deference to trial courts that often have first-hand observations of the parties spanning multiple hearings.

In re T.S.M., 71 A.3d 251, 267 (Pa. 2013) (citations and quotation marks omitted).

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 on 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, the orphans' court terminated Mother's parental rights pursuant to Section 2511(a)(2), (5), (8), and (b). This Court need only agree with any one subsection of 23 Pa.C.S.A. § 2511(a), in addition to Section 2511(b), in order to affirm the termination of parental rights. ***In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*), *appeal denied*, 863 A.2d 1141 (Pa. 2004). Here, we conclude that the orphans' court properly terminated Mother's parental rights pursuant to Sections 2511(a)(2) and (b), which provide 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.

. . .

(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), (b).

In order to terminate parental rights pursuant to 23 Pa.C.S.A § 2511(a)(2), the following three elements must be met: (1) repeated and continued incapacity, abuse, neglect or refusal; (2) such incapacity, abuse, neglect or refusal has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being; and (3) the causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied.

In re Adoption of M.E.P., 825 A.2d 1266, 1272 (Pa. Super. 2003) (citation omitted)). “The grounds for termination due to parental incapacity that cannot be remedied are not limited to affirmative misconduct. To the contrary, those grounds may include acts of refusal as well as incapacity to perform parental duties.” ***In re A.L.D.***, 797 A.2d 326, 337 (Pa. Super. 2002) (citations omitted).

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 63.

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

On appeal, Mother argues that the orphans' court erred by concluding that she is incapable of parenting Child, because she currently is parenting her son, J.L., and her stepson, A.L., successfully, and because she benefitted from the services she received with respect to both of those children. Mother's brief at 9-10. Mother acknowledges that this Court has held that a parent's ability to properly care for a child is not relevant or inadmissible with respect to that parent's ability to care for a different child who is the subject of termination proceedings. **Id.** (citing ***In re A.L.D.***, *supra*). However, she suggests that Pennsylvania's appellate courts should "revisit" that holding. **Id.** Mother further argues that she has a strong bond with Child, and that terminating Mother's parental rights will cause Child to experience "certain trauma and grief." **Id.** at 13-14. Mother emphasizes that there was no pre-adoptive foster home in place for Child at the time of the termination hearing. **Id.** at 14-15.

In its opinion accompanying the subject order, the orphans' court found as follows:

Here, the Agency, by clear and convincing evidence, established the termination grounds found in § 2511(a)(2) relative to Mother. The record shows that Mother has received a plethora of services dating back to 1999. Despite these services, Mother has refused to accept help and work towards reunification. Numerous agencies were met with argumentative and defensive measures with no significant change in progress.

This has caused [Child] to be without essential parental care, control or subsistence necessary for her physical or mental well-being. Mother's judgment problems, her lack of emotional insight, and her inability to provide a safe and secure environment for her children make her incapable of fulfilling her role as a competent parent.

Orphans' Court Opinion, 1/5/2015, at 6. The testimonial evidence supports the court's findings, as follows.

Caseworker, Jessica Baumgardner, testified that the Agency developed a series of Child Permanency Plans after Child was adjudicated dependent. N.T., 12/15/2014, at 103. Ms. Baumgardner explained that Mother was asked to complete a variety of parenting objectives, which focused on improving Mother's parenting skills, and on assessing and treating her mental health. **Id.** at 104-05. Ms. Baumgardner noted that the goals relating to Mother's parenting skills were addressed by FICS. **Id.** at 105. With respect to Mother's mental health, Mother first was asked to attend a mental health assessment in 2012, but did not comply with that request until June of 2013. **Id.** Mother now attends couples counseling, but has been unable to articulate what, if anything, she has learned as a result of this counseling. **Id.** at 105-06, 111.

FICS Family Preservation Program Director, Chuck Pepper, testified that Mother and her family first were referred to FICS in June of 2011. **Id.** at 114. FICS offered Mother and Husband family counseling, including "extensive parent education," which was "specifically geared toward teaching them empathy," and helping them "process their own emotions." **Id.** at

117-18. Mother also was offered individual counseling sessions. ***Id.*** at 118. However, Mother refused individual counseling. ***Id.*** at 119. Services were closed in November of 2011, because D.C. had been removed from the home, and due to a lack of progress from Mother and Husband. ***Id.*** at 119, 121, 123.

Mr. Peffer further testified that FICS received a second referral on July 19, 2012, after Child was placed in foster care. ***Id.*** at 123. Mother and Husband again were offered services, and again failed to make progress. ***Id.*** at 129, 145. Mr. Peffer explained that Mother participated in services, but showed poor cooperation. ***Id.*** at 137-38. Mother and Husband insisted on blaming their children for the problems in the home, and disregarded the parenting instruction offered by FICS. ***Id.*** at 127, 129-30. For example, Mother “made statements that she believed the devil was inside the children. . . . And from that basis she believed that the children were faulted, in essence. That they were bad.” ***Id.*** at 138. Mother also rejected the idea that her children did not feel loved, and contended instead that “kids . . . these days just want stuff. . . . [T]hat’s why the girls like being in foster care because they’re getting stuff. They don’t want love.” ***Id.*** at 142. Notably, Husband indicated during this time that he did not want Child and D.C. returned to the home. ***Id.*** at 133. When asked whether she rather would regain custody of Child and D.C. or stay with Husband, Mother reported that

she would prefer to stay with Husband. **Id.** at 134-35. Thus, services were closed a second time in May of 2013. **Id.** at 130.

Ms. Erin McNaulty testified that she was involved with the family as a FICS Family Service Aide starting on September 24, 2012. **Id.** at 145-46. Ms. McNaulty explained that she provided Mother and Husband with parenting education twice per month from April of 2013 until October of 2013. **Id.** at 146. She also provided Mother and Husband with visitation every other week. **Id.** Ms. McNaulty agreed that Mother was resistant to parenting instruction, and that she made little progress during this time. **Id.** at 155, 167-68.

Psychologist, David Ray, testified that he conducted a psychological evaluation of Mother, and that he assessed, *inter alia*, Mother's ability to parent Child. **Id.** at 25. Mr. Ray diagnosed Mother with "NOS, mixed personality disorder." **Id.** at 43. Mr. Ray explained that Mother suffers from "an extensive amount of paranoid traits," as well as passive aggressive traits, histrionic traits, and narcissistic traits. **Id.** at 44.

Mr. Ray further testified that he interviewed and evaluated Child. **Id.** at 45. Child has an IQ of 60, which indicates that she functions "at the range of . . . intellectual disability mild." **Id.** at 48. In addition, Child suffers from Attention Deficit Hyperactivity Disorder, and Post-Traumatic Stress Disorder. **Id.** at 50. Mr. Ray observed that Child's mental health

issues “will require far more parenting demands than the average child,” and that she will be “a challenge to place” ***Id.***

With respect to Mother’s ability to parent Child, Mr. Ray opined that Mother’s mental health issues will “markedly interfere with her ability to think, reason, think logically, abstractly, make appropriate judgments and so forth,” and that Mother will have “enough trouble taking care of herself,” let alone caring for an average child. ***Id.*** at 51-52. In addition, Mr. Ray opined that parenting Child in particular “is a tremendous task,” and that Mother “doesn’t have it in her.” ***Id.*** at 52, 63. Mr. Ray stated that he knows of no services that could remedy Mother’s parental incapacity. ***Id.*** at 64-65.

Thus, the testimonial evidence demonstrates that Mother is incapable of parenting Child; that Mother’s parental incapacity has left Child without essential parental care, control or subsistence; and that Mother cannot, or will not, remedy this incapacity. As observed by the orphans’ court, Mother has been offered services to improve her parenting skills for years. Mother has rejected these services, and has failed to make significant progress. While Mother contends that she is parenting two other children successfully, Mother also acknowledges that this Court has found such evidence to be irrelevant and inadmissible in termination cases. ***See A.L.D.***, 797 A.2d at 338 (“Significantly, evidence concerning a parent’s ability to care for another child is irrelevant and inadmissible in a proceeding to terminate parental rights with regard to the child at issue.”) (citations omitted). We are not

permitted to “revisit” the decisions of prior panels of this Court as Mother suggests. ***Commonwealth v. Pepe***, 897 A.2d 463, 465 (Pa. Super. 2006) (“It is beyond the power of a Superior Court panel to overrule a prior decision of the Superior Court, except in circumstances where intervening authority by our Supreme Court calls into question a previous decision of this Court.”) (citations omitted). As such, Mother’s conduct warrants termination pursuant to Section 2511(a)(2).

Having determined that the orphans’ court properly terminated Mother’s parental rights pursuant to Section 2511(a)(2), we now review the order pursuant to Section 2511(b). The orphans’ court found as follows:

In this case, the Agency established terminating Mother’s parental rights serves the child’s best interests. Mr. Ray found that [Child] does not have a healthy secure attachment to Mother. Rather, a disorganized attachment exists where [Child’s] need for emotional closeness is unseen or ignored, and Mother’s behavior is the source of disorientation or terror. While [Child] does have a relationship with her mother, the [c]ourt believes that any negative effects of severing the bond between [Child] and [M]other are far outweighed by the positive benefits of living in a warm, loving, stable, secure and nurturing environment where [Child] can continue to heal.

Mr. Ray’s evaluation found that parenting [Child] will be an extremely difficult task, and that whoever parents [Child] will need extensive help with services to deal with her ADHD behavior, her intellectual disabilities and her aggressive sexualized behavior. In spite of the extensive training offered to Mother by a number of agencies, Mother’s parenting abilities remain limited. Mother cannot adequately parent [Child] and lacks the capacity to provide her with an appropriate home environment. While the [c]ourt acknowledges that Mother loves and cares about [Child], [Child] would be deprived of a permanent, healthy, safe, and secure parent/child relationship if Mother’s rights were maintained. Therefore, the [c]ourt finds

terminating Mother's parental rights serve[s] [Child's] developmental, physical, and emotional needs and welfare.

Orphans' Court Opinion, 1/5/2015, at 8-9. Again, the testimonial evidence supports the court's findings.

Ms. McNaulty testified that Child wanted to attend visits with Mother, and that Child enjoyed going to visits. N.T., 12/15/2014, at 157, 160. Child also enjoyed having Mother help her with homework. ***Id.*** at 149. Mr. Ray testified that Child has an attachment to Mother, but that it is an "insecure, disorganized attachment." ***Id.*** at 66. Mr. Ray explained that a disorganized attachment "is where the child becomes dis-regulated. . . . Meaning the child goes to a visit, [and] it causes acting out. The relationship with that person causes distress and behavioral problems, et cetera." ***Id.*** at 66-67. Mr. Ray opined that returning Child to Mother's home "would be an absolute disaster." ***Id.*** at 79. Mr. Ray further opined that Child likely will experience some "[e]motional upheaval" if Mother's parental rights are terminated, but that Child will endure only "minimal" trauma, and that the benefits of termination will outweigh any distress that Child might experience. ***Id.*** at 80-81, 83.

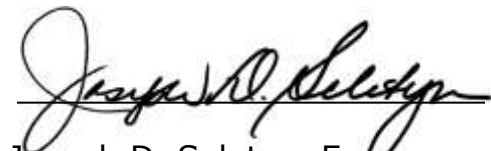
Based upon this evidence, we discern no abuse of discretion by the orphans' court in terminating Mother's parental rights to Child pursuant to Section 2511(b). The record supports the orphans' court's conclusion that any negative impact that Child might experience as a result of terminating Mother's parental rights will be outweighed by the benefits that Child will

receive from living in a loving and stable environment. While Mother points out that there was no pre-adoptive resource in place for Child at the time of the termination hearing, it is well-settled that a pre-adoptive placement is not necessary to terminate parental rights when termination is sought by a child protective services agency. ***T.S.M.***, 71 A.3d at 268 (citing 23 Pa.C.S. § 2512(b)) (“Notably, however, the Adoption Act specifically provides that a pending adoption is not a prerequisite to termination of parental rights involving agencies such as CYF”).

Accordingly, we affirm the order involuntarily terminating Mother’s parental rights pursuant to 23 Pa.C.S.A. §§ 2511(a)(2) and (b).

Order 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: 7/31/2015