

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN RE: RELINQUISHMENT OF: A.S.

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: J.B., FATHER

No. 599 MDA 2015

Appeal from the Order entered March 2, 2015,  
in the Court of Common Pleas of Lackawanna County, Orphans'  
Court, at No(s): A-60 of 2014

BEFORE: ALLEN, OTT, and STRASSBURGER\*, JJ.

MEMORANDUM BY STRASSBURGER, J.:

**FILED JULY 31, 2015**

J.B. (Father) appeals from the order entered March 2, 2015, in the Court of Common Pleas of Lackawanna County, which terminated involuntarily his parental rights to his minor son, A.S. (Child), born in September of 2003.<sup>1</sup> We affirm.

Father was incarcerated in 2008, and currently resides in Auburn Correctional Facility in Auburn, New York. Father was convicted of two counts of first degree murder, and is serving an aggregate sentence of twenty-five years to life in prison. Prior to being incarcerated in New York, Father reportedly was incarcerated in Peru. As discussed, *infra*, Father has seen Child only twice, and last saw Child when he was approximately four years old.

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\* Retired Senior Judge specially assigned to the Superior Court.

<sup>1</sup> Child's mother, T.P. (Mother), relinquished her parental rights to Child voluntarily. She is not a party to the instant appeal.

Child was placed in foster care on October 23, 2010, and was adjudicated dependent on November 18, 2010. Child was adjudicated dependent based on allegations that he had been abused by Mother. These allegations later were determined to be unfounded. However, Child was not returned to Mother's care due to, *inter alia*, Child's behavioral issues and his strained relationship with Mother.

On September 9, 2011, Child was placed in a residential treatment facility due to his severe mental health and behavioral issues. Child resided at the residential treatment facility until November 13, 2012. Since that time, Child has been hospitalized on six occasions due to mental health issues, and has resided in twelve different foster homes and one shelter. Child has been diagnosed with mood disorder, post-traumatic stress disorder, pervasive development disorder, and parental conflict.

On July 15, 2014, the Lackawanna County Office of Youth and Family Services (the Agency) filed a petition to terminate Father's parental rights to Child involuntarily. A termination hearing was held on August 28, 2014. On March 2, 2015, the orphans' court entered its order terminating Father's parental rights. Father timely filed a notice of appeal, along with a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b).

Father now raises the following issues for our review.

A. Whether the [orphans'] court erred as a matter of law and/or manifestly abused its discretion in determining the Agency

sustained its burden of proving the termination of Father's parental rights is warranted under Section 2511(a)(1) and/or 2511(a)(2) of the Adoption Act?

B. Even if this Court concludes the Agency established statutory grounds for the termination of Father's parental rights, whether the [orphans'] court nevertheless erred as a matter of law and/or manifestly abused its discretion in determining the Agency sustained its additional burden of proving the termination of Father's parental rights is in the best interests of the minor child?

Father's brief at 5 (suggested answers and unnecessary capitalization omitted).

We consider Father's claims mindful of our well-settled standard of review.

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, 23 Pa.C.S. §§ 2101-2938, which requires a bifurcated analysis.

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) (citations omitted).

In this case, the orphans' court terminated Father's parental rights pursuant to Sections 2511(a)(1), (2), and (b). We need only agree with the orphans' court as to any one subsection of Section 2511(a), as well as Section 2511(b), in order to affirm. ***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 analyze the court's decision to terminate under Section 2511(a)(2) and (b), 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.

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**(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. § 2511(a)(2) and (b).

We first address whether the orphans' court abused its discretion by terminating Father's parental rights pursuant to Section 2511(a)(2).

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). "[A] parent's incarceration is relevant to the section (a)(2) analysis and, depending on the circumstances of the case, it may be dispositive of a parent's ability to provide the 'essential parental

care, control or subsistence' that the section contemplates." *In re A.D.*, 93 A.3d 888, 897 (Pa. Super. 2014) (discussing *In re Adoption of S.P.*, 47 A.3d 817 (Pa. 2012)).

Instantly, Father contends that the Agency failed to produce clear and convincing evidence that his parental rights should be terminated pursuant to Section 2511(a)(2). Father's brief at 7, 11. In its opinion, the orphans' court explained that Father's lengthy incarceration renders him incapable of parenting Child, and that Father's parental incapacity cannot be remedied. Orphans' Court Opinion, 3/23/2015, at 9-10.

After a thorough review of the record in this matter, we conclude that the orphans' court did not abuse its discretion. Agency caseworker, Lindsey Glezen, testified that Father has seen Child twice since his birth. N.T., 8/28/2014, at 26. Father saw Child once when he was a baby, and again when Child was four years old. *Id.* In addition, Father has been writing Child letters "[o]ver the last year or so." *Id.* at 31. Father writes letters to Child "consistently," but Ms. Glezen did not know how many letters have been sent. *Id.* at 53, 58. Ms. Glezen believed that Child has written back to Father "once or twice." *Id.* at 31.

Father agreed that he has seen Child on only two occasions. *Id.* at 105. However, Father testified that Child was five years old at the time of his most recent visit. *Id.* at 104. Father stated that he writes to Child every month, and that he writes extra letters on holidays and on Child's birthday.

**Id.** at 105. Father further agreed that Child has responded to him twice. **Id.** at 106. Father claimed that Child “was adamant about getting in contact with me. He just really wanted to see me.” **Id.** at 108. Father noted that he will be eligible for parole in approximately 2033. **Id.** at 103-04.

Accordingly, the record confirms that Father is incapable of parenting Child; that Father’s parental incapacity has left Child without essential parental care, control, or subsistence; and that Father cannot remedy his parental capacity. Father is incarcerated and, at the earliest, Father will be paroled when Child is approximately 29 or 30 years old. In addition, Father has never cared for Child, or displayed that he is capable of supporting Child in any way. While Father writes Child monthly letters, this does not make up for Father’s complete inability to act as Child’s parent. No relief is due.

We next consider whether the orphans’ court abused its discretion by terminating Father’s parental rights under Section 2511(b). We have discussed our analysis under Section 2511(b) 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).

Here, Father argues that he is bonded with Child. Father's brief at 14. Father also emphasizes Child's history of unstable foster care placements, and contends that there is a "substantial likelihood" that Child never will be adopted. **Id.** at 7, 13-16. In contrast, the orphans' court found that there is "no observable bond" between Father and Child, and that terminating Father's parental rights would improve Child's chances of finding an adoptive family. Orphans' Court Opinion, 3/23/2015, at 10-13.

Again, we conclude that Father is not entitled to relief. Ms. Glezen testified that Child moved to his current foster placement on the Friday prior to the termination hearing. N.T., 8/28/2014, at 29. Ms. Glezen noted that there is a possibility that the current foster family will decide to adopt Child, but that this issue has not yet been discussed with Child's foster parents. **Id.** at 54-55. Ms. Glezen further testified that she has seen nothing which would indicate that Father and Child are bonded.<sup>2</sup> **Id.** at 51.

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<sup>2</sup> On cross-examination, Ms. Glezen was asked about a letter that Child sent to Father. N.T., 8/28/2014, at 60. The orphans' court described the letter as follows: "[I]t's a picture -- if it's drawn by the child, it says you and me, and there's a big heart. Dad and kid." **Id.** at 61. Based on this letter, Ms. Glezen admitted that, "[i]t appears that [Child] was happy at that point to speak to his father." **Id.** at 61-62. The letter was admitted into evidence as Exhibit D-1. **Id.** at 63. However, Exhibit D-1 is not contained in the certified record on appeal.



Ms. Melanie Rehrig testified that she is a permanency services supervisor at Diakon Adoption and Foster Care, and that Diakon currently is providing Child Specific Recruitment for Child.<sup>3</sup> **Id.** at 74-76. Ms. Rehrig stated that it is more difficult to find an adoptive family for a child when parental rights have not been terminated. **Id.** at 76-77. She explained that, “during the matching process, families might be hesitant to ... consider a youth that doesn’t have that [termination of parental rights] again, just because they don’t want to bring a child into the home and care for them and love them and then potentially risk losing [sic] that child.” **Id.** at 78. Additionally, Ms. Rehrig noted that Lackawanna County has not granted Diakon permission to publish a photo of Child. **Id.** at 80, 87. Ms. Rehrig believed that Diakon would be permitted to publish a photo if Father’s parental rights were terminated, but she was not certain. **Id.** at 87, 97. Ms. Rehrig also discussed the possibility of having Child featured in a television segment in the event Father’s rights were terminated. **Id.** at 79-80.

Thus, the record supports the finding of the orphans’ court that terminating Father’s parental rights will serve Child’s needs and welfare. Child last saw Father when he was approximately four years old. While Father recently began writing letters to Child, and while Child sent at least

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<sup>3</sup> Ms. Rehrig acknowledged that Diakon’s Child Specific Recruitment service would expire in November of 2014, but explained that the Agency could renew the service for another year. N.T., 8/28/2014, at 85. In addition, Child has been referred to the Older Child Matching Initiative, which would continue even if the Agency did not renew the Child Specific Recruitment service. **Id.** at 85-86.

one positive response, these facts do not establish that Father and Child share a bond. Moreover, the evidence demonstrates that terminating Father's parental rights will aid Child's search for a permanent home. At the very least, termination will eliminate the possibility that an adoptive family will be discouraged from considering Child due to Father's ongoing involvement in Child's life. Finally, Father's argument that Child likely never will be adopted is meritless. While Child's chances of being adopted may be limited by his serious mental health issues, failing to terminate Father's parental rights in this matter would condemn Child to spend the rest of his youth in foster care, with no chance of finding a permanent and stable home. This clearly would not be in Child's best interest.

Accordingly, because we conclude that the orphans' court did not abuse its discretion by terminating Father's parental rights to Child involuntarily, we affirm the order of the orphans' court.

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