NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: C.M., A MINOR	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: W.M., FATHER	No. 1906 EDA 2013

Appeal from the Decree May 30, 2013
In the Court of Common Pleas of Philadelphia County
Family Court at No(s): CP-51-AP-0000137-2013

BEFORE: SHOGAN, J., OTT, J., and PLATT, J.*

MEMORANDUM BY OTT, J. **FILED APRIL 15, 2014**

W.M. ("Father") appeals from the decree entered in the Court of Common Pleas of Philadelphia County that involuntarily terminated his parental rights to his daughter, C.M., born in March of 2010. We affirm the decree, and grant the amended petition for leave to withdraw as counsel filed by Father's counsel.

On March 5, 2013, the Philadelphia Department of Human Services, Children and Youth Division ("DHS"), filed a petition for the involuntary termination of parental rights of Father and D.L. ("Mother"), pursuant to 23

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* Retired Senior Judge assigned to the Superior Court.

Pa.C.S.A. § 2511(a)(1), (2), (5), (8), and (b).[1] On May 30, 2013, the trial court held a hearing on the petition with respect to Father,[2] during which the following witnesses testified: Monica Kras, case manager at Lutheran Children and Family Services; Molly McNeill, DHS caseworker; and Father, who testified *via* telephone from the State Correctional Institution ("SCI") at Rockview. The testimonial evidence revealed as follows, in relevant part.

Ms. McNeill testified that this family became known to DHS, in part, upon receiving two reports, in May and July of 2010, of domestic violence between Mother and Father. N.T., 5/30/13, at 24-25, 51. In the latter report, the allegations were that Father had become "very violent" and destroyed the apartment where Mother, C.M., and C.M.'s older half-sister were living. *Id.* at 52. DHS investigated the report and found it indicated. *Id.* As a result, DHS removed C.M. from Mother's care in July of 2010. *Id.* at 52-53. C.M. now resides in a pre-adoptive foster home with her foster mother.[3] *Id.* at 12, 15.

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[1] Mother's parental rights to C.M. were involuntarily terminated by decree entered on March 21, 2013, and she did not appeal.

[2] The hearing also included the petition for the involuntary termination of parental rights with respect to J.B., the biological father of C.M.'s older half-sister, who is not a subject of this appeal.

[3] Another sibling of C.M. resides with her in the same foster home. N.T., 5/30/13, at 12.

DHS established the following Family Service Plan ("FSP") goals for Father: maintain current contact information with DHS; maintain contact with C.M.; participate in parenting classes; attend the Achieving Reunification Center ("ARC") program and participate in employment training, job training, and drug and alcohol services. *Id.* at 53-54. Ms. McNeill testified that Father did not satisfy any of his FSP goals. *Id.* at 54-56. Moreover, Ms. Kras, the case manager at Lutheran Children and Family Services, testified that she sent correspondence to Father in prison that included her contact information. *Id.* at 21-22. Ms. Kras indicated that Father never expressed any interest to her with respect to maintaining a relationship with C.M. *Id.* at 21.

Ms. Kras testified that Father has been incarcerated the entire time C.M. has been in placement, and C.M. has not seen Father during this time. *Id.* at 18-19. Ms. McNeill stated that Father is incarcerated for crimes relating to the domestic violence incident in July of 2010. *Id.* at 57. Father testified that, in 2010, he was convicted of a crime involving possession of a firearm, for which he received a term of incarceration of three to seven years. *Id.* at 64.

By decree dated and entered on May 30, 2013, the trial court involuntarily terminated Father's parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(1), (2), (5), (8), and (b). On June 27, 2013, the trial court appointed new counsel to represent Father on appeal. Father's trial counsel,

not his newly appointed appellate counsel, filed a notice of appeal and a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b) on June 28, 2013.[4]

On October 21, 2013, Father's appellate counsel filed a petition for leave to withdraw as counsel and an ***Anders***[5] brief. By order dated February 21, 2014, this Court directed counsel to file an amended petition to withdraw because counsel had failed to comply with all the requirements for withdrawal. On March 3, 2014, Father's counsel filed an amended petition for leave to withdraw, which we address initially.[6] ***See Commonwealth v. Rojas***, 874 A.2d 638, 639 (Pa. Super. 2005) (stating, "[w]hen faced with a purported ***Anders*** brief, this Court may not review the merits of the

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[4] In its opinion pursuant to Pa.R.A.P. 1925(a), the trial court requested that the appeal be dismissed because Father's alleged error was vague and failed to set forth the basis for the appeal. On July 24, 2013, Father's appellate counsel filed a motion with the trial court requesting permission to file a supplemental concise statement. By order dated August 7, 2013, the trial court granted the request of Father's appellate counsel to file a supplemental concise statement of errors complained of on appeal within ten days, and counsel timely complied. Pursuant to an order of this Court, the trial court issued a Rule 1925(a) supplemental opinion on September 9, 2013.

[5] ***Anders v. California***, 386 U.S. 738 (1967).

[6] In ***In re V.E.***, 611 A.2d 1267 (Pa. Super. 1992), this Court extended the ***Anders*** principles to appeals involving the termination of parental rights. We stated that counsel appointed to represent an indigent parent on a first appeal from a decree involuntarily terminating parental rights may, after a conscientious and thorough review of the record, petition this Court for leave to withdraw representation and must submit an ***Anders*** brief. ***Id***. at 1275.

underlying issues without first passing on the request to withdraw[]") (citation omitted).

To withdraw pursuant to ***Anders***, counsel must perform each of the following tasks:

> (1) petition the court for leave to withdraw stating that after making a conscientious examination of the record and interviewing the defendant, counsel has determined the appeal would be frivolous;
>
> (2) file a brief referring to anything that might arguably support the appeal, but which does not resemble a "no merit" letter or *amicus curiae* brief; and
>
> (3) furnish a copy of the brief to defendant and advise him of his right to retain new counsel, proceed *pro se* or raise any additional points that he deems worthy of the court's attention.

In re S.M.B., 856 A.2d 1235, 1237 (Pa. Super. 2004). Thereafter, this Court examines the record and determines whether the appeal is wholly frivolous. ***Id.***

Our Supreme Court, in ***Commonwealth v. Santiago***, 978 A.2d 349 (Pa. 2009), stated that an ***Anders*** brief must comply with the following factors:

> (1) provide a summary of the procedural history and facts, with citations to the record;
>
> (2) refer to anything in the record that counsel believes arguably supports the appeal;
>
> (3) set forth counsel's conclusion that the appeal is frivolous; and
>
> (4) state counsel's reasons for concluding that the appeal is frivolous. Counsel should articulate the relevant facts of record,

> controlling case law, and/or statutes on point that have led to the conclusion that the appeal is frivolous.

Id. at 361.

With respect to the third requirement of ***Anders***, that counsel inform the defendant of his rights in light of counsel's withdrawal, this Court has held that counsel must "attach to their petition to withdraw a copy of the letter sent to their client advising him or her of their rights." ***Commonwealth v. Millisock***, 873 A.2d 748, 752 (Pa. Super. 2005).

In this case, Father's counsel did not originally comply with the third requirement of ***Anders***, in that he failed to attach to his petition a copy of his letter informing Father of his intent to file the petition to withdraw, and advising Father of his right to retain new counsel, to file a brief on his own behalf, or to raise any additional points he deems worthy of review. By order dated February 21, 2014, this Court directed counsel to file an amended petition for leave to withdraw, providing Father with his letter advising him of his rights and further providing Father with a copy of his amended petition. Upon review, we conclude counsel has now satisfied the withdrawal requirements.

In his amended petition, Father's counsel has satisfied the first requirement of ***Anders*** by filing a petition to withdraw wherein he asserts that he has made a conscientious review of the record and interviewed Father. Further, counsel states that he has determined the appeal would be frivolous. In addition, counsel has satisfied the second requirement by filing

an ***Anders*** brief that complies with the requirements set forth in ***Santiago***, ***supra***. With respect to the third requirement, counsel has attached to the amended petition to withdraw a copy of the letter sent to Father advising him of his rights, and he has filed a proof of service indicating he has provided Father with a copy of the amended petition to withdraw and ***Anders*** brief.

We now review the merit of Father's issues on appeal, which counsel states as follows:

> 1. Whether DHS failed to make reasonable efforts before filing a petition for termination?
>
> 2. Whether Father's court-appointed [t]rial counsel's actions constituted ineffective assistance of counsel?

Anders brief at 14.

Our standard of review is as follows:

> [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.***, [___ Pa. ___, ___, 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.***, [___ Pa. ___], 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.***

In re Adoption of S.P., 47 A.3d 817, 826 (Pa. 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. ***In re R.N.J.***, 985 A.2d 273, 276 (Pa. Super. 2009).

This Court need only agree with any one subsection of Section 2511(a), in addition to Section 2511(b), in order to affirm the termination of parental rights. ***See In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*). Instantly, we review the decree pursuant to Section 2511(a)(1) 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:
>
> > (1) The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.
> >
> > . . .
>
> **(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)(1), (b).

With respect to Section 2511(a)(1), our Supreme Court has held,

> Once the evidence establishes a failure to perform parental duties or a settled purpose of relinquishing parental rights, the court must engage in three lines of inquiry: (1) the parent's explanation for his or her conduct; (2) the post-abandonment contact between parent and child; and (3) consideration of the effect of termination of parental rights on the child pursuant to Section 2511(b).

In re Adoption of Charles E.D.M., 708 A.2d 88, 92 (Pa. 1998). Further,

> the trial court must consider the whole history of a given case and not mechanically apply the six-month statutory provision. The court must examine the individual circumstances of each case and consider all explanations offered by the parent facing termination of his or her parental rights, to determine if the

> evidence, in light of the totality of the circumstances, clearly warrants the involuntary termination.

In re N.M.B., 856 A.2d 847, 854-855 (Pa. Super. 2004) (citations omitted).

With respect to the relevance of a parent's incarceration in termination decisions under Section 2511(a)(1), our Supreme Court has stated:

> This Court has long held that a parent's absence or failure to support his or her child due to incarceration is not, in itself, conclusively determinative of the issue of parental abandonment. ***In re Adoption of McCray***, 460 Pa. 210, 331 A.2d 652, 655 (Pa. 1975). Indeed, incarceration alone is not an explicit basis upon which an involuntary termination may be ordered pursuant to Section 2511 of the Pennsylvania Adoption Code. ***In re C.S.***, 761 A.2d 1197, 1201 (Pa. Super. 2000) (en banc). Rather, we must inquire whether the parent has utilized those resources at his or her command while in prison to continue and pursue a close relationship with the child or children. ***McCray***, ***supra*** at 655. An incarcerated parent desiring to retain parental rights must exert him- or herself to take and maintain a place of importance in the child's life. ***Adoption of Baby Boy A.***, 512 Pa. 517, 517 A.2d 1244, 1246 (Pa. 1986).

In re R.I.S., 36 A.3d 567, 572-573 (Pa. 2011) (footnote omitted).

More recently, in ***In re Adoption of S.P.***, ***supra***, our Supreme Court discussed ***McCray***, ***supra***, a case wherein the Court considered the issue of the termination of parental rights of incarcerated persons involving abandonment, which is currently codified at Section 2511(a)(1). The ***S.P.*** Court stated:

> Applying in ***McCray*** the provision for termination of parental rights based upon abandonment, now codified as § 2511(a)(1), we noted that a parent "has an affirmative duty to love, protect and support his child and to make an effort to maintain communication and association with that child." ***Id.*** at 655. We observed that the father's incarceration made his performance of this duty "more difficult." ***Id.***

In re Adoption of S.P., 47 A.3d at 828. The ***S.P.*** Court continued:

> [A] parent's absence and/or failure to support due to incarceration is not conclusive on the issue of abandonment. Nevertheless, we are not willing to completely toll a parent's responsibilities during his or her incarceration. Rather, we must inquire whether the parent has utilized those resources at his or her command while in prison in continuing a close relationship with the child. Where the parent does not exercise reasonable firmness in declining to yield to obstacles, his other rights may be forfeited.
>
> [***McCray***] at 655 (footnotes and internal quotation marks omitted). Notably, we did not decree that incarceration could never be a factor in a court's determination that grounds for termination had been met in a particular case. Instead, the emphasis of this passage was to impose on the incarcerated parent, pursuant to an abandonment analysis, a duty to utilize available resources to continue a relationship with his or her child. Indeed, in ***McCray***, this Court agreed with the trial court and concluded that termination was appropriate where the father failed to perform parental duties for a six month period of time.

In re Adoption of S.P., ***supra***.

Finally, with respect to Section 2511(b), the requisite analysis is 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).

The first issue presented is that DHS failed to make reasonable efforts before filing the petition for involuntary termination of parental rights. Specifically, Father argues DHS failed to arrange for his participation by telephone in important family service meetings, and to make contact with him. We disagree.

This Court has long recognized that child welfare agencies are required to make reasonable efforts to preserve and reunify families. ***See In the Interest of S.A.D.***, 555 A.2d 123, 127 (Pa. Super. 1989); ***see also In re G.P.-R.***, 851 A.2d 967, 975 (Pa. Super. 2004). To meet the goals of rehabilitating families and reuniting foster children with their families, agencies "must provide timely services following removal and placement of a child." ***In re W.M.***, 41 A.3d 618, 627 (Pa. Super. 2012). However, the duties of child welfare agencies have reasonable limits. "If a parent fails to cooperate or appears incapable of benefiting from reasonable efforts supplied over a realistic period of time, the agency has fulfilled its mandate and upon proof of satisfaction of the reasonable good faith effort, the termination petition may be granted." ***In re A.L.D., Jr.***, 797 A.2d 326, 340 (Pa. Super. 2002) (citation omitted).

Instantly, the testimonial evidence demonstrates that DHS made a reasonable good faith effort to reunify Father and C.M. by establishing FSP

goals. ***See*** N.T., 5/30/13, at 53-54. Contrary to Father's assertion, Ms. McNeill, the DHS caseworker, testified that DHS contacted Father and invited him to family service meetings. Ms. McNeill testified on direct examination as follows:

> Q. During most of the time that [C.M.] has been in the care of DHS, where has [Father] been?
>
> A. He has been incarcerated.
>
> Q. Was he at one facility or various facilities?
>
> A. He has been moved to other facilities[.]
>
> [Q]. Each time he has been moved, has he been the one making outreach to DHS about where he has moved to?
>
> A. No, we had to locate where he was at.
>
> Q. When you were able to locate him, have you sent outreach to him?
>
> A. That is where we send the letters, yes.
>
> Q. What is included in those letters?
>
> A. They are invitations to our meetings that we have.

Id. at 56. On cross-examination by Father's counsel, Ms. McNeill testified:

> Q. . . . could you tell us what outreach you have made to [Father] with regard to this case?
>
> A. Whenever we had meetings we would send those letters to wherever he was located.

Id. at 60.

In addition to DHS contacting Father, Ms. Kras, the case manager at Lutheran Children and Family Services, contacted Father. Ms. Kras testified on direct examination as follows:

> Q. During the time that [C.M.] has been in care, have you made any outreach to [F]?
>
> A. Yes.
>
> Q. What kind of outreach have you made?
>
> A. Also by letter.
>
> Q. What addresses were you sending letters to [Father]?
>
> A. Whatever was on file for where he was incarcerated.

Id. at 13.

Thus, the testimonial evidence demonstrates that both DHS and the foster care agency made contact with Father, and Ms. McNeill invited him to attend the family service plan meetings. Moreover, there is no evidence that Father ever requested to participate in the family service plan meetings by telephone or in any other way. Ms. McNeill testified on cross-examination by Father's trial counsel that she received two letters from Father in the last year since she has been the DHS caseworker involved with this family. *Id.* at 60. Her testimony continued:

> Q. And in those letters, what did [Father] indicate?
>
> A. He indicated that if his rights needed to be terminated he would prefer that the child be with family.
>
> Q. So, his concern seemed mainly the placement of the child, is that correct?

A. Correct.

Id. at 60-61.

We conclude the foregoing testimony of Ms. McNeill and Ms. Kras demonstrates that DHS made reasonable efforts during the time of Father's incarceration. The testimonial evidence further demonstrates that Father failed to cooperate with the reasonable good faith efforts provided by DHS, and that his conduct warrants termination of his parental rights pursuant to Section 2511(a)(1).

Ms. McNeill testified that, while incarcerated, Father made no direct outreach to C.M. *Id.* at 56. He did not send any gifts or cards to C.M. *Id.* Further, Ms. McNeill testified on cross-examination by Father's counsel:

> Q. And, with regard to any efforts that [Father] has made to maintain his parental rights and to be a [f]ather to his child, what would you say have been his best efforts, if any?
>
> A. Minimal.

Id. at 62. Likewise, Ms. Kras testified on direct examination:

> Q. The entire time that [C.M.] has been in care . . . have you or your agency received any letters from [Father], asking about [C.M.]?
>
> A. No, not that I am aware of.
>
> Q. Have you personally received any phone calls from [Father] asking about [C.M.]?
>
> A. No.
>
> Q. Have you received any gifts or card for [C.M.]?

A. No, I have not.

Id. at 13-14.

In contrast to the testimony of Ms. McNeill and Ms. Kras, Father testified that he sent letters to C.M. He testified as follows on direct examination:

Q. And how often have you written to your daughter?

A. I have written to my daughter probably once a month and (inaudible).

Id. at 65. On cross-examination by DHS's counsel, Father testified:

Q. You said in your direct testimony that you had sent letters to [C.M.]?

A. I send letters, yes.

Q. When did you send letters?

A. (Inaudible).

Q. Your honor, if the witness could be instructed to answer the questions, not answer the question he wants to respond to.

The Court: Re[-]ask the question.

Q. What were the dates?

A. I don't remember. I can't tell you the dates. I didn't write down the dates I wrote my daughter, but I write my daughter.

Q. How many times did you send letters?

A. I can't count. More than ten.

Q. And when did you start sending letters?

A. I started sending letters since I first got locked up.

> Q. When was that?
>
> A. 2010.
>
> Q. And what was the frequency that you sent letters?
>
> A. What you mean frequency?
>
> Q. How often did you send letters?
>
> A. Probably once a month.
>
> Q. Once a month, so there should be – if the individual that [C.M.] is residing with was called to testify she would testify that there would be approximately, would you say, 25 letters that were sent?
>
> A. I told you I stopped writing (inaudible).
>
> Q. So you didn't send monthly letters for two years?
>
> A. Not for two years, because I stopped writing.
>
> Q. So, how many letters did you actually send total?
>
> A. I am not sure, sir. I am not able the answer that question, but I wrote my daughter.

Id. at 70-72.

To the extent the trial court made credibility determinations in favor of Ms. McNeill and Ms. Kras and against Father with respect to whether Father sent letters or cards to C.M., we will not disturb them. ***See In re Adoption of S.P.***, ***supra*** (stating that an appellate court must accept the credibility determinations of the trial court if they are supported by the record). We conclude the foregoing testimony of Ms. McNeill and Ms. Kras supports the trial court's finding that Father evidenced a settled purpose of relinquishing

parental rights or refused or failed to perform his parental duties for more than the requisite six-month period preceding the filing of the termination petition.

In light of the requisite bifurcated analysis, we next review the decree pursuant to Section 2511(b). The testimonial evidence does not reveal a bond between C.M. and Father. Indeed, C.M. was approximately four-months-old when she was placed in the care of DHS, and she has not seen or heard from Father during the time of her placement, *i.e.*, approximately two years and ten months. ***See In re K.Z.S.***, ***supra*** (stating that where there is no evidence of a bond between a parent and child, it is reasonable to infer that no bond exists). Rather, Ms. McNeill and Ms. Kras indicated in their testimony that C.M. has a parent-child bond with her foster mother. ***See*** N.T., 5/30/13, at 12-13, 57-58. Based on the testimonial evidence, we conclude the trial court did not abuse its discretion pursuant to Section 2511(b) as terminating Father's parental rights "would best serve the developmental, physical, and emotional needs and welfare" of C.M.

The second issue presented in counsel's ***Anders*** brief is that Father asserts ineffective assistance of trial counsel and the denial of a fundamentally fair involuntary termination hearing. We disagree. This Court has explained an indigent person's right to counsel in a termination of parental rights case as follows:

> The unique nature of parental termination cases has long been recognized by the Supreme Court of Pennsylvania. Thus, ***In Re:***

> ***Adoption of R.I.***, 455 Pa. 29, 312 A.2d 601 (Pa. 1973), the Supreme Court held that an indigent parent in a termination of parental rights case has a constitutional right to counsel. The right to counsel in parental termination cases is the right to effective assistance of counsel even though the case is civil in nature. ***In Re: Adoption of T.M.F.***, 392 Pa. Super. 598, 573 A.2d 1035 (Pa. Super. 1990) (*en banc*); ***see also, In the Interest of S.W.,*** 2001 Pa. Super 228, 781 A.2d 1247 (Pa. Super. 2001). However, this right is more limited than that in criminal cases, as claims of ineffective assistance of counsel must be raised on direct appeal. We then review the record as a whole to determine whether or not the parties received a "fundamentally fair" hearing; a finding that counsel was ineffective is made only if the parent demonstrates that counsel's ineffectiveness was "the cause of the decree of termination." ***T.M.F.***, 573 A.2d at 1044; ***see also, S.W.,*** 781 A.2d at 1249.

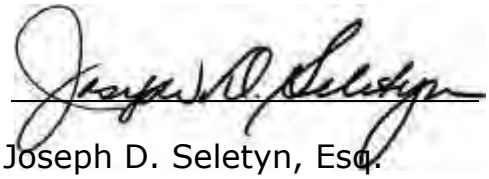
In the Interest of J.T., 983 A.2d 773, 774-775 (Pa. Super. 2009).

Upon thorough review of the record as a whole in this matter, we conclude Father received a "fundamentally fair" hearing. Further, the record fails to demonstrate that trial counsel's ineffectiveness, if any, was the cause of the decree of termination. Therefore, this issue fails.

Based on the foregoing testimonial evidence, we conclude the trial court did not abuse its discretion when it terminated Father's parental rights pursuant to Section 2511(a)(1) and (b). Accordingly, we affirm the decree, and grant the amended petition of Father's counsel to withdraw.

Decree affirmed. Amended petition to withdraw as counsel granted.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/15/2014