

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

IN RE: A.L., A MINOR	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
APPEAL OF: J.L., FATHER	:	
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	:	
	:	
	:	No. 914 MDA 2023

Appeal from the Order Entered June 21, 2023
In the Court of Common Pleas of Lycoming County Orphans' Court at
No(s): 2022-6839

BEFORE: LAZARUS, J., NICHOLS, J., and STEVENS, P.J.E.*

MEMORANDUM BY NICHOLS, J.:

FILED: JANUARY 18, 2024

Appellant J.L. (Father) appeals¹ from the order granting the petition filed by the Lycoming County Children & Youth Services (the Agency) to terminate Father's parental rights to A.L. (Child), born in September of 2019. On appeal, Father contends that the Agency failed to meet its burden of proof and that the trial court erred when it involuntarily terminated Father's parental rights. We affirm.

The trial court set forth an extensive recitation of the factual and procedural history of this case. **See** Trial Ct. Op., 6/21/23, at 1-8. Briefly, on July 29, 2021, the Agency received a report from Child Protective Services (CPS) alleging a reasonable likelihood of bodily injury to Child as a result of a

* Former Justice specially assigned to the Superior Court.

¹ We note that although the order also terminated K.T.'s (Mother's) parental rights, Mother is not a party to the instant appeal.

recent act and/or failure to act. Father was named as the alleged perpetrator in the CPS report. A search warrant was executed by the police on the residence of Mother, Father, and Child, revealing the presence of explosives, guns, methamphetamines, marijuana, and drug paraphernalia that were accessible to Child. As a result, Father was incarcerated. The trial court gave legal and physical custody of Child to the Agency, and Child was placed in foster care.

The trial court held an initial dependency hearing on August 30, 2021, at which point the trial court adjudicated Child dependent, and Child remained in foster care. The trial court held permanency review hearings on November 29, 2021, March 2, 2022, June 24, 2022, September 28, 2022, January 20, 2023, and May 10, 2023. Throughout the entirety of this case, Father was incarcerated on criminal charges. The trial court noted that Father had Polycom visits with Child and sent Child a limited number of letters, but concluded that in general, Father exhibited anywhere from no compliance to moderate compliance with the permanency plan.

On November 21, 2022, the Agency filed a petition for involuntary termination of Mother and Father's parental rights under 23 Pa.C.S. § 2511(a)(1), (2), (5), (8), and (b). The trial court held hearings on May 17 and 24, 2023. On June 21, 2023, the trial court entered an order involuntarily terminating Mother and Father's parental rights. Father filed a timely notice of appeal and complied with Pa.R.A.P. 1925(a)(2). Mother did not appeal the trial court's order terminating her parental rights.

On appeal, Father raises the following issues for our review:

1. Whether the [trial] court erred in terminating the parental rights of [Father] pursuant to 23 Pa.C.S. § 2511(a)(1) when [Father] has taken advantage of every opportunity provided to him to perform parental duties while incarcerated[?]
2. Whether the [trial] court erred in terminating the parental rights of [] [Father] pursuant to 23 Pa.C.S. § 2511(a)(2) when there was insufficient evidence that [] Child was without essential parental care, control or subsistence necessary and causes of the incapacity cannot or will not be remedied as [Father] has a plan to remedy the incapacity upon his release expected in the calendar year[?]
3. Whether the [trial] court erred in terminating the parental rights of [Father] pursuant to 23 Pa.C.S. § 2511(a)(5) and (8) in finding that (1) [] Child has been removed from parental care for at least six months or twelve months; (2) the conditions which led to removal or placement of [] Child continue[] to exist; (3) and termination would best serve the needs of welfare of [] Child when [Father] the record shows that the needs and welfare of [] Child would not be best served by termination[?]
4. Whether the [trial] court erred in terminating the parental rights of [] [Father] pursuant to 23 Pa. C.S. § 2511(b), when there is a healthy bond between [] Child and [Father] which would be traumatic if broken and the best interests of [] Child would not be served by termination[?]

Appellant's Brief at 7-8 (some formatting altered).

We begin with 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 omitted and formatting altered). “[T]he 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.” ***In re Q.R.D.***, 214 A.3d 233, 239 (Pa. Super. 2019) (citation 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). We note that we need only agree with the trial court as to any one subsection of Section 2511(a), as well as Section 2511(b), to affirm an order terminating parental rights. ***In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*).

Section 2511(a)(2)

Father argues that there was “insufficient evidence that [Child was] without essential parent[al] care, control or subsistence necessary and that

the cause of incapacity cannot or will not be remedied as [Father] has a plan to remedy the incapacity upon his release [from prison] expected in the calendar year.” Father’s Brief at 21. Father also claims that he “has made reasonable efforts to overcome obstacles to the preservation of his parental relationship.” ***Id.*** at 23. Father notes that he requested a continuance in this case because he expected to be sentenced and released from prison in his criminal case and indicated that he did not know what the term of the sentence would be. ***Id.*** Father further states that “he has a plan upon release to obtain housing, employment and all necessities for [] Child within twenty-four to forty-eight hours.” ***Id.*** at 25. During his incarceration, Father notes that he utilized his Polycom visits, that both he and Child enjoyed the visits, and that Father communicated via writing letters to Child and to Child’s foster parents. ***Id.***

Section 2511(a)(2) provides as follows:

§ 2511. Grounds for involuntary termination.

(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.

23 Pa.C.S. § 2511(a)(2).

To satisfy the requirements of [Section] 2511(a)(2), the moving party must prove (1) repeated and continued incapacity, abuse, neglect or refusal; (2) that such incapacity, abuse, neglect or refusal caused the child to be without essential parental care, control or subsistence; and (3) that the causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied. The grounds for termination are not limited to affirmative misconduct, but concern parental incapacity that cannot be remedied.

In re C.M.K., 203 A.3d 258, 262 (Pa. Super. 2019) (citations and quotation marks omitted).

Further, this Court has explained:

The grounds for termination of parental rights under Section 2511(a)(2), due to parental incapacity that cannot be remedied, are “not limited to affirmative misconduct.” ***In re A.L.D.***, 797 A.2d 326, 337 (Pa. Super. 2002).

Unlike subsection (a)(1), subsection (a)(2) does not emphasize a parent’s refusal or failure to perform parental duties, but instead emphasizes the child’s present and future need for essential parental care, control or subsistence necessary for his physical or mental well-being. Therefore, the language in subsection (a)(2) should not be read to compel courts to ignore a child’s need for a stable home and strong, continuous parental ties, which the policy of restraint in state intervention is intended to protect. This is particularly so where disruption of the family has already occurred and there is no reasonable prospect for reuniting it.

In re E.A.P., 944 A.2d 79, 82 (Pa. Super. 2008) (internal citations and quotation marks omitted).

Thus, while “sincere efforts to perform parental duties,” can preserve parental rights under subsection (a)(1), those same efforts may be insufficient to remedy parental incapacity under subsection (a)(2). “Parents are required to make diligent efforts toward the reasonably prompt assumption of full parental responsibilities.” [***A.L.D.***, 797 A.2d at 340]. A “parent’s vow to cooperate, after a long period of uncooperativeness regarding the necessity or availability of services, may properly be rejected as untimely or disingenuous.” ***Id.***

In re Z.P., 994 A.2d 1108, 1117-18 (Pa. Super. 2010) (some citations omitted, formatting altered, and emphasis omitted).

In addressing the relevance of incarceration on termination decisions under Section 2511(a)(2), our Supreme Court has stated:

[I]ncarceration is a factor, and indeed can be a determinative factor, in a court's conclusion that grounds for termination exist under [Section] 2511(a)(2) where the repeated and continued incapacity of a parent due to incarceration has caused the child to be without essential parental care, control or subsistence and that the causes of the incapacity cannot or will not be remedied.

In re Adoption of S.P., 47 A.3d 817, 828 (Pa. 2012).

Further, this Court has explained:

Each case of an incarcerated parent facing termination must be analyzed on its own facts, keeping in mind . . . that the child's need for consistent parental care and stability cannot be put aside or put on hold. Parental rights are not preserved by waiting for a more suitable or convenient time to perform one's parental responsibilities while others provide the child with his or her physical and emotional needs. Rather, a parent must utilize all available resources to preserve the parental relationship, and must exercise reasonable firmness in resisting obstacles placed in the path of maintaining the parent-child relationship. Importantly, a parent's recent efforts to straighten out [his] life upon release from incarceration does not require that a court indefinitely postpone adoption.

In re K.M.W., 238 A.3d 465, 474 (Pa. Super. 2020) (*en banc*) (citations omitted and some formatting altered).

Here, the trial court addressed Section 2511(a)(2) as follows:

Father testified that he plans to be a resource for [] Child upon his release from prison. Father has pled guilty in federal court to one count of possession of a firearm with an obliterated serial number. He is awaiting sentencing, although he was unable to provide any

information about a definite sentencing date, or length of sentence. Father indicated that he may be sent to a halfway house to serve the final months of his sentence. Although Father was unable to articulate a firm plan upon his release as far as his living situation, employment, and child care, he indicated that he had multiple options for places to live, and job offers, and would be able to acquire all necessities for [] Child within 24-48 hours of his release.

Ms. Bolton testified that, in order to be considered a resource for [] Child, Father would need to consistently do all of the following for a minimum of six months after his release: (1) gain and maintain appropriate housing; (2) gain and maintain steady employment; (3) obtain a drug and alcohol evaluation and comply with all treatment recommendations; (4) obtain a psychiatric evaluation and comply with all recommendations; (5) satisfy all legal obligations and be compliant with probation/parole; and (6) regularly attend in-person visits, which would be supervised at first. Father does not have the current ability to be a caregiver for [] Child. Although he indicated he expects to be released sometime in 2023, this is not guaranteed. Upon his release, Father will need to begin the second phase of his journey towards reunification, which would extend [] Child's permanency by an additional 6 months, and potentially even longer if Father suffers setbacks in meeting the Agency's expectations.

Although Father insists he will satisfy all of the requirements, "[i]t is not enough that Father pledges to do more in the future. . . ." Father's own actions, including those which precipitated the raid on his home where guns and drugs were found, led to his lengthy incarceration. Even if Father is released from prison sometime this calendar year and has no setbacks in the following six months while he works towards reunification, [] Child's permanency could be delayed an additional year.

[The trial court] would like to emphasize that Father's incarceration is not the sole factor in its determination that Father's incapacities have caused [] Child to be without essential parental care, control or subsistence necessary for her physical or mental well-being. The [trial court] has concerns about Father's protective capacity, in that he testified that Mother could not control her drug habit yet he left [] Child in the sole care of Mother when he moved out of the home they shared. Father also has two indicated CPS reports where he was named the perpetrator and [] Child was the victim. There are serious concerns about Father's

anger issues, as there were reports of domestic violence between him and Mother. None of these issues have been properly addressed by Father, as he testified that the only programming available to him in the prison has been [Narcotics Anonymous] and [Alcoholics Anonymous]. Even if he begins to engage in services immediately upon his release from incarceration, these incapacities are not likely to be remedied within a reasonable amount of time.

[] Child has been in placement nearly two years, and neither Mother nor Father have been able to make measurable progress in addressing the incapacities which caused [] Child to be removed from their care. . . . Father insists that he “is not incapable when [he] is not incarcerated,” but he has no definite date by which he can expect to begin addressing his incapacities. [The trial court] finds that . . . Father has [not] remedied [his] incapacities within a reasonable amount of time and will likely be unable to remedy them in the future. The [trial court] finds by clear and convincing evidence that the Agency has satisfied 23 Pa.C.S. § 2511(a)(2) by demonstrating [] Father’s repeated and continued incapacity has caused [] Child to be without essential parental control or subsistence necessary for her physical and mental well-being.

Trial Ct. Op. at 16-18.

Following our review of the record, we discern no abuse of discretion or error of law in the trial court’s conclusion that the Agency presented clear and convincing evidence to terminate Father’s parental rights under Section 2511(a)(2). **See T.S.M.**, 71 A.3d at 267.

The record reflects that Father has been incarcerated since July 21, 2021. N.T. Hr’g, 5/24/23, at 64. Colleen Bolton, an outreach caseworker for the Agency, testified that Father did not have a definitive date of release from incarceration. **Id.** at 33; **see also id.** at 66. Ms. Bolton further testified that despite being ordered to do so, Father has not sought out services such as drug and alcohol services, outreach, or domestic violence counseling. **Id.**

Additionally, Ms. Bolton testified that during his incarceration, Father has sent five letters to Child and refused to sign a family service plan. ***Id.*** at 34-35.

Ms. Bolton further testified that in order for the Agency to place Child with Father, even on a temporary basis, Father would be required to gain and maintain appropriate housing and employment, undergo a psychiatric evaluation, drug and alcohol evaluation, attend a domestic violence program, and satisfy any outstanding legal obligations. ***Id.*** at 153-54. Father would also be expected to follow any recommendations from the psychiatric and drug and alcohol evaluations. ***Id.*** at 154-55. Additionally, Father would be expected to attend in-person visits with Child. ***Id.*** at 154. Father would be expected to remain in compliance with these conditions for at least six months. ***Id.***

The trial court also heard testimony from Father, who confirmed that he has been incarcerated since July 21, 2021. ***Id.*** at 64. Father entered a guilty plea in federal court on a firearms charge, for which he is awaiting sentencing. ***Id.*** at 65. Father testified that he expects to be released at some point in 2023, but he did not have a firm release date. ***Id.*** at 66. Father also acknowledged that he may be required to serve a portion of his sentence in a halfway house. ***Id.*** at 66-67. Upon release, Father testified that he had multiple residences in Linden, Pennsylvania, and King of Prussia, Pennsylvania, where he would be able to live, and he had multiple offers of employment. ***Id.*** at 67-68. Father stated that he would be able to acquire

housing and employment within twenty-four to forty-eight hours of his release. **Id.** at 68.

As this Court has stated, a “child’s need for consistent parental care and stability cannot be put aside or put on hold.” **K.M.W.**, 238 A.3d at 474 (citation omitted and some formatting altered). A court is not required to indefinitely postpone adoption to accommodate a parent’s effort to straighten out his life following release from incarceration. **Id.** As noted previously, Father does not yet know when he will be released from prison and may be required to stay in a halfway house after he is released. N.T. Hr’g, 5/24/23, at 66-67. He would then be required to maintain appropriate housing and employment for a period of six months following his release before the Agency could place Child with him, even on a temporary basis. **Id.** at 153-54. As noted by the trial court, this would potentially delay Child’s permanency by an additional year, and that Child has already been in foster care for close to two years. **See** Trial Ct. Op. at 17. For these reasons, we discern no abuse of discretion by the trial court in concluding that termination was appropriate under Section 2511(a)(2).² **See T.S.M.**, 71 A.3d at 267; **K.M.W.**, 238 A.3d at 474. Accordingly, Father is not entitled to relief.

Section 2511(b)

Father next argues that the trial court erred when it involuntarily terminated his parental rights because there was a healthy bond between

² We reiterate that we need only agree with the trial court as to one subsection of Section 2511(a). **See B.L.W.**, 843 A.2d at 384.

Father and Child, and that termination was not in Child's best interests. Father's Brief at 28. Specifically, Father contends that termination would be traumatic for Child. *Id.* at 30. Father further argues that he engaged Child during Polycom visits, that Child enjoyed the visits, and that the evidence establishes that Father loves Child. *Id.* Therefore, Father claims that termination was improper under Section 2511(b).

Section 2511(b) provides as follows:

(b) Other considerations.—The court in terminating the rights of a parent shall give primary consideration to the developmental, physical and emotional needs and welfare of the child. The rights of a parent shall not be terminated solely on the basis of environmental factors such as inadequate housing, furnishings, income, clothing and medical care if found to be beyond the control of the parent. With respect to any petition filed pursuant to subsection (a)(1), (6) or (8), the court shall not consider any efforts by the parent to remedy the conditions described therein which are first initiated subsequent to the giving of notice of the filing of the petition.

23 Pa.C.S. § 2511(b).

This Court has explained:

While a parent's emotional bond with his or her child is a major aspect of the subsection 2511(b) best-interest analysis, it is nonetheless only one of many factors to be considered by the court when determining what is in the best interest of the child.

[I]n addition to a bond examination, the trial court can equally emphasize the safety needs of the child, and should also consider the intangibles, such as the love, comfort, security, and stability the child might have with the foster parent.

In re Adoption of C.D.R., 111 A.3d 1212, 1219 (Pa. Super. 2015) (quoting ***In re N.A.M.***, 33 A.3d 95, 103 (Pa. Super. 2011)) (some formatting altered), *abrogated in part on other grounds by* ***In re K.T.***, 296 A.3d 1085 (Pa. 2023).

Our Supreme Court has stated that “if the child has any bond with the biological parent, the court must conduct an analysis of that bond, which ‘is not always an easy task.’” ***K.T.***, 296 A.3d at 1106 (quoting ***T.S.M.***, 71 A.3d at 267). In ***K.T.***, our Supreme Court explained that “a court conducting the Section 2511(b) needs and welfare analysis must consider more than proof of an adverse or detrimental impact from severance of the parental bond.” ***Id.*** at 1113. Indeed, the parent-child bond analysis must include “a determination of whether the bond is necessary and beneficial to the child, *i.e.*, whether maintaining the bond serves the child’s developmental, physical, and emotional needs and welfare.” ***Id.***

“Common sense dictates that courts considering termination must also consider whether the children are in a pre-adoptive home and whether they have a bond with their foster parents.” ***T.S.M.***, 71 A.3d at 268 (citation omitted). More specifically, courts must consider “the child’s need for permanency and length of time in foster care . . . whether the child is in a pre-adoptive home and bonded with foster parents; and whether the foster home meets the child’s developmental, physical, and emotional needs, including intangible needs of love, comfort, security, safety, and stability.” ***K.T.***, 296 A.3d at 1113 (footnote omitted).

In weighing the bond considerations pursuant to Section 2511(b), “courts must keep the ticking clock of childhood ever in mind.” ***T.S.M.***, 71 A.3d at 269. “Children are young for a scant number of years, and we have an obligation to see to their healthy development quickly. When courts fail . . . the result, all too often, is catastrophically maladjusted children.” ***Id.***

In the instant case, the trial court addressed Section 2511(b) as follows:

The Agency made a referral to Crossroads Counseling for a bonding assessment between Mother and [] Child, as well as the resource parents and [] Child. Denise Feger, PhD, conducted the assessments. . . .

Dr. Feger was requested to perform an assessment between [] Child and her foster parents, which is not typical but was done due to a potential out of state placement option. Dr. Feger testified that the foster parents have created a structure within their home where none of the children have a designation based upon who their biological parents are. [] Child, having been in their care for almost two years, is a fully integrated member of their family. Dr. Feger testified that the bond between the foster parents and [] Child is that of a parent-child. [] Child identifies them as her primary caregivers and she would experience a profound loss if she were removed from the home.

No bonding assessment was conducted between Father and [] Child, due to his lack of in-person visits as a result of his incarceration. While the Polycom visits between [] Child and Father have gone well, they have been limited to 15 minutes each. Although it is clear, as evidenced by the song he sang at the hearing, that Father loves [] Child, the [trial court] finds that Father’s brief interactions with [] Child, without Father performing any parental duties, have been insufficient to establish and maintain a necessary and beneficial bond.

[] Child has been in the same foster home since being removed from her parents’ care. The foster parents have provided everything [] Child needs and this has naturally established a bond and attachment between [] Child [and] the foster parents which is not present between [] Child and [] Father. [] Child’s permanency cannot and should not be delayed. [] Child is clearly

bonded with the resource parents, who have provided for her physical and emotional needs and who have welcomed her into their family. Most importantly, they are ready, able, and willing to offer her permanency. Given the lack of a bond between [] Child and [] Father due to [his] failure to consistently perform parental duties, the [trial court] is satisfied that termination of [] Father's parental rights would not cause irreparable harm to [] Child. [The trial court] further finds that permanency in the form of adoption by those who have consistently met [her] needs is in the best interest of [] Child.

Trial Ct. Op. at 22-23.

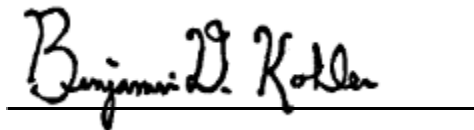
Based on our review of the record, we discern no abuse of discretion in the trial court's conclusion that termination of Father's parental rights would best serve Child's needs and welfare. **See K.T.**, 296 A.3d at 1113; **T.S.M.**, 71 A.3d at 267. As noted by the trial court, Dr. Feger³ testified that she performed a bonding assessment involving Child and her foster parents. N.T. Hr'g, 5/17/23, at 25. Child had been in foster care for twenty-three months at the time of the termination of parental rights hearing. **Id.** at 31. Dr. Feger testified that Child views her foster parents as her parents, and that Child is "extremely well-functioning" for her age, which Dr. Feger attributed to the "consistency and stability of her foster home placement." **Id.** at 22-25. Dr. Feger further testified that Child does not get that consistency from Father. **Id.** at 25. Dr. Feger concluded that removing Child from her placement with her foster parents would amount to a "significant loss" for Child. **Id.** at 32.

³ We note that the trial court was not required by statute or precedent to order a formal bonding evaluation by an expert. **See In re Adoption of J.N.M.**, 177 A.3d 937, 944 (Pa. Super. 2018). However, the trial court admitted Dr. Feger as an expert witness with expertise in bonding assessments. **See** N.T. Hr'g, 5/17/23, at 14.

On this record, we agree with the trial court's conclusion that the termination of Father's parent rights would best serve Child's needs and welfare. **See** 23 Pa.C.S. § 2511(b); **K.T.**, 296 A.3d at 1113. Therefore, the trial court did not err in terminating Father's parental rights. **See T.S.M.**, 71 A.3d at 267. For these reasons, we affirm.

Order affirmed. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 1/18/2024