

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

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| IN RE: B.A.W., A MINOR | : | IN THE SUPERIOR COURT OF |
| | : | PENNSYLVANIA |
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| APPEAL OF: C.M., MOTHER | : | |
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| | : | No. 2142 EDA 2023 |

Appeal from the Order Entered July 20, 2023
In the Court of Common Pleas of Bucks County Orphans' Court at No(s):
2023-A9052

BEFORE: BOWES, J., STABILE, J., and DUBOW, J.

MEMORANDUM BY DUBOW, J.:

FILED JANUARY 22, 2024

Appellant, C.M. ("Mother"), appeals from the July 20, 2023 order that terminated her parental rights to now-three-year-old B.A.W. ("Child"). Upon review, we affirm.

The relevant factual and procedural history is as follows. Mother and J.M.M. ("Father") are parents to Child.¹ Parents were never married. A few months after Child's birth, in November 2020, U.S. Immigration and Customs Enforcement deported Father due to his conviction for Driving Under the Influence.

On December 18, 2020, Mother signed a voluntary placement agreement due to her ongoing homelessness, lack of basic parenting skills, and inability to provide for Child's basic needs. The Bucks County Children

¹ The court involuntarily terminated Father's parental rights on July 20, 2023. Father is not a party to this appeal.

and Youth Social Services Agency ("the Agency") placed Child in kinship care with his maternal great-aunt. On April 7, 2021, the court adjudicated Child dependent.

On April 14, 2021, Mother participated in a parenting capacity evaluation conducted by Aaron Myers, Psy.D. Dr. Myers diagnosed Mother with an Unspecified Anxiety Disorder, Attention Deficit Hyperactivity Disorder, and Mild Intellectual Disabilities with an overall I.Q. of 63. Dr. Myers concluded that Mother's "parenting abilities and protective capacities appear impaired" and that Child would be at risk in Mother's care. Agency Exhibit 4, Psychological Evaluation, at 8. Dr. Myers recommended that Mother engage in general mental health treatment, follow through with psychiatrist appointments and recommended medication, complete parenting education, interact with a parenting coach, and find stable housing prior to reunification with Child. ***Id.*** at 9-10. Dr. Myers also recommended that Mother's visits with Child be supervised. ***Id.*** at 9.

The Agency offered Mother supervised visits with Child twice per week. Mother attended visits inconsistently and when she did attend, she arrived up to twenty minutes late because she stopped to get a cup of coffee. Despite the Agency informing Mother that she needed to come to visits prepared to engage with Child, Mother has never brought all the necessary items for Child such as diapers, wipes, and snacks. Additionally, Mother often brought food for Child that was not appropriate for Child's age or development, such as a caffeinated Starbucks drink, half a rotisserie chicken, or "flaming hot" Doritos.

N.T. Hearing, 7/18/23, at 95. Mother was often distracted by her phone during visits and wished to discuss her tumultuous romantic relationship with Father rather than spend time with Child.

In addition, Mother was frequently aggressive during visits, engaging in verbal altercations or issuing threats to the security guards, case aides, and Agency caseworkers. On one occasion, Mother's actions during a visit with Child caused police to intervene. On January 12, 2022, case aide Robin Elliott and Agency caseworker Shawn Rush supervised a visit between Mother and Child. During the visit, Mother used profanity in front of Child, threatened to remove Child from the kinship care home, and threatened to have Agency caseworkers fired. When Ms. Elliott picked up then-one-year-old Child to remove him from the visit, Mother escalated, and charged at Ms. Elliott knocking over both Ms. Elliott and Child. When Mr. Rush intervened, Mother threw objects at him and spit in his face. Additional staff helped restrain Mother until police arrived. As a result of this incident, police charged Mother with Simple Assault and Endangering the Welfare of a Child and Mother subsequently pled guilty to the charges.

The Agency has referred Mother to various service providers including Family Service Association, Tabor Services, Links Services, and CONNECT to assist Mother in obtaining intellectual disability services, parenting education, individual therapy, anger management, and housing. By her own admission, Mother has failed to engage in recommended mental health treatment,

complete parenting education, obtain employment, or secure adequate housing.

Child is currently placed in a pre-adoptive kinship care home with his maternal great-aunt and uncle and their two sons. Child receives early intervention services and has made significant developmental strides in the home.

On April 18, 2023, the Agency filed a petition to involuntarily terminate the parental rights of Mother. The trial court appointed Emily Ward, Esq., to serve as both Child's legal counsel and guardian *ad litem* ("GAL"), after determining there was no conflict between the dual roles.

On July 18, 2023, the court held a hearing on the petition. The Agency presented testimony from Mr. Rush and Dr. Myers, who testified in accordance with the above facts.

In addition, Mr. Rush testified that Mother loves her son, but is incapable of meeting Child's needs. Mr. Rush testified that Child is friendly and runs up to hug Mother, as well as his caseworkers, during visits. Mr. Rush explained that Child does not look to Mother for comfort or emotional security and testified that severing Mother's parental rights would have a minimal detrimental effect on Child because Mother has never been his primary caretaker. Mr. Rush further testified that Child receives love, stability, and structure in the kinship home and has a parent-child bond with the kinship parents, who prepare his meals, plan his activities, structure their life around Child, and provide a very loving home environment which meets all his

medical, developmental, emotional, and physical needs. Mr. Rush testified that it was in Child's best interest to terminate Mother's parental rights.

Mother testified on her own behalf. In sum, Mother testified that she loves hanging out with Child and does not want the court to terminate her parental rights. Mother acknowledged that she was not ready to reunify with Child because she still needed to engage in mental health treatment including anger management, participate in parenting coaching and classes, and obtain appropriate housing. Mother testified that she would like the court to grant subsidized permanent legal custody to Child's kinship parents and allow her to have bi-weekly video chats with Child because he needs his mother.

At the conclusion of the hearing, the court terminated Mother's parental rights pursuant to 23 Pa.C.S. § 2511(a)(2), (5), (8), and (b). Child's GAL agreed that the termination of Mother's parental rights was in Child's best interests.

Mother timely appealed. Both Mother and the trial court complied with Pa.R.A.P. 1925.

Mother raises the following issues for our review:

1. Did the trial court erroneously grant [the] Agency's [] petition to terminate the parental rights of [Mother] pursuant to 23 Pa.C.S. § 2511(a)(2) when the Agency had failed to prove the grounds thereunder by clear and convincing evidence?
2. Did the trial court erroneously grant the Agency's petition to involuntarily terminate the parental rights of [Mother] pursuant to 23 Pa.C.S. § 2511(a)(5) and (a)(8) when the Agency had failed to prove the grounds thereunder by clear and convincing evidence?

3. Did the trial court erroneously find that the needs and welfare of [C]hild as contemplated under 23 Pa.C.S. § 2511(b) were best met by terminating the parental rights of [Mother]?

Mother's Br. at 6-7.

A.

In addressing Mother's issues, we are mindful of our well settled standard of review. When we review a trial court's decision to grant or deny a petition to involuntarily terminate parental rights, we must accept the findings of fact and credibility determinations of the trial court if the record supports them. ***In re T.S.M.***, 71 A.3d 251, 267 (Pa. 2013). "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.*** (citation omitted). "Absent an abuse of discretion, an error of law, or insufficient evidentiary support for the trial court's decision, the decree must stand." ***In re R.N.J.***, 985 A.2d 273, 276 (Pa. Super. 2009) (citation omitted). We may not reverse merely because the record could support a different result. ***T.S.M.***, 71 A.3d at 267. We give great deference to the trial courts "that often have first-hand observations of the parties spanning multiple hearings." ***Id.*** Moreover, "[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 M.G.***, 855 A.2d 68, 73-74 (Pa. Super. 2004) (citation omitted).

Section 2511 of the Adoption Act, 23 Pa.C.S. § 2511, governs termination of parental rights, and requires a bifurcated analysis. "Initially,

the focus is on the conduct of the parent.” ***In re Adoption of A.C.***, 162 A.3d 1123, 1128 (Pa. Super. 2017) (citation omitted). “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).” ***Id.*** (citation omitted). “[I]f the court determines that the parent’s conduct warrants termination of his or her parental rights[,]” the court then engages 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.” ***Id.*** (citation omitted). Notably, we need only agree with the court’s decision as to any one subsection of Section 2511(a), as well as Section 2511(b), to affirm the termination of parental rights. ***In re K.Z.S.***, 946 A.2d 753, 758 (Pa. Super. 2008). We concentrate our analysis on subsection 2511(a)(2).

B.

In her first issue, Mother avers that the trial court abused its discretion when it terminated her parental rights pursuant to Section 2511(a)(2). Mother argues that the Agency should have offered her modified services as well as a modified reunification timeline due to her intellectual disability. Mother’s Br. at 12.

Section 2511(a)(2) provides for termination of parental rights where the petitioner demonstrates by clear and convincing evidence that “[t]he 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); ***In re Adoption of S.P.***, 47 A.3d 817, 827 (Pa. 2012). The grounds for termination of parental rights under Section 2511(a)(2) due to parental incapacity are not limited to affirmative misconduct; those grounds may also include acts of refusal as well as incapacity to perform parental duties. ***In re Adoption of C.D.R.***, 111 A.3d 1212, 1216 (Pa. Super. 2015) (abrogated on other grounds by ***Int. of K.T.***, 296 A.3d 1085, 1090 (Pa. 2023)). “Parents are required to make diligent efforts toward the reasonably prompt assumption of full parental duties.” ***In re C.M.K.***, 203 A.3d 258, 262 (Pa. Super. 2019) (citation omitted). Notably, 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.” ***In re Z.P.***, 994 A.2d 1108, 1118 (Pa. Super. 2010) (citation omitted).

Finally, sincere efforts to perform parental duties may still be insufficient to remedy an incapacity. ***Id.*** at 1117. This is because subsection (a)(2) “emphasizes the child’s present and future need for essential parental care, control or subsistence necessary for his physical or mental well-being[,]” especially “where disruption of the family has already occurred and there is no reasonable prospect for reuniting it.” ***Id.*** (citation omitted).

Applying these principles, the trial court concluded that Mother is incapable of performing parental duties for Child. The trial court found that

Mother was inconsistent in utilizing the Agency-provided services and resources to obtain mental health treatment, parenting education, and housing; that after two years "Mother was still incapable of preparing for her visits with Child as directed[;]" and that "Mother is incapable of caring for [] Child without assistance." Trial Ct. Op. at 6-8. The trial court credited Mr. Rush's testimony regarding Mother's troubling behaviors during visitation and emphasized its impact on her ability to care for Child. The court opined:

Mother continues to struggle to maintain interest in her Child, due to her attention deficit issues and her emotional deregulation. Mother maintained inconsistent visitation with [] Child, and when she attended scheduled visits, she was often aggressive to Agency workers at the expense of [] Child. Despite Mother's testimony at [the] hearing that she is willing to change her attitudes and receive help for herself in order to care for [] Child, the Agency has observed her inability to do so for a period of two years since [] Child entered care. It was established by clear and convincing evidence at [the] hearing that Mother's affirmative actions to care for [] Child were inadequate, and her lack of action when action was needed caused great concern to the undersigned. [This court] determined based upon the record at [the] hearing that Mother is not capable of providing present or future care or subsistence necessary for [] Child's mental and physical well-being. Mother's failure to develop skills to independently care for [] Child has impeded her ability to create a bond with her Child. Mother has also been unable to prioritize the well-being of [] Child in terms of his safety and health since [] Child came into care and Mother has been deficient in appropriately interacting with [] Child during her permitted visits. [This court] concluded that the Agency demonstrated clear and convincing evidence that Mother's parental rights should be terminated pursuant to Section 2511(a)(2) of the Adoption Act.

Trial Ct. Op. at 8 (internal citations omitted). Our review of the record supports the trial court's findings. Moreover, we decline to reweigh the evidence or usurp the trial court's credibility determinations.

Mother's argument that she should have been given modified services and more time to comply with services facilitating reunification due to her intellectual disability is unavailing. Mother provides no legal authority to support this position and, in fact, acknowledges that "[o]ur caselaw fails to recognize that parents with intellectual disabilities should be treated differently." Mother's Br. at 11-12. Indeed, this Court has held that a claim that a parent should be treated differently due to an intellectual disability in a termination proceeding is untenable because it "would require the trial court and this Court to ignore the best interest of the Child and focus instead on the needs of Mother. This we cannot do." ***In Interest of J.J.L.***, 150 A.3d 475, 481 (Pa. Super. 2016) (holding that the Americans with Disabilities Act did not apply to a proceeding regarding the termination of intellectually disabled mother's parental rights under the Adoption Act).

By Mother's own admission, she has failed to comply with any of the necessary services to promote reunification with Child. Moreover, she has attended visits inconsistently and demonstrated unacceptable and dangerous behavior during her visits with Child, with one such instance resulting in her arrest and conviction for Simple Assault and Endangering the Welfare of a Child. Mother has a diagnosed intellectual disability and has failed to demonstrate that she can care for Child without assistance, as evidenced by

her inability to progress past supervised visits with Child. The trial court had ample evidence to terminate Mother's parental rights pursuant to Section 2511(a)(2) and we find no abuse of discretion.

C.

In her next issue, Mother avers that the Agency failed to establish by clear and convincing evidence that termination would be in Child's best interest. Mother's Br. at 20.

With respect to Section 2511(b), our analysis focuses on the effect that terminating the parental bond will have on the child. This Court reviews whether "termination of parental rights would best serve the developmental, physical, and emotional needs and welfare of the child." ***In re Adoption of J.M.***, 991 A.2d 321, 324 (Pa. Super. 2010). It is well settled that "[i]ntangibles such as love, comfort, security, and stability are involved in the inquiry into needs and welfare of the child." ***In re C.M.S.***, 884 A.2d 1284, 1287 (Pa. Super. 2005).

One major aspect of the "needs and welfare" analysis concerns the nature and status of the emotional bond that the child has with the parent, "with close attention paid to the effect on the child of permanently severing any such bond." ***In re Adoption of N.N.H.***, 197 A.3d 777, 783 (Pa Super. 2018) (citation omitted). The fact that a child has a bond with a parent does not preclude the termination of parental rights. ***In re A.D.***, 93 A.3d 888, 897 (Pa. Super. 2014). Rather, the trial court must examine the depth of the bond to determine whether the bond is so meaningful to the child that its

termination would destroy an existing, necessary, and beneficial relationship. ***Id.*** at 898. Moreover, the trial court may consider intangibles, such as the love, comfort, security, and stability the child might have with the adoptive resource. ***In re N.A.M.***, 33 A.3d 95, 103 (Pa. Super. 2011). Ultimately, the concern is the needs and welfare of the child. ***Z.P.***, 994 A.2d at 1121.

Instantly, the trial court found that terminating Mother's parental rights was in Child's best interest. Trial Ct. Op. at 14. The trial court found that Mother and Child share a "superficial" and "casual" bond due to Mother's sporadic and distracted visits with Child while, in turn, Child enjoys a strong bond with his entire kinship family. ***Id.*** at 15. The court emphasized that Child has made significant medical, social, and emotional progress in his pre-adoptive kinship home and that they provide for all of Child's needs. ***Id.*** The court opined:

[T]he evidence indicates that Child is currently thriving, well-cared for, and comfortable in his kinship foster home. Though it was been established that Mother loves her son and wishes to be a parent to him, that bond is likely not reciprocated due to Mother's absence and lack of consistent interest in Child. It has been established that [] Child is comfortable and bonded with his kinship [] parents and their biological children. It was also established that [] Child is attached to his [kinship] parent's dog and expresses positive feelings about his life in his foster home. While [] Child and Mother share a superficial bond, she has never been his primary caretaker. Mother has consistently showed more interest in her relationship with Father, who hasn't resided in the same country as Mother since 2020. Any potential harm caused by severing the casual bond between Child and Mother would be outweighed by the benefit of permanency that [] Child's kinship [] family currently provides. Termination would not destroy an existing, necessary, and beneficial relationship.

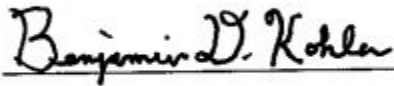
Id. at 15 (internal citations and quotation marks omitted). The record supports the trial court's findings. Once again, we decline to reweigh the evidence or upset the court's credibility determinations. Accordingly, we find no abuse of discretion.

D.

In conclusion, our review of the record supports the trial court's findings. We discern no error of law or abuse of discretion with respect to the trial court's conclusion that the Agency presented clear and convincing evidence to terminate Mothe's parental rights pursuant to Section 2511(a) and (b).

Order affirmed.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

Date: 1/22/2024