

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

IN RE: C.J.K., E.L.K., C.D.K. : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
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APPEAL OF: J.K., MOTHER : No. 1051 EDA 2013

Appeal from the Decree Entered March 20, 2013 in the
Court of Common Pleas of Lehigh County Orphans'
Court at No(s): A2012-0030, A2012-0031, A2012-0032

BEFORE: DONOHUE, WECHT, and STRASSBURGER,* JJ.

MEMORANDUM BY STRASSBURGER, J.: **FILED October 25, 2013**

J.K. (Mother) appeals from the decree entered March 20, 2013, which terminated her parental rights to her minor children, C.J.K., E.L.K., and C.D.K. (collectively, Children). After careful review, we affirm.

The trial court made the following findings of fact with regard to this case.

2. Mother and [Children's biological father (Father)] were married in February 2007, Mother was twenty years old and Father was twenty-six years old. A son, C.J.K., was born several months later. Sometime thereafter, both parents became unemployed and collected unemployment. The second child, a daughter, E.L.K., was born in August 2008. Eventually, the family, without sufficient financial resources, was evicted.

3. On November 3, 2009, the family was referred to Lehigh County Office of Children and Youth Services [(CYS)] for homelessness. Mother and Father were living in their car with their two year old son, C.J.K. A maternal aunt was providing care and housing for the one year old daughter, E.L.K.

*Retired Senior Judge assigned to Superior Court.

4. On or about December 16, 2009, the family was placed all together at New Bethany Family Shelter. During that time the third child, a second daughter, C.D.K., was born in May 2010[.]

5. No more than a month later and for unknown reasons the family voluntarily vacated the shelter, leaving their belongings behind. Utilizing monies they had saved, they moved into a hotel.

6. Shortly thereafter, from August 18, 2010 through August 27, 2010, Mother and Father reached an agreement to place [C]hildren with an aunt.

7. Shortly thereafter, on August 27, 2010, the parents voluntarily agreed to place [C]hildren with [CYS].

8. On September 21, 2010, [C]hildren were adjudicated dependent. At that time, the goal for Mother and Father was for them to obtain suitable housing and stable income, and to visit [C]hildren and cooperate with [CYS].

9. As the dependency case developed, [CYS] became aware of family issues in addition to homelessness. Over time the incapacity of Mother and Father to meet the unique needs of [C]hildren became apparent.

10. Initially, [C]hildren were in foster care together. However, due to the physical aggressiveness of their son, the oldest child, toward his sisters, C.J.K. was placed in a foster home apart from his sisters.

11. C.J.K. continuously resided at the home where he was placed in 2010 until 2012 when the foster home in which he was placed was closed due to downsizing of the foster care agency through whom he was placed.

12. Since September 2010, the two sisters have continuously resided together in the same pre-adoptive home.

13. The oldest child, C.J.K. was diagnosed with Pervasive Developmental Disorder with a clinical diagnosis of autism on Axis I. It is a disorder that involves the delay in the development of basic skills, including the ability to socialize with others and to

communicate. At the time this three year old boy came into placement, he had very limited vocabulary.

14. This young boy's condition necessitates a highly structured environment with continuous supervision.

15. C.D.K., the younger of the two girls, was diagnosed at birth with a genetic disorder, Oral-Facial-Digital Syndrome type 1 (OFD1); this is a rare genetic disorder and involves malformation of the face, mouth, fingers, and toes. There is no cure and this nearly three year old female toddler has multiple symptoms of this syndrome.

16. C.D.K.'s medical needs will be long standing with surgery and additional treatments in the future. Renal complications are a possible side effect of the syndrome. She has a primary physician as well as a speech therapist, occupational therapist, and oral surgeon due to the mouth/tongue/gum malformation.

17. C.D.K.'s medical condition requires a significant commitment of time and effort to provide her with the care that she needs.

18. After Adjudication in September 2010, Permanency Review Hearings were held: January 12, 2011, March 22, 2011, July 12, 2011, October 11, 2011, January 10, 2012 and April 10, 2012.

19. Not long after the first hearing held in January 2011, Father's compliance fell short of substantial and remained there. Over the course of the dependency matter, the [trial c]ourt found Father's compliance to be respectively for the six hearings: substantial, minimal, none, none, minimal and minimal, and his progress to be: substantial, minimal, none, none, none, and none.

20. Father failed to appear for half of the Permanency review Hearings (July 21, 2011, November 2, 2011 and April 18 2012). He failed to appear at the trial, although he was incarcerated at work release, he was able to make arrangements to appear for the termination hearing but failed to do so.

21. Father failed to exercise visits with [C]hildren from January through November of 2011, there was also no contact by phone or letter. He exercised four visits in 2011. In 2012, he resumed visiting with [C]hildren and the visits were less chaotic because of his contributions. Father failed to exercise other options to contact [C]hildren such as cards, letters or phone calls.

22. By March 2011, it was apparent that Father needed to complete a drug/alcohol evaluation. He completed it in November 2011 and he was recommended for intensive outpatient treatment for alcohol at Confront in Allentown. While he initiated treatment several times, he never began treatment. Father's alcohol issues remain unresolved.

23. In home services confirmed Father's abuse of alcohol and of Mother.

24. There were times when in-home service providers came to the home and Father would not get out of bed.

25. Father failed to comply with his agreement to submit to a mental health evaluation as well as submit to regular urinalysis as acknowledged in the order of March 22, 2011.

26. During the course of the dependency matter, Father has had no steady employment. He was financially dependent upon the income of Mother, even though he had a child support obligation for another child. Father and Mother's income tax refund was intercepted and applied toward Father's child support. On the day of the trial, he was incarcerated for non-payment of child support for an older child.

27. The [trial c]ourt in the dependency matter found that Mother's compliance on the average was moderate and found as follows: substantial, moderate, substantial, minimal, substantial and moderate. However, Mother was not successful with her progress and the [trial c]ourt found: substantial, moderate, minimal, none, minimal and minimal.

28. Mother has been steadily employed by Giant Foods since early 2011. She relocated her position from the Hellertown store to one in Allentown as well as increased her work hours by taking a night shift.

29. Mother has resided with Father in a one bedroom apartment since January 11, 2011.

30. Kim Mitchell of Signature Family Services testified that Mother called her to the home and Mitchell found the door frame smashed in pieces as Father had thrown a chair at Mother.

31. Despite Father's destruction of the premises and abuse towards her, Mother remained with Father even though she sought out male companionship as an effort to try and establish a home where she would have assistance with the care of [C]hildren.

32. Over a three month period, Mother brought three different male companions with her to the visits with [C]hildren. She advised the service provider that the individual was with whom she was going to reside.

33. Mother agreed to a mental health evaluation on or about October 17, 2010, however she never followed through with it.

34. Mother complied with Signature Family Services. Mother testified that she attended parenting classes at Care-Net, although this was not corroborated. Mother did not disclose this information to [CYS] because of her distrust of [CYS]. Mother was unable to explain in the simplest terms what she had learned when asked by the [trial] court.

35. Mother visited [C]hildren regularly and she exercised six visits in the community such as, Cedar Beach, Jefferson Park, and Chuck E. Cheese; during these community visits there were safety issues regarding [C]hildren.

36. Mother is unable to supervise all three [C]hildren.

37. The dependency matter endured for nearly two years during which time Mother was aware that Father had made little to no progress.

38. [CYS] told Mother that her [C]hildren would not be returned to her while she resided with Father who had made little to no effort to comply with services offered to him.

39. Despite Mother's financial stability and her knowledge that his presence in the home precluded the return of ... Children, Mother chose to remain with Father.

Trial Court Opinion, 3/20/2013, at 2-7.

On April 4, 2012, CYS filed petitions to terminate the parental rights of Mother and Father. A hearing was held on October 19, 2012. On March 20, 2013, the trial court entered a final decree terminating Mother's parental rights to all three Children.¹

Mother filed a timely notice of appeal and Rule 1925 statement. The trial court then entered a statement indicating that its opinion of March 19, 2013 adequately set forth the reasons for its decision to terminate Mother's parental rights.

Mother raises the following issues on appeal.

- I. Whether the trial court abused its discretion and committed an error of law by terminating Mother's parental rights when such determination was not supported by clear and convincing evidence under 23 Pa.C.S.A. §[]2511(a)(2), (5) and (8)?
- II. Whether the trial court abused its discretion by terminating [Mother's] rights by [*sic*] in violation of 23. Pa.C.S.A. §[]2511(b) by finding that such termination of parental rights will serve the developmental, physical and emotional needs and welfare of the Children?

Mother's Brief at 5 (capitalization omitted).

¹ Father's parental rights were also terminated. He is not a party to the present appeal.

The standard of review in determining whether a trial court erred in granting a petition to terminate parental rights involuntarily is well-settled.

In reviewing an involuntary termination of parental rights, we must employ a broad, comprehensive review of the record in order to determine whether the termination order is supported by competent evidence.... While the scope of review is broad, we are limited to determining whether the order is supported by competent evidence and whether the court adequately considered the effect of such decree on the welfare of the child.

In re Adoption of M.E.P., 825 A.2d 1266, 1270-1271 (Pa. Super. 2003) (citations and internal quotations omitted).

“Where a trial court has granted a petition to involuntarily terminate parental rights, this Court must accord the hearing judge’s decision the same deference that we would give to a jury verdict.” ***In re Termination of C.W.S.M.***, 839 A.2d 410, 414 (Pa. Super. 2003) (citation omitted). “In reviewing a ruling involuntarily terminating parental rights, the burden of proof is on the party seeking termination to establish by clear and convincing evidence the existence of grounds for doing so.” ***In re J.L.C. and J.R.C.***, 837 A.2d 1247, 1251 (Pa. Super. 2003) (citation omitted). “Clear and convincing evidence is defined as testimony that is so clear, direct, weighty and convincing that the trier of fact may come to a clear conclusion, without hesitance, of the truth of the precise facts in issue.” ***In re C.G.***, 791 A.2d 430, 434-435 (Pa. Super. 2002) (citations 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 Z.P.*, 994 A.2d 1108, 1115 (Pa. Super. 2010) (citing *In re B.L.W.*, 843 A.2d 380, 383 (Pa. Super. 2004) (*en banc*)).

This Court applies a two-part test for termination of parental rights. In *In re L.M.*, 923 A.2d 505, 511 (Pa. Super. 2007), we stated:

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 the instant matter, the trial court concluded that CYS proved by clear and convincing evidence that termination of Mother's parental rights was appropriate pursuant to 23 Pa.C.S. § 2511(a)(2) and was in the best interests of Children, pursuant to 23 Pa.C.S. § 2511(b). **See** Trial Court Opinion, 3/20/2013, at 10-17. Subsection (a)(2) 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:

(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).

The trial court based its decision to terminate Mother's parental rights on her insistence on maintaining a relationship with Father, and on her lack of progress in the development of parenting skills. Trial Court Opinion, 3/20/2013, at 14-15. Based on the evidence presented, we cannot conclude that the trial court abused its discretion by terminating Mother's parental rights for these reasons.

Mother argues that there was no evidence produced which demonstrated that C.J.K. and C.D.K.'s special needs rendered her unable to care for them. Mother's Brief at 12. She further contends that, even if such evidence was produced, she was still capable of caring for E.L.K., who has no special needs. *Id.* at 13. Mother argues that her inability to care for one or two of the Children does not permit a court to terminate her rights to all three, and emphasizes that she has resolved the economic problems which led to Children's initial placement with CYS. *Id.* at 13-15.

At the outset, we note that the record supports the trial court's assessment of Mother's parenting skills. For example, Mother at one point requested that CYS caseworker Heather Reeves "stop being nice to the [C]hildren as she felt that [Reeves] was making the [C]hildren's life

unhappy.” N.T., 10/19/2012, at 40. In another incident, Mother visited with Children at a park and promptly lost E.L.K. **Id.** at 38 (“[Reeves] and the service provider were frantically running around looking for [E.L.K.] At this point, [C.J.K.] had gone the other way.”).

Nonetheless, assuming *arguendo* that Mother’s argument is correct, she makes no effort to address Father, and the continued risk he would pose to all three Children if they were returned to Mother’s care. The evidence establishes that Father is an alcoholic who spends much of his time sleeping. **See, e.g., id.** at 185 (“[H]e was either intoxicated or asleep. One of the two.”); **id.** at 196 (“If I would come to the home ... he was sleeping and what I observed were beer bottles in the home by the case load[.]”). When Father is awake, he has proven violent and abusive. **Id.** at 189 (“[Mother] contacted me and said that [Father] was intoxicated and he had thrown a chair at her because he kept insisting that she had broken his arm[.]”). Mother also expressed concern that Father was using drugs. **Id.** at 188 (“[Mother] called me and said that she ... found drugs in the car, and she ... was confused between whether [Father’s] sleeping was the result of using drugs or the alcohol or both.”). Mother is unable to provide a safe and nurturing environment for Children while she remains with Father.

Moreover, the record supports the trial court’s conclusion that Mother is unwilling to part with Father. Mother testified during the hearing that she at one point called the police to remove Father. **Id.** at 137. According to

Mother, the police could not remove Father because his name was on the couple's lease and they were married. **Id.** However, when given the opportunity to move to her own apartment and leave Father, Mother failed to do so. **Id.** at 133-34 ("I did get myself an apartment and [Father] begged me to stay and told me he was going to change, and I believed him and then I ended up not going."). While Father was incarcerated during the time of the termination hearing, Mother indicated that she viewed Father as a potential babysitter for Children upon his release. **Id.** at 141. Thus, the record supports the trial court's conclusion that "the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by" Mother. 23 Pa.C.S. § 2511(a)(2).

Since we agree that Mother's rights were appropriately terminated under 23 Pa.C.S. § 2511(a)(2), we now move to an analysis of Section 2511(b) to determine whether termination of parental rights best serves Children's needs and welfare. **In re K.Z.S.**, 946 A.2d 753, 760 (Pa. Super. 2008).

A proper section 2511(b) analysis 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 that "[i]ntangibles such as love, comfort, security, and stability are involved in the inquiry into the needs and welfare of the child. In addition, we have 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.** “The trial court, in considering what situation would best serve the children’s needs and welfare, must examine the status of the natural parental bond to consider whether terminating the natural parents’ rights would destroy something in existence that is necessary and beneficial.” **Matter of Adoption of C.A.W.**, 683 A.2d 911, 918 (Pa. Super. 1996).

Here, the trial court reasoned that “[C]hildren have been in stable and steady environments where their special needs are met and it is in their best interests to remain there and enjoy the continuity, nurturing, care, attention and stability they are presently experiencing.” Trial Court Opinion, 3/20/2013, at 17. The trial court emphasized the “significant behavioral and medical issues of two of the three [C]hildren” and stated that the bond between Children and Mother was “outweighed by that between the children as well as that between the children and their current home settings.” **Id.** at 16. Again, we cannot conclude that the trial court abused its discretion.

Mother argues that “the record is devoid of any evidence that would support a finding that terminating Mother’s parental rights would best meet the physical and emotional needs and welfare of [C]hildren and the trial court failed to consider the effects of terminating the bond” that Children have with Mother. Mother’s Brief at 17.

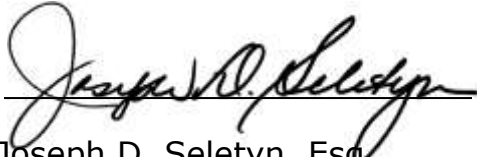
Contrary to Mother's contentions, the evidence produced at the termination hearing confirmed that Mother was ill-equipped to parent the Children and that, because of Father, she could not provide Children with appropriate safety and support. Moreover, testimony was elicited concerning the bond of each of the Children to Mother. The oldest of the Children, C.J.K., does not appear to possess any particular attachment to Mother, or anyone else, and generally does not display emotions. *Id.* at 67-69. The middle child, E.L.K., appears happy to see Mother during visits, but is evidently more bonded to her foster mother, and calls her foster mother "Mom." *Id.* at 68-69, 82-83. E.L.K. and her younger sister C.D.K. reside together in a pre-adoptive home and are "inseparable." *Id.* at 18, 24. At the time of the termination hearing, C.D.K. was only two years old, and was only a few months old at the time she was placed in foster care. C.D.K. is bonded with her foster mother and does not like to leave her side. *Id.* at 69, 82. As a result, it was reasonable for the trial court to conclude that it was not worth preserving what bond there was between Mother and Children, and that it was in the best interests of Children for Mother's parental rights to be terminated.

Thus, as the trial court's decision is supported by competent evidence, we affirm the decree granting CY's petition to terminate the parental rights of Mother pursuant to 23 Pa.C.S. § 2511(a) and (b).

Decree affirmed.

J-S54044-13

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: 10/25/2013