

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

IN RE: ADOPTION OF: J.R., A MINOR	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
APPEAL OF: K.L., MOTHER	:	
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	:	
	:	
	:	
	:	No. 1088 MDA 2023

Appeal from the Order Entered July 5, 2023
In the Court of Common Pleas of Cumberland County Orphans' Court at
No(s): 008 Adopt 2023

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

MEMORANDUM BY LAZARUS, J.:

FILED: JANUARY 22, 2024

K.L. (Mother) appeals from the order, entered in the Court of Common Pleas of Cumberland County, Orphans' Court Division, involuntarily terminating her parental rights to her minor son, J.R. (Child) (born October 2021). Counsel has also filed an **Anders**¹ brief and accompanying petition seeking to withdraw on appeal. After careful review, we affirm the order and grant counsel's petition to withdraw.

In February 2022, when Child was four months old, Cumberland County Children and Youth Services (CYS) received a general protective services

* Former Justice specially assigned to the Superior Court.

¹ **Anders v. California**, 386 U.S. 738 (1967); **Commonwealth v. Santiago**, 978 A.3d 349 (Pa. 2009). **See also In re V.E.**, 611 A.2d 1267 (Pa. Super. 1992) (extending **Anders** principles to appeals involving termination of parental rights).

(GPS) referral regarding parenting concerns with Child's father, J.R. (Father),² and a report that the family was homeless and living with one of Father's friends. At the time of the referral, Mother was incarcerated in Franklin County Prison³ in Chambersburg, PA. In April 2022, after CYS and the Hershey Child Protection Team viewed videos showing Father "slapping [Child] around his head and face, . . . pushing and holding [C]hild's face into the sofa cushions, yelling at [Child, and] holding and swinging [Child] with one hand and throwing him forcibly over his shoulder," the court entered a verbal order for emergency protective custody of Child. Confirmation of Verbal Order for Emergency Protective Custody, 4/5/22; Shelter Care Application, 4/11/22.⁴ Legal and physical custody of Child was granted to CYS. At that same time, Child was adjudicated dependent and placed in foster care with foster father, an adoptive resource with whom he resides to date.

CYS developed a permanency plan for Mother that included the following objectives: cooperate and communicate with CYS; complete parenting assessment and follow any recommendations; participate in drug and alcohol evaluation and follow any recommendations; participate in mental health

² Father is not a party to this appeal; however, his parental rights were also involuntarily terminated at the same time as Mother's.

³ Mother was facing felony charges related to drug delivery resulting in death.

⁴ Father was arrested on charges of felony aggravated assault (strangulation) and the summary charge of harassment with regard to Child. Father pled guilty on December 20, 2022, and was sentenced on January 31, 2023, to two to four years' imprisonment. **See** N.T. Termination Hearing, 7/5/23, at 9.

evaluation and follow through on any recommendations; obtain stable employment and safe and stable housing; and address and resolve any criminal matters. Child's permanency goal was set at reunification.

Mother was released from prison in June 2022 and moved into a transitional home, where she resided for one month. In August 2022, Mother was reincarcerated for a probation violation.⁵ CYS was unaware of Mother's whereabouts from the date of Child's placement until her reincarceration in August 2022.

The trial court held permanency review hearings in September/October 2022⁶ and February 2023. At the October 2022 hearing, the court found that Mother, who was still incarcerated, had moderately complied with her permanency plan and that she had made "moderate progress toward alleviating the circumstances [that] necessitated [Child's] original placement." Permanency Review Order, 9/3/22, at 1. The court also found that Mother had requested visits with Child in prison in April; however, those visits never occurred due to CYS's "lack of efforts during the remainder of the review

⁵ CYS had no contact with Mother and did not know where she was after she was released from prison in June 2022 until she was reincarcerated on August 10, 2022. When Mother was re-released on probation on November 30, 2022, CYS did not have information on her whereabouts until her second reincarceration on March 8, 2023.

⁶ The court held a permanency review hearing on September 19, 2022; however, the court held the record open for an additional two weeks for further assessment of CYS's efforts to support the goal of reunification. Testimony concluded at the October 3, 2022 hearing.

period until 9/19/22.” **Id.** at 3. Ultimately, Mother and Child had two prison visits on October 19, 2022 and November 3, 2022.⁷ A concurrent placement goal of return to parent and adoption was ordered. **Id.** at 2.

At the February 2023 placement review hearing, the court found Mother, who had been released from incarceration, had been minimally compliant with her plan goals and that she had made no progress toward alleviating the circumstances leading to Child’s original placement. **See** Permanency Review Order, 3/1/23, at 1. The court also noted that Mother “appears to be living in Pennsylvania, . . . is no longer residing at the last address she provided to Probation[,] has not made any progress on any of her permanency planning objectives[,] and appears to be in violation of her probation.” **Id.** at 2. Finally, the court found that while foster father “facilitated visits” between Mother and Child while she was incarcerated, Mother “did not maintain constant or positive contact with [foster father] after her release and [foster father] has not heard from her since Christmas.” **Id.** The placement goal of return to parent/adoption remained the same.

Mother was reincarcerated in March 2023. On March 31, 2023, CYS filed a petition to involuntarily terminate Mother’s parental rights to Child pursuant

⁷ The court also noted that Child is thriving in foster father’s care, that foster father is “very open to communication and visitation with [Child’s] family members[, and that v]isits were scheduled to occur regularly with maternal grandmother and step-grandfather[, but they] were cancelled and not rescheduled.” **Id.** Tellingly, the court noted that the reduction in visits with family members had the domino effect of strengthening Child’s bond with foster father. **Id.**

23 Pa.C.S.A. §§ 2511(a)(1), (2), (5), (8), and (b). In May 2023, Mother was rereleased from prison and transferred to an inpatient drug and alcohol treatment facility. On June 16, 2023, after successfully completing a dual-diagnosis program, Mother was discharged to a halfway house where she was participating in a three-month program.

On July 5, 2023, the court held a termination hearing⁸ at which Mother, CYS placement caseworker Sandra Gibson, halfway house counselor Ramonita Bracy, foster care agency case manager Carolyn Dorazio, and foster father testified. At that time, Mother was living in a halfway house and was on parole at the time of the termination hearing. Mother will remain on parole until 2027. Child was 18 months old at the time of the hearing. Mother last had custody of Child in December 2021, when Child was two months old.

At the conclusion of the termination hearing, the trial court entered an order granting CYS's petition and involuntarily terminating Mother's parental

⁸ Child was represented by guardian *ad litem*, Tammi Blackburn, Esquire, and attorney, Cindy Martin, Esquire, at the termination hearing. **See** 23 Pa.C.S.A. § 2313(a) (children have statutory right to counsel in contested involuntary termination proceedings) and ***In re K.R.***, 200 A.3d 969 (Pa. Super. 2018) (en banc), **but see *In Re: T.S., E.S.***, 192 A.3d 1080, 1092 (Pa. 2018) ("[D]uring contested termination-of-parental-rights proceedings, where there is no conflict between a child's legal and best interests, an attorney-guardian *ad litem* representing the child's best interests can also represent the child's legal interests.").

rights to Child pursuant to sections 2511(a)⁹ and (b) of the Adoption Act.¹⁰ In its Pa.R.A.P. 1925(a) opinion, the court “address[ed Mother’s] issues . . . within an overall analysis as to whether a sufficient statutory ground was proven and whether termination was in [Child’s] best interest.” Trial Court Opinion, 9/1/23, at 7. The court’s analysis of section 2511(a)¹¹ includes the following facts:

- Up until filing of termination petition, Mother’s sole contact with Child since he was adjudicated dependent and removed from the home was five prison visits;
- Through July 2023, Mother made no effort to meet CY’s goals, in particular failing to participate in parenting evaluation and parenting services;
- Mother was still at halfway house and unemployed at time of termination hearing;
- Mother’s halfway house cannot accommodate Child;
- Child has been in care and custody of CY for 15 months;

⁹ Notably, the court did not indicate under what specific subsection of 2511(a) it was terminating Mother’s parental rights. Rather, the court stated that it was changing the goal to adoption and that termination was in Child’s best interest, that Child had developed a much stronger bond with foster father than any bond Mother has with Child, and that it is in Child’s best interest to stay with foster father. **See** N.T. Termination Hearing, 7/5/23, at 87. We highly disfavor the trial court’s failure to not only provide reasons on the record for terminating Mother’s parental rights, but also failing to specify under what subsection it was terminating those rights both at the hearing and in its Rule 1925(a) opinion. We remind the trial judge that “[t]ermination of parental rights is a drastic measure that should not be taken lightly. Not only are [Mother’s] rights at stake here, but [so is Child’s] right to a relationship[.]” ***In re Adoption of K.G.M.***, 845 A.2d 861, 864 (Pa. Super. 2004) (citation omitted).

¹⁰ 23 Pa.C.S.A. §§ 2101-2938.

¹¹ The court noted that it was confining its analysis to the subsections of 2511(a) alleged in CY’s petition—§§ 2511(a)(1), (2), (5), and (8). **See** Trial Court Opinion, 9/1/23, at 8.

- Mother would not be able to be reunified with Child for another three to four months because she had at least two more months to complete her program at halfway house; and
- Mother has only cared for Child for two months out of his life and is still not available to care for Child.

Id. at 9-12.

Mother filed a contemporaneous notice of appeal and Rule 1925(b) concise statement of errors complained of on appeal. **See** Pa.R.A.P. 1925(a)(2)(i). Mother presents the following issues for our consideration:

- (1) Whether the [t]rial [c]ourt abused its discretion and committed an error of law when it found that sufficient grounds existed for a termination of [Mother's] parental rights to [C]hild, despite a lack of clear and convincing evidence, thus contravening section 2511(a) of the Adoption Act[.]
- (2) Whether the [t]rial [c]ourt abused its discretion and committed an error of law in terminating [Mother's] parental rights when the conditions [that] led to the removal or placement of [C]hild no longer existed or were substantially eliminated, thus contravening sections 2511(a) and (b) of the Adoption Act[.]
- (3) Whether the [t]rial [c]ourt abused its discretion and committed an error of law in determining it would be in [C]hild's best interest to have parental rights terminated, when [Mother], if given sufficient time, would be ready, willing, and able to parent [C]hild and provide for his needs, thus contravening [s]ection 2511(b) of the Adoption Act[.]

Appellant's Brief, at 4-5.

On October 23, 2023, court-appointed counsel filed an ***Anders*** brief and application seeking to withdraw from representing Mother on appeal, concluding that her issues are meritless. This Court has explained:

When considering an ***Anders*** brief, this Court may not review the merits of the underlying issues until we address counsel's request

to withdraw. In order to comply with *Anders* and its Pennsylvania progeny, counsel must:

- (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) (citations omitted).

In ***Santiago***, our Supreme Court further held:

[I]n the ***Anders*** brief that accompanies court-appointed counsel’s petition to withdraw, counsel must: (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.

Santiago, 978 A.2d at 361. Finally, counsel must also “attach to [his] petition to withdraw a copy of the letter sent to [his] client advising her [] of [her] rights.” ***Commonwealth v. Millisock***, 873 A.2d 748, 752 (Pa. Super. 2005).

After an appellate court receives an ***Anders*** brief and is satisfied that counsel has complied with the aforementioned requirements, the Court must then undertake an independent examination of the record to determine whether the appeal is wholly frivolous. ***In re S.M.B.***, 856 A.2d at 1237.

Here, counsel's petition to withdraw asserts that he made a conscientious review of the record and determined the appeal would be frivolous. Counsel has also filed a brief that complies with the requirements set forth in ***Santiago***. ***See Santiago***, 978 A.2d at 361. Finally, we note counsel attached to his petition a copy of a letter advising Mother of her rights. ***See Millisock***, 873 A.2d at 752. Hence, we conclude that counsel has complied with ***Anders***' procedural requirements and we proceed to an independent review of the merits. ***See In re S.M.B.***, 856 A.2d at 1237.

The standard of review in termination of parental rights cases requires appellate courts to accept the findings of fact and credibility determinations of the trial court if they are supported by the record. If the factual findings are supported, appellate courts review to determine if the trial court made an error of law or abused its discretion. [A] decision may be reversed for an abuse of discretion only upon demonstration of manifest unreasonableness, partiality, prejudice, bias, or ill-will. The trial court's decision, however, should not be reversed merely because the record would support a different result. We have previously emphasized our deference to trial courts that often have first-hand observations of the parties spanning multiple hearings.

In re T.S.M., 71 A.3d 251, 267 (Pa. 2013) (citations and quotation marks omitted). A court must conduct a bifurcated analysis when faced with a petition to involuntarily terminate 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 [s]ection 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 [s]ection 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).¹²

Under subsection 2511(a)(2):

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.A. § 2511(a)(2). Our Supreme Court has stated:

[I]ncarceration neither compels nor precludes termination. Instead, we hold that incarceration is a factor, and indeed can be a determinative factor, in a court's conclusion that grounds for termination exist under § 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).

Mother contends that the trial court erred in terminating her parental rights where she successfully completed inpatient treatment at Cove Forge, moved into a halfway house as recommended, is on a waitlist for mental health services, attends AA/NA meetings daily, is applying for jobs, intends to

¹² We first note that subsections 2511(a)(5) and (8) do not apply to a parent who is incarcerated at the time the child is removed and, thus, did not have physical custody. ***See In re Z.P.***, 944 A.2d 1108, 1123 n.2. (Pa. Super. 2010). Because Mother was incarcerated at the time Child was removed from the family and adjudicated delinquent, we will confine our review to the remaining section 2511(a) subsections raised in CYS's termination petition.

complete the three-month halfway house program, has attended rehab to “try to get herself back on track to reunify with [Child,]” was unable to contact Child when she was out of prison because she did not have a phone or job, is about to start a parenting program, and “request[ed] additional time to work on her permanency plan goals now that she was clean and on the right track.” Appellant’s Brief, at 9-10.

Ther record bears out that, in June 2023, Mother successfully completed a drug and alcohol program at Cove Forge Behavioral Health System, where she attended chemical dependency groups and AA/NA groups, participated in group activities, and was taught relapse prevention strategies and recovery tools to be implemented in her daily life. Mother’s lead case manager at Cove Forge recommended that Mother continue her drug and alcohol treatment when she was released, attend meetings, obtain a sponsor, and live in a group home. Following her release, Mother enrolled and participated in a treatment program at Traditions House, where she attended group sessions and “phased from blackout to level 1” which allowed her to “go out on pass[,] begin looking for employment[, and] begin her search for housing in preparation for discharge.” Letter by Ramonita Bracy, MA, Tradition’s Women Counselor, 7/4/23.

Nevertheless, although Mother completed an in-patient dual-diagnosis program and enrolled in an outpatient treatment program in June 2023, the following facts still remain: Child has only spent two months of his entire life in Mother’s care; Mother has been incarcerated for a large part of Child’s life;

Mother was unemployed and living in a halfway house at the time of the termination hearing; Mother actively used drugs in between the periods she was incarcerated; Mother will be on parole until 2027; and, until March 2023, Mother's sole contact with Child consisted of five prison visits. ***See In re Burns***, 379 A.2d 535, 540 (Pa. 1977) (affirmative parental duty applies even while parent incarcerated; duty requires parent maintain "continuing interest in child and [make] a genuine effort to maintain communication and association with child"); ***see also In Interest of A.P.***, 692 A.2d 240, 245 (Pa. Super. 1997) ("[F]act of incarceration alone does not obviate the duty to exercise reasonable firmness under the circumstances to maintain a secure parent/child bond.").

Critically, Mother is unable to provide any care for Child while she is in the halfway house; her release date is September 2023. N.T. Termination Hearing, 7/5/23, at 70. Mother failed to maintain consistent contact with CYS when she was released from prison, despite her testimony that she knew the agency's phone number, she knew who to contact at CYS, and she knew where the CYS offices were physically located. ***Id.*** Finally, and significantly, Mother has not fulfilled her service plan goals, including attending parenting classes and engaging in parenting services or mental health treatment, has not had

custody of Child since he was two months old, and last visited with Child in May 2023 when she was incarcerated.¹³ **Id.** at 23, 68-69.

On the other hand, Child has an established, close bond with foster father, who meets Child's emotional, physical, and mental needs. **Id.** at 25, 39, 42. **See In re D.C.D.**, 105 A.3d 662, 677 (Pa. 2014) (trial court properly considered child's "strong bond with her foster family with whom she has lived nearly all her life and who has indicated a desire to adopt her" pursuant to section 2511(b)). Child has lived with foster father, an adoptive resource, for three-quarters of his life. Foster father, a family friend, provides Child with a loving, stable home life and has been "very responsive" and accommodating in facilitating visits between Mother and Child and other family members. N.T. Termination Hearing, 7/5/23, at 21-22, 43. **See also id.** at 23-24 (CYS placement caseworker testifying foster father invited maternal grandmother to Child's physical therapy sessions and arranged visit with her at restaurant, and has arranged visits between Child and paternal uncle); **id.** at 25 (CYS caseworker testifying foster father is "very open to biological family involvement"); **id.** at 38-39 (foster care caseworker testifying foster father very "proactive" in keeping Child up to date on medical care and well-visits).

Under such circumstances, we find that the trial court correctly concluded there was clear and convincing evidence to terminate Mother's

¹³ Mother was diagnosed with anxiety, depression, and PTSD. **See** N.T. Termination Hearing, 7/5/23, at 59. She had been prescribed medication to treat the diagnoses at the time of the termination hearing. **Id.**

parental rights under subsections 2511(a)(2)¹⁴ and (b). Although Mother pleaded with the court for more time, she also testified that, realistically, it would take much longer than two to three months for her to “get up on [her] feet” and be able to care for Child full-time. N.T. Termination Hearing, 7/5/23, at 71. Child’s life “simply cannot be put on hold [any longer] in the hope that [Mother] will summon the ability to handle the responsibilities of parenting.” ***In re Z.P.***, 994 A.2d 1108, 1125 (Pa. Super. 2010).¹⁵

The fact that Mother has been unable to fulfill her parental duties to Child cannot be factually disputed. As we acknowledged in ***In re B., N.M.***, 856 A.3d 847 (Pa. Super. 2003), “a parent’s basic constitutional right to the custody and rearing of his child is converted, upon the failure to fulfill his or her parental duties, to the child’s right to have proper parenting and fulfillment

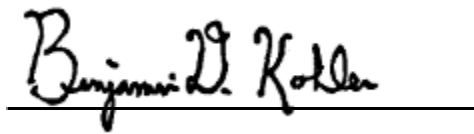
¹⁴ Parental rights may be involuntarily terminated where any one subsection of section 2511(a) is satisfied, and termination is in the child’s best interests under section 2511(b). ***See B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (en banc).

¹⁵ Foster father testified at the termination hearing that he is open to communication with Mother, noting that “ultimately [Mother and Father] are [Child’s] parents[,] that’s going to exist for his entire life [and he is] not looking to erase that.” N.T. Termination Hearing, 7/5/23, at 45. In light of foster father’s incredibly supportive stance toward Mother remaining a part of Child’s life even if her parental rights are terminated, we note that “Act 101” (eff. 4/25/2011) and 23 Pa.C.S.A. §§ 2731-2742, provides an option for prospective adoptive parents and birth relatives to enter into a voluntary agreement for ongoing communication or contact that is in the best interest of the child. However, to be legally enforceable, the agreement must be approved by the court on or before the date of the adoption decree. ***See*** 23 Pa.C.S.A. §§ 2735(c), 2738(c).

of his or her potential in a permanent, healthy, safe environment.” ***Id.*** at 865.

Order affirmed. Counsel’s petition to withdraw granted. 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: 1/22/2024