

IN RE: ADOPTION OF R.B., A.B. AND N.B.  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch, Orphans' Court Division  
Adoption Docket #7-2008, Volume 4, Page 291

*Involuntary Termination of Parental Rights; Parent-Child "Bond Analysis";*

*Best Interests of the Child*

1. The standard of proof required in involuntary terminations proceedings must be at least clear and convincing evidence.
2. A request to have a natural parent's parental rights terminated is governed by 23 Pa.C.S. §2511, and the grounds for termination are listed under subsection (a).
3. After concluding that grounds for termination are established by clear and convincing evidence under a subsection of 23 Pa.C.S.A. §2511(a), a Court must also conduct an analysis of the situation under 23 Pa.C.S.A. §2511(b) and consider the "best interests" of the children in its determination.
4. It is under this section of statutory analysis that many parents challenge a Court's determination that termination of their parental rights would best serve the children's needs and welfare, as they believe that the severance of a parent-child bond would harm the children. But bonding is only a small subset of the needs and welfare of the children.
5. Often overlooked is the distinction between a parent-child bond and the three specific statutory requirements set forth in §2511(b): developmental, physical, and emotional needs and welfare of the children.
6. Sole emphasis on a parent-child bond is misplaced, as consideration is to be given equally to the three areas of needs and welfare: 1) developmental; 2) physical and 3) emotional. 23 Pa.C.S.A. §2511(b).
7. Developmental needs such as education, life's lessons, and counseling, and physical needs such as shelter, clothing, food, love, comfort, and security, are vital to the welfare of these children. And while bonding is a part of a child's emotional needs and welfare, children deserve stability and a sense of permanency in their lives that the parents in this case are unable to give them.
8. While severing a parent-child bond by terminating parental rights may cause the children to experience sadness and loss, the children in the present case have already experienced the sadness and loss of their parents due to their inability to be parents to them over the past twenty-three (23) months.
9. In addition to recognizing the bond, the Court must also consider the ramifications of not terminating the parental rights and freeing [the children] for adoption.
10. The issue is not only whether there is a bond that exists between parent and the child[ren] that would be harmful if severed; the issue is what is in the child[ren]'s best needs and interest under the totality of the circumstances. In re T.D., 2008 WL 1838353, \*9 (Pa.Super.2008).

Appearances:

Anne M. Shepard, Esquire, *Counsel for Natural Father*

Michael J. Connor, Esquire, *Counsel for Natural Mother*

Brian C. Bornman, Esquire, *Counsel for Franklin County Children and Youth Services*

OPINION

Van Horn, J., May 19, 2008

Procedural and Factual Background

This case involves three brothers, R.B. born January 4, 1996, A.B. born July 14, 1997 and N.B. born June 23, 1998. The three boys came into the care of Franklin County Children and Youth Services on April 13, 2006. Their biological parents are R.B., Sr. and P.D.

In the days leading up to their placement, the boys' adult half-sister, A.D., drove from her home in Monessen, Pennsylvania on April 9, 2006 out of concern since she had not been able to reach her mother, P.D., and the boys for an extended period of time. When she arrived at Mother's home she requested assistance from the Chambersburg Police Department due to her finding the house dark with the door open. Four children, including an older sister of the boys, and Mother's paramour were found asleep in the home. There was no electricity for the home, no living room furniture and no food in the house. The older sister took the three boys with their sister back to her home in Monessen until Mother could be located.

After three days, the older sister contacted the agency since she had not been able to locate her Mother and was unable to continue caring for all four children. She agreed to continue caring for the boys' sister. No other family resources were available as Father was incarcerated.

Mother arrived late to the detention hearing on April 17, 2006 and met with caseworkers from Franklin County Children and Youth Services after the hearing had concluded continuing the boys in care. Mother admitted an alcohol problem and reluctantly acknowledged a crack cocaine problem. Her desire was to enter a rehabilitation program and she acknowledged that she could not properly care for her children at that time.

Mother was not present for the adjudication hearing on April 24, 2006 and her whereabouts were unknown until May 15, 2006 when the adult daughter reported that Mother was in a drug and alcohol treatment facility in Williamsburg, Pennsylvania.

Approximately two months later the adult sister reported that Mother was attending counseling and living at the Interfaith Hospitality Network Shelter Program. This facility reported on July 18, 2006 that Mother had been extradited to the Franklin County Jail on drug delivery charges.

Upon Mother's release from jail she informed the agency that she was going to live with her adult daughter and the boys' sister in Monessen, Pennsylvania. She sporadically had contact with the agency through February of 2007. After a three-month gap in communication, Mother reported on May 2, 2007 that she was now residing at the Avis Arbor Recovery Shelter Washington City Mission Program. Her reason for a long period of time without contact was due to her losing the children's phone numbers, the agency's phone number and the foster care provider's phone number.

Thereafter Mother entered a series of treatment facilities beginning with a ten week program at the Wesley Spectrum Services Drug and Alcohol Treatment Facility followed by a stay at Family Links in Pittsburgh, Pennsylvania and finally a move to the Sojourner House in Pittsburgh on August 15, 2007.

Mother failed to visit with the children during the entire time they were in care from April 13, 2006 to the date of the hearing on March 11, 2008. She did not provide any gifts or other acknowledgments during their nearly two years in placement.

Mother appeared at the hearing on the petition to terminate her parental rights with counsel and advised that she has completed the drug and alcohol treatment at Sojourner House. She hopes to obtain housing in the near future although acknowledged that it may take a period of several months for her to accomplish this goal.

Mother and Father's thirteen year old daughter has lived with Mother at the Sojourner House for the past seven months. Mother is not employed and receives disability income. She is without adequate housing or financial resources to support herself and four children.

Mother acknowledged a history of addiction to alcohol and crack cocaine for a period in excess of ten years. She has completed numerous treatment programs both before and after the placement of her three sons. She also acknowledges being an active user at the time the children were removed from her care and for a year thereafter.

Father was incarcerated in the Graterford State Correctional Facility for simple assault, aggravated assault and disorderly conduct at the time the three boys came into care on April 13, 2006. Very limited information was provided concerning Father's relationship with the children prior to his incarceration in 2006 other than Mother's testimony that R.B. Sr. was a good father during the time they lived together. Father returned to the area upon his release from incarceration at the end of January 2007 to reside with his girlfriend to whom he was recently married. Father complied with the Court's directive for a psychological evaluation which was completed on March 29, 2007. Dr. Edward Yelinek diagnosed Father with Axis I Adjustment Disorder with Anxious Features and Axis II Anti-Social Personality Disorder and Borderline Intellectual Functioning. Dr. Yelinek indicated that individual therapy was an option for Father but he was uncertain if it would be helpful to stabilize Father's mood and regulate his behavior. Dr. Yelinek did not support any unsupervised visitation between Father and the children due to the children's behavioral problems and Father's poor impulse control. He noted that Father's behavior associated with his Axis II diagnosis are very difficult to change and with Father's intellectual limitations, treatment becomes even more difficult, if not impossible. Dr. Yelinek found rigidity in Father's parenting style that would not likely be changed for a substantial period of time.

Franklin County Children and Youth Services attempted to work with Father on identified issues being fully aware of Dr. Yelinek's evaluation. The goal was to return the three boys to his care. The oldest of the three, R.B., has severe mental health issues that interfered with his ability to appropriately function in the foster care setting. R.B. is currently in a residential treatment facility.

Father began visiting with the boys after his release from incarceration with supervised community visits occurring in February of 2007. At the permanency hearing in August of 2007, despite the boys having been in care for fifteen out of the preceding twenty-two months, Father was afforded additional time to demonstrate sufficient stability and parenting skills. His visits progressed in October of 2007 to weekly unsupervised visits of four hours in length. In December of 2007, he began twice weekly unsupervised visits of between six and eight hours in length.

During an unsupervised visit on December 1, 2007, Father admitted to slapping N.B. in the face. Franklin County Children and Youth Services initiated a safety plan providing for no physical discipline by Father upon the children and overnight visits began on December 24, 2007. Another incident occurred on January 12, 2008 at Father's home while A.B. and N.B. were visiting. Father testified that he placed his hand on N.B.'s cheek and pushed his face away. Credible evidence indicates that Father did physically slap the child despite being educated against the use of physical discipline and in clear violation of the safety plan instituted as a result of the December 1, 2007 incident. Father has not been able to demonstrate any internalization of the education and training provided to enhance his parenting skills. The safety of his sons is jeopardized by Father's behavior while the children are in his care.

Father's counselor, Paul Scalia, has attempted to work with Father on the issues identified in the permanency plan. He sees Father as being fairly inflexible and concludes that Father would have difficulty coping with any behaviors of the children that were outside of Father's expectations. Mr. Scalia agreed with the evaluation provided by Dr. Yelinek.

Franklin County Children and Youth Services continued work with Father towards reunification after the December 1, 2007 incident of physical discipline against N.B. After the January 12, 2008 incident with N.B., the safety of the children required supervised visits only with Father until the hearing held on March 11, 2008 on the agency's Petition to Terminate Parental Rights.

The Court entered its Order on March 14, 2008 after analysis of the factual evidence presented at hearing and concluded that the agency had met its burden by clear and convincing proof that the parental rights of both Mother and Father should be terminated pursuant to Subsections 2, 5 and 8 of 23 Pa.C.S. §2511(a) in that:

1. The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the children to be without essential parental care, control or subsistence necessary for their 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);
2. The children have been removed from the care of the parent by the Courts for a period of at least six months and the conditions which led to the removal or placement of the children continued to exist and further the parent cannot or will not remedy those conditions within a reasonable

period of time, and the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the children within a reasonable period of time, and termination of the parental rights would best serve the needs and welfare of the children, 23 Pa.C.S. §2511(a)(5); and

3. The children have been removed from the care of the parent by the Court, more than twelve months have elapsed from the date of removal, the conditions which led to the removal of the children continue to exist and termination of parental rights would best serve the needs and welfare of the children, 23 Pa.C.S. §2511(a)(8).

Both Mother and Father timely appealed from the Court's decision and by Order of Court, timely provided their Statement of Matters Complained of on Appeal. This Opinion is now offered in support of the decision of March 14, 2008 terminating the parental rights of both Father and Mother.

## Discussion

### **1. Termination of Parental Rights Generally**

"The U.S. Supreme Court determined, in Santosky v. Kramer, 455 U.S. 745 (1982), that the due process clause of the Fourteenth Amendment to the U.S. Constitution requires that the standard of proof in involuntary termination proceedings must be at least clear and convincing evidence." In Re Adoption of D.M.L. and F.W.Z., 453 A.2d 664, 666 (Pa. Super. 1982). It is well established that this high burden of proof lies with the party seeking termination. See generally In the Matter of the Adoption of C.A.W. and A.A.W., 683 A.2d 911 (Pa. Super. 1996). Therefore, in this termination case, FCCYS held the burden to prove the grounds for involuntary termination by the clear and convincing standard.

### **2. Father's Appeal**

A request to have a natural parent's parental rights terminated is governed by 23 Pa.C.S. §2511, and the grounds for termination are listed under subsection (a). In the present case, the factual evidence presented at the hearing by FCCYS satisfied the burden of proof by clear and convincing evidence that the parental rights of both Mother and Father should be terminated pursuant to Subsections 2, 5 and 8. After concluding that grounds for termination are established under a subsection of 23 Pa.C.S.A. §2511(a), a Court must also conduct an analysis of the situation under 23 Pa.C.S.A. §2511(b) and consider the "best interests" of the children in its determination. This section requires a Court to give primary consideration to the "developmental, physical, and emotional needs and welfare of the child." 23 Pa.C.S.A. §2511(b). It is under this section of statutory analysis that many parents challenge a Court's determination that termination of their parental rights would best serve the children's needs and welfare, as they believe that the severance of a parent-child bond would harm the children. In the present case, Father alleges error in the Court not considering the bond established between himself and each child and concludes that the Court erred in severing that bond as not being in the best interests of the children.

While this Court did certainly take into consideration the bond that inevitably developed between Father and the children during the years that the family lived together, bonding is but a small subset of the needs and welfare of the children. Often overlooked is the distinction between a parent/child bond and the three specific statutory requirements set forth in §2511(b): developmental, physical, and emotional needs and welfare of the children. Father's sole emphasis on what he characterized as a bond is misplaced, as consideration is to be given equally to the three areas of needs and welfare: 1) developmental; 2) physical and 3) emotional. Developmental needs such as education, life's lessons, and counseling, and physical needs such as shelter, clothing, food, love, comfort, and security are vital to the welfare of these children. And while bonding is a part of a child's emotional needs and welfare, these children deserve stability and a sense of permanency in their lives that the parents in this case are unable to give them.

The *guardian ad litem* in this case, who acts in the best interests of the children, suggested that termination is the proper decision, even after acknowledging two of the children's preferences for reunification with Father. The Court recognizes that severing a parent-child bond by terminating parental rights may cause the children to experience sadness and loss. However, these children have already experienced the sadness and loss of their parents due to their inability to be parents to them over the past twenty-three (23) months. "In a case involving [older children], the connection between the [children] and the parents is stronger. In addition to recognizing the bond, the Court must also consider the ramifications of not terminating the parental rights and freeing [the children] for adoption. The issue is not only whether there is a bond that exists between parent and the child[ren] that would be harmful if

severed; the issue is what is in the child[ren]'s best needs and interest under the totality of the circumstances." In re T.D., 2008 WL 1838353, \*9 (Pa.Super. 2008).

The *guardian ad litem* also expressed concerns, which were echoed in this Court's initial Order for termination, over Father's impulse control, anger, and aggressiveness which have in the past and undoubtedly will in the future impair his ability to deal with the children's behavioral problems and special needs. While it is true that Father complied with the recommendations of FCCYS in completing a psychological evaluation and following through with counseling, Father has not been able to demonstrate any internalization of the education and training provided to enhance his parenting skills. Despite the exhaustive efforts of FCCYS in working with Father to allow him to demonstrate his ability to reform, Father was not able to control his anger and aggressiveness in order to appropriately parent his children, and their safety has been jeopardized while in his care.

After consideration of the three specific statutory requirements set forth in §2511(b), the developmental, physical, and emotional needs and welfare of the children as well as the bond that has developed between Father and the children, this Court could not overlook Father's demonstrated inability to provide appropriate parental care for the children. Therefore, the best interests of the children are served by the termination of Father's parental rights.

### **3. Mother's Appeal**

Mother alleges error in the Court not providing her an opportunity to obtain appropriate housing now that she has completed drug and alcohol treatment. Mother also claims that the needs and welfare of the children are not best served with a termination of parental rights given no expert testimony on the effect of the termination on the children.

As previously mentioned, at the time of the termination hearing before this Court, the children had been in placement for twenty-three (23) months. They came into placement due to the unknown whereabouts of Mother and a lack of resource in an incarcerated Father. Eventually, FCCYS learned that Mother had been in and out of jail, various treatment facilities, shelters, family homes, and finally moved to Pittsburgh, Pennsylvania where she is currently residing in the Sojourner House for drug and alcohol treatment.

During the entire time the children were in care from April 13, 2006 to the date of the hearing on March 11, 2008, Mother failed to visit the children and had very limited contact with the agency. Mother did not keep FCCYS apprised of any programs she had completed nor provide the agency with documentation to prove completion. While it is commendable that Mother has taken steps to seek treatment for her drug and alcohol addiction, this Court believes that Mother still has a long way to go on her road to recovery, as her addiction is very serious and complicated. Mother will need a significant amount of time to process her own dependency, a task that is difficult enough without the presence of three challenging children who would be dependent on her for their needs and welfare.

Additionally, although Mother testified that she hopes to obtain housing in the near future, she acknowledged that it may take a period of several months for her to accomplish this goal. Statutory and case law are very clear that it is anticipated that children will reach a level of permanency from the time they come into care within eighteen (18) months. Furthermore, finalizing an adoption and having the children in a permanent placement is also contemplated at that time. At the time of this hearing for termination, the children had been in placement for almost twenty-three (23) months. Before placement, FCCYS was unable to work with Mother due to her unknown whereabouts and sporadic contact with the agency. Even if Mother had presented with a defined plan including housing and employment in a defined period of time, the Court cannot discount Mother's apparent history of incapacity as well as the circumstances which caused the children to come into placement as being predictors of the future. "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." In re Involuntary Termination of Parental Rights to E.A.P., 2008 PA Super 24 (Pa. Super. 2008)(quoting In re B., N.M., 856 A.2d 847, 855 (Pa. Super. 2004)). Therefore, the Court believes that FCCYS has sustained its burden of proving by clear and convincing evidence that Mother has not been able to remedy the conditions which caused the children to be without parental care and which led to their removal and will not be able to remedy those conditions within a reasonable amount of time.

Mother also claims that the Court erred in determining that termination of Mother's parental rights would best serve the needs and welfare of the children. Mother relies on the fact that FCCYS did not provide expert testimony regarding the effect on the children of termination of Mother's parental rights as support for her claim.

The Court refers to its discussion of the "best interests" analysis pursuant 23 Pa.C.S.A. §2511(b) highlighted under "Father's Appeal" section and incorporates that discussion herein. Additionally, the Court can certainly conclude that there would be an extensive period of time necessary to allow Mother to demonstrate that she has overcome her addictions and is capable of independently caring not only for herself but also for the children. Keeping the children in foster care limbo for an undefined period of time is counter to this Court's responsibilities to provide permanency for these children who have been in foster care for nearly two years. Echoing the sentiment of the Superior Court in C.L.G., 2007 PA Super 355, this Court will not subordinate indefinitely these children's needs for permanence and stability to Mother's claims of progress and hope for the future.

This Court suggested that termination would not be a detriment to the children, and remains confident in that determination. Having found grounds for termination under several subsections of 23 Pa.C.S.A. §2511(a), the Court concludes that the other considerations identified in 23 Pa.C.S.A. §2511(b) require termination to best meet the developmental, physical and emotional needs and welfare of the children given the totality of the circumstances that brought the children into care and Mother's absence in their lives for their entire placement.

## Conclusion

The appellate standard of review in cases of involuntary termination of parental rights is limited to determining whether the lower court's findings are supported by competent evidence. In Re L.A.G., 415 A.2d 44 (Pa. 1980). In making this determination, the court is obliged to accept as true "all the evidence supporting the findings and all reasonable inferences there from." In Re D.K.W., 415 A.2d 69, 71 (Pa. 1980). Absent an abuse of discretion, the findings of this Court must be upheld.

With each involuntary termination decision, this Court realizes that the decision carries great emotional impact on both the child and the parent. Therefore, the Court thoroughly analyzes the facts and circumstances of each case. This Court is confident that the record in this case reflects that Father has failed to perform appropriate parental duties as he is unable to demonstrate an ability to control his anger and aggression. This County has provided many services for Father in hopes that a reunification would be possible; however, after more than a reasonable period of time, the conditions are not safe for the children to return to Father's home. These children deserve a safe and stable home and the Court believes they can now have a sense of permanency with termination of Father's parental rights as they will be freed for adoption.

With respect to Mother, she has failed or has refused to perform her parental duties with no justifiable obstacles presented, and the best interests of the children are served by the termination of parental rights.

This Court is confident that the statutory requirements for involuntary termination were fully met by the presentation of evidence by FCCYS. Therefore, it is respectfully requested that this Court's Order of March 14, 2008 be affirmed for the reasons stated in the said Order and for the reasons stated herein.

## ORDER OF COURT

And now this 19th day of May 2008, pursuant to Pa.R.A.P. 1931(c), it is ordered that the Clerk of Courts of Franklin County shall promptly transmit to the Prothonotary of the Superior Court the record in this matter along with the attached Opinion *sur* Pa.R.A.P. 1925(a).